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# **HUD Conference on Fair Housing Testing**

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Final Summary Report

The research forming the basis for this report was conducted pursuant to a contract with the U. S. Department of Housing and Urban Development (HUD). The statements and conclusions contained herein are those of the contractor and do not necessarily reflect the views of the U. S. Government in general or HUD in particular.

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# HUD Conference on Fair Housing Testing

DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

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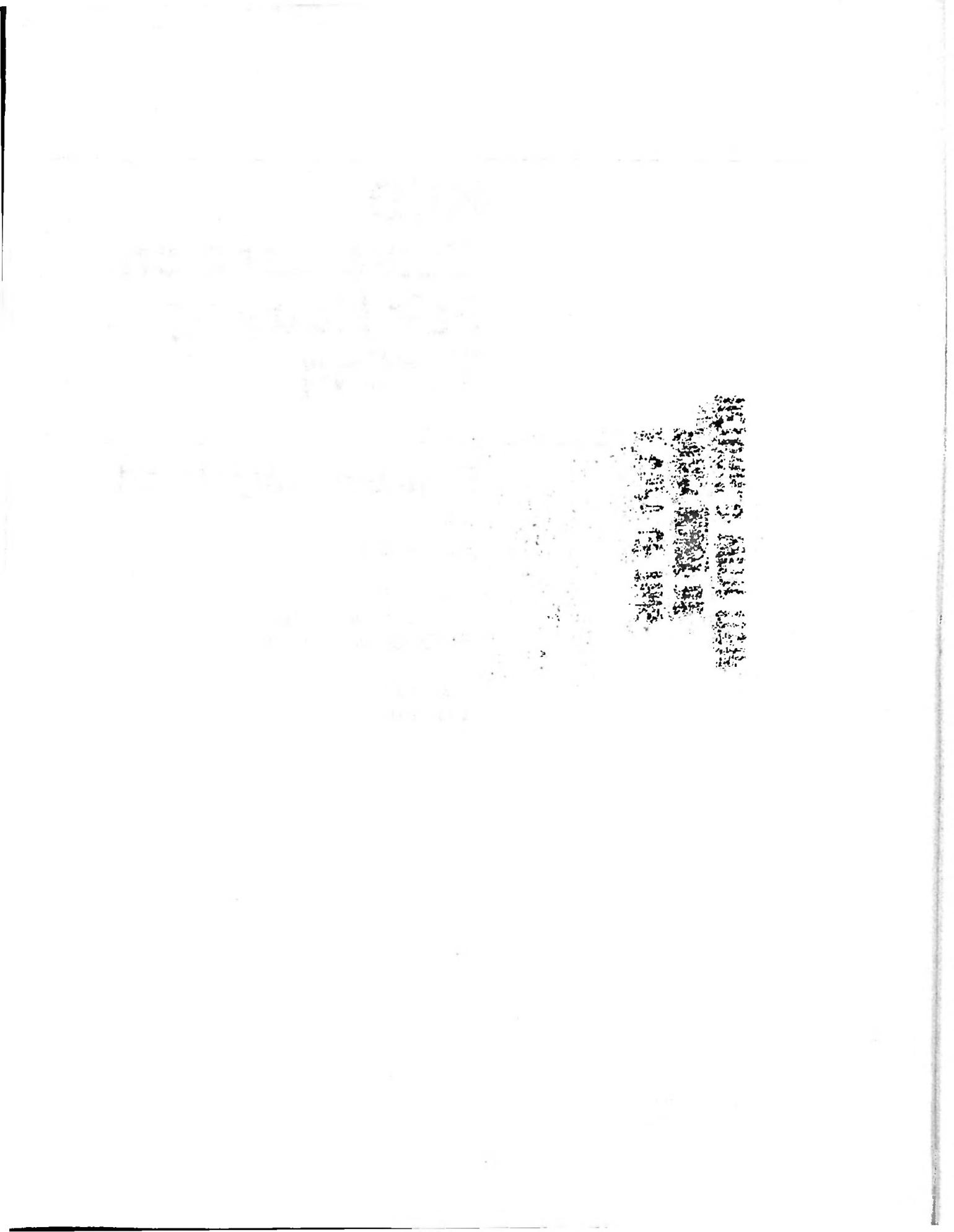
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## Final Summary Report

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**REPORT ON  
THE HUD CONFERENCE ON  
FAIR HOUSING TESTING**

**EXECUTIVE SUMMARY**

On December 6th and 7th, 1984, The Department of Housing and Urban Development sponsored the first national conference on fair housing testing. The conference was attended by approximately 250 individuals, including staff of State and local fair housing agencies, representatives of private fair housing groups, and Federal agency officials. Over the two-day course of the conference, some 36 speakers and discussants addressed a range of topics relating to testing techniques and the use of testing results. In addition, each of the conference speakers prepared papers or written comments to be included in the conference record.

A principal goal of the conference was to encourage the use of testing evidence by State and local fair housing agencies. Fair housing tests -- which are designed to reveal and document discriminatory practices on the part of landlords, real estate agents, and other housing providers -- have become an important tool in the enforcement of fair housing laws. When properly conducted, testing is an efficient means of investigating fair housing complaints and the results can be used to provide persuasive evidence of discrimination in Federal court or in administrative proceedings under State and local ordinances. In addition, systemic testing techniques can be used to document a pattern and practice of discrimination apart from individual complaints lodged by bonafide homeseekers. The development of such systemic testing programs appeared to be of particular interest to conference participants.

A second goal of the conference was to promote the development of testing programs which are valid, credible, and meet high standards of objectivity and professionalism. Over the past ten years, testing practices have become increasingly sophisticated, standardized and disciplined. Given this, a major purpose of the conference was to share information on testing techniques and methods in order to ensure that testing programs are conducted properly and effectively. Major workshops were devoted to proper technique in individual and systemic investigations. In addition, the conference examined the requirements of a properly designed research audit.

Finally, the conference provided an opportunity for experts in the area of fair housing testing to examine the state of the art in testing, explore new testing uses and methods, and share information about their programs and activities. Open discussions at the end of each session often led to lively debate among speakers as well as chance for the audience to raise issues or concerns of particular interest to them. The overall response to the conference suggested a need for additional networking and information sharing among the agencies and organizations involved in fair housing enforcement.

This report provides a summary of the conference, drawing on the presentations of the principal speakers and the ensuing general discussions. It is not a "how to" manual; rather it is intended to provide an overview of the principal issues and themes which emerged from the conference. However, where appropriate this summary references existing manuals and guidebooks developed by fair housing groups around the country. It also references the some 28 papers, critiques, and written remarks prepared specifically for this conference. These documents provide additional perspective and detail on issues raised in the summary and, it is expected, will be of considerable interest and value to the fair housing community. Copies of all papers will be available from HUD (see Appendix A).

**CHAPTER 1****INTRODUCTION**

On December 6th and 7th, 1984, the Department of Housing and Urban Development sponsored the first national conference devoted to the topic of fair housing testing. Fair housing tests, which are designed to reveal and document discriminatory practices on the part of realtors, property managers, and other housing providers, have long been an important tool in the enforcement of fair housing laws. The purpose of the HUD conference was to bring together practitioners in the field of fair housing testing to share experiences and insights, to examine the state of the art in testing practices, and to enhance and increase the use of testing to further equal opportunity in housing.

**1.1 Background**

Testing is a means of measuring differences in the quality, content, and quantity of information and service given to customers by housing providers, attributable to a difference in race, sex, religion -- or whatever variable is being tested. Teams of persons as similar as possible in all characteristics except race, pose as homeseekers. The team members visit the same real estate office, rental agency, or apartment building at closely spaced intervals to apply for the same type of accommodation. Each tester then records the responses and treatment received, and the two reports are compared.<sup>1</sup> The results of

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1. This definition and description appears in one of the first HUD sponsored guidebooks on testing and fair housing enforcement: Guide to Fair Housing Law Enforcement, National Committee Against Discrimination in Housing, 1979.

such tests can be used to determine whether fair housing laws are being violated, to provide evidence in an enforcement action against a specific real estate firm or agent, or to provide information about the nature and level of discrimination practiced in the market.

Since the mid-1970's, the Department of Housing and Urban Development has encouraged the use and development of testing in both the enforcement and research contexts. In 1979, for example, HUD released the results of a major research study -- the Housing Market Practices Survey (HMPS) -- which used the testing methodology to examine the incidence of housing discrimination in the United States. The study documented pervasive discrimination in each of the 40 metropolitan areas studied and also highlighted testing as effective technique for revealing and documenting often subtle forms of discrimination. To assist local groups in applying testing techniques, the Department sponsored the development of a variety of technical assistance materials based on HMPS and other successful projects.

HUD efforts to foster increased use of testing have also included direct funding for the development of local testing programs. Funding for private fair housing groups came through the Fair Housing Enforcement Demonstration in 1980, in which HUD funded nine local organizations to receive, test, and document an increased workload of fair housing complaints. The focus of the demonstration, however, was on the development of systemic testing projects to document patterns and practices of discrimination and the use of this evidence in appropriate enforcement actions. Funding for public agencies has come through the Fair Housing Assistance Program (FHAP) which supports individual

complaint processing in substantially equivalent agencies and also provides competitive awards for special projects. Numerous State and local agencies have received competitive awards under FHAP to undertake testing programs. These range from the development of a systemic enforcement unit in Massachusetts to a program in Wisconsin to provide technical assistance to local groups interested in developing a testing capacity.

Paralleling the growth and development of testing programs has been the development of a solid case law supporting the admissibility of tester evidence in fair housing cases. Throughout the 1970s private fair housing groups had brought numerous Title VIII actions in federal court, many of which relied heavily on tester evidence and increasingly yielded significant damage and attorney fee awards for victims of housing discrimination.<sup>1</sup> In 1982, in the landmark case of Havens Realty Corporation v. Coleman,<sup>2</sup> a unanimous Supreme Court affirmed the standing of minority testers and fair housing organizations to sue on their own behalf under the Fair Housing Act. The impact of this decision is just beginning to be felt, but is without doubt an important and forceful step contributing to private enforcement efforts to achieve fair housing compliance. In the Chicago area alone, some 36 cases have been filed since Havens -- the majority of these settled with money damages, affirmative action and reporting requirements.<sup>3</sup> Courts in this

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1. See Rachel Susz, "Federal Fair Housing," Case & Comment, Vol. 89, No. 3, May-June, 1984.

2. 102 S. Ct. 1114, 3 EOH 15, 413 (1982).

3. See Caruso, "Comments".

jurisdiction have adopted Havens, awarding damages to testers as well as to fair housing organizations for injury to their program.

## 1.2 Goals of the Conference

A major audience of the Conference on Fair Housing Testing was State and local substantially equivalent agencies. Among such public agencies, the use of testing evidence appears to be growing and is strongly supported by HUD. In 1982, for example, HUD Secretary Pierce emphasized the need for the continued use of testers to discover and gain recourse against housing providers who discriminate.<sup>1</sup> A recent study of HUD's Fair Housing Assistance Program showed that 14 of 15 agencies examined had used testing evidence in conciliating fair housing complaints.<sup>2</sup> Nevertheless, there appears to be room for additional use of testers, both in individual complaint processing and the initiation of systemic cases. A major goal of the conference, then, was to encourage State and local agencies to make greater use of testers in appropriate instances.

Recent years have also witnessed important strides in the development of testing techniques, through the testing programs sponsored by HUD, State and local agencies, and through the work of the private fair housing centers. The result has been a growing body of knowledge about how to conduct professional, valid, and credible testing programs and to use testing evidence to support effective fair housing enforcement. A second goal of the conference, then, was to share

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1. Remarks of Samuel Pierce at the National Community Housing Resource Board Conference, September 28, 1982.

2. Remarks of Samuel Pierce at the HUD Conference on Fair Housing Testing, December 6, 1984.

information about testing techniques and uses in order to ensure that testing activities are conducted efficiently, properly, and lead to effective enforcement of fair housing laws.

A final goal of the conference was to review state-of-the-art testing techniques and to examine potential new uses and methods in testing. Over the years testing has evolved from a relatively casual practice to one that has become increasingly sophisticated, standardized and disciplined. Nevertheless, as discriminatory practices have become more sophisticated and difficult to detect, fair housing advocates have had to become more innovative -- redesigning and expanding tests to address new forms and methods of discrimination. The addition of new protected classes under State and local law has also required that enforcement agencies test for discrimination against a wide variety of groups and, in some cases, conduct multiple tests to identify the basis for discrimination. Finally, testing has in the past been largely used to document discrimination in the availability of rentals and (to a lesser extent) sales units. Fair housing groups are now turning their attention to other types of discrimination -- including insurance redlining and discrimination in the credit market -- and exploring the potential of testing to address these forms of discrimination as well.

### 1.3 Purpose of This Summary

The HUD Conference on Fair Housing Testing was attended by approximately 250 individuals, including staff of State and local fair housing agencies, representatives of private fair housing groups, and federal agency officials. Over the two-day course of the conference, 36 speakers and discussants addressed a variety of topics related to

testing, ranging from how to conduct individual and systemic tests to developing political support for testing programs. Open discussion periods followed each session, allowing additional issues to be raised and, in many cases, stimulating lively debate among the participants.

The purpose of this report is to summarize the principal findings of the conference, drawing on both the presentations of the principal speakers and the ensuing general discussion at the conference sessions. The report is not a "how to" manual on testing, but rather is intended to provide an overview of the conference, addressing major themes and issues. However, where appropriate, the report cites available materials and handbooks on testing prepared by agencies and organizations around the country.<sup>1</sup>

References are also included to some 28 papers and written comments, prepared specifically for the conference and submitted for inclusion in the conference record. These documents provide additional detail and perspective on issues raised in this summary and, it is expected, will be of considerable interest and value to the fair housing community. A complete listing of these documents is presented in Appendix A, along with brief descriptions of the scope and content of the major papers. The conference agenda is included in Appendix B.

The summary is organized into five chapters. The second chapter outlines the three types of testing covered at the conference. These include testing to gather evidence to support individual complaints, systemic testing to uncover patterns and practices of

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1. This report does not certify the completeness, legal accuracy, or objectivity of these manuals. Nevertheless, they appear to be among the best available guides to testing practice and use.

discrimination, and research testing used to document the type and level of discrimination in a market or for educational purposes. Issues addressed include the appropriateness and usefulness of each testing type in an enforcement program and the means of developing support for testing, particularly in the public agency setting. The third chapter focuses on legal issues in testing. Since testing evidence must be able to stand up in court or in administrative proceedings, testing programs must be designed with a view towards meeting applicable standards of proof. The fourth chapter focuses on technique, highlighting principal concerns applicable to individual, systemic, and research-related testing programs. Finally, Chapter 5 looks at the state-of-the-art in testing, exploring areas where new approaches are being tried or where additional development is needed. A brief conclusion is provided in Chapter 6.



**CHAPTER 2****USES OF TESTING**

Fair housing tests are designed to reveal and document discrimination on the part of realtors, agents, property managers or other housing providers. The conference focused on three different types of testing: individual testing, systemic testing, and the research audit. Each type of testing has a different purpose and each offers different opportunities to agencies charged with extending equal opportunity in housing. This chapter outlines these three basic testing types and reviews their role in promoting fair housing compliance.

**2.1 Testing in Individual Complaints**

Pioneered by private fair housing groups, testing was first used to provide evidence of discrimination in individual fair housing complaints. The legal foundation for testing was established shortly after the passage of Title VIII in the case of Bush v. Kaim, 297 F.2d 151 (N.D. Ohio 1969), in which a white "tester" couple sought and obtained housing which had been denied to a similarly qualified black couple. The court held that the difference in treatment afforded to the two couples constituted proof of discrimination. Since that time, civil rights groups and fair housing centers have regularly used testers to investigate and verify individual complaints of discrimination and to support such complaints in Federal court. Similarly, State and local agencies have developed a firm foundation for the use of tester evidence in proceedings under state or municipal fair housing ordinances.

The purpose of individual complaint testing is to gather corroborating evidence to support a charge of housing discrimination brought by a bonafide homeseeker. Successful individual complaint testing requires an ability to respond to a complaint quickly, dispatching one or more testers to investigate the complaint. Where differences in treatment indicate that illegal discrimination has occurred, various forms of relief may be sought including securing the unit for the complainant or the award of actual and punitive damages for the victim.<sup>1</sup> Providing such individual relief is fundamental to enforcement of the Fair Housing Act, and it has been shown that testing evidence can contribute to swift and successful disposition of such cases. The sense of the conference was that testing for individual complaints was a basic activity and that every enforcement agency should have the capability of conducting such tests.

## 2.2 Systemic Testing

While the processing of individual complaints is fundamental to enforcing fair housing laws, enforcement based on individual complaints depends on the existence of bonafide homeseekers who are both aware that they have been discriminated against and are willing to pursue such complaints with the appropriate agencies. However, since discriminatory practices have become more sophisticated and difficult to detect, victims of housing discrimination are unlikely to be aware that discrimination has occurred. Thus private fair housing groups and

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<sup>1</sup> Actual damages may encompass damages for humiliation, embarrassment, and other injury, as well as "out of pocket" compensation.

public agencies alike have turned to systemic testing techniques to address this problem.

Unlike individual complaint testing, systemic testing involves repeated tests of carefully selected targets, and no bonafide homeseeker need be involved. The purpose of systemic testing is to document a consistent pattern and practice of discrimination against a class of homeseekers, usually over an extended period of time. Testers are matched to each other in all respects except that variable being tested, and testers in each pair request the same type of housing. Based on a comparison of tester reports, differences in treatment are identified. The results of all tests against a specific target are then analyzed together to determine if a pattern and practice of discrimination can be established. Where public agencies conduct the tests, and have enforcement powers, the agency itself may initiate a complaint and seek affirmative remedies. In private actions, the Supreme Court recently affirmed that fair housing organizations as well as protected-class testers have standing to sue and recover damages.

Although systemic testing programs can make a significant contribution towards eradicating housing discrimination, conference speakers did not fail to point out the complexity and difficulties of systemic testing. As discussed further in Chapter 4, agencies which have developed systemic programs have found that systemic testing can be time consuming, costly, and a potential drain on agency resources. In almost every case, projects were ultimately more complex and demanding than originally anticipated.

Despite these difficulties, however, conference speakers strongly encouraged the development of a systemic capability -- either as an on-going program or a one-time project. It should also be pointed out that agencies considering a systemic testing program can now draw on a number of newly available documents -- including a self-contained systemic manual developed for this conference -- which provide excellent guidance on how to conduct systemic tests and point out pitfalls or problems to be avoided.<sup>1</sup> While agencies can expect to make mistakes at first, systemic testing programs appear to provide the single most effective means available to discourage discrimination and enforce fair housing laws. Moreover, in the view of at least one agency executive, no public agency can assert itself as a civil rights leader or pace setter if it fails to undertake at least one major testing project.<sup>2</sup>

### 2.3 The Research Audit

The third use of testing addressed by the conference is research testing -- hereafter referred to as auditing. Audits follow essentially the same technique as systemic enforcement related testing, in that matched pairs of testers (auditors) visit the same site, request the same type of housing and complete a written report which is then analyzed to measure differences in treatment afforded members of different groups. However, in research audits, targets are selected

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1. See: Rubin, Forward, MacLeod, and Sanders, "Designing and Conducting a Systemic Testing Program" (conference paper). California Department of Fair Employment and Housing "Fair Housing Testing: A Three Part Manual," DFEH #176 (1984). California DFEH, "Report of a Systemic Fair Housing Project," June, 1984.

2. Schiller, "Developing Support for Public Agency Testing," (conference paper).

through random sampling in order to make inferences about a large group of housing providers. Audit results are analyzed using standard measures (such as number of housing units inspected) and statistical tests are performed to determine the probability that differences in treatment are due to the independent variable (e.g., race, sex) rather than chance factors. The basic purpose of research auditing is to provide information about the type and level of discrimination existing in a given market.

Although the emphasis of the conference was clearly on enforcement related testing (testing in support of individual complaints or to initiate a pattern and practice suit), the research audit provides still another tool for enforcement agencies. Despite the concern of fair housing groups that scarce resources be directed to activities which directly promote compliance, research studies using the audit technique have had considerable impact and are not without enforcement value.

The conference reviewed several audit-based studies, ranging from HUD's Housing Market Practices Survey (1979) to more recent local studies in Boston and Denver.<sup>1</sup> Such studies -- even when designed purely for research purposes -- support enforcement efforts in at least two ways. First audits can provide powerful evidence concerning the levels of discrimination in a market, which in turn can be used to mobilize support for enhanced enforcement efforts. Secondly, by identifying the circumstances under which discrimination is most likely

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1. See Yinger, "Measuring Racial Discrimination with Fair Housing Audits," (conference paper).

to occur, audit studies can help enforcement agencies to target their enforcement activities. Audit studies have been used to measure and compare levels of discrimination against different groups (e.g., Hispanics in Dallas and Blacks, Hispanics and Asians in Boston), to identify the points in real estate transactions where discrimination is likely to occur, and to examine the prevalence of different forms of discriminatory treatment (e.g., availability, terms and conditions, or steering). Such information can be useful to enforcement agencies in setting program priorities and allocating enforcement resources.

While the scale and complexity of an audit will vary with its objectives and the resources of the agency involved, a useful point made at the conference is that research studies may in some cases be easier to conduct than systemic projects, and they are also likely to generate greater public interest. This point was illustrated by a testing program in California where both research audits and systemic testing were undertaken as part of a statewide testing project. The research audits were found to be less time consuming and costly since sample sites needed to be visited only once and thus fewer testers were needed.<sup>1</sup> Although the research audits did not (and were not intended to) produce complaints, they generated greater attention and publicity than the systemic results and had a far reaching impact on the communities involved.<sup>2</sup>

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1. Also the systemic testing projects were conducted in areas where the sophistication of housing providers required application testing (in which testers use a verifiable identify and actually place a deposit on the unit); the research audits by contrast were conducted in less sophisticated markets where less costly availability testing was likely to reveal significant discrimination.

2. See Schiller, op. cit.

In addition, research audits may be directly linked to enforcement efforts. This occurred in 1983 study of discrimination in Boston.<sup>1</sup> The project contained a research component, aimed at verifying and expanding the results of an earlier audit-based study. However, the primary goal of the project was enforcement, and the study was designed so that the results of those tests where discrimination was indicated could be turned over to the State enforcement agency for investigation, additional testing, and prosecution.

#### 2.4 Other Testing Programs

A final, related use of testing discussed at the conference was "educational testing," in which the test results are used as a tool for educating realtors and agents about their fair housing responsibilities. As in auditing, the data are not collected for enforcement purposes, but rather to provide feedback -- in this case directly to participating agents -- on their compliance with fair housing law. Such programs respond to the problem that some industry members may violate the law without being aware of it. This might stem from ignorance of the specific requirements of Federal, State, or local law, or from a mistaken belief that they are "assisting" clients when they are in fact discriminating. Particularly in the rental market, where there is little or no training for agents or industry supervision, educational testing appears to be a promising approach.

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1. See Feins and Holshouser, "Multiple Uses of Audit Based Research: Evidence from Boston," (conference paper).

The principal example of this use is a program developed in Grand Rapids, Michigan.<sup>1</sup> Originally funded with a foundation grant and contributions from the Grand Rapids Board of Realtors, the program involves: 1) a three-hour training program for realtors covering fair housing law and discriminatory practices, 2) testing of agents, and 3) review of the results with individual agents and board members. As a condition of acceptance by the Board of Realtors, the results cannot be used for enforcement purposes (with the exception of possible disciplinary action by the Board's Ethics Committee). This aspect of the program generated a fair amount of concern on the part of conference participants who held out little hope for successful "voluntary compliance." However, the program is not intended as a substitute for enforcement, but rather as an approach for supplementing litigation efforts with cooperative and non adversarial programs which attempt to foster institutional change within the real estate industry.

## **2.5 Building Support for Testing Programs**

Since a principal audience of the conference was State and local equivalent agencies, considerable attention was devoted to the topic of building support for testing programs in public agencies. This issue was addressed in the opening session of the conference by speakers from three State agencies, each of which had developed strong testing capabilities. Not surprisingly, issues of support were different for different testing types.

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1. See Schreuder, "Testing and the Real Estate Industry," (conference paper).

The overwhelming sense of the conference was that the legal and political groundwork for complaint-based testing was well established and that every agency should have the capability of doing its own individual testing. Since the only factor that distinguishes testing-based complaints from other complaints is the manner in which the evidence is gathered, the use of testing in individual complaints appears to raise no special questions of policy.<sup>1</sup> Such testing is commonly conducted by staff investigators, sometimes supplemented by a pool of volunteer testers. The use of volunteers as well as staff adds flexibility to the program in terms of matching testers to complainants.

The principal cost of developing an individual complaint testing program is initial training. Also, where volunteers are used token payments of \$15 to \$20 per test are usually provided to cover lunch, car fare or other expenses. However, staff costs and other expenses appear to be easily justified by the impact of tester-gathered evidence on the speed and outcome of case processing. In its recent study of FHAP funded agencies, HUD found that virtually all of the agencies examined used tester evidence in at least some of their cases and that such evidence significantly increased the success of conciliation.<sup>2</sup> Among agencies represented at the conference, complaint based testing was viewed as routine rather than innovative. It was also considered by conference participants to be highly cost effective -- the most efficient means of moving from allegation to determination. As suggested by one speaker, any decision-maker needing further proof of

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1. See Floyd, "Developing Support for Public Agency Testing" (conference paper), and Schiller, op. cit.

2. Remarks prepared for delivery by Samuel R. Pierce, Jr., before the HUD Conference on Fair Housing Testing.

this need only arrange a modest demonstration in which a number of cases are processed with and without testing. A comparison of the length of time required for processing and the settlement rates, should prove the value of testing as an investigative technique.<sup>1</sup>

While individual testing appears to be widely recognized as an effective investigative tool, the development of systemic or targeted testing programs, particularly in public agencies, may generate some concern. An important difference between individual and systemic testing is that in the latter case an organization or agency usually acts on its own initiative to select targets, uncover evidence of illegal discrimination and file complaints against violators.<sup>2</sup> This is likely to cause at least some uneasiness within the agency, and commissioners or other decision makers may need to be convinced of both the propriety and need for a systemic testing program.

Many potential concerns can be addressed with reference to the well-established legal basis for testing. As discussed in Chapter 3, the courts have repeatedly found that responsible, well conducted tests are valid evidence of discrimination. The courts have also declined to consider testing as "entrapment" and have dismissed various counter claims and counter suits as being without merit. Establishing the legality and the legitimacy of testing at the outset is key to obtaining internal support for the program.<sup>3</sup> It may also be particularly important to address the issue of "entrapment," by pointing out that

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1. Schiller, op cit.

2. Systemic complaints may also be formed by combining several individual complaints against the same defendant to demonstrate a pattern and practice of discrimination.

3. Floyd, op cit.

a professionally conducted testing program does no more than reveal the practices of housing providers under normal business circumstances.

Establishing the need for a systemic program may also pose difficulties, especially if commissioners view small individual complaint caseloads as evidence that no significant housing discrimination problems exist. But, given the subtle ways in which discrimination can be practiced, it is unlikely that individual complaints reflect the level or type of discrimination in the market. Evidence from research studies demonstrate this disparity and can be used to help establish the need for agency initiated testing. In Boston, for example, a finding that Blacks were 89 percent sure to encounter at least one act of discrimination in visiting four rental offices contrasted with the denials of some politicians and industry spokespersons that any problem existed.

The third element in building support for a systemic testing program is to demonstrate the potential impact of systemic testing on the agency and its enforcement efforts. Potential benefits may include increased caseload activity generally and an increased proportion of high impact cases, with broader remedies. Systemic testing results can also be used to provide evidence of substantial levels of discrimination in the market which may in-turn convince legislators of the need for increased funding for enforcement agencies and the passage of stronger fair housing laws.<sup>1</sup> In addition, testing programs enhance an agency's visibility and reduce levels of discrimination in the market by deterring violaters who fear detection. The knowledge that even very covert forms of discrimination can be detected serves an important

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1. See Rubin, et al., op. cit.

preventative role. Finally, systemic testing projects can serve an important staff development role, sharpening the staffs' investigative skills and increasing their sensitivity to subtle forms of housing discrimination.<sup>1</sup>

In addition to building internal support for a testing program, various approaches to dealing with external actors were discussed. Representatives of the real estate industry -- in particular the National Association of Realtors -- have expressed concern about increased use of testing by local organizations, suggesting that such programs may be unsupervised, subjective, and arbitrary.<sup>2</sup> Given this perception, testing programs should be prepared for potential negative reactions. However, conference participants who had developed systemic testing programs indicated that industry opposition was far weaker than originally anticipated and that housing providers will not necessarily put up organized resistance to an objective, credible testing program.

One approach to dissipating opposition is by informing the local real estate industry of the proposed program and offering to discuss it with them. Offering such advance notice was a strategy adopted in Pennsylvania where a secondary agenda of the program is to facilitate a dialogue with the industry and to obtain voluntary

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1. Schiller, op cit., p. 35.

2. Prior to the conference, HUD formally invited the National Association of Realtors (NAR) to participate in all aspects of the conference. In particular, they were asked to discuss their current development of educational or Board-sponsored testing programs. NAR declined to participate in the conference. William D. North expressed NAR's concerns about testing in a recent statement (May 2, 1985) regarding HUD FY 1986 Appropriation Bill to the House Subcommittee on HUD-Independent Agencies. NAR emphasizes that it is not opposed to testing per se, but that to be fair and effective, testing must be uniform, unbiased, professional, and consistent. To this end the association has urged HUD to develop and publish guidelines standards and criteria for testing programs.

compliance agreements. However, the disadvantage of this approach is that the industry may warn its membership, allowing realtors to temporarily clean up their procedures in anticipation of testing. Moreover, the view was forcefully expressed by one conference participant that such contacts are unnecessary and show self-doubt or timidity on the part of the agency. The conference reached no final consensus on the necessity or advisability of consulting with housing industry groups; clearly, local needs and objectives will have to determine this choice.

Other actors who will be important to generating support for the program are local fair housing advocacy groups and the media. Advocacy groups may help convince commissioners of the need for testing, and may participate in joint testing projects. Effective media coverage maximizes the impact of testing activities and helps develop awareness and broad-based support for such programs.<sup>1</sup> In addition to reaching civil rights community (who will see a demonstrated result of agency enforcement efforts) media coverage can have an impact on the real estate community itself and legislators who may be more willing to provide additional support for civil rights enforcement.

## 2.6 The Limits of Testing

No discussion of testing can be complete without some attention to limitations of the testing technique. As noted earlier, complaint-based testing as an enforcement tool is limited by the ability of bonafide homeseekers to recognize discrimination when it occurs and their willingness to seek an appropriate remedy. Moreover, individual

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1. For hints on dealing with the media, see Rubin et al., p. 100.

cases depend on home seekers who are looking for housing; in highly segregated markets, minorities are unlikely to look in communities that have a reputation as being "closed" or where hostile reactions are anticipated.

While systematic testing programs address this problem, this approach has limitations as well. In particular it may not be a cost effective mechanism for identifying discriminating behavior on the part of all types of housing providers. For example, a large share of rental housing is owned by small-scale landlords with only a few properties. Systemic investigations, on the other hand, tend to focus on major property owners or agents because of the higher impact of such cases. Moreover, where available units are not advertised, but rather are passed on largely by word of mouth, such units are not susceptible to testing techniques.

Second, testing is most useful in reviewing the initial stages of a property transaction, that is, in inspecting available units for rent or for sale. As discussed in Chapter 5, "application testing" -- where testers actually place deposits on units and use verifiable identities for credit checks -- can be used to identify discrimination in the later stages of a real estate transaction. However, this form of testing is more complex and costly, imposing a substantially greater burden on the testing organization. Whether such application testing will be necessary is a judgment that each organization must make, based on an assessment of the local industry's sophistication and the likelihood that traditional availability tests will expose existing discriminatory practices.

Finally, testing is only as effective as the enforcement or educational program which guides its use. For most testing activities, timely and effective enforcement should be the explicit objective. Agencies and organizations must be prepared to pursue penalties against housing providers who violate the law, through local administrative proceedings, recourse to Federal court, or referral procedures to HUD or the Department of Justice. In every case, the organization must be careful to ensure that each test has been properly conducted and meets the highest standards of objectivity and credibility. Where testing is used for research purposes, the results should be publicized to heighten awareness of fair housing concerns and to point out problems or progress in meeting fair housing goals.

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## CHAPTER 3

### LEGAL ISSUES IN TESTING

Because the conference was primarily concerned with testing for enforcement purposes, legal issues in testing were raised in several conference sessions. Moreover, in light of rapid development in the field of fair housing litigation, the conference provided an opportunity for fair housing attorneys to share information on new cases and legal strategies. This chapter begins with a discussion of the legal basis for testing and reviews the types of challenges that have been raised to the use of testers. Subsequent sections examine standards of proof required for individual and systemic complaints. Finally, the impact of the recent Havens decision is discussed, focusing on potential conflicts that may arise when testers act as plaintiffs in fair housing cases.

#### 3.1 The Legal Basis for Testing

The legal basis for the admissibility of tester evidence has been established over the past 15 years through numerous court cases.<sup>1</sup> Moreover, the courts have affirmatively and consistently recognized the importance of testing in fair housing cases where sophisticated and subtle forms of discrimination may make testing results the only competent evidence to prove illegal conduct on the part of a defendant.

Given the potential effectiveness of tester evidence, however, it is not surprising that defendants have attempted to challenge its use. Charges of entrapment were among the first to be raised, but were rejected both because the concept of entrapment is not applicable and

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1. See Pratt, "Legal Issues in Testing" (conference paper).

because there can be no entrapment if all a tester does is to offer a favorable opportunity for a violation to occur. Nevertheless, a potential entrapment defense is one reason why testers are trained not to solicit biased remarks or behavior from real estate agents.

Other attempts to curtail the use of tester evidence have included claims that testers violated an agent's right to be free from unreasonable searches and that tester activity constituted interference with economic relations, trespass, unjust enrichment and libel. Such claims have been rejected or have been met with reference to the anti-retaliation provisions of the Fair Housing Act. In addition, a State statute (Wisconsin) which prohibited testing altogether was found to conflict with the Fair Housing Act and therefore to be invalid under the U.S. Constitution.

The conclusion of the conference was that the legality of testing per se is clearly affirmed. Nevertheless, testing programs have reason to be careful and professional in all testing activities, since lawsuits, or counter suits, are still a possibility. But, where testers are properly trained, adequately supervised, and all due care has been taken, such claims are unlikely to prevail and should not be allowed to deter the development of effective and aggressive testing programs.

### **3.2 Testing Evidence and Standards of Proof**

Evidentiary standards were addressed at the legal session of the conference from two perspectives. The first presentation (Pratt) reviewed the case law to examine applicable standards of proof in

individual and systemic cases. In a second presentation (Dreyer<sup>1</sup>), the emphasis was on systemic testing and evidentiary standards as applied by a State-level equivalent agency, the Massachusetts Commission Against Discrimination (MCAD).

As described by Pratt, there are three basic types of discrimination cases: overt, disparate treatment, and adverse impact. In the case of overt discrimination -- where an announced policy or practice of discrimination is at issue -- tester evidence may be used to verify the plaintiff's experience by receiving the same form of announced discrimination. The objective is to establish a prima facie case that the announced discriminatory act did, in fact, occur. In such cases it may not even be necessary to use a majority class tester if a protected class tester receives the same treatment as the plaintiff and is able to corroborate the plaintiff's testimony in court.

Adverse impact cases use tester evidence in essentially the same way. Here the issue revolves around a facially neutral policy which has the effect of excluding members of a protected class. As an example, a policy of excluding child support or alimony from income for determining eligibility may have a disproportionately adverse impact on women. Tester evidence in such a case would be used to establish the existence of the policy, while statistical evidence would be used to address the issue of impact.

The third type of discrimination case falls under the category of disparate treatment, in which the complainant or plaintiff alleges

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1. See Dreyer, "Standards of Proof in Systemic Fair Housing Cases Before the Massachusetts Commission Against Discrimination," (conference paper).

that he or she was discriminated against due to membership in a protected class. This is the most common type of discrimination case and receives the most attention here.

In disparate treatment cases, a prima facie case is established by proof of four factors:<sup>1</sup>

1. The plaintiff is a member of the protected class.
2. The plaintiff applied for and was qualified for housing.
3. The plaintiff was denied the housing.
4. The housing opportunity remained available.

Tester evidence is used to establish two elements of the prima facie case: that the housing opportunity remained available and that the plaintiff was qualified for the housing. Availability may be shown by the experience of the majority class tester who follows the homeseeker in time and receives more favorable information as to the availability of the unit. Evidence of preferential treatment offered to the majority tester with qualifications equal to (or usually slightly inferior to) those of the homeseeker is used to support the conclusion that the homeseeker was objectively qualified for the unit.

Once a prima facie case is established, the burden of proof in fair housing cases shifts to the defendant to offer legitimate nondiscriminatory reasons for the difference in treatment. Here again tester evidence may be used to rebut such explanations and show that

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1. Presenters and commenters agreed on this basic formulation. However, Dreyer also presented related formulations to be used in other types of cases (eviction, refusal to negotiate, steering, difference in terms and conditions, and false information cases). At least one commenter (Caruso) found these to exceed the standards applied in Federal court.

they are manufactured or pretextual. Tester evidence may be ideal for this use by showing that the reasons advanced by a defendant were not sufficient to reject a majority class applicant.

An issue addressed by both Pratt and Dreyer was the number of tests required to establish proof of discrimination. In individual cases, for example, the quantum of proof is rarely at issue; rather the emphasis is on whether the tester is believable. A single, clear test is sufficient in most cases to establish proof of discrimination. In systemic cases, by contrast, evidence is usually based on a series of tests. Proof of a number of incidents, particularly where discriminatory practices are subtle and sophisticated may be required to convince a fact finder that discrimination has occurred. Nevertheless, the number of tests needed cannot be specified in advance, but depend on the strength and consistency of the evidence.

For example, systemic testing may reveal differences in treatment between testers in the same test (e.g., contradictions as to the availability of a unit). In this case a finding of discrimination with respect to one test would be sufficient to establish the respondent's liability. However, additional tests are desirable and reduce the chances that the defendant will be able to articulate a nondiscriminatory reason for the difference in treatment. In other instances, a pattern of discrimination cannot be detected except through the analysis of multiple tests against a given target. Particularly in cumulative disparate treatment cases (where, for example, white testers are shown more units than their Black counterparts) a showing is required of a "consistent" difference in treatment. Here statistical

tests may be required to verify the significance of the accumulated instances of disparate treatment.<sup>1</sup>

### 3.3 The Standing of Testers to Sue

In 1982, following a series of lower court decisions, the U.S. Supreme Court held in the Havens case that protected class testers have standing to sue under the Fair Housing Act when they have received false information related to housing availability. Since the Act makes misrepresentation to "any person" illegal, there is no requirement that the plaintiff be a bonafide homeseeker. The court also discussed the standing of fair housing organizations to sue in their own right where injury to the organization can be shown. Since Havens, courts have given both testers and open housing centers clear standing; testers have been paid damages and fair housing center have received damages both for the cost of the tests and for injury to their program.

Havens is a landmark decision in fair housing law, but as noted by numerous speakers and participants, fair housing centers are only beginning to adjust to its full implications. One issue which was hotly debated at the conference was the use of testers as plaintiffs. One potential problem was illustrated in a case in which minority testers were used as plaintiffs for one of three causes of action within the same case.<sup>2</sup> When the case came to settlement, the major plaintiff wanted to settle because her share of the relief was substantial; the conflicting interest of the parties convinced their attorney that she would not use minority testers in this way again.

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1. See Yinger, The Statistics of Fair Housing Audits: A Primer for Fair Housing Groups and Enforcement officials (conference paper).

2. See Sigler, "Testing," (discussant comments).

A related problem is that the courts may question the credibility or motives of testers who stand to receive large monetary awards as a result of their testing activity. In order to thwart any attempts to impeach a tester's testimony, at least one fair housing center requires all testers to sign a waiver that they will not sue for damages if they become victims of discrimination while testing.<sup>1</sup> Similarly, another center has established a policy of barring testers from further activity after the receipt of any award.

### 3.4 Remedies and Damages

In individual complaint cases the remedy to be sought depends on the needs and objectives of the client. In New York City, where the housing market is extremely tight, securing the unit for the complainant is in many cases the only meaningful remedy. As a result, New York City's Commission on Human Rights has developed a technique called "the confrontation" in which the Commission's General Counsel can find probable cause based on a complaint and the tester's report. Once cause is established, the investigator, the tester, and the complainant immediately confront the landlord and ask that the apartment be given to the complainant in light of the evidence. In addition to a prepared conciliation agreement, the confrontation "kit" includes completed subpoenas and a posting notice to help spur landlord acquiescence.<sup>2</sup>

Increasingly high damage awards have been an important development in effective fair housing enforcement. Where private

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1. See Borowski (discussant comments).

2. The use of a tester as a surrogate to obtain an apartment or home was discussed by Irvine (Development of New Testing Techniques, conference paper) but was considered legally dangerous by Friedman (discussant comments). In the view of Friedman, the use of a temporary restraining order is the correct approach.

judgments fell in the \$1,500 - \$2,500 range in the early 1970's, judgments in the \$10,000 to \$50,000 range were being rendered from 1978 through 1983.<sup>1</sup> Awards made as part of the 1982 Mansards case illustrate the potential impact to realtors who discriminate. Here the homeseekers, a couple, were awarded a total of \$20,000 in actual damages and \$30,000 in punitive damages. Two minority testers received a total of \$7,500 in actual damages and \$2,000 in punitive damages. Damages to the open housing center totaled \$5,280 and attorneys fees and costs of \$49,663.52 were awarded.<sup>2</sup> Increasingly State and local enforcement agencies also ask for contributions to local open housing centers as a part of settlements sought in agency initiated cases.<sup>3</sup>

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1. See Susz, op. cit.

2. See Holbert, "Remarks" (discussant comments).

3. See Rubin, et al., and Schiller, op., cit.

**CHAPTER 4****TESTING AND AUDITING TECHNIQUES**

A major purpose of the conference was to promote the use of proper procedures and techniques in conducting fair housing tests. Two workshops addressed testing techniques, the first focusing on individual complaint testing and the second on systemic testing. In addition, the elements of a methodologically sound audit were explored in the session on audit-based research. This Chapter summarizes the main themes of the workshops. Readers are referred to the conference papers for detailed information on testing methodology and techniques.

**4.1 Individual Complaint Testing**

Testing to provide evidence in support of individual complaints can be conducted for all protected classes and for most discriminatory acts. Testing for availability in the sales and rental markets is most common, but testing may be used to document racially motivated evictions<sup>1</sup>, discrimination in financing,<sup>2</sup> or to meet a variety of other fact situations where discrimination is alleged. In all cases, the objective is to isolate race, sex, or other protected basis as a factor by holding other characteristics constant. Where a complainant may be discriminated against on the basis of a number of attributes (eg., race and sex), multiple tests may be required to identify the reason for a difference in treatment and produce a positive test.

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1. See Irvine, "Development of New Testing Techniques" (conference paper).

2. See Caruso and Lambert, "Testing Techniques and the Testing Process" (conference paper).

Several types of tests may be used depending on the situation. These include telephone tests, single person tests, matched pairs and sandwich tests. Telephone tests may serve as a quick method of checking unit availability, but are less useful in establishing proof of discrimination. While a few cases have used evidence based on telephone contacts, it is more difficult to prove that the respondent was aware of the race of the caller.<sup>1</sup> Furthermore, testimony based on a telephone contact is usually less persuasive than a face-to-face meeting.

Single person tests are commonly used in investigating individual complaints. In this case, the tester visits the unit in question to determine its availability, followed closely by the homeseeker. However, more dramatic evidence can be provided through a "sandwich" test, involving an initial inquiry by the tester, a follow-up visit by the homeseeker and a final confirmation by the tester. At least one State court (Pennsylvania) has required this type of cross check in order to meet the burden of proving discrimination. Finally, matched pairs of testers may be used where more than one test is required or where the bonafide client is reluctant to return to the unit.

The basic activities associated with complaint-based testing -- including selecting testers, making the assignment, and reporting and

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1. In testing for sex discrimination, identifying the caller by voice presents less of a problem. Also testers can give a racial identification as part of the testing scenario. Telephone contacts may also be useful in determining whether to conduct a face-to-face test, especially if staff suspect the personality of the complainant may be an issue (Seigler, op. cit.). The use of telephone tests in systemic investigations is discussed in Rubin, et al., op. cit.

debriefing -- are covered in detail in the conference papers and in other available manuals and guides<sup>1</sup> and will not be described here. One point which must be addressed, however, is the need for absolute objectivity and careful attention to detail on the part of testers, who must be able to serve as credible witnesses in any ensuing legal action.

Private fair housing attorneys among others stress the importance of personal tester credibility in successful fair housing cases. This can have implications for the type of individual selected to serve as a fair housing tester. In some cases, those most attracted to the work -- people who feel strongly about the injustice of housing discrimination -- may be less suitable as witnesses in fair housing cases. The point is illustrated by the case of Village of Bellwood vs. Duane Realty<sup>2</sup> where one of the testers was a Black employee of an abutting village, whose work involved dealing with problems of discrimination. Her sense of outrage -- which was evident in her testimony -- led to the judge to perceive her as biased.<sup>3</sup>

The need for objectivity and impartiality on the part of testers also requires that testers be thoroughly trained before being assigned cases. The role of the tester is to observe and report actual

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1. See Caruso and Lambert, op. cit.; Leadership council for Metropolitan Open Communities, "Testing and Auditing in Fair Housing Cases, Chicago 1982; "Guide to Fair Housing Law Enforcement", HUD-PDR-491, October, 1979; and Connecticut Commission on Human Rights and Opportunities, "Connecticut Fair Housing Testers Manual," February, 1984.

2. 482 F. Supp. 1321 (N.D. Ill. 1979).

3. To avoid this problem, one fair housing center has gone so far as to recruit local actors as testers. In addition to having flexible hours and an ability to play a part, such individuals tend to have no professional or personal axe to grind making them perhaps ideal witnesses in fair housing cases.

facts. Testers must maintain a nonjudgmental attitude and must not attempt to lead an alleged discriminator into making incriminating statements.<sup>1</sup> Furthermore, testers must be trained to be precise and accurate both making their requests to the housing provider and in recording the details of the contact.<sup>2</sup>

#### 4.2 Systemic Testing Programs

While individual testing can be considered a component of normal complaint investigation procedures, conducting systemic testing projects requires careful advance preparation and often the dedication of substantial resources on the part of the testing agency. The Massachusetts Commission Against Discrimination (MCAD), which has developed an on-going systemic program, estimates that an annual financial commitment of \$70,000 is required for its activities. This size budget permits the execution of at least 200 tests per year at an average cost of \$350 per test. The expected number of complaints generated as a result of this activity is about 40, producing an average per case cost of \$2000. Pennsylvania's Human Relations Commission reports similar costs for a 1984 HUD funded project. Here, 435 three-person tests were conducted over the course of a year, supported by a \$150,000 grant, and resulting in 64 docketed complaints.

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1. A possible exception to this rule is put forth by Irvine regarding the investigation of racially motivated evictions. Borowski also describes situations where leading questions may be asked, but advises that in such situations the use of tape records is advisable.

2. The need for accuracy is illustrated in a case where testers testified that an agent had indicated that various houses were for sale but had held a multiple listing book so that nothing could be seen. In his report, however, the tester had written that he had seen the listing book instead of indicating that only the back of the book was visible.

On the other hand, smaller more limited projects can also be developed. For example, private fair housing centers participating in HUD's 1980 Fair Housing Enforcement Demonstration spent an average of just under \$50,000 each for systemic testing activities conducted over a two-year period. On average, participating organizations completed between 3 and 4 separate projects containing 38 tests per project. While agencies considering systemic projects should be aware of the potential costs, as several conference participants pointed out, testing projects do not need to be exorbitantly expensive to be effective. Moreover, once testers are trained, the program can be regulated to accommodate available resources.<sup>1</sup>

In planning for a systemic project, the project leader should be prepared to allocate sufficient staff time to cover basic project activities. These include: selecting targets; developing the project's operating methodology; developing or adapting the necessary forms; recruiting, selecting and training testers; making test assignments; monitoring tests and debriefing testers; and analyzing the results. Also, if the same agency will file and investigate the resulting complaints, staff with appropriate legal and investigative skills will need to be assigned to the project. With respect to this last point, it is important to ensure that the agency does not become over extended and that the number of targeted housing providers corresponds to the organization's capacity to handle related law enforcement activities.

Guidance on how to design and conduct a systemic testing program was provided in a conference workshop devoted to this topic. In

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1. Floyd, op. cit.

addition, representatives from the MCAD produced a comprehensive systemic testing manual geared specifically to the needs of State and local agencies. Readers are referred to this and other guidance materials for more information.<sup>1</sup> The following sections briefly summarize a few key points made at the conference concerning systemic testing projects.

#### Selecting Targets

Target selection is considered to be one of the most important aspects of designing a systemic project, since the characteristics of the target determine many other aspects of the work. For example, the size of the target(s) will help determine the number of tests needed; different types of targets will require different operating methods, e.g. appointments vs. walk-in contacts. In systemic testing, targets are generally selected for their impact on opening housing opportunities for particular classes. Targets might include major rental complexes, large real estate agencies, real estate offices in a particular neighborhood, or mortgage lending institutions. Targets may also be selected on the basis of prior complaints indicating discrimination. Whatever the basis for target selection, however, it is desirable that the agency use a set of explicit, predetermined criteria in selecting particular targets in order to avoid the appearance of targeting for political or other subjective reasons.<sup>2</sup>

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1. See Rubin et al., MCAD, "Designing and Conducting a Systemic Testing Program" (conference paper). See also California DFEH, "Fair Housing Testing: A Three Part Manual."

2. Floyd, op. cit.

Recruiting Testers/Use of Staff

Since a substantial pool of testers is generally required for systemic projects, fair housing agencies often recruit "volunteers" who are paid a small honorarium for each test completed. In Massachusetts, for example, testers are recruits drawn from local universities or other sources, primarily through word of mouth recruitment. MCAD has found that a tester pool of 12 to 15 matched teams has been required for its program operations.

Use of agency staff as testers is a second approach which has been used in both California and Pennsylvania. In Pennsylvania, past testing projects had been generally been conducted using regular agency employees. However, due to program cutbacks, the most recent testing cycle used principally outside testers. The agency found that recruiting and training such testers proved to be more time consuming than anticipated. Also, fewer than 60 percent of the positive tests resulted in docketed complaints, in part due to errors made by inexperienced testers. Although the use of "volunteers" saved staff time, the agency is reluctant to use them in the future and cautioned that the use of volunteers may be a mixed blessing.

California's Department of Fair Employment and Housing came to the opposite conclusion based on a statewide project which used agency staff and paid testers, as well as unpaid volunteers. Although no evidence is available on the error rates in tests conducted by each group, the use of outside testers was recommended over staff, principally because of the disruption to normal case processing

activities.<sup>1</sup> The use of paid testers as opposed to volunteers was also recommended since it increases a tester's incentive to stick with the program. Clearly, there are alternative approaches to selecting testers, and each agency will develop its own criteria for making this decision. Factors such as cost, staff availability, and the need for selecting testers with specific characteristics (e.g. age, national origin) will play a role in the recruitment plan.

#### Training for Testers

Thorough tester training is an essential component of any testing project, and some courts have noted in their decisions that proper training is of substantial importance in establishing the credibility of testers as witnesses. Details on tester training are provided in both Rubin, et al. and Caruso and Lambert.

At a minimum, testers should be required to attend one full day of training and to conduct practice tests before being given actual assignments. In addition to stressing the need for objectivity and neutrality on the part of testers, training should emphasize the importance of being absolutely straight-forward about the events of the test. The conduct of a test can never be perfectly controlled and mistakes in timing, requests for wrong size unit or other unanticipated events must be reported so that the supervisor can reschedule or amend the test. Several programs have developed tester manuals which outline procedures to be followed in the field, including reminders of specific

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1. DFEH, "Report of a Systemic Fair Housing Testing Project," 1984.

rules which must be reviewed by testers prior to the conduct of each test.<sup>1</sup>

#### Conducting and Supervising the Tests

The actual tests will be executed by the testers using assignment forms detailing the identity to be assumed and the type of housing request to be made. Depending on the target and its operating procedures, testers will schedule their visits by telephone or conduct tests on a walk-in basis.

Two models for coordinating these activities have been suggested: self-coordinated and centrally coordinated.<sup>2</sup> In the self-coordinated model, when a site visit is completed the lead tester advises his or her partner by telephone of when to arrive for the second part of the test. In the centrally coordinated model, the supervisor handles contacts with each tester before and after each visit. The self-coordinated model saves staff time, but has the disadvantage that testers must talk to each other, possibly jeopardizing their credibility. The centralized model also provides for greater control and flexibility in modifying a test if the need arises.

The issue of minimizing tester contact during a test deserves special mention, since it is extremely important that testers approach the target with an objective and neutral attitude. In general, it is better if testers do not talk to each other at all prior to debriefing. They must never discuss the results of the test prior to this time. Some groups also prohibit tester pairs from discussing the

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1. MCAD's Tester Manual (see Rubin et al.) is a compilation of a number of manuals developed by organizations across the country.

2. DFEH, "Fair Housing Testing a Three Part Manual."

results of a test, even after debriefing, since the emotional impact of learning that one has been discriminated against can be difficult to handle. At the same time, however, testers must be given some opportunity to talk about their feelings and share experiences. Since testers must keep their work confidential (in order to avoid alerting potential targets) group sessions, parties, and other events are often built in to the program to provide testers with an opportunity for release.

Debriefing sessions can also be used to discuss the stresses involved in testing and to identify testers who may be on the verge of "burning out." While the primary purpose of debriefing is to review the tester reports, identify any mistakes which may have made the test invalid, and prepare (if appropriate) a sworn affidavit for later use in legal proceedings, debriefing sessions are also important in providing testers with emotional support. Debriefing -- which should occur the day of the test if possible<sup>1</sup> -- provides the test supervisor with an important opportunity to determine whether the tester is performing adequately, discuss any problems, and, if necessary, terminate the tester. As reported by numerous groups, even the best testers may eventually "burn out" and it is essential that the supervisor be watchful and attentive to a tester's need for a break.

#### Analyzing Test Results

Test results are analyzed after each test is conducted and again after all testing is completed. The preliminary analysis is

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1. Testers may confuse tests or have difficulty remembering facts if debriefing occurs too long after a test or if a second test is scheduled before debriefing on the first.

designed to determine: (1) whether a specific test is valid, (2) whether additional tests are needed, (3) when additional tests should be scheduled, and (4) whether or not the methodology needs to be revised.

As indicated earlier, the specific number of tests needed will vary in each case. In one of its testing projects, MCAD made an ad hoc decision that they would look for at least three positive tests before recommending the case to the commission for complaint initiation. In some cases however, where the evidence was of sufficient strength, only two positive tests were used. Alternatively, where after two or three tests no discrimination was indicated, the target was dropped.

In the next stage -- after all testing is completed -- the analysis focuses on probable outcomes against agencies and individual agents. MCAD looks for evidence of denial of availability, steering and adverse terms and conditions, using both statistical and nonstatistical methods of analysis.<sup>1</sup>

#### Case Processing and Enforcement

The MCAD paper (Rubin et al.) provides useful pointers on case processing procedures, including drafting and serving complaints, conducting the investigation and fact-finding conference, completing the follow-up investigation, and disposition writing. However, as suggested by the authors, it may be most appropriate for an agency to adapt current investigative systems and procedures for systemic cases. The MCAD paper also addresses forms of remedy and compliance monitoring.

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1. Approaches for analyzing test results are presented in Rubin, et al., including a section on statistical tests. A more detailed step by step approach to statistical analysis is provided in Yinger, "The Statistics of Fair Housing Audits," (conference paper).

For example, based on a recent round of testing MCAD brought charges against nine real estate firms and 21 individual agents. After investigation, a finding of "probable cause" was found against eight of the agencies and 17 agents. Most of those cases were settled, with consent orders incorporating affirmative marketing requirements, compliance reporting to MCAD, and monetary contributions to fair housing organizations.

For private fair housing organizations, the most likely enforcement approach will be a private action in Federal court. Also, in both cases complaints may be referred to HUD for investigation or to the Department of Justice. Successful suits by DOJ can result in significant orders requiring remedies of far reaching impact. However, DOJ staff resources are limited and organizations considering referring cases will want to develop contacts with DOJ to explore more fully the types of cases that are likely to be accepted. It should be noted that some fair housing organizations represented at the conference expressed concern about referring cases to DOJ, based on past experience in which they felt that the agency had not followed-up adequately on referred complaints. On the other hand, MCAD has recently signed a memorandum of understanding with DOJ under which the Department is in the process of prosecuting three cases resulting from MCAD's most recent round of testing. MCAD decided to refer the cases in order to concentrate its resources on other cases and to conduct additional testing. The memorandum provides for MCAD authority to approve any agreements resulting from the cases.

#### 4.3 Measuring Discrimination Through the Research Audit

Fair housing audits, like systemic investigations, provide a means to uncover discrimination without waiting for victims to complain. As described earlier, audit based research can be valuable to enforcement agencies in several ways. Most importantly, by introducing audit results into the public debate, jurisdictions with severe discrimination problems can mobilize support for stronger anti-discrimination measures. For example, a research audit conducted in 1981 for the city of Boston was a motivating factor behind the enactment of that city's fair housing ordinance and the establishment of a fair housing commission.

High quality audits depend on careful study design and management. A number of such audits described and reviewed at the conference provide excellent models to draw on.<sup>1</sup> The most well known of the research studies is HUD's Housing Market Practices Study (HMPS) conducted in 1977. This study established the basic methodology for the research audit. However, since HMPS, researchers have refined and expanded the technique. Differences between HMPS and the more recent Boston Studies are illustrative.

In HMPS, the research collected and analyzed data for several sets of real estate practices in the sales and rental markets: housing

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1. See in particular, Yinger, "Measuring Racial and Ethnic Discrimination with Fair Housing Audits" (conference paper) for a review of 5 audit studies, and Feins and Holshauser, *op. cit.* for a description of two Boston based studies. See also Harriet Newburger, "Recent Evidence on Discrimination in Housing" (HUD-PDR-786, April 1984) and Franklin James, "Discrimination, Segregation and Minority Housing Conditions in Sunbelt Cities: A Study of Denver, Houston and Phoenix" (University of Colorado at Denver, 1983).

availability, terms and conditions, information requested from the auditor, information volunteered by the agent, and courtesy and quality of service. The Boston studies dropped several of these treatment categories<sup>1</sup> but refined and added others. Availability and rental terms were incorporated largely intact, but a new series of terms and conditions were added for sales transactions.<sup>2</sup> Most importantly the study added questions on local recommendations, neighborhood characteristics, and implied or direct comments about racial composition of the area in order to measure steering.

Field techniques were also adopted largely from the HMPS research. However, an important change was the randomization of order between the white visit and the black visit. In HMPS the black always went first in rentals and the white in sales. Random order provided for more powerful research findings, since it rules out any correlation between order of visit and minority status.

Finally, new analytic techniques were developed for the Boston studies, in part because of the much smaller samples to be used. Metric measures -- in particular how many units were described or offered to each team member -- were used, and statistical tests were applied to show whether the differences were significant. The study also used multiple regression techniques to control for other factors in tests for differential treatment.

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1. Courtesy and information.

2. The importance of market conditions in designing an audit is shown by the need to revise the terms used in the 1983 study to reflect changes in mortgage types, e.g., the introduction of variable rate mortgages.

The 1983 Boston study is the most current example of a full scale research audit. Moreover, the 1983 study experience addresses some of the practical issues involved in auditing for ethnic minorities (Hispanic, Asian) and in designing a valid audit study which can also be used for enforcement purposes. In order to be useful to enforcement personnel, the design had to provide for more audits at each real estate agency than would normally result from random sampling.

These design issues were discussed by Feins and Holshouser in their description of the Boston studies. Moreover, Yinger provides additional discussion of key methodological concerns, including sampling, designing the survey instrument, matching testers, avoiding detection, and order of visit. Of particular importance are methods for calculating the extent of discrimination and techniques for testing whether differences in treatment are statistically significant. As shown by Yinger, some standard statistical tests, such as the T-test, understate the level of discrimination thus leading to a conclusion that discrimination does not exist when in fact it does. The use of appropriate statistical techniques should not only yield better research results but is applicable to testing evidence used in conciliation or court proceedings. To assist local agencies in applying these techniques, Yinger provides a step-by-step guide to their use in "The Statistics of Fair Housing Audits: A Primer for Fair Housing Groups and Enforcement Officials."<sup>1</sup>

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1. This "how to" guide was prepared as an appendix to the author's principal paper, "Measuring Racial and Ethnic Discrimination with Fair Housing Audits." It shows how to organize and analyze testing data, apply statistical tests, and determine the number of tests needed to make statistical techniques helpful.



## CHAPTER 5

### FUTURE DIRECTIONS IN TESTING

Testing has taken significant strides over the past decade.

- o Fair housing centers and public agencies alike regularly use testers to investigate individual complaints and obtain affirmative remedies for victims of housing discrimination.
- o The legality of testing is now firmly established, and courts recognize its importance in fair housing cases. Testers have been given standing to sue and have received damage awards as high as \$10,000 -- an important deterrent to potential discriminators.
- o Partially as a result of the experience of private fair housing groups in Federal court, testing procedures, as well as recruitment and training practices, have become more professional and standardized.
- o Finally, systemic testing techniques are increasingly used to enforce fair housing laws without waiting for individual victims to complain.

Future issues in fair housing testing tend to focus on (1) testing for discrimination in transactions other than sales and rentals, (2) testing for different groups and multiple bases of discrimination, (3) testing deeper into the acquisition process in real estate transactions, (4) the impact of new "technology" on testing programs, and (5) new uses for testing such as educational programs for realtors.

#### 5.1 Testing for Other Forms of Discrimination

To date, testing activities have focused almost exclusively on testing for availability in sales and rentals. In fact, rental testing has been the most dominant testing form. This may reflect both the belief that opening the rental market is more critical for ensuring equal housing opportunities for minority groups and the fact that rental tests can be conducted more quickly, and are therefore somewhat less

costly, than sales tests. In any case, techniques for testing in both the rental and sales market are well established and will provide many of the basic elements of most testing programs. Methods for testing other aspects of the housing delivery system are less well known. However, examples do exist and warrant future attention.

#### Redlining

In 1981 a private fair housing organization (HOME of Greater Cincinnati) developed a home insurance audit at the request of plaintiffs in a redlining case. Testers (homeowners) were recruited in black and white neighborhoods, and their homes were matched in terms of age, type of construction, and general condition. Testers then inquired about home insurance at four insurance companies each, and the results were used in litigation.

#### Real Estate Board Membership

Lack of equal housing opportunity may in part arise from the fact that minority brokers are often excluded from nonminority areas. The Legal Action Program in Chicago has used testers to show that real estate board requirements were being used to exclude minorities and were not being applied to majority applicants.

#### Financing

The use of testing to reveal discrimination in home financing and other credit transactions has been pioneered by a federal agency, the Federal Trade Commission. Responsible for enforcing the Equal Credit Opportunity Act, the FTC has been conducting credit tests since 1979, using both agency staff and in some cases by contracting out projects to fair housing organizations. Tests have been conducted both

in person and by telephone and have tested for discrimination based on race, sex, marital status, and, most recently, age. At least one major case has been brought using tester evidence.

To date, FTC credit tests have focused on the initial stages of applying for credit -- usually to determine whether testers will be discouraged from submitting an application. Discouragement, as well as other prescreening activities, (such as discounting certain types of income or failing to file minority applications), can only be detected through the testing technique. In later stages of the process -- where written applications have been submitted -- file reviews and other traditional bank examination procedures may be more appropriate.<sup>1</sup> However, it is also important to note that the FTC's decision to adopt testing as a means of detecting illegal discrimination was based on a judgement that this approach was cost effective and potentially less burdensome to the institutions being reviewed than other types of compliance examinations. Testing, in this agency's view, can quickly produce a clean bill of health for complying institutions, while providing the necessary evidence in cases where compliance problems exist.

## 5.2 Testing for Other Protected Groups

The Federal Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, national origin and sex. In recent years many State and local governments have expanded their fair

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1. This issue is addressed in Loney "Testing at the Federal Level" (conference paper). The paper examines considerations behind the Federal Reserve Board's decision not to develop a testing program at this time.

housing statutes to add protections against discrimination based on marital status, parenthood, age, and handicap. The inclusion of additional protected classes may warrant adjustments on the part of fair housing agencies in two ways.

First, although techniques for testing on other bases are fundamentally the same, an increasing proportion of complainants may require multiple tests in order to produce a positive result. While it is reasonable to test first for the most likely basis, discrimination may not be found until tests are performed for other possible bases.<sup>1</sup> However, the greater the number of tests, the greater the chances that testing will be detected. In addition, discrimination may be based on a combination of attributes (e.g. sex and race) rather than any single attribute. The challenge will be for fair housing organizations to anticipate such possibilities and design tests which efficiently identify the basis for discrimination.

A second challenge for fair housing organizations will be to ensure that enforcement efforts -- particularly through systemic testing -- reflect the possible types of discrimination in the market. For example the bulk of past testing projects have focused on race, and to a lesser extent ethnicity. The prevalence of such discrimination is indisputable. However, less is known about age-based discrimination or discrimination against female heads of households or other protected or unprotected groups. Research audits can be used to measure and compare

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1. See Willis, "Recent Developments and Trends in Fair Housing Testing" (conference paper).

levels of discrimination against different groups and to target enforcement resources to meet these needs.

### 5.3 Testing Beyond Availability

Standard rental and sales tests are designed to identify discriminatory treatment in the initial stages of a house purchase or the rental process. However, additional discrimination would likely be found in tests designed to address subsequent steps in obtaining housing, such as:

- o time passed on a waiting list;
- o making a deposit on a unit and completing an application;
- o signing a sales contract; and
- o securing financing.

With respect to rental tests, progress has been made in developing procedures to test deeper into the process by providing testers with verifiable identities and having them complete applications and place deposits on units. Indeed, "application testing" is now required in many markets where sophisticated housing providers have turned to credit checks and central office processing as a means of foiling standard availability tests. While credit checks are certainly a legitimate part of the rental process, it appears that some agents do use them in a discriminatory manner. Application tests, while more expensive and complex, provide a solution to this problem.

In California's 1983 testing project, for example, application tests were used in each of the enforcement oriented components, with the objective to see how far testers would be able to advance through the rental application process. Problems included recruiting individuals

who would be willing to "loan" their identities to testers and developing well matched, verifiable profiles. Nevertheless, fair housing groups are beginning to deal with this issue, in some instances sharing verifiable identities among groups in different geographic areas.

Testing deeper into the sales process poses more complexities and difficulties, but it is expected that additional progress will be made in this area as well. For example, a tester matched with a bonafide homeseeker could submit a slightly lower offer on a home to see if this would be accepted over the bonafide's.

#### 5.4 New Technologies

The two "new technologies" most apparent in the testing field are the micro-computer and the tape recorder. For private fair housing centers, investments in computers are increasingly being made to record case data, to serve various management uses, and to analyze test results. For example, computer analysis using census data down to the block level can be essential in revealing racial steering practices in markets which have pockets of residential integration.

There has also been a marked increase in recent years in the number of fair housing organization which use tape recorders.<sup>1</sup> Two advantages to the use of tape recorders can be cited. First, taped contacts with housing providers can serve to corroborate a tester's report and, where racial remarks are at issue, catch nuances which may be important. Secondly, tape recorders can relieve some of the pressure

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1. See Willis, "Some Recent Developments in Fair Housing Testing", (conference paper).

on the tester, who must be sure that everything she/he says conforms to the test plan and at the same time remember exactly what is said by the respondent. When the pressure to remember is reduced, testers can concentrate on asking the right questions and maintaining their identity.

Although transcripts of taped tests have been used in State and Federal court, and in negotiations, the legality of taping another party without warning or warrant varies from state to state. In some states, ambiguous legal opinions have led groups to continue using tape recorders until ordered to stop. Other groups avoid the use of tape recorders because of the large number of unanswered questions about their use. At a minimum, the use of tape recorders appears to be increasing and further development can be expected as groups experiment with this technique and learn to use tape recorders effectively.

### **5.5 Educational Programs**

One of the promising non-enforcement uses for testing now being developed combines tests of individual real estate agents with feed-back and educational sessions. The best current example of educational testing is the program sponsored by the Grand Rapids Board of Realtors (described in Chapter 2). As described by the fair housing consultant who devised the program, the approach should not be seen as a substitute for enforcement related testing but rather as a means of supplementing litigation with cooperative programs which may help foster institutional change.

In considering such programs, agencies should be aware of a number of external and internal pressures on the real estate industry

which may contribute to the increased effectiveness of educational and cooperative programs in the future. External pressures include the obvious effectiveness of testing in detecting and documenting discriminatory practices and the increasing levels of damage awards for victims, testers, and fair housing organizations.<sup>1</sup> For the industry, the cost of such litigation (in dollars energy, time, reputation and lost business) is tremendous. Moreover, efforts in Congress to strengthen fair housing laws, and proposals of the Reagan Administration to impose large fines against agents who are found to discriminate may lead the industry to reassess its equal opportunity needs.

Internally, two factors are at work. First, realtors and sales agents are more highly educated and professional than ever before, leading to greater recognition of the industry's responsibility with respect to equal opportunity issues. Secondly, the industry itself is beginning to see the failure of past voluntary efforts and this is generating internal concern. While industry concerns about testing are unlikely to disappear overnight, the time may be ripe for approaching the industry with programs that help realtors identify and correct their own problems. Current discussions with the National Association of Realtors to expand the Grand Rapids Program to the national level are an indication of this. Various conference participants also noted increased interest of local real estate boards in training programs for agents.<sup>2</sup>

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1. See Schreuder, "Testing and the Real Estate Industry," (conference paper).

2. Floyd, op. cit.

## 5.6 Future Needs

In addition to identifying future directions for the use of testing, an important outcome of the conference was to suggest areas in which Federal, State, local, and private fair housing organizations can improve their efforts or require additional assistance. In the area of technical assistance, reactions to the conference indicated that there is a tremendous need and demand for information about testing. While in recent years a number of testing manuals have been produced by different organizations, these have not on the whole been widely disseminated. The papers produced for this conference also constitute a substantial contribution to the literature on testing. Developing a means for local organizations to identify and obtain materials on testing would undoubtedly contribute to the development of effective, standardized testing procedures and allow inexperienced organizations to benefit from the lessons of others. Developing a mechanism for other information sharing among agencies and groups would also be extremely valuable. Particularly among attorneys present at the conference, a need was expressed for additional networking and regular communication to keep on top of new legal developments and case strategies.

Second, the conference suggested a need for better communication and coordination among fair housing actors at the local, State, and Federal levels. As noted earlier, some fair housing organizations have had poor experiences in referring cases to DOJ. Others have had difficulty in conciliation hearings with HUD and are now

working with the regional officials to improve the process.<sup>1</sup> Efficient use of resources and effective enforcement argues for efforts to increase coordination and communication among fair housing actors at all levels.

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1. See Seigler, (dicussant comments).

**CHAPTER 6****CONCLUSION**

The HUD conference on fair housing testing brought together over 200 representatives of enforcement oriented agencies, including State and local substantially equivalent agencies, local fair housing centers, and federal agencies with enforcement and compliance responsibilities. When properly conducted, testing has proved to be an effective approach for documenting illegal discrimination and is increasingly being used to aggressively enforce fair housing laws.

Pioneered by the local fair housing centers, testing can be used to investigate complaints brought by bonafide homeseekers and to initiate complaints without waiting for individual homeseekers to come forward. Auditing techniques also provide a direct means of measuring the levels and types of discrimination in the market and have potential as an educational tool in cooperative programs with the real estate industry.

Given the often subtle nature of discrimination, and the resulting inability of many homeseekers to recognize that they have been the victims of discriminatory treatment, systemic testing appears to offer the best available tool to seek out and prosecute fair housing offenders. Systemic testing is routinely used by many private fair housing groups in their efforts to promote equal opportunities in housing and is increasingly becoming a part of public agency programs. The opportunities afforded through the development of a systemic capability were perhaps best summed up by Roger MacLeod of the Massachusetts Commission Against Discrimination, who oversaw the

development of that agency's systemic unit. In the words of MacLeod, systemic testing is:

- (1) Effective -- because it provides an opportunity to impact a number of targets and to modify their institutionalized discriminatory practices;
- (2) Exciting -- because as you conduct the program and as the results begin to emerge, you see the demonstrated empirical proof of what your experience told you to be true: the substantial level of discrimination in the market place; and
- (3) Rewarding -- in that the program provides an affirmative opportunity for an enforcement agency to substantially impact equal housing opportunities ... you affirmatively control the enforcement process compared to the reactive posture of individual complaint enforcement.

Of all topics covered at the conference, the development of a systemic capability generated the most interest -- particularly among State and local agencies for whom systemic projects represented the "next step". For agencies considering such programs, it is worth repeating two other points made by MacLeod. Systemic testing can be costly (averaging about \$350 per test for MCAD), and systemic testing is demanding. In addition to meeting all the requirements of a valid, legally sound test, systemic testing requires considerable planning, highly skilled and committed personnel, excellent organization, and detailed implementation. One goal of the conference was to delineate the requirements of a properly designed, professionally executed, and efficiently managed systemic testing program. This goal was achieved, yielding excellent materials for other State and local agencies to draw on.

The conference also explored the future agenda in testing and auditing. In the enforcement field, future work is likely to focus on

expanding existing testing techniques to delve deeper into real estate transactions and to address discriminatory practices in other aspects of the housing delivery system -- for example insurance redlining and discrimination in financing. Additional research is warranted in order to identify the extent of discrimination faced by different household types, measure changes over time in the levels of discrimination, and develop a greater understanding of the situations in which housing discrimination is most likely to occur. Finally, the use of testing for educational programs for the housing industry may help address the problem of housing discrimination at its root by heightening awareness of the industry's role and responsibility in providing equal access to housing opportunities.

Reaction to the conference suggested an ongoing need for communication and coordination among enforcement oriented agencies at all levels. Less experienced agencies and groups came to the conference to obtain practical information on testing techniques and program approaches. A number of these organizations had potential new programs on the drawing board, contributing to a substantial and immediate demand for copies of key conference papers. More experienced groups came to share the lessons of their programs and to discuss new directions in the testing field.

At the Federal level, the conference included representatives of HUD, the Department of Justice, the Federal Trade Commission and the Department of Defense. The Department of Defense has regularly used testers in connection with its off-base housing program since the early

1970s;<sup>1</sup> the FTC is the newest Federal actor to develop a testing program and is spearheading the use of testers to investigate discriminatory credit practices.<sup>2</sup>

The majority of the participants represented private fair housing centers and State and local substantially equivalent agencies. The role of the private organizations, both in developing testing techniques and in pursuing private litigation, is well known. Increasing damage awards for individual plaintiffs, as well as the standing accorded to testers and organizations under the Havens case, point to high levels of activity among private fair housing groups. A more dramatic increase in activity can be seen among the State and local agencies. HUD has now certified 33 State laws as substantially equivalent and recognizes 57 substantially equivalent localities. The percentage of cases processed at the State and local level rose from 39% in FY1981 to 67% in FY1984.<sup>3</sup> In addition, many State and local agencies are in the process of developing systemic enforcement programs. The conference afforded an unusual opportunity for representatives of agencies at different levels of government and different levels of experience to exchange ideas and share their knowledge about how to conduct valid, professional, and effective testing programs.

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1. See Wiggins, "Fair Housing Testing in the Federal Sector," (conference paper).

2. FTC staff are in the process of preparing a manual based on their credit market testing program.

3. Remarks of John J. Knapp, General Counsel at the HUD Conference on Fair Housing Testing.

APPENDIX A

PAPERS AND PRESENTATIONS FROM THE HUD CONFERENCE  
ON FAIR HOUSING TESTING



This appendix lists all written materials submitted for inclusion in the conference record. Copies of the 28 papers, critiques, and written remarks listed in Appendix A can be obtained from HUD. (Make requests including title of paper and author to HUD USER, P.O. Box 280, Germantown, Maryland, 20874, or telephone 301-251-5154). In addition, this appendix provides brief abstracts of the major papers presented at each of the conference sessions.



**PAPERS AND PRESENTATIONS FROM THE  
HUD CONFERENCE ON FAIR HOUSING TESTING  
DECEMBER 6 AND 7, 1984**

1. Remarks by Secretary Samuel R. Pierce Jr.

**SESSION 1**

**DEVELOPING SUPPORT FOR PUBLIC AGENCY TESTING**

2. "Developing Support for Public Agency Testing", presentation by Homer Floyd, Pennsylvania Human Rights Commission.
3. "Developing Support for Public Agency Testing", presentation by Joan M. Thompson, Director, Fair Housing, New York City Commission on Human Rights
4. "Developing Support for Public Agency Testing", paper by Carol F. Schiller, California Department of Fair Employment and Housing
5. Remarks by John Knapp, HUD General Counsel

**SESSION 2**

**WORKSHOP ON TESTING TECHNIQUES: INDIVIDUAL COMPLAINTS**

6. "Testing Techniques and the Testing Process: Individual Tests and Systematic Tests", paper (with attachments) by F. Willis Caruso and Shirley Lambert, Leadership Council for Metropolitan Communities Chicago.
7. Comments by Mary Sigler, Metropolitan Fair Housing Council, Oklahoma City.
8. "Testing for the Complainant", comments by Lee Porter, Executive Director, Fair Housing Council of Northern New Jersey.
9. Comments by Michael F. Dennis, Compliance Director for Montgomery County, Maryland Human Relations Commission.

**SESSION 3**

**NEW TESTING TECHNIQUES**

10. "Development of New Testing Techniques", paper by Karla Irvine, Housing Opportunities Made Equal of Greater Cincinnati.
11. "Some Recent Developments and Trends in Fair Housing Testing", paper by Kent Willis, Housing Opportunities Made Equal, Richmond, Virginia.

12. "Comments on New Testing Techniques", by Marcia Borowski, Metro Fair Housing Center, Atlanta.
13. "Critique of the New Techniques Session", by Avery S. Friedman, Attorney, Cleveland, Ohio.

## SESSION 4

## EVIDENTIARY STANDARDS IN FAIR HOUSING TESTING

14. "Legal Issues in Testing", paper by Sara L. Pratt, Rights Advocates Training Services, Inc., Louisville, Kentucky.
15. "Standards of Proof in Systemic Fair Housing Cases before the Massachusetts Commission Against Discrimination", paper by Sharyn E. Dreyer, Massachusetts Commission Against Discrimination.
16. Comments, by Kenneth Holbert, HUD/FHEO.

## SESSION 5

## WORKSHOP ON SYSTEMIC TESTING TECHNIQUES

17. "Designing and Conducting a Systemic Testing Program", paper (with attachments) by Laurie F. Rubin, Susan M. Forward, Roger C. MacLeod, and Robert Sanders, Massachusetts Commission Against Discrimination.

## SESSION 6

## AUDIT-BASED RESEARCH

18. "The Miami Housing Audit Study", presentation by Larry Bivins, Miami Herald.
19. "The Multiple Uses of Audit-Based Research: Evidence from Boston", paper by Judith Feins and William Holshouser.
20. "Measuring Racial and Ethnic Discrimination with Fair Housing Audits: A Review of Existing Evidence and Research Methodology", paper by John Yinger, University of Michigan.  
  
"The Statistics of Fair Housing Audits: A Primer for Fair Housing Groups and Enforcement Officials," prepared as a supplement to the conference paper by John Yinger.
21. "Options for Audit-Based Research", paper by Raymond J. Struyk, The Urban Institute.
22. "A Discussion of Three Papers on Fair Housing Audit-Based Research", comments by Joe T. Darden, Michigan State University.

23. "Comments on Audit-Based Research", by Dorothy J. Porter, Director, Colorado Civil Rights Division.

#### SESSION 7

##### TESTING AT THE FEDERAL LEVEL

24. "Fair Housing Testing in the Federal Sector", presentation by Lt. Col. Ellsworth E. Wiggins, Office of the Deputy Assistant Secretary of Defense (Equal Opportunity Safety Policy).
25. "Testing at the Federal Level", presentation by Glenn E. Loney, Division of Consumer and Community Affairs, Federal Reserve.

#### SESSION 8

##### TESTING AND THE REAL ESTATE INDUSTRY

26. "Testing and the Real Estate Industry", paper by Anne E. Schreuder, Calvin College, Michigan.
27. Comments, by Candance M. Tapscott, Arlington, Virginia.
28. "Closing Remarks: The Role of Testing in a Comprehensive Enforcement Program," by William Wynn, Deputy Assistant Secretary for Enforcement and Compliance, HUD/FH&EO.



**"Developing Support For Public Agency Testing"**

**by Homer C. Floyd**

This presentation, by the Executive Director of the Pennsylvania Human Rights Commission, discusses the evolution of the Commission's testing program and draws six lessons from this experience. The paper begins by laying out the rationale for systemic testing used to convince Commissioner's of the need for the program. It then briefly describes the Commission's testing program -- from its beginnings in 1972 through to a recent round of testing funded under HUD's FHAP program. Key aspects of the program have included a practice of letting the industry know that testing is being conducted and simultaneous attempts to encourage real estate groups to sign voluntary compliance agreements.

For agencies which are considering a testing program, Floyd emphasizes the need to carefully plan and prepare for testing, the desirability of presenting an objective rationale for selecting targets, and the need to conduct only as many tests as can be processed and resolved within a reasonable amount of time. He points out that a testing program (especially for rentals) can usually be developed within an agency's current budget and that the program can be regulated to accommodate available resources once the initial training investment is made. Positive impacts of the program can include increased case activity, an increased proportion of "high impact" cases, and higher visibility for the agency.

(17 pages)

**"Developing Support for Public Agency Testing"**

**by Joan Thompson**

New York City's Commission on Human Rights has been involved in both individual and systemic testing since the early 1970's. In the area of individual complaint testing, the Commission has pioneered a successful technique known as the "confrontation", whereby the Commission's General Counsel can find probable cause based on a complaint and the tester's report. Once probable cause is established, the tester, the complainant, and an investigator return to the apartment armed with copies of complaint, a conciliation agreement, and other materials and ask the respondent to give the apartment to the complainant in light of the evidence. As Thompson points out, in a city with an extremely low vacancy rate, securing an apartment within hours of the act of discrimination may be the only meaningful remedy for the complainant.

In the area of systematic testing, however, Thompson suggests that the Commission's program was less than successful until recently. Changes which have fostered better systemic enforcement have included the creation of a separate, 20-member Fair Housing Division in 1980, and the development of cooperative arrangements in 1983 with the State Attorney General's Office and New York City's Corporation Counsel. With these expanded resources and powers the Commission is actively pursuing systemic cases and achieving remedies which surpass those previously won by the Commission's legal division.

(10 pages)

**"Developing Support for Public Agency Testing"**

**by Carol F. Schiller**

Carol Schiller's paper draws on the lessons learned during a large-scale testing project undertaken in 1983 by the California Department of Fair Employment and Housing. The project involved tests for discrimination in the rental market in each of the state's ten districts. Nine of the districts conducted systemic testing efforts designed to result in litigation; in one district research audits were conducted to measure and publicize the extent of discrimination. Since slightly different models were used in different districts, the project produced a wealth of experience on various aspects of designing and managing a testing program.

In addition to examining the successes and pitfalls of the 1983 project, the author explores issues related to developing internal support for testing programs, as well as approaches for dissipating potential opposition from the housing industry. She argues forcefully that all public agencies should develop an independent capacity for individual testing. While developing a systemic capability can offer an agency significant returns, the author suggests that in light of the resources required, an agency must carefully examine its needs and objectives in order to design an appropriate program. She concludes with a set of questions designed to help agencies determine when, how, and if systemic or research-oriented testing should be undertaken.

(40 pages)

**"Testing Techniques and the Testing Process:  
Individual Tests and Systemic Tests"**

**by F. Willis Caruso and Shirley Lambert**

The authors of this paper represent the Legal Action Program of the Leadership Council for Metropolitan Open Communities in Chicago. LAP has over 14 years experience in testing and has filed over 800 fair housing actions, almost all of these based on testing evidence. While over 85% of LAPs cases have been successful, the authors of this paper have made a particular effort to pass on the lessons learned from their defeats as well as their victories. Throughout, the authors use examples from their case experience to illustrate proper technique or point out potential testing pitfalls.

This paper is intended as a primer on basic testing techniques, with the emphasis on testing in individual complaints. The paper describes various types of tests which may be used (e.g., single tester, matched pairs, sandwich tests) and provides specific guidance on how to conduct tests in both the sales and rental markets. Substantial sections are devoted to key aspects of a professional testing program, including recruiting testers, training for testers, and management and supervision of the tests. Attachments provide sample forms, model affidavits, and other materials which can be adapted for local use.

(65 pages; plus 49 page attachment)

**"Development of New Testing Techniques"**

by Karla Irvine

A major purpose of the Conference on Fair Housing Testing was to examine new "state of the art" testing techniques and applications. As Karla Irvine points out in this paper, testing has evolved from a relatively casual practice to one that has become increasingly "sophisticated, standardized, disciplined, and innovative." Steps along the way have included HUD's 1977 Housing Market Practices Survey and the experience of various fair housing centers in using testing evidence before the federal courts. Both have helped to professionalize testing programs and to establish standards for conducting thorough, objective and valid tests.

However, just as testing has come of age, discriminatory practices have also become more subtle and difficult to uncover. The use of credit checks and central office processing of rental applications have, for example, forced many fair housing centers to conduct "application tests" using borrowed identities which can be verified. Testing has also moved beyond the sales and rental markets as fair housing groups begin to explore the potential for testing in the credit and home insurance markets. Finally, as state and local laws add more protected classes, fair housing centers are learning to adapt their techniques to test for sexual harassment, discrimination against handicapped individuals, and other forms of discrimination. Karla Irvine's paper documents these trends and calls for continued innovation in meeting these new testing needs.

(12 pages)

**Some Recent Developments and Trends in  
Fair Housing Testing**

**by Kent Willis**

Based on current techniques and needs, Kent Willis' paper looks into the possible future of testing programs. The author sets the stage for this discussion by suggesting that testing originated as a reactive practice -- designed to substantiate the claims of injured homeseekers -- but has developed into an important tool which can be used in a variety of proactive ways: auditing techniques can be used to gather data about the levels and forms of discrimination in the market and cases can now be developed for litigation where there are no complainants other than the testers.

The paper itself focuses on four aspects of testing where the author sees evolution as either particularly evident or necessary. These include: the development of verifiable tester identities for application testing; the need to test on a variety of bases as protected under Federal, state or local law; the use of tape recorders; and testing for individual discrimination in mortgage lending. With respect to the latter, Willis proposes a comprehensive testing approach which combines testing with housing counseling and tracks the treatment provided to bonafides throughout the home acquisition process.

(13 pages)

**"Legal Issues in Testing"**

**by Sara L. Pratt**

This paper provides basic guidance on three key legal issues in testing: standards of evidence required; responses to the types of defenses which defendants may invoke; and, the standing of testers and agencies to sue for relief or damages. With respect to the first point, the paper concludes that the courts have not defined a particular number of tests required but rather consider the credibility of tester testimony and the strength of the evidence of each test in addition to sheer volume of evidence. The paper also points out, however, that the volume of evidence required in cases involving systematic (or patterns and practices) discrimination will typically be greater than in cases involving discrimination against an individual, and it may have to be gathered over a longer period of time.

Regarding defenses employed by defendants, the paper discusses the use in the past and the general standing of four arguments against testing results: entrapment/lack of good faith defenses; challenges to the credibility of the test results; countersuits by defendants; and, prohibition of testing by states. Finally, the paper demonstrates that testers in the groups protected by the law have standing to sue in court. Additionally, based on the "indirect injury theory," fair housing organizations may have standing to sue in their own right under certain conditions.

(19 pages)

**"Standards of Proof in Systemic Fair Housing Cases  
Before the Massachusetts Commission Against Discrimination"**

**by Sharyn E. Dreyer**

Sharyn Dreyer's paper addresses issues of evidentiary standards in both individual and systemic cases, with an emphasis on the latter. An important addition to the material on individual cases provided in the Pratt paper is the discussion of the use of statistical data to provide essential pretextual information and to establish a prima facie case against the defendant.

In its thorough discussion of systemic cases, the paper outlines clearly the steps needed to be taken at the investigative stage (i.e., testing and analysis) to insure that the results will meet the court's standards. A useful technique for organizing the results of the test for analysis is presented, and three different types of discrimination which have been identified using this technique are discussed. These range from "internal disparate treatment," in which black and white testers are differently treated within the same test, to "cumulative disparate treatment," in which evidence of differential treatment is derived only from totalling up the results of a number of individual tests against a particular target. Use of statistical techniques for evaluating test results is also highlighted. The paper then goes on to discuss evidentiary standards employed at the investigative disposition and public hearing stages, providing considerable detail for the latter.

(39 pages)

**"Designing and Conducting Systemic Testing Program"**

**by Lauric F. Rubin, Susan M. Forward,  
Roger C. MacLeod, and Robert Sanders**

This paper constitutes a detailed, self-contained manual on how to develop and implement a systemic testing program. Prepared by staff of the Massachusetts Commission Against Discrimination, the paper draws on this Agency's considerable experience in the field to provide useful information and guidance on virtually all aspects of the systemic testing process.

The paper begins by defining terms and distinguishing systemic enforcement testing from research audits and testing for individual complaints. Subsequent sections provide detailed information on the key aspects implementation including: criteria and procedures for target selection; procedures for recruiting, training and providing emotional support for testers; and scheduling and administering the tests. The next two sections provide particularly valuable information on analyzing and interpreting test results and processing cases which are based on testing evidence. Finally, the authors examine the quantitative and qualitative impacts of a systemic testing program and provide advice on maximizing impact through careful control of media coverage. Sample forms and legal documents are provided in the attachments, along with a manual for testers which is a compilation of manuals used by fair housing organizations around the country.

(106 pages; plus 100 page attachment)

**"The Miami Housing Audit Study"**

**by Larry Bivins**

Larry Bivins reports on the results of a series of 45 tests in the rental housing market of Miami that were conducted in 1983 to determine the extent of racial discrimination practiced. Systematic tests of this type, for non enforcement purposes, are called audits. The study was motivated by the desire of two newspapers reporters to document the difficulties faced by blacks in Miami. The two reporters conducted all of the audits themselves, and eventually published their story in **The Miami Herald**.

The results of the audits revealed discrimination in 25 out of the 45 apartment buildings or complexes visited, with the type of discrimination encountered ranging from the quite overt to being told by courteous and ostensibly helpful rental agents that units were not available. Publication of the story attracted wide-spread attention and considerable official response. Both the Justice Department and the Department of Housing and Urban Development took action. Additionally, the Community Housing Resource Board was awarded \$80,000 to further study the rental housing market, leading to improved enforcement of fair housing statutes.

(4 pages)

**"The Multiple Uses of Audit-Based Research:  
Evidence from Boston"**

by Judith D. Feins and William L. Holshouser, Jr.

This paper discusses two fair housing audits conducted for the City of Boston. The first study took place in 1981, involved seven neighborhoods, and used black/white teams of auditors. The second study was conducted in 1983-1984 in two neighborhoods and tested for discrimination against Hispanics and Southeast Asians as well as blacks. The two studies were very similar in the methodology followed, building and extending on the methodology used in HUD's 1977 HMPS Study. However, the political and institutional setting in which the projects were conducted was very different: the first study played a role in the political battle which led to the enactment of Boston's Fair Housing Statute and the establishment of a Fair Housing Commission; the second was conducted at the request of the Commission and was designed for enforcement. Seen together, the two studies demonstrate something of the range of ways in which auditing can be useful to fair housing practitioners.

Both studies involved a large number of audits -- 274 and 114, respectively. Both followed quite rigorous procedures in collecting and analyzing the data. The studies documented high levels of discrimination against blacks, Southeast Asians, and Hispanics. In particular, discrimination centered on the availability of units. Differential treatment was not found for terms and conditions quoted for individual units or on the way in which home seekers were treated. The evidence on steering was not sufficient to support a research conclusion.

(30 pages; plus appendix containing the audit instruments used in both studies)

**"Measuring Racial and Ethnic Discrimination with Fair Housing Audits: A Review of Existing Evidence and Research Methodology"**  
and

**"The Statistics of Fair Housing Audits: A Primer for Fair Housing Groups and Enforcement Officials"**

by John Yinger

John Yinger's paper reviews five recent, high-quality audit studies, discusses the key methodological requirements for such audits, shows how to measure discrimination with audit results, and presents several extensions of the basic measurement techniques. The paper is exceptional in that it brings together in an accessible way the methodological principles from social science research with the practical aspects of audit studies which local fair housing agencies might conduct. In effect, it presents the steps to obtaining statistically valid results from audit studies.

One of the most important parts of the paper for local officials is on approaches to calculating the extent of discrimination using audit findings, and ways to test whether the observed differences in the treatment of the two groups of testers are statistically significant. The paper also discusses how to compute correctly the average probability of a minority homeseeker encountering discrimination in dealings with one, two, and other numbers of real estate agents. The approach to calculating these probabilities for minority homeseekers with different attributes (incomes, family size) is reviewed as well. References are included to the studies reviewed. A separate appendix to the paper, "The Statistics of Fair Housing Audits: A Primer for Fair Housing Groups and Enforcement Officials," provides a step-by-step guide to using the recommended statistical techniques.

(51 pages; appendix - 28 pages)

**"Options for Audit-Based Research"**

by Raymond J. Struyk

This paper provides a review of the critical questions about the extent of discrimination in housing that remain to be addressed and which could be addressed by conducting audits. It also looks at how the effort to document discrimination at the national level -- and to develop guidance materials for communities not having their own audit findings -- might be organized. The paper emphasizes the potential role of the findings of audit-based research in concentrating limited enforcement resources on those households experiencing the greatest incidence of discrimination.

In particular, the paper discusses three blocks of questions that need to be addressed in future audits: (1) determining the rank-order among types of households in the extent to which they are systematically discriminated against; (2) identifying the points in the rental or home purchase process at which discrimination is most likely to occur (to date studies have been of the contact between a real estate agent and home seeker inquiring about initial availability); and, (3) documenting the interaction between the presence of discrimination and the ability of households to become participants in housing voucher type programs.

(23 pages)

**"Fair Housing Testing in the Federal Sector**

**by Lt. Col Ellsworth E. Wiggins, USAF**

The Department of Defense has a long standing commitment to promoting equal opportunity in off base housing. Beginning in 1963, base commanders were assigned specific responsibility for opposing discriminatory practices affecting military personnel and their families, and a system of "off limits" sanctions was authorized to deal with instances of off base discrimination. Since the early 1970's testing has been an important part of this program, and it is regularly used to verify complaints of housing discrimination.

As described in this paper, the military's housing program includes a centralized housing referral office through which all personnel seeking off base housing must pass. One responsibility of this office is to brief military personnel on fair housing policy and to alert them to the methods that may be used to discriminate against minorities or other protected groups. When a complaint is lodged with the office, an inquiry must be initiated within three days, and verifiers may be assigned to collect information about the suspected agent's rental practices. Ideally, two verifiers are used; all verifiers must be volunteers. Where a preliminary inquiry substantiates the complaint, a hearing is scheduled, and, after a review of the evidence, the commander may impose restrictive sanctions. Restricted units are listed with the housing referral office and are placed off limits to all military personnel.

**"Testing at the Federal Level"**

**by Glenn E. Loney**

This paper provides a candid assessment of the potential role of testing in the Federal Reserve System's enforcement program. The agency is responsible for ensuring that member banks comply with three laws which directly relate to unlawful discrimination: the Community Reinvestment Act, the Equal Credit Opportunity Act and the Fair Housing Act. Although the Federal Reserve Board has adopted a policy stating that testing is an appropriate examination tool in certain cases, routine use of testers has not been utilized or advocated. Rather, testing is likely to be used in special cases to confirm or deny suspicions raised through the regular examination process or through consumer complaints.

A number of drawbacks to the regular use of testers are examined in this paper. To begin, testing in the credit market is relatively new and, as in real estate transactions, is most easily implemented with respect to the initial stages of a credit transaction. Thus testing may efficiently detect actions designed to discourage credit applications, but may be less effective for reviewing a bank's activities where written application for credit are submitted and evaluated. Other issues concern the cost of developing a testing capability, questions concerning who would conduct the tests, and possible implementation problems in small communities where testers might be easily detected.

(12 pages)

## "Testing and the Real Estate Industry"

by Anne Schreuder

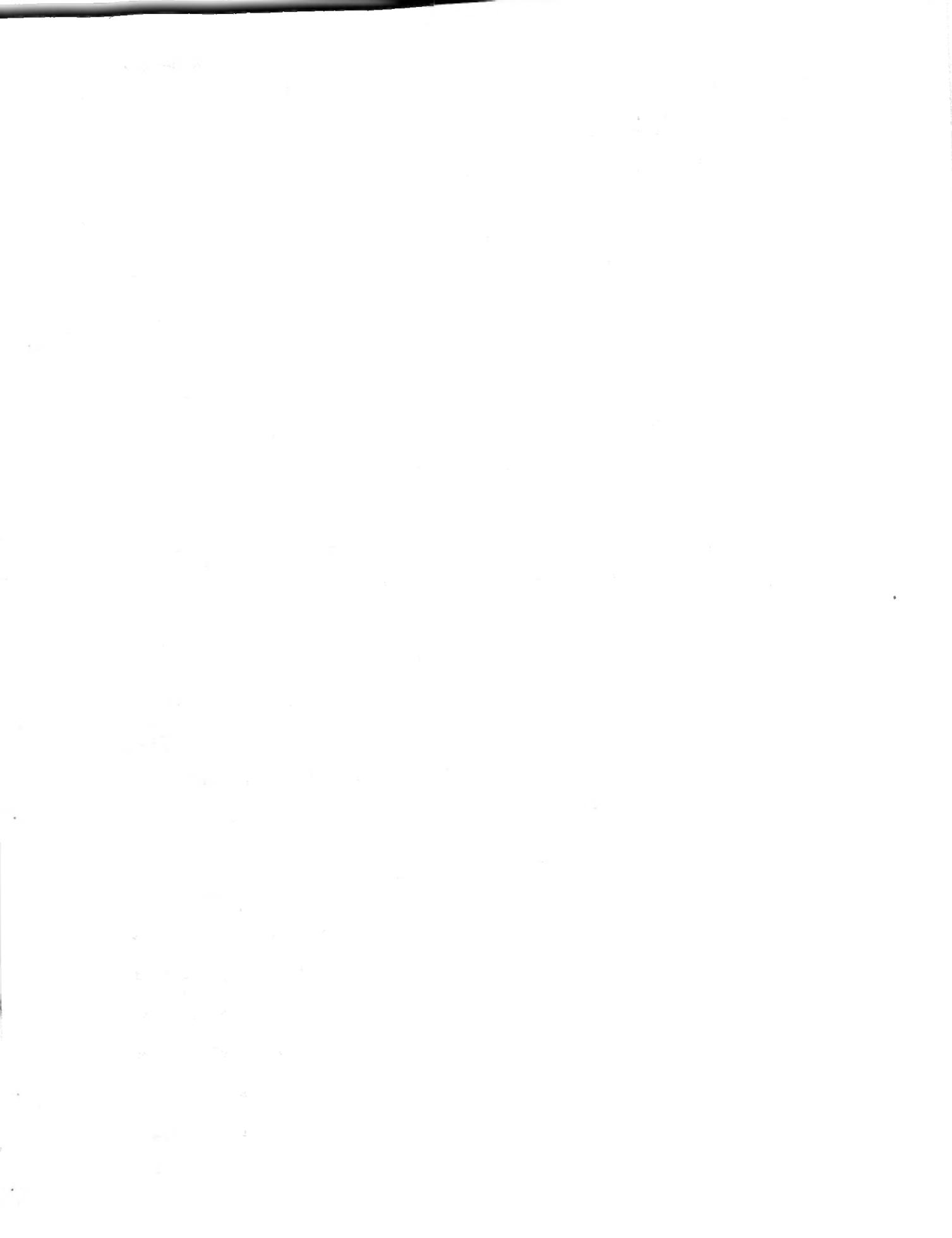
Anne Schreuder's paper focuses on an unusual use of testing: to educate realtors and promote self-enforcement within the real estate industry. Her paper is based on nearly seven years experience in working with the Grand Rapids Real Estate Board to develop a cooperative program of education and testing for local members. Originally funded with a foundation grant and board contributions, the program involves: 1) a three-hour training session for realtors covering fair housing law and discriminatory practices, 2) testing of agents, and 3) review of the testing results with individual agents and board members. As a condition of the program, no litigation was to be initiated. However, the Board's professional standards committee could take disciplinary action in cases where discrimination was found.

The results of the testing program in Grand Rapids have been quite positive, and the author is currently exploring the possibilities of expanding the approach to the national level, possibly in conjunction with the National Association of Realtors. Although she acknowledges opposition to testing on the part of the real estate industry, she cites both internal and external pressures on the industry to reassess their equal housing opportunity needs and rethink their traditional opposition to testing. While the author stresses at the outset that educational testing is not a substitute for enforcement related programs, she nevertheless sees opportunities for supplementing litigation efforts with cooperative and non-adversarial programs which attempt to foster institutional change.

(14 pages)

APPENDIX B

CONFERENCE AGENDA



# Fair Housing Testing Conference

U.S. Department of Housing and Urban Development  
Office of Policy Development and Research  
Office of Fair Housing and Equal Opportunity

## AGENDA FOR THE HUD CONFERENCE ON FAIR HOUSING TESTING

Rosslyn Westpark Hotel  
Arlington, Virginia

December 6, 1984

8:30 Registration/Coffee in corridor leading to the Rosslyn A Room.

### GENERAL SESSION (Rosslyn A)

9:15 Welcome and Conference Overview

A brief introduction focusing on HUD's objectives in holding the conference and the agency's interest in promoting the greater use of testing evidence.

Welcome: Dr. June Koch, Assistant Secretary for the Office of Policy Development and Research, HUD

Opening Remarks: Antonio Monroig, Assistant Secretary for the Office of Fair Housing and Equal Opportunity, HUD

9:30 Keynote Address: HUD Initiatives in Fair Housing Enforcement

HUD Secretary Samuel R. Pierce, Jr.

10:00 Developing Support for Public Agency Testing

This session will bring together representatives of State and local agencies which have adopted different approaches to testing in individual and systemic cases. Presentations will focus on: how support for the program was developed; policy concerns associated with public agency testing; and the costs and impacts of the testing program.

Session Chair: Steven Sacks, HUD/FH&EO

Speakers: Homer Floyd, Pennsylvania Human Rights Commission

Joan Thompson, NYC Department of Human Rights

Carol Schiller, California Department of Fair Employment and Housing

Discussant: Arthur Green, Connecticut Commission on Human Rights and Opportunities

12:00 Luncheon (Rosslyn B)

Introduction: Charles P. Smith, Deputy Assistant Secretary, HUD/PD&R

Address: John Knapp, General Counsel, HUD

GENERAL SESSION (Rosslyn A)

1:30 Workshop I on Testing Techniques: Individual Complaints

This workshop will cover the basic techniques of testing for individual complaints, as well as administrative aspects of this type of testing. Discussants will focus on standards for professional testing and limitations on its use.

Workshop Chair: Katrina Ross, HUD/FH&EO

Presenters: F. Willis Caruso, and Shirley Lambert, Leadership Council for Metropolitan Open Communities, Chicago

Discussants: Mary Sigler, Metro Fair Housing Council, Oklahoma City

Lee Porter, Fair Housing Council of Northern New Jersey, Hackensack, N.J.

Michael Dennis, Montgomery County Human Relations Commission

3:45 Concurrent Sessions

I. Session on New Testing Techniques (Rosslyn A)

This session will focus on new applications and new techniques in testing. Following presentations, the session will be open to comments from the floor.

Session Chair: George Ferguson, HUD/PD&R

Presenters: Karla Irvine, HOME, Cincinnati, Ohio  
Kent Willis, HOME, Richmond, Virginia

Discussants: Marcia Borowski, Metro Fair Housing,  
Atlanta, Georgia  
George Schermer, Washington, D.C.  
Avery Friedman, Cleveland, Ohio

II. Session on Evidentiary Standards in Fair Housing Testing (Rosslyn B)

This session will include a presentation on tester evidence in fair housing case law and a presentation focusing on standards of proof used by agencies in systemic cases.

Session Chair: Charles Farbstein, HUD/OGC

Presenters: Sara Pratt, Rights Advocates Training  
Service, Kentucky  
Sharon Dreyer, Massachusetts Commission  
Against Discrimination

Discussants: Walter Gorman, Deputy Chief of the  
Housing and Civil Enforcement Section,  
U.S. Department of Justice  
Kenneth Holbert, HUD/FH&EO  
F. Willis Caruso, Leadership Council for  
Metropolitan Open Communities, Chicago

5:45 Reception (Promenade Area)

6:15 Dinner (Westpark Cafe)

Introduction: W. Scott Davis, General Deputy Assistant Secretary,  
HUD/FHEO

Address: James L. Usry, Mayor, Atlantic City, New Jersey

7:30 Networking (Westpark Cafe)

The networking session will allow attendees to meet informally with individuals who have similar interests. Areas of interest will be identified at registration. The following is a key resource person who will provide information and assistance:

Rachel Suse, Attorney, Washington, D.C.

December 7, 1984

9:00 Coffee in corridor to Rosslyn B

9:15 Workshop II on Systemic Testing Techniques (Rosslyn B)

This workshop will focus on techniques and administrative approaches for conducting systemic investigations, building on and distinguishing from the techniques presented in Workshop I. Discussants will focus on alternative techniques and using the results to pursue a systemic complaint.

Workshop Chair: Harry Carey, HUD/OGC

Presenter: Roger MacLeod, Massachusetts Commission  
Against Discrimination

Discussants: Pat Morse Education/Instruction, Boston

Thomas Keeling, Housing and Civil  
Enforcement Section, U.S. Department  
of Justice

11:00 Concurrent Sessions

I. Session on Audit-Based Research (Dogwood Room)

This panel will review recent work in audit-based research and examine issues associated with future research efforts. These projects document discrimination rather than lead to enforcement as in HUD's Housing Market Practices Survey. An example of testing by newspaper reporters in the Miami rental market will also be presented.

Session Chair: Jill Khadduri, HUD/PD&R

Presenters and Topics: "Discrimination in the Miami Rental Market"

Larry Bivins, Miami Herald

"Lessons from Two Boston Studies"  
Judith Feins and William Holshouser,  
Abt Associates

"Lessons from Audit-Based Research"  
John Yinger, University of Michigan

"Future Directions in Audit-Based Research"  
Ray Struyk, The Urban Institute

Discussants: Joe Darden, Michigan State University

Dorothy Porter, Colorado Civil Rights  
Division

II. Testing at the Federal Level (Rosslyn B)

This session will focus on the planned or actual use of testing procedures by Federal agencies.

Session Chair: Thomas Jankowski, HUD/FH&EO

Presenters: Sandra Wilmore, Federal Trade Commission

Lt. Col. Ellsworth Wiggins, Department  
of Defense

Glenn Loney, Federal Reserve Board

12:45 Luncheon (Westpark Cafe)

GENERAL SESSION (Rosslyn B)

1:45 Testing and the Real Estate Industry

This session will focus on testing for the real estate industry and present strategies for developing cooperative educational testing programs. The Grand Rapids program (in which training and testing results are used to educate Realtors) will be highlighted.

Session Chair: John M. Goering, HUD/PD&R

Presenters: Anne Schreuder, Calvin College

Discussant: Candace Tapscott, Northern Virginia CHRB

3:30 Summary: The Role of Testing in a Comprehensive Enforcement Program

This final session will focus on the role of testing in an agency's overall program and draw together insights from the conference.

Presenters: Frederick Eggers, Director, Division of  
Community Development and Fair Housing  
Analysis, HUD/PD&R

William Wynn, Deputy Assistant Secretary  
for Enforcement and Compliance, HUD/FH&EO

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