

Guest Editors' Introduction

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The thirtieth anniversary of the national Fair Housing Act is an occasion for mixed emotions and for partial celebration. The law was enacted in spring 1968, shortly after the assassination of Dr. Martin Luther King, Jr. and the resulting riots, and many decades after President Truman had ordered the racial desegregation of the military. It also followed several years of other pathbreaking civil rights laws that had been enacted covering employment, education, voting rights, and public accommodations. In many ways “fair housing” was one of the hardest bills to enact because it struck at one of the cherished pillars of American way of life—the right to own or rent and to do what one pleases with one’s property. The law extended beyond public-sector housing, which had also been addressed in Title VI of the 1964 Civil Rights Act. The Act was, in theory, the pinnacle of civil rights reform in this country because it offered equal access to a home, a mortgage, and neighborhoods that accompanied equal access to the voting booth, education, jobs, hotels, and other major arenas of life.

This collection of thoughtful articles examines many issues: Has the Fair Housing Act accomplished all that it could? Is this country closer to becoming a place where equal housing is more of a reality than it would be without such a law? And, if it is not all that it could be, do we know what more is needed to achieve its ultimate purposes? This volume is an occasion for only partial celebration because of the continuing racially divided nature of most housing markets in this country.

These articles were born out of a discussion we had about how best to memorialize the then-forthcoming anniversary of the Act. We decided to both convene a panel of experts at the August 1998 annual meetings of the American Sociological Association (ASA) and to expand the resulting papers with additional contributions. Three of the four panelists’ papers presented at the ASA meeting are included in this collection.¹

This volume is not designed as a definitive evaluation of all aspects of the movement toward equal housing in this country but to serve as a vehicle to permit a range of experts, including members of Congress, lawyers, advocates, and senior social science researchers, to engage in thoughtful consideration of how much has been achieved and how much more might be done to fully accomplish the goals of the Act. The contributors represent an eminent group that has devoted decades to assessments of the meaning of race, racial prejudice and discrimination, and government policies as they affect the right of any individual to own a home regardless of race, color, national origin, sex, or religion—the

initial charter of protected groups—as well as the assessments of protection offered to the disabled and to families with children during the past 10 years.

There is no intention to seek to create solely a celebratory volume in which only the best of achievements and important social policy advances are presented; it is not a festschrift to honor and praise the enforcement of the Fair Housing Act. Nor is this collection designed to explore all of the limits of past and prevailing programs. Rather the objective is to seek out thoughtful advice about how this Nation may best move forward in promoting the twin goals (in former Representative Charles Mathias' words) to provide "not only greater housing choice but also to promote racial integration for all Americans." Hopefully, this collection, as well as those that follow, will help articulate the basis for future policies, research, and commitments.

As you will note, there are three broad types of articles included within this edition of *Cityscape*. The first group of articles discusses the legislative origins and legal functioning of the Fair Housing Act, as amended. It includes contributions by Senator Edward Kennedy, one of the leaders in the fight for civil rights over the past 30 years, and former Representative Charles Mathias who, as member of the Republican party, served as a crucial voice in both the House and Senate in promoting the final language for the 1968 Act and for the important, transforming enforcement provisions enacted by Congress in 1988. This section also includes a detailed and thoughtful update of actions by the U. S. Department of Justice by the acting Assistant Attorney General for Civil Rights, Bill Lann Lee. The fourth paper in this first section is by New York University Law Professor Michael Schill and Samantha Friedman who, under contract with HUD, have prepared this first careful, quantitative evaluation of several key aspects of the operation of the Fair Housing Act focusing in particular on the final stages of enforcement when relief is sought from either a Federal Court or from an Administrative Law Judge. These four contributions take us from the early days of 1966 when the Act was first debated to the present when we see evidence of who is served and how well by the existing enforcement process.

The second set of papers includes five essays by sociologists, demographers, policy analysts, and economists on the question of how they view evidence concerning the Nation's progress towards equality in housing options. Joe Feagin, President-elect of ASA, has had a long and distinguished career examining the operation of the real estate industry and how racial disparities continue to function in our society. His article is followed by that of John Yinger, author of *Closed Doors, Opportunities Lost*, an important book on housing discrimination. Nancy Denton's article, "Half Empty or Half Full" builds upon her expertise as co-author of the major assessment of racial segregation in America, *American Apartheid*, which she published in 1993 with Douglas Massey. George Galster, the Clarence Hillbery Professor of Urban Affairs at Wayne State University, contributes his article next followed by James Carr's on the complexity of segregation. Each of these articles raises doubts and questions about the nature of racial segregation and the continuing plague of discrimination. They also raise questions about U.S. Department of Housing and Urban Development's (HUD's) efficacy in enforcing the Act over the past 30 years.

The final section of this collection includes three articles by well-known advocacy analysts, including William Tisdale, executive director of the Milwaukee Fair Housing Council; Raul Yzaguirre, Laura Arce, and Charles Kamasaki of La Raza; and Florence Wagman Roisman of the Indiana University School of Law. These authors stimulate thinking about how much more could or needs to be done to redress the currently racially divided condition of housing markets. The final article is by Eva Plaza, Assistant Secretary for the Office of Fair Housing and Equal Opportunity at HUD.

We appreciate that many other voices could and should have been added to this collection—those of Native Americans; Muslim organizations; people with disabilities; those representing women's rights groups and families with children; established civil rights groups; and the multitude of housing industry groups, including real estate agents, developers, home builders, mortgage lenders, appraisers, insurance firms, and banking regulators. Many of these groups were unable to answer our invitation to submit articles. However, we look forward to the continued reexamination of the need for the fair housing movement by all those concerned with and involved in this cause.

Overview Thoughts and Analyses

Because we have each spent more than two decades wrestling with the issues of race and fair housing enforcement, we felt that we should not remain mere bystanders or conveners but rather should offer our own thoughts and observations as a guide through this collection.² Our objective is not to resolve any issues, correct any errors, or debate opinions with the contributors but rather to try to portray a sense of what we believe have been signs or evidence of success and what appears to have stalled or failed over the past several decades as it relates to the movement toward equality in housing. That is what, if any, are the signs of progress toward a more just and equal society in relation to private- and public-sector housing markets?

One of the most significant "missing pieces" in our ability to thoroughly and sensibly assess the meaning and impacts of the Fair Housing Act is independent evaluations of the operation and effectiveness of the law enforcement process as it is currently constituted. Neither independent researchers, the U.S. Department of Justice (DOJ), nor HUD have conducted the necessary studies of the full range of implementation and impact issues associated with the 30 years of enforcement operations. Michael Schill and Samantha Friedman's article is perhaps the first major attempt to evaluate one crucial aspect of the Act's enforcement; the evaluation's funding is partly due to unique commitment of the senior researcher and the interest and support of the former Assistant Secretary of Fair Housing and Equal Opportunity, Elizabeth Julian. The meaning of the success or limitations of the Fair Housing Act can then only be judged inferentially, based upon evidence from studies of housing segregation, audit studies of discriminatory conduct of housing market actors, public opinion surveys, and the judgment of practitioners who have witnessed the slow, often recalcitrant progress toward enforcing equality in public and private sector housing.

Limited Progress Over the Past 30 Years

That there has been clear, recognizable progress in the area of race relations in the United States over the past half century can be appreciated by recalling what conditions for Blacks were like in the South in the early 1950s:

They [Blacks] could not live where they desired; they could not work where White people worked except in menial positions.... They could not use the same restrooms, drinking fountains, or telephone booths. They could not eat in the same restaurants, sleep in the same hotels, be treated in the same hospitals.... They could not attend the same public schools. They could not vote (Jaynes and Williams, 1989).

The transformation of our society to one in which greater racial acceptance and tolerance is commonplace is best reflected in the past 40 years of social surveys. When President Clinton's Initiative on Race, through the Council of Economic Advisors, prepared its assessment of racial indicators, key among them was a chart showing White's attitudes

toward housing integration. The final chart in that report reveals a sharp, steady decline in the proportion of White Americans who said that they would move if Blacks came to live next door or if large numbers came into their neighborhood. The reaction of Whites who stated that they would move if Blacks “moved into their neighborhood in large numbers” fell from 80 percent to 18 percent from 1958 to 1997 (*Changing America*, 1998). Americans have apparently overcome their early stated opposition to housing integration. The chart reveals a relatively abrupt decline in the mid-1960s but the rate quickly returned to its former level—a steady downward slope. This suggests, but certainly does not prove, that while the debate over the Fair Housing Act might have caused a momentary rise in the numbers of people accepting housing integration, this effect soon reversed itself as the slope of change resumed its slow, monotonic, seemingly inexorable decline. Whatever the determinants of this change in attitude, they were set in place before the passage of the Act and continued seemingly despite its enactment. America may then count itself lucky that the majority of Americans have become, in principle, supportive of fair housing even though it remains unproven that the Act’s passage was either a cause or result.

Signs of Progress

Signs of success, however, must be tempered by our clear awareness from the work of Howard Schuman, Charlotte Steeh, and Larry Bobo (1985, 1997) that Americans are good at accepting a broad statement of principle but are typically much less willing to endorse specific methods of implementing civil rights programs and reforms. Indeed, it is argued that some of the lack of support of methods, in fact, casts doubt upon the true degree of commitment to the principles. More tellingly, Galster notes in his article that when Whites are asked a related set of questions about their opinions of Blacks that a host of negative images, opinions, and stereotypes emerge. Bobo, James Kluegel, and Ryan Smith (1996) argue that judgments that Blacks are more likely to be lazy, on welfare, drug addicted, or involved in gangs represent a new form of racial judgment: “This new ideology takes as legitimate extant patterns of black-white socioeconomic inequality and residential segregation, viewing these conditions, as it does, not as the deliberate products of racial discrimination, but rather as the outcomes of a free market, a race-neutral state apparatus, and the freely taken actions of African-Americans themselves.” We have then a clear sign of societal progress that makes it possible for fair housing to be endorsed in principle, but we also have major studies of attitudes that suggest Whites have created new forms of racial judgment that have some, if not many, of the same consequences as their former attitudes of traditional racial prejudice. There is then, as we began, good reason for mixed emotion and partial congratulation.

Central to the current ambivalence and debate about the meaning and effectiveness of civil rights is the finding that Whites and most minorities profoundly disagree in their view about a core, bedrock issue: Just how much discrimination exists in this country today? Most White Americans for example, believe as Joe Feagin notes, that racial discrimination no longer constitutes a major problem for minorities. A June 1997 Gallup poll finds that three-fourths of Whites believe that “Blacks are treated the same as Whites.” A 1995 poll by *The Washington Post* reveals that only 36 percent of Whites believe that “past and present discrimination is a major reason for the economic and social problems” facing Blacks. There are comparable differences for Hispanics.³ That is, while most Whites in this country do not believe there is much current discrimination, virtually all minorities believe and have experienced the opposite. Jennifer Hochschild (1995) comments:

African Americans (and other minorities) increasingly believe that racial discrimination is worsening and that it inhibits their race’s ability to participate in the American dream; Whites increasingly believe that discrimination is lessening and that Blacks have the same chance to participate in the dream as Whites.

Legal analyst Richard Delgado states this dilemma even more sharply: “White people rarely see acts of blatant or subtle racism, while minority people experience them all the time.”⁷⁴

This discrepancy is understandable in part because the nature and forms of racial subjugation have altered noticeably over the past several decades. Explicit door-slaming discrimination, as Nancy Denton notes, rarely occurs. “Because discrimination is so subtle and pernicious,” she says, “it is seldom seen by Whites. It has been incorporated into the structure of how business is done and is treated as normal.” Joe Feagin concurs with this opinion and adds that the racial isolation of most Whites means that they have few occasions and little basis to reevaluate their opinion that the civil rights laws have worked and minorities have nothing to fear. Carr, too, notes that discrimination “can be institutionalized in policies, practices, and procedures and continues long after the desire to discriminate has faded.... [S]uch actions can be invisible even to those who fight discrimination in their work.”

The new reality of current discrimination has not been incorporated into the charters of most civil rights enforcement agencies. Many are still fighting a battle with tools designed for an older, elapsed era of bitter, open, and explicit racism. How could 30-year-old laws and judgments about the nature of discrimination be effective when virtually the entire substructure of racial practices and opinions have altered so dramatically, especially since no corresponding opportunity has existed to redesign the operation of investigative strategies to detect and uproot such embedded, institutionalized forms of racial disadvantage? The fact that Whites and Blacks see the world in such notably different ways undoubtedly has consequences for the ability—and even the willingness—of civil rights enforcement agencies such as HUD to aggressively pursue evidence of individual and systemic forms of discrimination and effects-based racial disadvantage.

An equally conflicted sign of success noted by several of the contributors is the slow decline in the level of racial segregation in America’s cities. Reynolds Farley and William Frey (1994) have written elsewhere of this evidence as a sign of “small steps toward a more integrated society.” Denton elaborates on this with research documenting the decline in the number of previously all-White neighborhoods. By 1990, she comments, “most homogeneously White neighborhoods had virtually disappeared in the suburbs of most metropolitan areas as well as in their central cities.” Galster adds additional evidence, noting that “the stability of racially mixed [census] tracts has risen since 1970.” Others, most notably Phil Nyden, Michael Maly, and John Lukehart (1997) and Juliet Saltman (1990) have provided detailed descriptions and explanations for the persistence of a small number of types of stably integrated communities. Some of this stable integration has in fact occurred because of committed fair housing enforcement principles, while other communities have stabilized because of the currents of demographic change. Despite such promising trends, the rate of decline in segregation has been tortuously slow, and Carr cautions that the Fair Housing Act has proven a weak tool with which to address the complexities of segregation. Galster and Florence Wagman Roisman strongly support this conclusion.

A third sign of progress can be noted—one that deals more with the administration of research on housing discrimination than with enforcement. Most of the articles in this issue have noted the powerful importance of fair housing testing techniques in both the investigation of discrimination allegations and in documenting its nature and persistence at the national level. John Yinger’s research is notable in this regard.

National Audits of Housing Discrimination

HUD is the only Federal agency that has funded more than 20 years of research aimed at describing and understanding the levels and forms of discrimination as it is practiced by rental and sales agents across the Nation. In both 1977 and 1989, HUD funded major national audits of discrimination that have documented the fact, as shown in Yinger’s article, that no change could be detected in the level of discrimination over this period. From the time of the enactment of the Fair Housing Act in 1968 until the time that the new fair housing amendments went into effect, there was no measurable change in the level of discrimination practiced in this country despite more than a decade of educational and training programs, both by HUD and by industry groups.

In December 1998, HUD announced that it will fund and conduct a third national audit of housing discrimination to measure housing discrimination against all of the major racial and ethnic minorities, including African-Americans, Hispanics, Asian-Americans and Native Americans. This new study will differ from its predecessors in the commitment to establish a series of new benchmark “report cards” at both the local and national level which, for the first time, will permit assessments of the impacts or relevance of local fair housing enforcement in reducing these practices. HUD expects to be able to repeat these audits at regular intervals. This national report card on racial discrimination in housing has been made possible because the current Administration decided to commit a substantial increase in funding to civil rights enforcement over the past two fiscal years (FY99 and FY00).

In addition to the great benefits of the series of national audits, Feagin, Yinger, and Galster make use of results from local fair housing audits to buttress their arguments that we have no clear sign that even the enactment of the Fair Housing Amendments in 1988 have altered the level of discrimination in rental and sales housing. Exhibit 1 summarizes the results of seven local audits.

Exhibit 1

Incidence of Racial Discrimination in Rental Housing Market Audits for Select Metropolitan Statistical Areas, 1989–98

Housing Market	Audit Date	Number of Audits	Incidence (%)
Spokane, Washington	1989	54	43.0
Marin County, California	1993	31	55.0
New Orleans, Louisiana	1995	60	77.0
Montgomery, Alabama	1995	28	69.6
Fresno, California	1995	23	74.0
Pittsburgh, Pennsylvania	1996	21	71.4
Washington, D.C.	1997	163	35.0

Note: These are the levels or incidence of discrimination as reported. Spokane data are a conservative estimate due to overlapping data fields.

These audit studies conducted by private fair housing groups in a variety of cities help shed some light on the issue of the change or persistence in levels and forms of housing discrimination. As Raul Yzaguirre, Laura Arce, and Charles Kamasaki describe, many of

these studies also shed light on the high levels of discrimination experienced by Hispanics as well as by African-Americans, although there have been few studies of Asian-Americans, Native Americans, and other protected classes. Local studies have typically been testing projects by nonprofit organizations funded under HUD's Fair Housing Initiatives Program (FHIP), including audits in Marin County and Fresno, California; New Orleans, Louisiana; and Montgomery, Alabama, from 1993 to 1997.⁵

The studies shown in exhibit 1 focus on the rental market and reveal varying levels of denials of apartments to Black, but not White testers with rental discrimination levels ranging from a high of 77 percent in New Orleans in 1995, to a low of 35 percent in the Washington, D.C., area in 1997. While the data suggest a modest overall decline in the level of measured housing discrimination from 1986 to 1997, the data also reveal enough variations from year to year to suggest caution in assuming a linear rate of improvement.

In 1993 in Marin County, California, for example, White testers were told about more units and offered longer term leases and half-off rent. In no case were any racially derogatory remarks made. In 1995 in New Orleans (Orleans and Jefferson Parishes), 60 tests revealed little sign of outright denial or use of racial slurs, but did reveal use of delaying tactics and various screening techniques. As in HDS, the Housing Discrimination Study, nearly 9 percent (8.7) were denied because of race. However, the largest category included cases in which a Black tester just could not make an appointment to see the rental agent, although the White tester could. In one case, while the White tester called and scheduled an appointment on the first call, the Black tester called six times over 9 days and was finally told that the agent "could not help" the tester.

Parts of these denial policies are institutional: The Louisiana Department of Justice, for example, reports that former rental firm employees testified that they were instructed to "star" applications submitted by Blacks, causing them to be subjected to more rigorous rental criteria. If they were accepted, they were steered to poorer quality units. Consistently, Whites are told that units are available and how to see them while Blacks are told nothing is available. When they press, Blacks are asked about their income, background, and credit history. They are then denied units while Whites are offered them almost unconditionally.

In Montgomery, Alabama, in 1995, 28 paired tests were conducted with Black testers experiencing discrimination in 69.6 percent of the cases.⁶ For example, a White tester was shown an apartment and invited to call back while the Black tester, arriving 90 minutes later, was told the apartment was rented. A follow-up test by a White showed the unit still available. In another case, the Black tester was required to fill out a detailed application while the unit was offered to Whites with no questions asked. Whites and Blacks were steered to different developments. Whites were offered "move-in specials," but Blacks were not. Whites were told units were available and, at almost the same time, Blacks were told there were no available apartments. This happened repeatedly in Montgomery. When Blacks were told of units, they were in the Black section of the city while Whites were only told of units in White neighborhoods.

In Fresno, California, in 1996, audit results revealed treatment differences in 74 percent of cases. "For the most part, African-Americans are politely denied without ever being given a chance to apply." For example, a Black tester was told no apartments were available while a less well-qualified White was encouraged to apply for two units that were available. In another, the Blacks were offered a rent of \$595 and the Whites \$510 a month.

Also in 1996, Pittsburgh was the subject of 21 tests in 2 White neighborhoods. More than 70 percent (71.4 percent) of the tests revealed evidence of discrimination against Blacks, including not calling or failing to show up for appointments with Blacks, not telling Blacks of units made available to Whites, and requiring Blacks to answer more questions about their personal background. Whites were also told about or steered to units that Blacks were not told about.

Changes in Discrimination from 1986 to 1997 in the Washington, D.C., Metropolitan Area

While no national probability audit study exists to compare 1989 with present discrimination levels, The Fair Housing Council of Greater Washington conducted comparably designed audits that do provide a description of the recent level of discrimination in the area. Exhibit 2 presents data regarding the incidence of racial rental market discrimination in the Washington, D.C., metropolitan area for most years between 1986 and 1997.

Exhibit 2

Incidence of Racial Discrimination in the Washington, D.C., Metropolitan Area Rental Market, 1986–97

Year	Number of Audits	Incidence*
1986	280	49.3
1987	111	46.8
1988	295	28.1
1989	215	54.4
1990	200	54.0
1991	100	48.0
1992	129	40.0
1993	107	39.0
1997	163	35.0

* As in Galster (1990a), incidence refers to the net difference in percentage of audits in which White auditors were favored over Black auditors. Special tabulations were provided by the Fair Housing Council of Greater Washington.

It is important to note that the level of discrimination in Washington, D.C., for 1989 was the highest level reported for any of the nine audit studies. If, instead, the benchmark year for comparison were 1988, the level of discrimination would have increased from 28 to 35 percent, suggesting methodological concerns with the design of the audit studies. There is no information available as to why the measured levels of discrimination fluctuated so markedly between 1988 and 1990, but the methods used may not be consistent, suggesting caution in making use of these numbers.

Justice Department Rental Testing Evidence

The article by Assistant Attorney General for Civil Rights Bill Lann Lee describes cases brought by DOJ using testing since the initiation of their fair housing testing unit roughly 7 years ago (Yu and Taylor, 1997). As of 1997, DOJ’s Office of Civil Rights had filed 36 cases alleging racial discrimination in rental housing in 9 metropolitan areas using testing

evidence. These cases alone resulted in more than \$4.4 million in penalties awarded for plaintiffs. The testing data reveal both consistent patterns of denial of information to Blacks that was given to Whites, outright refusal to rent, and a variety of techniques either to delay the Black applicants or to charge them more than their White counterparts.

Relatively typical of these cases was the evidence gathered against the Araich Anstalt Corporation located in Boca Raton, Florida. In October 1993, a White tester employed by DOJ was sent to the Boca Real apartments and told that a two-bedroom unit for \$805 would be available in roughly 2 weeks. A Black tester arrived shortly thereafter and was told that units rent for \$845 to \$1,200 a month, but none would be available until the next year. Roughly 10 days later, a Black tester was told nothing was available. Three hours later, a White tester was told a unit was available at only \$795 a month—a price \$50 to \$405 less than that quoted to Blacks.

In the case of the Kendall House apartments in Miami, employees were told that Kendall House does not rent to Blacks. Blacks were actively discouraged from filing applications. When they did file, the staff marked their applications with a code (blacking in letters in a word) to indicate they were minority so that different treatment could be disguised from the applicant. In this case, relief of \$1 million was imposed, while in another Florida case the violations led to penalties of more than \$400,000.

In 1997 a testing case in Chicago found that Forest Hills Realty Management Corporation had told eight White testers about available apartments in a South Chicago Heights building, but told their Black teammates that no apartments were available. Whites were offered rent discounts and told that units were available in a Forest Hills building, but Black testers were told there were no vacancies and only one Black tester was offered a rent discount. The apartment owners agreed to pay \$300,000 in damages and another \$150,000 in civil penalties.

Although there is the suggestion of a modest decline in the incidence of racial mistreatment in the Washington metropolitan area since the enactment of stronger civil rights enforcement protections, evidence from other local audits about the precise level or the most prevalent forms suggest that only one robust conclusion is feasible at this point. Courtesy appears a standard mask for decisions made to either deny minorities, charge them a higher price, or just as often, to steer them to blacker areas or poorer quality units. Without the aid of testing by local agencies or private civil rights groups, few if any protected class members would be able to detect these forms of mistreatment because they felt as if they had been treated well.

Testing, therefore, is not simply a helpful investigative tool, but rather an indispensable, probative method for accurately and validly ascertaining how rental and sales agents treat minorities in most types of cases when alternative forms of complaint-based investigations would likely provide little or no comparably persuasive evidence. The new forms of racial opinions, beliefs, and structurally based racial practices in existence today should no longer require that there be individual complaints or victims to generate civil rights cases. Several of the contributors argue for a more aggressive use of testing, the development of new investigative techniques, and greater use of systemic investigations. Galster makes this point powerfully: "The fundamental flaw in the Fair Housing Act is that it relies on the victim to recognize and formally complain about the suspected acts of discrimination. Given the subtlety of discrimination as it is practiced today, such reliance is misplaced. As a result, there is little chance of violators fearing detection or litigation." Feagin adds that "in most regions of the country, White landlords and real estate people can discriminate with virtual impunity in the case of housing." Yinger advises a sensible alternative: "The

1988 amendments to the Fair Housing Act give the Housing Secretary the authority to initiate fair housing investigations. This change is important because it helps to take the burden of enforcement off the victims of discrimination and enables HUD to uncover discrimination even when it does not lead to a complaint [by an individual].”

Increased Funding

The final issue we will mention as a potential source of progress is the recent decision by the Administration to increase the Federal resources available for civil rights enforcement by more than 20 percent. Based upon recommendations of the President’s Initiative on Race, there was an average increase of 18 percent last year, with another increase provided this year, aimed at correcting many years of resource decline. For the past two decades, for example, civil rights enforcement agencies—including HUD—have lost considerable ground with their decreased budgets and notably reduced staffing—even as their responsibilities were increased. A U.S. Civil Rights Commission examination of the adequacy of funding and staffing for the enforcement of major civil rights laws, such as those in employment, housing, voting rights, and education revealed sharp declines in the level of funding for most civil rights agencies over the period from fiscal year 1981 through 1994.⁷ For example, 2,850 full-time staff were employed at the Equal Employment Opportunity Commission (EEOC) in 1990—a period when EEOC was receiving roughly 62,000 cases a year. By 1997 there were only 2,680 staff (or 170 fewer) and the number of charges had risen to between 80,000 and 100,000. Similarly, the Office of Civil Rights at the U.S. Department of Education had 815 staff in 1990 to handle roughly 3,400 cases, while in 1997 fewer than 134 staff received more than 5,200 complaints. HUD too has experienced a similar leveling and reduction of resources over the 10- to 15- year period.

Reductions in budgets and staffing made it difficult for agencies to devote sufficient time and attention to training staff and providing technical assistance to Federal fund recipients to recognize and prevent discrimination. This has been especially true for the increasingly subtle and complex forms of contemporary discrimination, which have largely supplanted more blatant forms of discrimination. This is the first addition of major resources in more than 15 years.

As part of the overall increase in funding, a new initiative was announced recently that would significantly expand and strengthen the ability to collect, analyze, and disseminate reliable data on the nature and extent of discrimination based on race and national origin. The Office of Management and Budget has proposed allocating up to \$10 million initially for a well-designed and coordinated process of generating relevant research indicators across a wide range of Federal agencies charged with enforcing civil rights laws that would then become part of a regular “national report card” covering such areas as education, health, employment, housing, and the administration of justice.

Evidence of Limitations and Inadequacy

From its inception, a number of seeds would prove to be the roots of policy discontent and weakness within the Fair Housing Act. Among the many decisions made by Congress at that time was to assign primary responsibility for enforcement of the Act to HUD. HUD is an agency well situated to understand and correct abuses in housing markets, including the abuses associated with discrimination by industry members. Congress could have created an independent commission—similar to EEOC—in the area of equal employment, or it might have lodged the enforcement authority within DOJ as it did with public accom-

modations and other issues. As it did with education, Congress located the enforcement requirements within the agency charged with administering other housing-related laws and programs.

However, HUD is also an agency whose obligations to support urban economic and housing development require working collaboratively with major housing and mortgage lending institutions. As such, enforcement of the Fair Housing Act means that HUD is charged with playing both “good cop” (providing categorical and block grant funding as well as FHA (Federal Housing Administration) insurance) and “bad cop” within its own precincts. In general, there is nothing unusual about a Federal agency enforcing civil rights laws at the same time that it is charged with other duties. Such a partnering can, under the right circumstances, leverage the good intentions of housing policies with those associated with civil rights. However, under the wrong set of political circumstances, HUD’s fair housing mandate has taken a back seat to other interests. We have both witnessed the extent to which outside major interest groups can influence the shape, aggressiveness and direction of enforcement actions. Due to inept and corrupt management during the Reagan administration, a review of HUD’s operations completed in 1994 revealed it to be a “grossly mismanaged” agency with a mismatch of goals and resources. It had, as the report noted, an “expectations glut,” which meant that in an area such as fair housing much more was expected than the system could provide in terms of leadership and resources (National Academy of Public Administration, 1994).⁸ Recent actions to dramatically reform HUD’s operations are still underway, with a substantially increased focus of fair housing enforcement by Housing Secretaries Henry Cisneros and Andrew Cuomo.

Those who enacted the bill in 1968 also knew full well that they were selecting as the core tool for enforcement of the law an inherently weak and oblique method—the power to “conciliate” or mediate the dispute. Representative Mathias, as well as others, lament the exclusion of the power to issue cease-and-desist orders. Denton comments that “it cannot be emphasized enough that the 20 years between 1968 and 1988 were a lost opportunity in terms of race relations in the United States. Progress that could have been built on the momentum of the civil rights movement was not made.”

Among the related issues of concern to all who study and try to implement the Fair Housing Act is the question of the relatively small number of complaints that are filed annually alleging housing discrimination. Schill and Friedman note that roughly 82,000 complaints have been filed from 1989 to 1997, with the recent annual level reaching roughly 10,000 cases in comparison to the roughly 80,000 employment discrimination cases received annually by EEOC. They also note a pronounced decline in the number of cases brought by families with children—findings that do not appear to have any ready explanation. The inability to understand the relative lack of demand or use of this civil right is one of the puzzles that constitutes a long-term source of frustration and a sign of the potential failure of the Fair Housing Act to achieve its full use and potential. Is the low level of complaints due to the appearance of HUD as a biased or inept agency or is it due to the fact that minorities and other protected classes do not perceive that they have been discriminated against? What set of techniques can best be established within each housing market that could raise to a meaningful level the complaints and systemic investigations to reduce what audit studies tell us is a high level of discrimination? William Tisdale has a range of thoughtful suggestions aimed at creating a more comprehensive solution to these questions and Bill Lann Lee promises more pattern-and-practice cases that he plans to settle or resolve with the objective of creating “truly integrated and balanced living patterns.”

Addressing Discrimination

The final area of comment we would like to make is on HUD's responsibility to address discrimination in federally funded housing programs—an issue that has been a sore spot in the administration of both Title VI and Title VIII over the past 20 to 35 years. The U.S. Commission on Civil Rights and the Citizens Commission on Civil Rights have noted that most Federal agencies have been less than effective in addressing the volume and backlog of cases on hand and in exercising their broad authority to initiate investigations of discrimination on a systemic basis. In particular, a review of the Title VI⁹ enforcement record of these agencies has found that: "Federal agencies' budget and staffing for Title VI implementation and enforcement activities have declined as their civil rights workload has increased. As a result, few Federal agencies devote sufficient resources to Title VI to ensure that the agency and its recipients are in compliance with Title VI's nondiscrimination provision."¹⁰

Galster and Roisman devote particular attention in their articles to the issue of how this country's legacy of segregated and concentrated poverty can best be addressed because these problems lie close to the heart of resolving America's continuing racial dilemma. Galster, in particular, makes the argument that the achievement of fair housing requires both the reduction of ghettos and an increase in the number of racially integrated communities. To him, "de-ghettoization is a clear failure of the Fair Housing Act of 1968." The existence of racial ghettos helps foster the belief among Whites that some forms of "statistical discrimination" are justified because, Whites will argue, ghettos prove Blacks are bad risks and this perception also helps support exclusionary land-use practices and other types of adverse racial impact decisions that constitute a new form of "spatial racism." (Wilson, 1987, 1997; Hochschild, 1993, 1995) He supports HUD's important demonstration efforts, such as the Moving to Opportunity demonstration and Regional Opportunity Counseling, aimed at spatially deconcentrating the poor, and encourages actions to combat adverse impacts.

Roisman has been for years a well-known critic of HUD's efforts to desegregate its own programs and she contributes an important array of recommendations and advice about how HUD and local public housing agencies might best proactively address "pervasive racial discrimination and segregation." She supports a wide ranging set of proposals including the targeting of investigations and relief, and offers her suggestions to extend the ability of the Section 8 program to promote desegregation, although at some cost. Her list of recommendations include many discussed by HUD officials and she continues to serve by prodding agencies to continuously rethink decisions that might affect the goal of housing desegregation.

Galster, like many others, applauds the decision by Secretary Cisneros and the Office of Fair Housing and Equal Opportunity to acknowledge HUD's role in and liability for housing segregation and to begin the process of settling a number of long-standing housing segregation law suits. The effectiveness of the remedies established in a core number of these cases has just been studied to build a baseline of measurement—for the first time—to know which techniques work best in fostering stable levels of desegregation in public housing authorities with often-dwindling numbers of Whites left to desegregate. This is the first major evaluation of the effectiveness of Title VI remedies in nearly 20 years and illustrates the prior paucity of evidence and care in understanding how to best implement this Act. We all look forward to the evaluations of these remedies as well as studies of the success of the Moving to Opportunity desegregative efforts to learn how much more might be achieved with the resources offered by Congress.

Concluding Thoughts

Almost 15 years ago, Schuman, Steeh, and Bobo (1985) concluded their 40-year survey of data on race by stating that “what has occurred is a mixture of progress and resistance, certainty and ambivalence, striking movement and mere surface change.” We concur that such an assessment equally applies to the broad arena of civil rights enforcement and to fair housing in particular.

Some of the clearest signs of positive change are reflected in Denton’s evidence about how far we have come even though so much more work remains to be done. By pointing to evidence about the growing numbers of neighborhoods that have some degree of racial integration and to the increasing importance of America’s growing racial diversity, she offers as much a finding as a challenge to understand whether, to what extent, and in what ways, the fair housing movement will be relevant to this transformation of America’s future communities. Also, will policies and programs connected to the President’s Initiative on Race lead to a new generation of efforts aimed at reducing racial disparities, ghetto poverty, and the lack of economic and housing opportunity? Will HUD and its partner agencies, including Government-Sponsored Entities and Federal banking regulators, find more creative and effective means to offer home ownership and wealth accumulation to minorities long deprived of such a share in the American way?¹¹ Discrimination in mortgage lending, property insurance, appraisal, zoning, and many other practices and services connected to the provision of housing has been the subject of heated public policy debate research and litigation in recent years (Goering and Wienk, 1996; Squires, 1997). Outside of the limited context of rental and sales housing, what additional research and policies are needed? HUD, primarily through the FHIP program, has conducted several innovative testing and enforcement initiatives in mortgage lending and property insurance and has negotiated substantial settlements in complaints against AccuBanc Mortgage Corporation, Allstate, State Farm, and other providers of housing-related financial services. These initiatives have not been carefully evaluated, and such studies are much needed.

The future may indeed hold instances in which private law suits in fair housing and public housing segregation continue to open frontiers of action and unlock problems long hidden from view. We expect that this will and should continue. We hope that the requirement for community based “Analyses of Impediments” will also serve to empower communities to use that lever on resources to press home specific, tangible programmatic changes that can alter the current system of segregation and institutionally based racism. Few, if any, of this issue’s authors recommend major legislative changes. Many of us are long-schooled in the fear that amendments to Title VIII or Title VI would risk opening a Pandora’s box of potentially unwelcome amendments. We can only hope that at some point in the future, the two Acts could be honed and their enforcement provisions linked in ways that permit private and public sector housing options to be treated as interdependent resources for programmatic and remedial actions.

If Feagin is correct that White racism remains “the core reality” for this country (a condition in which “slavery, segregation, and modern racism give Whites major material and cultural advantages they do not deserve”), civil rights enforcement has a far higher hurdle to clear than simply reducing levels of discrimination. Each of the authors in this collection has offered thoughtful analyses and advice—advice for HUD, the country, community groups and major institutions. We both hope that the next decade’s assessment of FAIR HOUSING at age 40 will document the fact that the country turned a corner, at the turn of the century, and that its vast wealth, budget surpluses, and domestic tranquillity lead to equal justice as well. One worries, however, that in the next decade sharp differences in viewpoint will leave considerable uncertainty about the line between preferences,

discriminatory conduct, and civil rights enforcement, adding weight to the already “deep, sharp, and confusing battle to locate the mainstream in racial policy” in this country (Edley, 1993). Do we need to worry with Derrick Bell (1992) that “the racism that made slavery feasible is far from dead in the last decade of the twentieth-century; and the civil rights gains, so hard won, are being steadily eroded?”

Authors

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Notes

1. Professors Joe Feagin, Nancy Denton, and Larry Bobo were the panelists for the ASA meeting along with William Tisdale. Bobo was unable to revise his remarks for inclusion in this collection due to time pressures. Neither the meetings at ASA nor this collection are intended to reflect upon the recent efforts of Housing Secretaries Henry Cisneros and Andrew Cuomo to strengthen fair housing enforcement. The absence of any empirically based evaluations of recent initiatives risk making such judgments either self-serving or apologetic.
2. Although some would argue it is close to impossible for analysts who have spent so many years working in or for HUD to be objective and fair, it is nonetheless true that we have each witnessed our share of the policymaking, research, and political judgments that have formed the core of what HUD has, and has not, been able to accomplish over the past 30 years and that these views are a useful part of understanding the current trajectory of change. These views are necessarily only personal and do not reflect on the institutions that we currently serve.
3. The Gallup Organization. June 1997. “Black/White Relations in the United States: 1997,” Gallup Poll Social Audit. See also Richard Morin, 1995, “A Distorted Image of Minorities: Poll Suggests that What Whites Think They See May Affect Beliefs,” *The Washington Post* (October 8):A1.

4. Jennifer Hochschild, 1995, *Facing Up to the American Dream: Race, Class, and the Soul of the Nation*. Princeton: Princeton University Press, p. 55; see also Richard Delgado, 1994, "Rodrigo's Eighth Chronicle: Black Crime, White Fears- On the Social Construction of Threat," *Virginia Law Review* (March):503-548.
5. HUD has also funded two major studies of lending discrimination including a series of pilot audits of lenders in a number of cities aimed at developing and implementing techniques that will validly measure discrimination in the pre-application stage of lending. The results of these two studies will be available within the year. Not all of these audit studies measured discrimination throughout the entire metropolitan area: In Marin County and Pittsburgh only select neighborhoods were measured. Of the 28 cases, 16 revealed evidence of discrimination and 7 did not. Five cases were deleted as inconclusive. Telephone interview with testing coordinator of the Central Alabama Fair Housing Center, April 15, 1997.
6. U.S. Commission on Civil Rights, June 1995, "Funding Federal Civil Rights Enforcement," Washington, DC:71.
7. One of the striking parts of public service is that throughout the terrible years of mismanagement and neglect that a host of committed fair housing professionals, in both Washington and throughout the country, continued to work to try to enforce HUD's civil rights laws. Their persistence is one of the hidden, notable achievements within the fair housing movement. For additional detail about the negative effects of Reagan administration policies on civil rights see Myers, 1997.
8. Title VI of the 1964 Civil Rights Act prohibits discrimination on the basis of race by recipients of Federal financial assistance.
9. U.S. Commission on Civil Rights, June 1996, "Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs," Washington, DC:7.
10. See page 39 of *Changing America*. The chart on "Households Owning Selected Assets, 1993" that reveals that households maintained by Whites were "more likely than those maintained by blacks or Hispanics to own stocks or mutual funds, have equity in their homes, or hold assets in a retirement savings account...." There is also the collateral finding that Whites have a substantially higher level of home equity than do Blacks.

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