



Racial Discrimination in Housing: *Underestimated and Overlooked*

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About the Fair Housing Justice Center

The Fair Housing Justice Center (FHJC), a regional civil rights organization based in New York City, is dedicated to eliminating housing discrimination, promoting open, accessible, and inclusive communities, and strengthening enforcement of fair housing laws.

A report on the results of a national Housing Discrimination Study (HDS) sponsored by the United States Department of Housing and Urban Development (HUD) and released in June 2013 raises more questions than it answers.

Allocating over \$10 million to fund this study, HUD contracted with the Urban Institute to “produce current national estimates of discrimination against blacks, Hispanics, and Asians in rental and sales markets nationwide.” But does the recent report, *Housing Discrimination Against Racial and Ethnic Minorities 2012* (HDS 2012), come close to producing credible estimates of racial discrimination in housing? I submit that it does not and that the study fails to provide meaningful insights, much less reliable measures, about the level or extent of racial discrimination in our nation’s housing markets.

The HDS 2012 report acknowledges that the results “probably understate the total level of discrimination that occurs in the marketplace.” I have argued for over two decades that these national paired testing studies greatly underestimate the amount of housing discrimination based on race and national origin that remain in our metropolitan regions. In my view, the three (3) reasons for this can be found in the basic architecture of the study:

1. Sampling Method Excludes Many Housing Providers

The sampling methods employed in HDS 2012 omit significant segments of housing markets. The HDS report states that one of the objectives in sampling rental and sales ads for testing was “to draw random samples of ads from sources commonly used by rental housing seekers and home buyers.” There is no evidence to support the contention that the online ad sources sampled by HDS researchers are those most commonly used by rental housing seekers and home buyers. For instance, in New York City, many rental housing providers elect not to advertise their rental units at all or, alternatively, market available rental units through real estate brokers who may selectively advertise their properties based on the preferences of the individual landlords. Some advertise on real estate or property management company websites (not sampled in HDS), or on pay-for-listings websites (not sampled in HDS). Some housing providers rely exclusively on word-of-mouth (not sampled in HDS), referrals from existing tenants (not sampled in HDS), or other informal means such as notices on bulletin boards (not sampled in HDS). Some rental housing providers, co-ops, and condo developments in New York City selectively advertise in publications, often religious or “ethnic” publications (not sampled in HDS), which are targeted to specific audiences based on religion, race, or ethnicity. Available units in most affordable or subsidized housing (not sampled in HDS) are often filled from waiting lists. Home seekers use a variety of sources to secure suitable housing in New York City and in most metropolitan regions. Researchers may dismiss these sampling concerns as either “anecdotal,” a negligible percentage of the market, or just an inevitable limitation of any research project that must rely on a random scientific sample to be credible and objective. It is reasonable to

conclude, however, that the HDS sampling falls considerably short of capturing a representative sample of the universe of all advertised or available housing.

Fair housing enforcement professionals understand certain “ground truths” about how home seekers search for housing and the myriad approaches that housing providers use to locate prospective renters and home buyers. Do we find less overt discrimination when testing HDS sampled units in 2010 than we did in 1977? Yes, of course, and that is good news. However, any housing provider in 2013 who is intent on discriminating and violating fair housing laws fully understands that taking steps to minimize contact with “unwanted” populations may be the best way to elude detection and avoid the possibility of someone filing a housing discrimination complaint. That may mean using other, less public, means of advertising available rental units, avenues less likely to attract populations that the housing provider seeks to avoid. It can also mean adopting policies, procedures, or practices that make it more difficult to detect discrimination at the early stages of a housing transaction. In other words, it is the very housing providers who are most cunning and willful in their discriminatory conduct who end up “falling below the HDS radar” and their rental practices are, by design, excluded from this study.

2. Testing Protocols Less Likely to Detect Discriminatory Conduct

A careful review of the HDS testing protocols reveal that the protocols have not been substantially modified since the 1989 HDS study was conducted to account for changes in housing provider practices or the experiences of enforcement practitioners. As properties that are advertised on sampled websites such as www.craigslist.org, the initial prescribed contact by two testers may not be sufficient to detect differential treatment or discriminatory conduct. Recent experiences of enforcement professionals suggest that repeated follow-up contacts by testers better simulates the behavior of ordinary home seekers and may disclose much more about a housing provider’s business practices and whether the provider is complying with fair housing laws. When greater interest is expressed by prospective renters through subsequent contact, valuable information can often be captured about housing provider practices. This information may disclose differences in treatment that are detectable by testing but not at the preliminary stage of a housing transaction, the type of contact that HDS protocols prescribe. Some housing providers have adopted what I have called a “flight attendant” orientation. To provide equal treatment, a standard, almost scripted, presentation is made to prospective home seekers upon initial contact. The provision of equal treatment at this stage may or may not be an authentic attempt to comply with the law. In some instances, differences are disclosed when home seekers (or testers) express more serious interest during subsequent contacts with the housing provider. The report acknowledges

this limitation when it states “the estimates of discrimination reported here do not capture all the forms of discriminatory treatment that minority home seekers may experience, only those that occur during the initial inquiry and information gathering.” If this is true, can the study really provide us with an estimate of the level or incidence of racial discrimination in the housing market? This is a very complex and challenging area of human interaction and there are tremendous variations in housing provider practices and housing market dynamics. For thirty-seven years, I have coordinated testing investigations. I have supervised testing investigations in over twenty states and can attest to the fact that the housing market in New York City operates very differently from the housing markets in Detroit, Michigan; Sioux Falls, South Dakota; Miami, Florida; or Grand Rapids, Michigan. Since any testing approach adopted and uniformly applied becomes the sole basis for collecting critical observations and data about housing provider practices, is it even possible to adopt a “one size fits all” approach given the stark differences in housing provider practices across different housing markets? Perhaps more consideration should have been given in the design phase of this study to explore ways to arrive at a testing protocol that was more balanced, one that could be standardized and rigorously implemented (essential for research), but that, at the same time, could be tailored to be more probative about housing market practices and address some of the nuanced and not so nuanced differences in housing markets. I suspect cost and timing were driving some of the decisions to replicate past testing protocols. A consequence of largely replicating earlier testing protocols was the inability to capture deeper insights into housing market practices and produce a more meaningful estimate of racial discrimination. Again, perhaps the simple “paired testing” protocols used by the HDS 2012 were the only protocols that would work across all housing markets. If that is the case, then I would argue that this type of superficial contact by testers will not disclose much about the extent or nature of racially discriminatory housing practices.

3. Analysis Inadequately Documents Illegal Housing Discrimination

It is time to be more transparent and candid about the analysis that is conducted with the observations and data collected by testers in these studies. The so-called “treatment measures” applied to the test results bear little resemblance to actual prohibited practices and have a dubious relationship to the legal requirements of fair housing laws. Some discriminatory conduct is not detected and other discriminatory conduct is distorted or obscured by the application of these selected “treatment measures.” For example, the analysis is predicated on arriving at a determination that a test exhibits a “white-favored” or “minority-favored” outcome by a simple number count, such as number of units suggested or number of units shown. I am reminded of a test that was completed in HDS 2000 when I directed the field implementation in the previous national housing

discrimination study. An African American tester was told about and shown two apartments in a black neighborhood. As I recall, when the white tester inquired, the same agent said he had one apartment for the tester to consider (an apartment located in a different area from the two units shown to the African American tester) and that he had other apartments, but they were all in a bad neighborhood (a predominately black neighborhood). At the time, I was puzzled that the study characterized this test as a “minority-favored” outcome simply because the black tester was told about and shown two apartments and the white tester was only told about one apartment. I do not quarrel that the test showed differential treatment and discrimination, but I think a reasonable person would agree that the discrimination was adversely impacting both testers by steering the white tester away from a black neighborhood and steering the black tester to a black neighborhood for the purpose of maintaining racial segregation.

As one who reviews and routinely testifies in court about test results, I understand the complexity and challenges associated with comparing the treatment of testers in view of the applicable law. That’s not what these studies do in any significant way. When racial discrimination was quite overt in the late 1970’s, a quantitative analysis of test results would disclose significant differences in treatment without needing to give much consideration to the context of each transaction. As housing discrimination became more stealth and subtle (a fact acknowledged by most enforcement practitioners and researchers for years), “context” becomes extremely important in evaluating test results. Simply “counting things” may tell us very little about whether discrimination based on race and national origin is occurring. I am not suggesting that a “better” quantitative analysis could have been conducted. In view of the subtleties and complexities of contemporary race discrimination, perhaps this type of quantitative research method may be incapable of adequately documenting many of the racially discriminatory practices that continue to infect our housing markets.

The combination of these three factors should give serious pause to anyone who reads the conclusions in the final HDS 2012 report. The researchers and policy makers who continue to work on and support these studies will not be surprised by the concerns that I offer here as I have been involved in three of the four national housing discrimination studies since 1977.

Consider a finding in the HDS 2012 report (Appendix F, p.143) which states:

Black Renters. Home seekers encounter minimal variation in their experiences with the New York rental market. There is no significant difference in the number of units blacks and whites either learn about or inspect, nor in the financial variables.

Below is a partial list of recent federal cases in New York alleging systemic discrimination based on race and/or national origin by the Fair Housing Justice Center (FHJC) based in New

York City. The alleged discrimination was detected and documented by testing investigations that were planned and executed by experienced enforcement professionals at the FHJC

These twelve cases share a common characteristic worth noting. Even though these housing providers collectively control access to thousands of housing units, none of these providers would have been sampled in HDS 2012. Either the housing providers did not advertise, advertised by selectively informing brokers, or advertised in media not sampled by HDS.

FHJC v. 1777 Management LLC

This case involved allegations of race and national origin discrimination against African Americans and Latinos at a 76-unit apartment building in Midwood, Brooklyn. One “wrap-around test” was conducted using five testers. African American and Latino testers were lied to about available apartments. A white tester was told about two available apartments. The case was resolved in 2011 for injunctive relief and a monetary recovery of \$100,000 for damages, attorney’s fees and costs.

FHJC et al. v. Broadway Crescent Realty LLC et al.

This case involved allegations of race discrimination against African Americans at a 72-unit apartment building in Astoria, Queens. Four paired tests were conducted. African American testers were lied to about available apartments, while white testers were told about and shown available apartments. The case was resolved in 2011 for injunctive relief that applied to multiple rental properties and a monetary recovery of \$341,000 for damages, attorney’s fees, and costs.

Lee v. Bais Seller Real Estate & Construction

This case involved allegations of race discrimination against African Americans by a small real estate company based in Brooklyn that offered properties for rent. Five paired tests were conducted. African American testers were denied service and provided no information about available apartments, while white testers were told about and, in some cases, shown available apartments. The case was resolved in 2012 for injunctive relief and a monetary recovery of \$50,000 for damages, attorney’s fees, and costs.

FHJC et al. v. Revlyn Apts. LLC et al.

This case involved allegations of race discrimination against African Americans at two apartment buildings located in Brooklyn. Four paired tests were conducted. African American testers were lied to about available apartments, while white testers were told about and shown available apartments. Black testers were quoted higher rents than white testers. The case was resolved in 2012 for injunctive relief that applied to three rental properties and a monetary recovery of \$225,000 for damages, attorney’s fees, and costs.

FHJC et al. v. Nasa Real Estate Corp. et al.

This case involved allegations of race discrimination against African Americans at a 107-unit apartment building in Astoria, Queens. Three paired tests were conducted. African American testers were lied to about available apartments, while white testers were told about and shown available apartments. Black testers were quoted higher rents than white testers. The case was resolved in 2013 for injunctive relief that applied to multiple rental properties and a monetary recovery of \$130,000 for damages, attorney's fees, and costs.

FHJC et al. v. Silver Beach Gardens et al.

This case involved allegations of race discrimination against African Americans by a real estate broker and two large housing cooperatives located in the Throgg's Neck area of the Bronx. The two co-ops are neighborhoods consisting of over 1000 single family homes. One paired test was conducted. African American testers were not offered or shown any homes in the housing cooperatives, while white testers were offered and shown nine homes in the housing cooperatives. The entire case was resolved by 2013 for injunctive relief and a total monetary recovery of \$500,000 for damages, attorney's fees, and costs. The real estate broker also agreed to surrender her real estate license.

FHJC et al. v. Merz Realty Co. et al.

This case involves allegations of race discrimination against African Americans at a 59-unit apartment building in Bay Ridge, Brooklyn. Three paired tests were conducted. African American testers were lied to about available apartments, while white testers were told about and shown available apartments. The case was filed in 2013 and is pending.

U.S. v. Burgundy Gardens Realty LLC

This case involved allegations of race discrimination against African Americans at a 99-unit apartment building in Valley Cottage, New York (Rockland County). Multiple tests were conducted by the FHJC. African American testers were lied to about available apartments while white testers were told about and, in some cases, shown available apartments. The case was resolved in 2012 for injunctive relief, and a monetary recovery of \$175,000 in damages and civil penalties.

FHJC et al. v. Kara Realty LLC et al.

This case involves allegations of race discrimination against African Americans by the owners and managers of 19 rental buildings in New York City. Two paired tests and one wrap-around test were conducted. African American testers were lied to about available apartments, while white testers were told about and shown available apartments. The case was filed in 2013 and is still pending.

U.S. v. Pearl River Gardens LLC

This case involved allegations of race discrimination against African Americans at a 32-unit apartment building in Pearl River, New York (Rockland County). Three paired tests were conducted by the FHJC. African American testers were lied to about available apartments, while white testers were told about and shown available apartments. The case was resolved in 2011 for injunctive relief, an admission by the owner that he lied to African American testers about available apartments, and a penalty judgment of \$55,000.

U.S. v. Loventhal Silver Riverdale et al.

This case involved allegations of race discrimination against African Americans at a 72-unit apartment building in Riverdale, Bronx. Three paired tests were conducted by the FHJC. African American testers were lied to about available apartments, while white testers were told about and shown available apartments. The case was resolved in 2012 for injunctive relief, an admission by one of the agents that he told white testers about and showed them available apartments while telling African American testers that no apartments were available, in addition to \$75,000 in damages and civil penalties.

To document the racially discriminatory practices at several of these sites required multiple contacts by testers and/or multiple tests. In one sales case, a simple paired test occurred with testers having contact with an agent over a two month period. In other instances, a “paired test” structure was not deemed the most effective way to document the alleged discriminatory conduct and other test structures were utilized. A “one size fits all” approach to testing, while it may be essential for research, is not always the best approach when conducting investigations aimed at documenting discriminatory conduct.

Finally, eleven of the twelve cases did not stem from the receipt of a complaint, and, in fact, it is very unlikely a bona fide home seeker would have detected the discrimination by these housing providers. In all twelve cases, white testers were told about more rental units than black testers. In some instances, white testers were quoted lower rents on housing than black testers.

The FHJC, the same organization that coordinated over 6% of the 8047 tests conducted in the HDS 2012, also completed the testing investigations that led to the fair housing cases described above. It is impossible to reconcile a report that finds so little evidence of racial discrimination with the experiences of an organization that continues to document intentional, persistent, and pervasive discrimination based on race in the local housing market.

Unfortunately, and ironically, the lackluster performance of many local, state, and federal fair housing law enforcement agencies may inadvertently reinforce a perception that the HDS 2012

report findings accurately estimate the level of housing discrimination. After all, most of these government enforcement agencies rely on a complaint-driven approach to combatting racial discrimination and enforcing fair housing laws. Those of us who routinely conduct testing investigations for the purpose of enforcing fair housing laws understand that most race and national origin discrimination (as evidenced by the examples cited above) goes undetected by ordinary home seekers. When discrimination is not detected, it is not reported. So the danger here is that a flawed and inadequate enforcement scheme that yields few complaints of race discrimination may reinforce the results of this equally deficient research study.

Any research into a domestic issue as important as racial discrimination in housing should equip us to better understand the extent of the problem and the challenges we still face as a nation in reducing discrimination and residential racial segregation. It should help us make sense of the realities on the ground. The HDS 2012 report, in my view, does not do that. Instead, it suggests that the problem appears to be negligible and that African American renters in New York have few problems learning about housing opportunities. This finding is inconsistent with other testing conducted in New York: testing that is more inclusive because it examines the practices of housing providers who advertise in different ways or not at all, more probative because it drills deeper into housing provider practices, and more meaningful because it compares the conduct of housing providers against the requirements of fair housing laws.

I have tremendous respect for the Urban Institute, especially its cutting edge work on fair housing issues and its use of paired testing to document inequality in various areas of American life. I am first and foremost a fair housing enforcement professional and not a researcher. My only point is that if this is the only way or even the best way to conduct these types of studies, perhaps we need to assess whether the millions spent to conduct studies like this accomplish the stated goal of providing policy-makers with a reliable estimate or measure of housing discrimination. Perhaps it is time to decide whether funds allocated for studies like HDS could be more wisely spent on targeted testing and enforcement activities designed to reduce, rather than study, racial discrimination in housing. That is a policy debate that I am happy to have. In the interest of achieving more equity, opportunity, and inclusion throughout our nation, we should all appreciate the importance of having that debate.

About the Author

Fred Freiberg is the Field Services Director for the Fair Housing Justice Center (FHJC), a New York-based regional fair housing organization that he co-founded in 2004. Prior to 2004, Mr. Freiberg directed a national testing program that he helped to establish in the Civil Rights Division of the United States Department of Justice. Mr. Freiberg has supervised and participated in thousands of testing investigations involving rental housing, real estate sales, new construction, nursing homes, mobile homes, places of public accommodation, and mortgage lending institutions. Mr. Freiberg was a founder and the first Executive Director of the Metropolitan Milwaukee Fair Housing Council from 1977-1981. In 1991, he worked as a consultant to the Urban Institute on a Congressionally-mandated evaluation of testing guidelines in HUD's Fair Housing Initiatives Program (FHIP). From 1999 to 2002, Mr. Freiberg was retained by the Urban Institute to manage the testing in two national research projects. He supervised the testing in a national research study of mortgage lending practices and directed the field implementation for the third and largest national study of housing discrimination conducted in the United States. Mr. Freiberg's professional activities for fair housing span 37 years during which time he has testified in dozens of fair housing cases, published articles on fair housing, and received numerous awards for his accomplishments in the fair housing field. Since January 2005, Mr. Freiberg has served as adjunct faculty for Columbia Law School where he co-teaches a Housing Discrimination Law Seminar.



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