

An Issue of Public Importance: The Justice Department's Enforcement of the Fair Housing Act

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On the afternoon of April 28, 1966, President Lyndon B. Johnson met in the Cabinet Room of the White House with a group of citizens who were concerned about civil rights. Included among those citizens was the Reverend Martin Luther King, Jr.¹ In their presence, the President signed a message to Congress that called for the enactment of “the first effective Federal law against discrimination in the sale and rental of housing” in the United States. The President’s message noted that “[as] long as the color of a man’s skin determines his choice of housing, no investment in the physical rebuilding of our cities will free the men and women living there.”² Not surprisingly, Congress did not pass such a law in 1966 or in 1967. Indeed, President Johnson later observed, “Few in the Nation—and the record will show that very few in that room that afternoon—believed that fair housing would—in our time—become the unchallenged law of the land.”³

Within 2 years, however, after an act of unspeakable violence, the legislative impasse finally ended. On April 4, 1968, Dr. King was shot and killed in Memphis. Seven days later, President Johnson signed the Fair Housing Act into law as Title VIII of the Civil Rights Act of 1968.⁴ In doing so, the President acknowledged the country’s “outrage ... at the assassination” of King, “who [had been] at that meeting that afternoon in the White House in 1966.” The President further professed that “the proudest moments of my Presidency have been times such as this when I have signed into law the promises of a century.”⁵

Passage of the Fair Housing Act in 1968 provided a sign of hope that the terrible racial divisions within the country,⁶ reflected in the violence that enveloped the Nation following King’s death, could be healed. Declaring that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States,”⁷ the Act prohibited discrimination in housing on the basis of race, color, religion, or national origin.⁸ At the time, the Act was hailed as “a detailed housing law, applicable to a broad range of discriminatory housing practices and enforceable by a complete arsenal of Federal authority.” See *Jones v. Alfred H. Mayer Co.*, 392 U.S. at 413, 417 (1968) (contrasting the provisions of the Civil Rights Act of 1866, 42 U.S.C. §1982, with the Fair Housing Act).⁹

Thirty years after passage of the 1968 law, fair housing—the right to live wherever one wants and can afford—remains at the heart of the American dream. For me, fighting housing discrimination is not simply an abstract interest. It is a passion that is born of personal experience. I am the son of Chinese immigrants who migrated to this country before World War II. My father, at the age of 35, volunteered for the U.S. Army Air Corps during that war. In the military he experienced equal opportunity and tolerance for the first time. Yet, when he returned to New York City after the war, my father found nothing had changed. He was called a “dumb Chinaman” and worse. Searching for an apartment while still in uniform, he was turned away because he was Chinese.

As a civil rights lawyer for 24 years, I am well aware that, despite the passage of the 1968 Fair Housing Act and the 1988 amendments to this Act, discrimination in housing remains a compelling problem that continues to burden our land.¹⁰ That is the primary reason that vigorous enforcement of the Fair Housing Act is one of my highest priorities as head of the Civil Rights Division of the U.S. Department of Justice (DOJ).

This article focuses on DOJ’s role in enforcing the Act and ensuring that fair housing is not only a dream but a reality for all Americans.

DOJ’s Enforcement Activities

Early Enforcement Efforts

The Department brought important precedent-setting cases under the 1968 Fair Housing Act. For instance, in *United States v. West Peachtree Tenth Corp.*, 437 F.2d 221, 228 (5th Cir. 1971), the Court of Appeals for the Fifth Circuit set forth a model remedial decree for fair housing cases.¹¹ In *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), the United States challenged racially discriminatory zoning practices that had precluded development of racially integrated, low-income housing in a St. Louis suburb. The United States further challenged discriminatory land use practices in such cases as *United States v. City of Parma*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 456 U.S. 926 (1982); *United States v. City of Birmingham*, 727 F.2d 560 (6th Cir.), *cert. denied*, 469 U.S. 821 (1984); and *United States v. Yonkers Board of Education*, 624 F. Supp. 1276 (S.D. N.Y. 1986), *aff’d*, 837 F.2d 1181 (2^d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988). Other important cases brought by the United States during this period include *United States v. Bob Lawrence Realty, Inc.*, 474 F. 2d 115 (5th Cir.), *cert. denied*, 414 U.S. 825 (1973) (challenging blockbusting actions of real estate companies); *United States v. Hunter*, 459 F.2d 205 (4th Cir.), *cert. denied*, 409 U.S. 934 (1972) (holding that Section 804(c), 42 U.S.C. §3604(c), prohibited the publication of an advertisement for an apartment in a “White home” without violating the first amendment); *United States v. Youritan Construction Co.*, 370 F. Supp. 643, 649 (N.D. Calif. 1973), *aff’d and modified as to relief*, 509 F. 2d 623 (9th Cir. 1975) (holding that the duty to comply with the Fair Housing Act is non-delegable); *United States v. Northside Realty Associates, Inc.*, 605 F.2d 1348 (5th Cir. 1979) (upholding the legality of testing for fair housing compliance); and *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977), *appeal dismissed*, 590 F.2d 242 (7th Cir. 1978) (holding unlawful under the Act the practice of treating race as a negative factor in real estate appraisals).

As noted earlier, the Supreme Court in *Jones* characterized the 1968 Fair Housing Act as “enforceable by a complete arsenal of Federal authority.”¹² This characterization was true only when contrasting the Act with prior existing law. The “arsenal of Federal authority” provided by the 1968 Act was far from powerful or complete. Indeed, the Supreme Court

noted only a few years after *Jones* that “the Housing Section of the Civil Rights Division had less than two dozen lawyers,” and concluded that “complaints by private persons [were] the primary method of obtaining compliance with the Act.”¹³ The Attorney General had brought some important cases, as indicated above. However, the authority to initiate enforcement actions was limited to situations where there was a pattern-or-practice of discrimination or where a group of persons had been denied rights granted by the Act and such denial “raise[d] an issue of general public importance.” In addition, the Act limited the Attorney General to seeking “preventive relief,” which the courts construed as limited to equitable relief.¹⁴ Although the 1968 Act empowered HUD to receive and investigate individual complaints of discrimination, neither HUD nor DOJ had authority to initiate enforcement actions based on such complaints. The Act required individuals to bring their own lawsuits if they desired judicial resolution of their claims.

Effect of 1988 Amendments to the Act on DOJ’s Enforcement

In time Congress recognized the impediments to effective governmental enforcement of the 1968 Fair Housing Act and addressed them by passing the Fair Housing Amendments Act (FHAA) of 1988. By passing the 1988 Act, Congress acknowledged that the “Federal enforcement role [had been] severely limited” under the original statutory scheme.¹⁵ In addition to expanding the Act to cover discrimination against persons with disabilities and families with children,¹⁶ the 1988 amendments fundamentally changed and greatly expanded the Federal Government’s role in enforcing the Fair Housing Act. First, the amendments gave both HUD and DOJ the authority to address discriminatory complaints from individuals.¹⁷ Second, the amended Act gave the Justice Department specific authority to seek compensatory and punitive damages for persons aggrieved by discrimination in both individual and pattern-or-practice cases. In pattern-or-practice cases, the Act allows DOJ to seek civil penalties of up to \$50,000 for a first violation and up to \$100,000 for subsequent violations of the statute.¹⁸ This ability to obtain monetary relief greatly enhances DOJ’s authority by putting teeth into its enforcement activities. Defendants now know that a suit by DOJ (or an administrative enforcement action by HUD) can mean costly damage awards and civil penalties in addition to litigation expenses.

DOJ’s Enforcement Efforts Under the Amended Act

The 1988 amendments to the Fair Housing Act have had a dramatic effect on DOJ’s enforcement activity. The Housing and Civil Enforcement Section of the Department’s Civil Rights Division, located in Washington, D.C., has chief responsibility for the Government’s civil litigation under the Fair Housing Act. After the amended Act went into effect, the number of civil fair housing cases brought by DOJ increased from approximately 15 to 20 in the years prior to the 1988 amendments to a peak of 194 cases in 1994. Since 1988 the Housing and Enforcement Section has nearly tripled in size to address its increased enforcement responsibility. Moreover, to assist in this enforcement effort, the Attorney General has delegated responsibility for litigating most of the “election” cases—cases brought by the United States on behalf of aggrieved persons pursuant to Section 812(o) of the Act—to attorneys in U.S. Attorney’s offices throughout the country.¹⁹ That delegation has allowed the Section to focus most of its efforts on the broad pattern-or-practice civil cases authorized by Section 814 of the amended Act.²⁰ In addition to this civil litigation, the Civil Rights Division, through its Criminal Section and with the assistance of the U.S. Attorneys, prosecutes cases under Section 901 of the Act, 42 U.S.C. § 3631. This provision makes it a Federal crime to use force or the threat of force to willfully interfere with the exercise of housing rights.

The Fair Housing Act applies to actions taken by:

- Direct providers of housing, such as builders, landlords, and real estate companies.
- Municipalities, banks, insurance companies, and other entities whose discriminatory practices make housing unavailable to persons because of their race, color, religion, sex, national origin, disability, or familial status.
- Individuals whose senseless acts of violence interfere with the exercise of rights secured by the Act.

The civil and criminal enforcement efforts of the Civil Rights Division have been broad and are designed to reach all such practices. Below is a summary of the Division's most recent and important enforcement activities.

Civil enforcement initiatives. In an effort to enhance enforcement of the amended Act, DOJ announced the creation of two important enforcement initiatives in November 1991. These initiatives remain central to the Department's fair housing enforcement program. They include the Federal Government's first fair housing testing program and more vigorous enforcement of fair lending laws.

Fair housing testing initiative. Thirty years after enactment of the Fair Housing Act, those protected by its provisions are too often told that a dwelling is not available at the desired time, in the right size, or in the proper price range. These disappointed applicants go away, often unaware that the color of their skin made the housing "unavailable." To detect this kind of "discrimination with a smile," the Civil Rights Division has established a fair housing testing program. This program has greatly improved our ability to root out and attack discriminatory housing practices that might otherwise have gone undetected or unpunished. In a test for race discrimination in rental housing, for example, pairs of White and Black persons, who have been trained by Section personnel, pose as prospective tenants and attempt to rent an apartment at a particular complex. By comparing their treatment, the Section is able to evaluate whether a landlord is discriminating on the basis of race. Similar tests are designed to ferret out discrimination on the basis of national origin and familial status. Recently, we expanded our use of testing investigations to determine whether newly constructed multifamily housing has been designed and constructed in compliance with the accessibility provisions of the amended Fair Housing Act.²⁰

Fair housing testing has long been a major tool for gathering evidence of housing discrimination.²¹ By creating its own testing capability, the Section greatly enhanced its ability to enforce the Act in a more proactive and directed manner. Additionally, the program has proven to be very successful. Evidence gathered under the testing program since its creation in 1992 and through July 1998 has resulted in the filing of 48 pattern-or-practice cases. By August 1998, 41 of these cases had been successfully resolved, either through entry of a consent decree or a finding of liability.²² The monetary relief awarded in these cases includes approximately \$1.2 million in civil penalties and \$6.3 million in damages for individual discrimination victims and for activities designed to promote fair housing. This latter relief has been particularly important and beneficial because it has a broader impact on continuing efforts to ensure fair housing in communities affected by discrimination.²³

Our testing program has been recognized as an especially effective enforcement initiative. It was featured in a 1997 Report of the Citizens' Commission on Civil Rights, a private, bipartisan organization established in 1982 to monitor civil rights enforcement of the Federal Government. The Commission described the testing program as a "remarkable

success story” that has provided a steady stream of pattern-or-practice cases by the Justice Department in all parts of the country (Ladd, 1997). Moreover, this program has become a model for the creation of similar Federal programs. Several agencies have consulted with the Section and sought its expertise concerning testing procedures.

Fair lending initiative. Recognizing that discrimination too often limits homeownership opportunities, the Section recently established a major enforcement initiative that addresses discriminatory activities by lending institutions, especially discriminatory mortgage lending. The importance of homeownership should never be underestimated. It provides a person with feelings of self-worth, a sense of security, and economic stability. Homeownership creates a commitment to the community and is vital to a community’s economic development. It helps build stronger neighborhoods and promotes safer streets and better schools. That is why homeownership is central to the American dream.

Building a home requires more than a dream—and more than bricks and mortar. It requires capital and access to credit, the lifeblood of economic opportunity. With credit, homes can be bought, businesses started, neighborhoods rebuilt, and communities revitalized.

Lending discrimination is prohibited by both the Fair Housing Act and the Equal Credit Opportunity Act.²⁴ The Section has brought 13 lending cases since 1992 and obtained almost \$33.4 million in monetary relief.²⁵ Equally important, the equitable relief we have secured has required lending institutions to adopt policies and procedures ensuring equal treatment of their customers. These lending cases, which are among the most complex litigated by the Civil Rights Division, have challenged the discriminatory underwriting, marketing, and pricing practices of lending institutions.²⁶ More recently, we have placed increased emphasis on institutions that specialize in lending to borrowers with less-than-perfect credit, but who do so in a discriminatory manner.²⁷

Our lending initiative has not been limited to litigation, however. A critical first step in the enforcement process has been education. Over the last 4 years, we have made great strides in building cooperative relationships with industry and encouraging voluntary compliance with fair lending laws. On many occasions, Civil Rights Division attorneys have spoken at seminars, meetings, and conferences to inform lenders of their fair lending obligations and to answer their questions. Moreover, our fair lending initiative has focused the attention of bank regulatory and other agencies on fair lending enforcement.

Undeniably the initiative has had a significant impact on combating lending discrimination. A 1996 *Wall Street Journal* article reported the “sharp” rise in mortgage lending to minorities in recent years and credited much of this improvement to “tough fair-lending enforcement by the Justice Department (Wilke, 1996).”²⁸ The 1997 Citizens’ Commission Report, too, concluded that the Division’s lending initiative has paid tremendous dividends (Ladd, 1997).

Other Important Areas of Civil Enforcement

Other areas in which the Department has sought enforcement include insurance, municipalities, accessibility, and sexual harassment.

Insurance cases. An important adjunct to the Section’s lending cases has been our effort to address discrimination in the provision of homeowners insurance. As the Court of Appeals for the Seventh Circuit observed in *NAACP v. American Family Mutual Insurance*, 978 F.2d 287, 297 (7th Cir. 1992), *cert. denied*, 508 U.S. 907 (1993): “Lenders require their borrowers to secure property insurance. No insurance, no loan; no loan, no

house; lack of insurance thus makes housing unavailable.”²⁹ The Section has played a leading role in establishing that the Fair Housing Act covers the sale and terms of homeowners insurance. This has been accomplished through our affirmative litigation and defense of HUD’s implementing regulations under the Act, which prohibit discrimination in the provision of such insurance.³⁰ For instance, we have brought two important cases addressing this kind of discrimination, one against the Nationwide Insurance Company, the Nation’s fifth largest provider of homeowners insurance,³¹ and the other against the American Family Insurance Company.³² We settled both cases through ground-breaking consent decrees that included significant monetary relief estimated to be \$13 million in the *Nationwide* case and more than \$16.5 million in the *American Family* case. The consent decrees also contained important injunctive relief. This relief required these two large insurance companies to change their underwriting policies so homeowners insurance would be more readily available to previously excluded individuals.³³

Cases involving municipal defendants. When municipalities discriminate the impact can be particularly devastating. If discrimination is based on race or national origin, a city’s action can cause or perpetuate residential segregation, which adversely affects housing, employment, and educational opportunities. Cases attacking this kind of discrimination have long been a high priority of the Civil Rights Division.³⁴ Our recent litigation has involved discrimination on the basis of disability, race, and national origin.

For example, in 1997 the Section resolved three lawsuits against Chicago suburbs, alleging that the municipalities’ regulatory enforcement actions discriminated against Hispanics who reside in or move into those jurisdictions. In *Hispanics United of DuPage County v. Village of Addison*, 988 F. Supp. 1130 (N.D. Ill. 1997),³⁵ the Court (Castillo, J.) approved a settlement resolving claims that the village had violated the Fair Housing Act by illegally tearing down Hispanic neighborhoods as part of an urban renewal program.³⁶ Among other things, the settlement required that the village pay \$1.4 million to help build affordable housing, carry out relocation programs, build parks, and compensate families displaced by the urban renewal plan. In approving the settlement, the court “expressly commended the Department of Justice for its pivotal role in resolving this litigation.”³⁷

In May 1997 the Division settled a suit against the City of Waukegan, Illinois, in which the United States alleged that city officials had engaged in discriminatory conduct against Hispanics. The suit alleged that city officials enacted and enforced a new ordinance restricting the number of persons living in a house, even though they knew that Hispanics moving into the community often resided in extended families.³⁸ In December 1997 the Division settled a suit it had brought against the Town of Cicero, Illinois, alleging that the town had violated the Fair Housing Act by enacting and selectively enforcing a restrictive occupancy ordinance with the intent of slowing the influx of Hispanic families into Cicero.³⁹

Since the Fair Housing Act Amendments in 1988 were enacted, a major part of the Section’s enforcement program has focused on challenging municipal policies that prevent group homes for persons with disabilities from locating within a particular jurisdiction.⁴⁰ These cases typically arise when the housing sponsor seeks permits, variances, or other zoning approvals that allow it to operate a group home in the neighborhood. We have successfully pressed two theories of liability. In some cases we have alleged that a governmental unit has engaged in intentional discrimination.⁴¹ More often, we have prevailed upon the theory that the municipality has “refused to make reasonable accommodations in rules, policies, practices, or services when necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. §3604(f)(3)(B).⁴²

A series of recent cases illustrates the type of litigation we have brought. In *United States v. City of Fresno*, CV-F-97-5360 (E.D. Calif.), we settled a case in which we alleged that the City of Fresno had violated the Fair Housing Act by refusing to allow city renovation funds to be used for an apartment building intended to house tenants with mental disabilities. Under the consent order resolving the case, the city was required to pay \$535,000, including \$445,000 in grants to help pay for renovation of the building.⁴³ In *United States v. City of Creve Coeur*, C.A. No. 4:96CV01106JCH (E.D. Mo. Sept. 9, 1997), the court (Gunn, J.) ruled that the city had violated the Fair Housing Act by failing to provide a reasonable accommodation to private plaintiffs who had sought to establish a group home for persons with Alzheimer's disease within the city. The city had asserted that because the home would have been operated on a for-profit basis, it constituted a business and, therefore, was not permitted in a residential neighborhood. We argued, and the court agreed, that for-profit and not-for-profit group homes have the same effect on their surroundings. Finally, in *United States v. City of Jackson*, C.A. No. 3:96-cv-419WS (S.D. Miss. Oct. 14, 1997), we prevailed on a motion for partial summary judgment, establishing that the city had violated the reasonable accommodation provision of the Fair Housing Act by refusing to authorize operation of a small, nonprofit personal care home for elderly Alzheimer's sufferers in a single-family residential zone. Relief issues were ultimately resolved by a consent decree that required the city to amend its zoning ordinance and pay \$230,000 to persons aggrieved by its discriminatory actions.

Accessibility cases. When Congress amended the Fair Housing Act in 1988 to prohibit discrimination on the basis of disability, it defined *discrimination* for purposes of Section 804(f), to include a failure to design and construct certain new multifamily dwellings with specific accessibility features (42 U.S.C. §3604(f)(3)(C)(I)-(iii)).⁴⁴ Because of continued widespread noncompliance, the Section has recently undertaken more vigorous enforcement of those requirements. Based on evidence gathered from our testing program,⁴⁵ we have brought a number of cases in the past year alleging that designers and builders of new multifamily housing in Chicago had failed to comply with the requirements. In one of these cases, we obtained an important decision addressing the coverage of these provisions. See *United States v. Hartz Construction Co.*, 1998 WL 42265 (N.D. Ill. Jan. 28, 1998) (holding that an architectural firm could be liable for failing to design dwellings in compliance with the Fair Housing Act).⁴⁶ In July 1998 the Section obtained an out-of-court agreement with Pulte Home Corporation, the Nation's largest home builder, resolving allegations involving some of its properties in Chicago, Florida and Virginia.⁴⁷ In addition to the Chicago-based cases, we have recently entered out-of-court settlements with housing providers in Georgia and filed cases raising similar accessibility issues in Nevada.

Sexual harassment and housing. A 1974 amendment to the Fair Housing Act made it unlawful to discriminate in housing on the basis of sex.⁴⁸ Several of our recent cases have alleged that landlords sexually harassed female tenants. In some of these cases, the landlords were charged with demanding sexual favors in return for continued tenancy or more advantageous rental terms; in others, we alleged that they created a hostile environment for women who lived in constant fear or felt compelled to find a new place to live. Tragically, many of these women were also poor and had limited access to other decent housing for themselves and their families.

For instance, in *Krueger v. Cuomo*, 115 F.3d 487 (7th Cir. 1997), we recently defended the findings of a HUD administrative law judge (ALJ) who had concluded that a landlord violated the Fair Housing Act by sexually harassing a female tenant who had used a Section 8 housing voucher⁴⁹ to obtain an apartment. The Court of Appeals affirmed those findings, noting that it demands little in the way of either

empathy or imagination to appreciate the predicament of a woman who is harassed in full view of her children, whose home becomes not a sanctuary but the situs of her torment, and who concludes that she has no alternative but to leave a long sought-for apartment.⁵⁰

In January 1995 we settled *United States v. Langford*, C.A. No. J92:0673 (S.D. Miss.), a case alleging that one of the largest Section 8 housing providers in the delta region of Mississippi had sexually harassed his female tenants, some of whom were minors. The settlement required the defendant to provide compensation to the victims, pay a civil penalty to the United States, and cease participation in the management of rental properties. We also settled *United States v. Nediakov*, C.A. No. 93C-1794 (N.D. Ill.), a case alleging that the defendant had subjected female tenants to extensive, continuous, and unwelcome sexual harassment; had conditioned tenancy on the grant of sexual favors; had created a hostile environment for female tenants; and had retaliated against women who filed complaints of sexual harassment against him. As part of the settlement, the landlord agreed to pay \$150,000 in damages to six aggrieved women, pay a \$30,000 civil penalty to the United States, and sell his building (Jet Magazine, 1994).

Criminal Enforcement

While the primary focus of this article has been on the Division's civil enforcement activity under the Fair Housing Act, we cannot overstate the importance of criminal prosecutions of housing-related violence. Hate crimes, including those aimed at preventing persons from exercising rights secured by the Fair Housing Act, are the most visible signs that the promise of equality embodied by the Act is not yet reality. Hate crimes can ruin lives, divide our communities, and rend the national fabric. Section 901 of the 1968 Act, 42 U.S.C. §3631, prohibits such activities. For many years, the Division's Criminal Section has actively prosecuted such cases with the assistance of the U.S. Attorneys.

Recent statistics reflect the priority we have given to such prosecutions and the fact that the face of racism is still, too often, a violent one. From fiscal year 1996 through May 31, 1998 the United States indicted more than 80 entities in cases involving allegations of criminal interference with federally protected housing rights. These cases typically involve acts of force or violence, such as cross burnings, invasions of homes, shootings, or firebombings, directed at African-Americans who have chosen to live in integrated communities. Some of these cases are especially compelling. For instance, in *United States v. DeRosia and Reiman*, Crim. No. 96-CR-81040 (E.D. Mich.), two defendants pled guilty to spray painting racist messages on a house in Mount Morris, Michigan, which was being constructed by Habitat for Humanity for an African-American woman and her children. In *United States v. Demuro*, Crim. No. 97-310 (E.D. Pa.), six defendants were convicted at trial while one other defendant pled guilty to vandalizing property leased by an African-American woman in a predominantly White, south Philadelphia neighborhood. The damage included a collapsed kitchen ceiling caused by water flowing from vandalized upstairs plumbing, windows shot through by an air rifle, and putty in the door locks. In *United States v. McKay*, Crim. No. 1:96-CR-304 (N.D. Ohio), the defendant pled guilty to constructing and throwing a wooden cross on the lawn of an African-American family's home. The family had just settled a discrimination lawsuit allowing them to move into a home in predominantly White Parma, Ohio. The United States had sued this municipality in the 1970s for violating the Fair Housing Act. See *United States v. City of Parma, Ohio*, 661 F.2d.562 (6th Cir. 1981), *cert. denied*, 456 U.S. 1049 (1982). Whenever such incidents of intimidation and violence occur, we will prosecute with vigor.

Future Efforts

DOJ's Civil Rights Division has set two enforcement priorities to which it will devote increased attention: hate crime cases, many of which involve housing-related violence or threats of violence; and pattern-or-practice cases involving, among other substantive areas, fair housing and fair lending.

Our civil enforcement efforts will continue to focus on pattern-or-practice cases developed through our testing and mortgage-lending initiatives. In these cases, we will place increased emphasis on obtaining relief, either through litigated judgments or negotiated settlements, that bans future discriminatory conduct, appropriately compensates victims of such discrimination, and requires significant actions that promote equal housing opportunity in the communities affected by the discrimination. When Congress enacted the Fair Housing Act in 1968, one of its goals was to replace ghettos with "truly integrated and balanced living patterns."⁵¹ This broad relief is designed to achieve this goal.

While broad relief has been obtained in several cases brought as a result of our testing program,⁵² we are also seeking it in all kinds of pattern-or-practice cases. Two recent settlements are illustrative. In 1980 the City of Parma, Ohio—a Cleveland suburb that is 99 percent White—was found to have violated the Act by engaging in a series of actions that had been undertaken for the purpose and effect of perpetuating the city's all-White image.⁵³ We recently negotiated a further settlement with the city designed to promote integrative moves into the community that would end years of Federal court supervision of the municipality's housing policies. Among other things, that settlement requires Parma to open a new housing office staffed by two full-time employees from the Cuyahoga Plan of Ohio, a local fair housing agency; execute an affirmative marketing program for minorities; and provide approximately \$1 million in mortgage aid and apartment renovation loans to attract minority residents to Parma (The Columbus Dispatch, 1997).⁵⁴

Such affirmative outreach efforts are also an important component of a settlement we reached in May 1998 to resolve our litigation against First Real Estate Corporation, the largest real estate company in Alabama. In that suit, the United States alleged that the company used the race of the potential clients to determine assignment of sales agents, steered prospective purchasers to or away from particular homes on the basis of their race, and used an advertising strategy that varied depending upon the racial composition of various neighborhoods.⁵⁵ The consent decree requires the company to:

- Revise its sales practices to ensure that the decision to show a home is not based on the race either of the customer or of the residents of the neighborhood where the home is located.
- Assign customers to agents without regard to race.
- Establish a \$100,000 fund to compensate persons who may have been injured as a result of the company's allegedly discriminatory practices.
- Undertake a program to educate its agents and employees of their responsibilities under the Fair Housing Act.
- Promote fair housing in Birmingham by sponsoring clinics for prospective homebuyers and developing a marketing plan to promote all communities in the metropolitan area as open to all races and nationalities.

Conclusion

The court in our recent case against the *Village of Addison* observed that “the hallmark of a great society—a true racially and ethnically integrated community—is an elusive goal that unfortunately still has not been achieved in most urban and suburban communities.”⁵⁶ Thirty years after enactment of the Fair Housing Act, insidious discrimination continues to prevent many Americans—whether on the basis of race, religion, sex, familial status, national origin, or disability—from realizing their dreams of living in the home of their choice. When the United States brings an enforcement action under the Act, it seeks to make those dreams real. The Fair Housing Act, as amended in 1988, has provided the Civil Rights Division with a very effective weapon in this quest, and we will be steadfast in our enforcement efforts to promote the Nation’s commitment to “fair housing throughout the United States.”⁵⁷

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Notes

1. President’s Remarks Upon Signing the Bill into Law, 4 Weekly Comp. Pres. Doc. 673, 674 (April 11, 1968).
2. President’s Message to the Congress, 2 Weekly Comp. Pres. Doc. 581, 588 (Apr. 28, 1966) and President’s Remarks Upon Signing the Bill into Law, 4 Weekly Comp. Pres. Doc. 673 (April 11, 1968). That message noted the following:

The time has come for the Congress to declare resoundingly that discrimination in housing and all the evils it breeds are a denial of justice and a threat to the development of our growing urban areas.

The time has come to combat unreasoning restrictions on any family’s freedom to live in the home and the neighborhood of its choice.

3. A Weekly Comp. Pres. Doc. at 673. Earlier judicial, legislative, and executive authority had prohibited some, but not all, discriminatory housing practices. For instance, in *Buchanan v. Warley*, 245 U.S. 60 (1917), the Supreme Court held that a municipal ordinance that prohibited Blacks from purchasing a home on a block where the majority of the homes were occupied by Whites violated the 14th amendment. In 1948, the Supreme Court in *Shelley v. Kramer*, 334 U.S. 1, 18 (1948), held that state judicial enforcement of racially restrictive covenants violated the 14th amendment. In *Hurd v. Hodge*, 334 U.S. 24 (1948), the Court held that the District of Columbia similarly could not enforce such covenants on the basis of the Civil Rights Act of 1866, 42 U.S.C. §1982. In November 1962 President Kennedy issued Executive Order 11063, 27 Fed. Reg. 11,517 (Nov. 20, 1962), directing all Federal departments and agencies to prevent discrimination in the sale, rental, or use of all residential property owned, operated, or financed by the Federal Government. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d), generally prohibited discrimination in programs and activities receiving Federal financial assistance. Shortly after enactment of the Fair Housing Act, the Supreme Court held that the Civil Rights Act of 1866, 42 U.S.C. §1982, as a valid exercise of Congressional power under the 13th

amendment, reached private racially discriminatory housing practices. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 410, 443 (1968).

4. P. L. 90–284, Title VIII, Apr. 11, 1968, 82 Stat. 81.
5. 4 Weekly Comp. Pres. Doc. at 674.
6. See National Advisory Commission on Civil Disorders, p.1 (1968), which found that the country was “moving toward two societies, one Black, one White—separate and unequal.”
7. 42 U.S.C. §3601. P. L. 90–284, Title VIII, §801, Apr. 11, 1968, 82 Stat. 81. The national policy enacted by Congress in the Fair Housing Act represented a change from prior governmental practices that had contributed to the country’s segregated housing. Indeed, “for a period approaching 20 years, the Federal Government, through the [Federal Housing Administration], was the leading exponent of racial discrimination in housing and residential segregation.” *Reed v. Rhodes*, 422 F. Supp. 708, 789 (N.D. Ohio 1976), *aff’d*, 607 F.2d 714 (6th Cir. 1979), *cert. denied*, 445 U.S. 935 (1980) (emphasis supplied) (internal quotations deleted). Many other courts have acknowledged the discriminatory practices of Federal agencies. See, for example, *Hills v. Gautreaux*, 425 U.S. 284, 286 (1976); *Young v. Pierce*, 628 F. Supp. 1037 (E.D. Tex. 1985); *United States v. City of Parma, Ohio*, 494 F. Supp. 1049, 1058 (N.D. Ohio 1980), *aff’d as modified*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 456 U.S. 926 (1982); *Evans v. Buchanan*, 393 F. Supp. 428, 434–435 (D. Del. 1975) (three-judge court); *Oliver v. Kalamazoo Bd. of Educ.*, 368 F. Supp. 143, 182–184 (W.D. Mich. 1973), *aff’d*, 508 F. 2d 178 (6th Cir. 1974); *Heyward v. Public Housing Administration*, 238 F. 2d 689 (5th Cir. 1956).
8. 42 U.S.C. §3604 (1968). Congress amended the Act in 1974 to prohibit discrimination on the basis of sex, P. L. 93–383, Title VIII, §808(b)(1), Aug. 22, 1974, 88 Stat. 729, and in 1988 to prohibit discrimination on the basis of familial status and handicap, P. L. 100–430, §6, Sept. 13, 1988, 102 Stat. 1619, 1620–21.
9. In *Jones*, 392 U.S. at 413, the Supreme Court observed:

Whatever else it may be, 42 U.S.C. §1982 is not a comprehensive open housing law. In sharp contrast to [the recently enacted Fair Housing Act], the statute in this case deals only with racial discrimination and does not address itself to discrimination on grounds of religion or national origin. It does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling. It does not prohibit advertising or other representations that indicate discriminatory preferences. It does not refer explicitly to discrimination in financing arrangements or in the provision of brokerage services. It does not empower a Federal administrative agency to assist aggrieved parties. It makes no provision for intervention by the Attorney General. And although it can be enforced by injunction, it contains no provision expressly authorizing a Federal court to order the payment of damages.
10. Many studies have documented the discriminatory treatment that minorities continue to experience in the housing market. For example, the Fair Housing Council of

Greater Washington (1998) noted the following results of a 1997 audit of sales and rental practices in the Washington, D.C.:

In 1997, the Fair Housing Council released audits documenting the extent of discrimination faced by African-Americans and Latinos in the region's rental market (44 percent and 37 percent, respectively) and in the sales market (33 percent and 43 percent, respectively). Treatment of people with disabilities in the housing market was also documented (50 percent discriminatory treatment and 100 percent non-compliance of newly constructed buildings with regard to accessibility).

While noting the 1997 rental/sales audit, the 1998 study focuses primarily on the considerable differential treatment that minorities face in obtaining mortgages. It shows that, 30 years after the enactment of the Federal Fair Housing Act, African-Americans and Latinos seeking mortgages in the Washington, D.C. area still encounter discrimination 41 percent of the time. Examples of discriminatory conduct cited in this audit include: higher interest rate quotes; limited loan choices; disparities in interest rates, points, and terms; inability to obtain information and/or appointments; use of the credit check as a pretext; and discourteous treatment. Studies such as this help explain why mortgage denial rates differ significantly among the races and ethnic groups. According to data recently compiled by the Federal Financial Institutions Examination Council (FFIEC), "Denial rates for conventional (nongovernmental) home purchase loans in 1997 were 53 percent for Black applicants, 52 percent for Native American applicants, 38 percent for Hispanic applicants, 26 percent for White applicants and 13 percent for Asian applicants." (Federal Financial Institutions Examination Council, 1998.)

11. A number of courts have viewed the relief ordered in *West Peachtree* as a model for equitable relief in Fair Housing cases. See, for example, *United States v. Hunter*, 459 F.2d 205, 214 (4th Cir. 1972), *cert. denied*, 409 U.S. 934 (1972); and *United States v. Real Estate Development Corp.*, 347 F. Supp. 776, 785 (N.D. Miss. 1972). The relief included both a prohibitory injunction and mandatory relief. It required affirmative advertising of the rental units, adoption of objective rental standards, instruction of employees as to the requirements of the decree, and the filing of regular compliance reports with the United States.
12. 392 U.S. at 417.
13. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209, 211 (1972). See also Schwemm, (1988) for a review of the limited governmental role in enforcing the original Act.
14. See, for example, *United States v. J.C. Long*, 537 F.2d 1151, 1155 (4th Cir. 1975), *cert. denied*, 429 U.S. 871 (1976) (holding that in a suit brought by the Attorney General, money damages could not be awarded to the individual victims of discrimination); *United States v. Northside Realty Associates, Inc.*, 605 F.2d 1348 (5th Cir. 1979) (same).
15. The enactment of the Fair Housing Amendments Act of 1988 culminated a long process that had begun in the 92nd Congress, which held a series of oversight hearings on fair housing. In 1980 the House of Representatives passed the Fair Housing Amendments Act of 1980, which provided for administrative enforcement and

coverage of persons with disabilities. However, the bill failed in the Senate. See H.R. Rep. No. 711 at 14–15, 100th Cong., 2nd Sess. (1988), *reprinted in* 1988 U.S.C.A.N. 2173, 2176 (“House Report”) (describing historical antecedents to the 1988 amendments).

16. See 42 U.S.C. §3604. Congress recognized that persons with disabilities and families with children, “like the other classes protected by [the Fair Housing Act], have been the victims of unfair and discriminatory housing practices.” House Report, at 13. By adding the prohibition against discrimination on the basis of handicap, Congress made a “clear pronouncement of a national commitment to end the unnecessary exclusion of persons with [disabilities] from the American mainstream.” *Id.*, at 18. By adding the prohibition against discrimination on the basis of familial status, Congress recognized that “discrimination against families with children prevents millions of American families” from realizing the Nation’s goal of providing a decent home and suitable living environment for every American family. *Id.*, at 19. It also recognized that “discrimination against families with children often has a racially discriminatory effect” *Id.*, at 21.

17. This new authority is considerable. The amended Act:

- Requires HUD to investigate and attempt conciliation of all complaints, as did the 1968 Act. However, the amended Act goes on to require HUD to determine whether reasonable cause exists to believe a discriminatory housing practice has occurred. If HUD makes such a determination, it must issue a formal administrative charge of discrimination. See Section 810, 42 U.S.C. §3610. If, during the course of an investigation, HUD concludes that “prompt judicial action” is necessary to carry out the purposes of the Act, it may authorize the Attorney General to commence and maintain a civil action for appropriate temporary or preliminary relief pending final disposition of the administrative complaint. See Section 810(e), 42 U.S.C. §3610(e).
- Creates a new administrative law mechanism, including ALJs and formal administrative law procedures, to hear such charges. See Section 812, 42 U.S.C. §3612.
- Includes a provision by which either the complainant or the respondent to an administrative charge may elect to have this charge heard in Federal court. Should such an election be made, the Attorney General is required to commence a civil action in a United States District Court on behalf of the aggrieved complainant(s). See Section 812(o) of the Act, 42 U.S.C. § 3612(o).
- Authorizes the Federal Government to seek monetary damages for the persons on whose behalf the actions are brought, whether an enforcement action is heard by an ALJ or a Federal court.
- Requires HUD to refer to DOJ matters concerning the legality of any State or local zoning or other land use law or ordinance involving a discriminatory housing practice. Section 810(g), 42 U.S.C. §3610(g). The amended Act creates specific authority for the Attorney General to initiate civil lawsuits on the basis of such referrals. See Section 814(b)(1), 42 U.S.C. §3614(b)(1).
- Gives DOJ the authority to bring civil actions, after referral from HUD, for any breach of a HUD conciliation agreement. See Section 814(b)(2), 42 U.S.C. §3614(b)(2).

- Gives DOJ the authority to intervene in private civil actions, in which the Attorney General certifies that the action is of “general public importance.” 42 U.S.C. §3613(e).
- 18. Under the amended Act, DOJ is authorized to seek compensatory and punitive damages for both aggrieved persons on whose behalf the Department brings suit in “election” cases, see 42 U.S.C. § 3612(o)(3), as well as for any person identified as aggrieved in the broader pattern-or-practice cases brought pursuant to Section 814. See 42 U.S.C. §3614(d)(1)(B). In addition to such damages, the Department is authorized to seek civil penalties in the cases brought pursuant to Section 814. See 42 U.S.C. §3614(d)(1)(C).
- 19. The Attorney General formally delegated the responsibility to litigate the “election” cases to the U.S. Attorneys in November 1993. These offices work with attorneys in the Housing and Civil Enforcement Section, who offer support for this litigation. This arrangement has beneficially allowed The Department to draw on the resources of the U.S. Attorney offices to assist in civil rights enforcement to a much greater extent than in the past, resulting in a very successful and well-coordinated enforcement program. As of August 1998 those offices have brought more than 220 election cases. Those cases may be roughly broken down by protected class:
 - Familial status: 40 percent.
 - Race: 37 percent.
 - Handicap: 16 percent.
 - Sex: 9 percent.

Some cases may have included allegations pertaining to more than one protected class.
- 20. See the subsection entitled “Accessibility cases” in this article for a more detailed discussion of this kind of case.
- 21. See, for example, *Havens v. Coleman*, 455 U.S. 365 (1982). In the early years of its enforcement efforts, the Department often relied upon testing evidence provided to it by local fair housing groups. See, for example, *United States v. Northside Realty Associates, Inc.*, 605 F.2d 1348 (5th Cir. 1976) (affirming the legality of evidence obtained by testers and relied upon by the United States).
- 22. The United States failed to obtain relief in only 2 of the 48 testing cases. See *United States v. Telegraph Park*, C.A. No. 4:94CV00758LOD (E.D. Ohio Apr. 1998 (jury decision)); *United States v. Lorrantffy Care Center*, C.A. No. 5:97CV00295 (N.D. Ohio Apr. 1998) (jury decision).
- 23. For example, in a group of 8 cases brought in South Florida pursuant to evidence gathered by the testing program, the Section obtained a total of \$1,725,500 through its settlements. See *United States v. Natura, Inc.*, C.A. No. 94-6955-CIV-Lenard (S.D. Fla. Nov. 8, 1995); *United States v. Jacobson*, C.A. No. 95-1238-CIV-Ferguson (S.D. Fla. May 30, 1996); *United States v. Joseph Skilken Revocable Trust*, C.A. No. 95-8353-CIV-Hurley (S.D. Fla. Oct. 25, 1996); *United States v. Araich Anstalt Corp.*, C.A. No. 95-8355-CIV-Hurley (S.D. Fla. Nov. 11, 1996); *United States v. Kendall House Apartments*, C.A. No. 95-2050-CIV-Kehoe (S.D. Fla. Nov. 13, 1996); *United States v. Rosemurgy*, C.A. No. 95-8351-CIV-Gonzalez (S.D. Fla. Nov. 18, 1996); *United States v. Langlois*, C.A. No. 95-8352-CIV-Hurley (S.D. Fla.

Dec. 12, 1996); *United States v. Gordon*, C.A. No. 95–8354–CIV–Ryskamp (S.D. Fla. Apr. 8, 1997). Close to \$500,000 of the monetary settlements was paid to a private fair housing group to promote fair housing, through housing counseling and affirmative marketing in the communities experiencing the discrimination. Such marketing included development of promotional videos and community tours in Kendall and Boca Raton, Florida. Similarly, \$500,000 of a \$1.5-million settlement against the owners and managers of a 1,142-unit apartment complex in New Jersey was targeted for activities designed to further fair housing. *United States v. Chandler Associates*, C.A. No. 97–3114 (D. N.J. Jun. 18, 1997). Such relief to aid private fair housing efforts has become a notable component of our settlements, including those reached in cases that have not relied upon testing evidence. These efforts have helped us to work more closely with local fair housing groups. Indeed, \$250,000 of a \$1.8-million settlement in a major pattern-or-practice case was designated to create the first private fair housing group in Mobile, Alabama. *United States v. Mitchell Brothers, Inc.*, C.A. No. 95–0694–RV–S (S.D. Ala. June 13, 1996).

24. The Equal Credit Opportunity Act states, *inter alia*, that it shall be unlawful “to discriminate against any applicant with respect to any aspect of a credit transaction—on the basis of race.” 15 U.S.C. §1691(a)(1). The Attorney General is authorized to initiate pattern-or-practice cases under that statute. 15 U.S.C. §1691e(h).
25. These cases are: *United States v. Decatur Federal Savings and Loan Association* No. 1, C.A. No. 92–CV–2198 (N.D. Ga. Sept. 17, 1992); *United States v. First National Bank of Vicksburg*, C.A. No. 5:94 CV6(B)(N) (W.D. Miss. January 21, 1994); *United States v. Blackpipe State Bank*, C.A. No. 93–5115 (D. S.D. November 16, 1993); *United States v. Chevy Chase Federal Savings Bank*, C.A. No. 911824 JG (D. D.C. August 22, 1994); *United States v. The Northern Trust Co.*, C.A. No. 95–CV–3239 (N.D. Ill. June 1, 1995); *United States v. The Huntington Mortgage Co.*, C.A. No. 1:95 CV 2211 (N.D. Ohio, October 18, 1995); *United States v. Security State Bank of Pecos*, C.A. No. SA 95–0996 (W.D. Tex. October 18, 1995); *United States v. Fleet Mortgage Corp.*, C.A. No. CV96–2279 (E.D. N.Y. May 7, 1996); *United States v. Long Beach Mortgage Co.*, C.A. No. 96–6159 DT (CWX) (C.D. Cal. September 5, 1996); *United States v. First National Bank of Dona Ana County*, C.A. No. 97–0096 (D. N.M. January 28, 1997); *United States v. First National Bank of Gordon, Nebraska*, C.A. No. 96–5035 (W.D. S.D. May 7, 1997); and *United States v. Albank FSB and Albank Financial Corp.*, C.A. No. 97–CV–1206 (N.D. N.Y. August 13, 1997).
26. Three cases settled in 1997 (see note 26 above) illustrate our litigation in this area. The first was brought against the First National Bank of Dona Ana County, New Mexico, alleging discrimination against Hispanics in the underwriting of loans. The consent decree included monetary relief of \$585,000. The second consent decree resolved litigation against the First National Bank of Gordon, Nebraska, alleging discrimination against Native American customers who had been charged significantly higher interest rates on consumer loans than White customers. The consent decree in that case included monetary relief of \$275,000. The third case settled claims against Albank Federal Savings Bank of Albany, New York, alleging the bank refused to grant loans in minority areas of Connecticut and Westchester County, New York. This is commonly referred to as *redlining*. The consent decree included a permanent injunction against discriminatory marketing programs and the provision of discounted loans in geographical areas previously ignored. This relief will cost the bank almost \$9 million in below-market rate loans.

27. These lenders typically charge higher prices for such loans, which is not inappropriate. However, it is unlawful to charge discriminatory prices. Our 1996 lawsuit against Long Beach Mortgage Company (see note 26 above) was our first case against a lender that makes most of its loans to less credit-worthy borrowers. We alleged that the company had allowed both its employee loan officers and its independent loan brokers the discretion to charge borrowers up to 12 percent of the loan amount above the lender's base price. The price above the base price was unrelated to the qualifications of the borrower or the risk to the lender. Instead, African-Americans, Hispanics, women, and the elderly were charged higher rates than others. Under the settlement we obtained, the company will pay \$3 million in damages to 1,200 victims of its discriminatory practices.
28. The trend of increased mortgage lending to minorities continues. For instance, data recently released by the FFIEC shows that during the 5 years from 1993 through 1997 the number of home purchase loans extended has increased 62 percent for Blacks, 58 percent for Hispanics, 29 percent for Asians, 25 percent for Native Americans, and 62 percent for Whites (Federal Financial Institutions Examination Council, 1998).
29. Such discrimination has been documented. For instance, one recent study by the Missouri State Department of Insurance reported that "residents of neighborhoods with a high proportion of minorities have less access to agents, are sold more restricted policies, and have higher complaint rates." (Federal and State Insurance Week, 1998.)
30. See *Nationwide Mutual Insurance Co. v. Cisneros*, 52 F.3d 1351, 1360 (6th Cir. 1995), cert. denied 516 U.S. 1140 (1996) (defensive suit); *NATIONAL ASSOCIATION FOR ADVANCEMENT OF COLORED PEOPLE v. American Family Mutual Insurance Co.*, 978 F.2d 287, 301 (7th Cir. 1992), cert. denied, 508 U.S. 907 (1993) (affirmative suit); *Canady v. Allstate Insurance Co.*, PH Fair Lending Rptr. ¶16,120 (W.D. Mo. 1996); *McDiarmid v. Economy Fire and Casualty Co.*, 604 F. Supp. 105, 108–09 (S.D. Ohio); and *Dunn v. Midwestern Indemnity American Fire and Casualty*, 472 F. Supp. 1106, 1111–12 (S.D. Ohio 1979). In each of those cases, the courts have held that the Act does prohibit discrimination in the provision of such insurance. We have most recently addressed this issue as an amicus in *National Fair Housing Alliance, Inc. v. Liberty Mutual Insurance Co.*, C.A. No. 1:98CV00928 TPJ (D.D.C.) (brief filed July 29, 1998). HUD's regulation prohibiting discrimination in the provision of homeowners' insurance is found at 24 C.F.R. § 100.70(d)(4).
31. Our complaint in *United States v. Nationwide Mutual Insurance Co.*, C.A. No. C2–97–291 (S.D. Ohio March 10, 1997), alleged, *inter alia*, that Nationwide's underwriting rules, which prohibited insuring a home if it was above a certain age or below a certain value, were not supported by economic considerations. We alleged that these rules effectively barred coverage in minority neighborhoods where homes are typically older and undervalued due, in part, to discrimination in the real estate market. Our complaint further alleged that, because of these rules, Nationwide restricted the neighborhoods in which homeowners insurance could be offered based on its racial or ethnic composition and instructed its agents to avoid doing business in minority neighborhoods.
32. The Complaint in *United States v. American Family Mutual Insurance Co.*, C.A. No. 95–C–0327 (E.D. Wis. March 30, 1995), alleged, *inter alia*, that employees of American Family at one time:

- Gave explicit instructions to agents and underwriters to consider race in deciding whether, and on what terms, to offer homeowners insurance.
- Required agents and underwriters to consider race as a factor in deciding whether to inspect a home. Inspection results were used to deny coverage in some cases.
- Overlooked deficiencies in the conditions of homes in White neighborhoods but used similar deficiencies to deny coverage in African-American neighborhoods.
- Made disparaging and stereotypical references about African-Americans being poor insurance risks.
- Criticized agents, including African-Americans, who sought to do business in the African-American community and discouraged them from doing such business.

33. Under the consent order in the *American Family* case, the company is required, among other things:

- To stop excluding homes solely on the basis of the age or sales price of the home.
- To provide a new custom value policy designed to make replacement-cost insurance more widely available.
- To advertise in media that targets African-Americans.
- To inspect homes in African-American neighborhoods using the same criteria as inspections in White neighborhoods.
- To conduct random testing of its practices.
- To issue a statement indicating its policy of nondiscrimination.

The consent decree in *Nationwide* obligates the company:

- To stop requiring a home's market value to be a minimum percentage of the total cost of replacement.
- To remove geographic restrictions that bar homeowners insurance in minority neighborhoods.
- To inspect the condition of a home to decide if it should be covered, instead of simply refusing coverage because the home is old or falls below a certain value.
- To increase insurance coverage through targeted advertising and community outreach.
- To train its employees about the need to treat applicants without regard to race and monitor their performance through testing.

34. See, for example, *Kennedy Park Homes Association v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971) (United States intervenor); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975); *United States v. Birmingham*, 727 F.2d 560 (6th Cir.), *cert. denied*, 469 U.S. 821 (1984); *United States v. Yonkers Board of Education*, 624 F. Supp. 1276 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988); *United States v. City of Philadelphia*, 838 F. Supp. 223 (E.D. Pa. 1993). Courts have held that the Fair Housing Act, 42 U.S.C. §3604(a), prohibits racially

discriminatory municipal land use practices. *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 588 F.2d 1283 (7th Cir. 1977), *cert. denied*, 434 U.S. 1025 (1978); *Resident Advisory Board v. Rizzo*, 564 F.2d 126 (3rd Cir. 1977), *cert. denied*, 422 U.S. 1022 (1978); *Huntington Branch, NATIONAL ASSOCIATION FOR ADVANCEMENT OF COLORED PEOPLE v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988), *aff'd*, 488 U.S. 15 (1988). Since passage of the amended Act in 1988, courts have affirmed the right of persons with disabilities under Section 804(f), 42 U.S.C. §3604(f), “to choose to live in single-family neighborhoods, for that right serves to end the exclusion of [such] individuals from the American mainstream...” *Smith & Lee Associates, Inc. v. City of Taylor, Michigan*, 102 F.3d 781, 794–95 (6th Cir. 1996). See also *City of Edmonds v. Washington State Building Code Council*, 18 F.3d 802, 806 (9th Cir. 1994), *aff'd*, 514 U.S. 725 (1995) (“Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community”).

35. The suit filed by the United States (C.A. No. 95–C–3926, N.D. Ill.) had been consolidated with the action filed by Hispanics United of DuPage County (C.A. No. 94–C–6075).
36. Our complaint in *Village of Addison* alleged that the village had improperly used a State financing program that gave municipalities the authority to tear down areas designated as blighted and turn the properties over to private developers. It further alleged that Addison intentionally targeted its plan at six of the eight census blocks with majority Hispanic populations, even after repeated inspections found that the housing complied with the applicable housing codes. We claimed that the village knew there would be insufficient housing for the displaced residents of those areas and that many Hispanic families would be forced to leave.
37. *Village of Addison*, 988 F. Supp at 1170.
38. This case, *United States v. City of Waukegan*, C.A. No. 96–C–4996 (N.D. Ill.), was settled on May 20, 1997. The settlement required the city to undertake the following:
 - Pay \$175,000 in damages to the victims of the discriminatory policy and \$25,000 in civil penalties to the United States.
 - Stop enforcing the family-composition ordinance.
 - Train employees responsible for matters related to zoning and land use about the requirements of the Fair Housing Act.
 - Hire a fair housing counselor, who is fluent in both English and Spanish, to handle housing complaints.
 - Hold regularly scheduled meetings to inform the public about city housing opportunities and health and safety standards for houses and apartments.
39. *United States v. Town of Cicero, Illinois*, C.A. No. 93–C–1805 (N.D. Ill. Dec. 11, 1997). The challenged ordinance had restricted occupancy of some three-bedroom dwellings to as few as two persons. Our suit alleged that the town had enforced the occupancy ordinance only against new purchasers of property, the majority of whom were Hispanic and not against current residents, the majority of whom were White. Under the settlement, Cicero agreed:

- To pay \$60,000 to compensate persons who were harmed by the town's enforcement of the ordinance.
 - To refrain from enforcing the ordinance.
 - To refrain from adopting a new occupancy standard that would be more restrictive than nationally recognized building codes.
40. The Division has opposed recent efforts to amend this part of the Act. In a statement before the Subcommittee on HUD Oversight and Structure of the Senate, Committee on Banking, Housing, and Urban Affairs, Deval Partick, Assistant Attorney General, Civil Rights Division, said, "While we recognize the legitimate concerns and questions of municipalities with respect to what the [Fair Housing] Act means and what it requires, we are convinced that the changes proposed in S. 1132 would unfairly limit the housing rights of persons with disabilities." (Patrick, 1996.) See also the testimony of Acting Deputy Assistant Attorney General Paul F. Hancock opposing enactment of H.R.589. (Hancock, 1997.)
41. See, for example, *United States v. Borough of Audubon*, 797 F. Supp. 353, 360–61 (D. N.J. 1991), *aff'd mem.*, 968 F.2d 14 (3rd Cir. 1992) (concluding that "a predominant motivation behind the actions of Audubon officials was discriminatory animus" and noting that local officials had acted together to "tag team" the owners of the subject housing through overzealous use of zoning code enforcement procedures because the residents of the housing were persons with disabilities).
42. Section 804(f)(3)(B) of the Act, 42 U.S.C. § 3604(f)(3)(B), provides that unlawful discrimination includes a failure to make "reasonable accommodations in rules, policies, practices or services ... necessary to afford [a person with a disability] equal opportunity to use and enjoy a dwelling." Cases in which we have successfully pressed this theory include *City of Taylor*, 102 F.3d at 795 (affirming finding that group homes for elderly persons with disabilities "needed an accommodation and that the requested accommodation [was] reasonable") (United States co-plaintiff); and *City of Philadelphia*, 838 F. Supp. at 227–230 (concluding that the city had violated the Act by refusing to allow substitution of side yard for zoning requirement that building have a rear yard with regard to a dwelling that was to be used as a group home for persons with disabilities).
43. The Consent Order in *City of Fresno* also required the city to do the following:
- Pay \$85,000 in legal costs incurred by the private plaintiffs.
 - Pay \$5,000 to help cover the costs of housing for a prospective resident who was unable to move into the home while the renovation was delayed.
 - Train its employees and officials to ensure they will not discriminate in the future against persons with disabilities.
 - Conduct a community outreach program to inform the public about services and benefits available to Fresno residents with disabilities.
 - Review existing housing programs to determine whether any changes are needed to accommodate residents with disabilities.
44. As noted in the Report of the House Judiciary Committee, which accompanied the 1988 amendments:

Because persons with mobility impairments need to be able to get into and around a dwelling unit (or else they are in effect excluded because of their handicap), the bill requires that in the future covered multifamily dwellings be accessible and adaptable. This means that the doors and hallways must be wide enough to accommodate wheelchairs, switches and other controls must be in convenient locations, most rooms and spaces must be on an accessible route, and disabled persons should be able to easily make additional accommodations if needed, such as installing grab bars in the bathroom, without major renovation or structural change. House Report, at 18, reprinted in 1988 U.S.C.C.A.N. at 2179.

45. The tests were performed in partnership with the John Marshall Law School Fair Housing Clinic and Access Living. Our tests indicate that noncompliance may be widespread. For instance, of the 49 sites we tested in the Chicago area, 48 had some type of violation. We determined that 29 of those 48 sites—consisting of approximately 4,500 units—had significant noncompliance problems that warranted further action by the Attorney General including litigation or negotiating out-of-court settlement agreements.
46. We also recently appeared as an amicus in another case raising a similar coverage issue. *Baltimore Neighborhoods, Inc. v. Rommel Builders, Inc.*, 3 F. Supp. 2d 661, 664 (D. Md. 1998) (holding that a builder could be liable for failing to construct dwellings in compliance with the Act).
47. Under the settlement, Pulte will do the following:
 - Mount a nationwide education program to train other developers and architects about the requirements of the Fair Housing Act.
 - Build all future covered multifamily developments in compliance with the Act.
 - Correct virtually all violations in the six developments in Illinois, Florida, and Virginia, that were not completed when DOJ began its investigation.
 - Redesign units not yet constructed and remove barriers in the public and common areas of the developments.
 - Inform the owner of each covered unit that it will retrofit, at the owner's request, the unit at its own expense.
 - Pay \$7,500 to compensate each aggrieved person deterred from living at the developments and \$2,500 to homeowners who modified their own units, plus the actual reasonable costs to make the modifications.
 - Construct at least 100 accessible replacement units: single-family, detached dwellings that would not otherwise have been required to comply with the Fair Housing Act.
48. See note 8 above.
49. Under the Section 8 certificate program for existing housing, a public or municipal housing authority receives funds from HUD and provides certificates to qualifying, low-income persons, authorizing them to rent a unit in privately owned housing with the assistance of a rental subsidy. Congress enacted the Section 8 program “for the purpose of aiding low-income families in obtaining a decent place to live....” 42 U.S.C. §1437f. See generally 24 CFR Part 813.

50. The ALJ concluded that the landlord had violated 42 U.S.C. § 3604(b), which forbids discrimination on the basis of sex “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,” and 42 U.S.C. §3617, which makes it unlawful “to coerce, intimidate, threaten, or interfere” with any person in the exercise of rights secured by the Fair Housing Act. *Krueger*, 115 F.3d at 491–92.
51. See *Trafficante*, 409 U.S. at 211 (quoting Senator Mondale, 114 Cong. Rec. 3422 (1968)).
52. See note 24 above.
53. *City of Parma*, 494 F. Supp. at 1049.
54. See *The Cleveland Plain Dealer*, (1998), which notes that “interest is high in a downpayment aid program geared to attract Black homebuyers to this predominantly White suburb” and that “the suburb clearly is building bridges to people who a Federal judge said city leaders once tried to exclude.”
55. The United States filed its complaint in *United States v. First Real Estate Corp.*, C.A. No. CV-98-N1212-S (N.D. Ala. May 14, 1998) simultaneously with a consent decree.
56. *Village of Addison*, 988F. Supp at 1135.
57. 42 U.S.C. §3601.

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