FAIR HOUSING TESTING—UNCOVERING DISCRIMINATORY PRACTICES

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INTRODUCTION

The 1866 Civil Rights Act prohibits racial discrimination and grants all citizens the same rights to property as white citizens. Title VIII of the 1968 Civil Rights Act, as amended by the Fair Housing Amendments Act of 1988, prohibits discrimination in the availability and negotiations for sale or rental of housing based on race, color, sex, religion, national origin, familial status, or physical/mental handicap. Title VIII also explicitly prohibits the practices of steering3 and blockbusting.4 The United States Supreme Court has stated that two

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1. 42 U.S.C. § 1982 (1988). The text of the 1988 version provides that “[a]ll citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.” Id.

3601. DECLARATION OF POLICY

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

3604. DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING AND OTHER PROHIBITED PRACTICES

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful — (a) to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of service or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

Id. §§ 3601, 3604.

3. Steering is a practice of preserving and encouraging patterns of racial segregation by “steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups.” Havens Realty Corp. v. Coleman, 455 U.S. 363, 368 n.1 (1982).

4. 42 U.S.C. § 3604 (1988). Blockbusting is a practice by which real estate agencies attempt to exploit racial tensions and anxieties when African-Americans move into
means of redress exist for Title VIII violations: "immediate suit in federal district court, or a simple, inexpensive, informal conciliation procedure, to be followed by litigation should conciliation efforts fail."  

The Fair Housing Act prescribes an open housing market in which all homeseekers of similar income level occupying the same housing market area possess a like range of housing choices available to them, regardless of their race, color, ancestry, national origin, religion, sex, or marital status. When housing providers lead homeseekers to housing or restrict access to housing based on race, color, sex, religion, national origin, familial status, or physical/mental handicap, the ultimate result is segregation. Addressing discriminatory housing practices is complicated by the covert nature of these practices and ultimately by the evidentiary complexities associated with proving violations of the law. For purposes of simplification, this discussion will be limited to racial discrimination and the strategy of developing proofs through the use of testers.

I. THE NATURE OF RACIAL DISCRIMINATION IN HOUSING

Typically, a case of housing discrimination develops when a minority person is told that (1) a home, apartment, or other property is not available; (2) the unit is already sold, rented, or contracted for; or (3) the unit is available, but on different terms or prices than those offered to other applicants. Housing discrimination also results when rental or real estate agents steer minority applicants away from areas predominantly occupied by majority persons, or into areas predominantly occupied by minority persons. These discriminatory practices often occur in a manner that leaves victims unaware that they have been discriminated against. While certainly not universally true, the general nature of race-based housing discrimination is covert, although overt discrimination still exists. That overt racial discrimination in housing continues to exist is a testament to the need for antidiscrimination protections.


female filed a lawsuit in federal district court against her landlord, alleging that she was threatened with eviction because she had African-American friends who visited her. The plaintiff's evidence included a signed rental agreement which stated: "No! Negro's (Blacks) or Mexicans in the Apartment."

In another 1994 case, a Vidor, Texas, woman was ordered to pay over $300,000 because of her "relentless campaign of intimidation" against an African-American man and his white friend. A Housing and Urban Development Chief Administrative Law Judge ruled that Edith Marie Johnson taunted fellow public housing resident Bill Simpson with racial slurs and threatened his life. He also ruled that Johnson threatened the life of Ross Dennis, a white man who had befriended Simpson at the Vidor Village complex. Johnson's conduct included referring to Dennis and others who talked to Simpson as "nigger lovers." Johnson also threatened, "[I]f I had a gun, I'd kill that nigger. I could just puke," and, if he "comes into my yard, I'll kill him with my baseball bat." Johnson also began passing along messages to neighbors about Ku Klux Klan meetings and Klan groups having plans to burn down the complex. Carloads of persons clothed in robes sometimes drove through the complex, with the Vidor area being the site of rallies by several Klan and other white supremacist groups. The judge wrote that "the egregiousness of [Johnson's] discriminatory conduct cannot be overstated.... [H]er conduct towards Mr. Simpson and Mr. Dennis was flagrant, notorious and pernicious."

These recent cases illustrate the exception to the general rule that discrimination is not blatant. Instead, discrimination is usually covert, and "often appears in insidious and subtle forms." Such sophisticated practices include courteous treatment, such as showing a unit and taking an application or contract to make it difficult to detect discrimination. After such measures are taken, the minority homeseeker is turned down.

As housing providers become more knowledgeable about housing discrimination laws, they are more likely to use apparently nondiscriminatory reasons for denying housing to prospective homeseekers. The housing provider might use such statements as:

* "We have nothing available right now, but if you will check back in a month or two we should have something."
* "We have a long waiting list."

9. Id.
11. Id. at 2.
12. Id. at 1.
* “I’m terribly sorry, but we just rented the last available apartment.”
* “I don’t think you’ll like the neighborhood.”
* “The managers are not home, and I don’t know when they will return.”
* “We only work with professional/married/single people.”
* “We don’t have any children in the complex,” or “we only allow children in certain buildings.”

Such statements, or mere inaction, such as not returning calls or following up, mask discriminatory conduct and serve as a cover-up or “pretext” for discrimination. Consequently, the prospective homeseeker may never realize that she has been the subject of unlawful discrimination.

II. THE NECESSITY OF PROOF AND THE ROLE OF FAIR HOUSING CENTERS

A. THE NECESSITY OF EVIDENCE

An attorney, Cecelia Henderson, believed the act of racial discrimination against her and her three children was devastating, stating that “housing discrimination . . . is so hidden.” Even though it is hidden, a homeseeker’s belief that she has been the victim of unlawful discrimination is inadequate to prove discrimination actually took place. Because she likely received a seemingly nondiscriminatory reason for the refusal to rent or sell, direct evidence of discriminatory conduct may be difficult to obtain. The homeseeker must somehow be able to offer evidence of how the housing provider dealt with other homeseekers who also applied for housing, and who are like the complaining homeseeker in all respects except for the homeseeker’s race (or other protected characteristic). It is not always practical to locate other applicants with like credentials who experienced similar treatment at the hands of the same housing provider.

Because it is not likely that the defendant will either admit or sufficiently publicize his illegal conduct, often the only way to determine whether a housing provider engages in discriminatory practices is to conduct undercover investigations, or tests, to observe how the housing provider responds to similarly situated individuals.

14. Statements were adapted from a manual prepared by the Fair Housing Center of Metropolitan Detroit.
18. Id.
United States Supreme Court has held that in employment discrimination cases it is relevant to examine the defendant employer's treatment of white applicants with similar credentials. Robert Schwemm, author of *Housing Discrimination: Law and Litigation*, and *Guide to Practice Open Housing Law*, states that it is essential to conduct a test of the discriminatory apartments or agency in advance of filing a complaint of discrimination to determine if discrimination did take place. The changeable nature of availability of any given dwelling dictates that it may be necessary to have "testers" available to conduct investigations on short notice. These testers can promptly investigate so that discrimination can be determined before the apartment or house in question is rented or sold to a third party.

B. THE ROLE OF FAIR HOUSING CENTERS IN PROVING DISCRIMINATION

In *Zuch v. Hussey*, the United States District Court for the Eastern District of Michigan concluded that the ultimate effect a statutory prohibition can have in reducing racial segregation in housing cannot be determined, because the issues are complicated by attitudes which the laws or the courts cannot reach. The court recognized that fear is in the minds of some people; and that fear is "as real as the blackness of the skins of the people whom they fear," and noted that such fear cannot be enjoined.

Once these ungovernable attitudes unfold into unfair treatment of categories of people, resulting in discriminatory housing practices, the courts then have a basis for regulating the conduct, but only if persuasive evidence of those practices has been developed and preserved. To this end, fair housing organizations have been established to uncover the unfair treatment and to develop and preserve evidence of housing discrimination.

In the broadest sense, the primary purpose of most fair housing organizations is to help provide equal housing opportunities for people living within the targeted geographical area of the organization. Typical fair housing functions include: (1) educating the public re-

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20. Caruso & Schwemm, supra note 7, at 3.
22. Caruso & Schwemm, supra note 7, at 3.
25. Id.
garding fair housing laws; (2) counseling individuals who believe they may have been the subject of unlawful discrimination; (3) receiving and investigating complaints regarding housing discrimination; and (4) referring appropriate cases to conciliation, attorneys, or enforcement agencies for resolution. Fair housing centers recruit and train testers to assist in the investigation of housing discrimination complaints and generally to determine compliance, in the absence of a participating complainant, with fair housing laws. As attorney Cecelia Henderson stated regarding her discrimination case, "The Center helped find the evidence that put the case together." The primary means by which fair housing centers gather evidence of discriminatory conduct is through the mechanism of testing.

III. DESCRIPTION OF TESTING

The typical Title VIII complaint case involves refusing to rent or sell to a minority family. The discrimination is often proved by sending a demographically matched white homeseeker to seek the same dwelling. The test is designed to elicit whether the defendant will sell or rent to the tester even though the defendant refused to deal with a similarly situated minority applicant.

"[T]esters' are individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices." Testing may be described as a way of measuring differences in the quality, content, and quantity of information and service given to customers attributable to a difference in race (or national origin, religion, sex — whatever variable is being tested). There are many different types of testing methods but testing is either based on a complaint of discrimination or is an investigative/survey test, the latter being used to determine compliance with legal norms without reference to a particular complaint.

The typical investigative/survey test utilizes teams of persons whom pose as homeseekers and "possess substantially similar distinguishing characteristics and personal backgrounds" except the tested

27. Id.
28. MANUAL, supra note 18, at 3.
30. Id.
31. ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW 416 (1983) [hereinafter SCHWEMM].
variable (race, color, religion, etc.). The team members visit the same real estate agency or apartment building at closely spaced intervals to apply for the same type of accommodation. The testers are trained to be detailed observers in these encounters with landlords and agents. Testers report such details as whether they observed a fair housing poster at the site; the length of time spent waiting to be interviewed; whether the agent requested information about debts, obligations, references, etc.; the agent's comments about qualifications; whether the agent made phone calls on the tester's behalf, or offered to let the tester go through a directory, listing book, etc.; and the number of homes the tester was invited to inspect. Testers keep detailed records documenting the responses and treatment received in each situation. The testers are debriefed to assure that any inconsistencies in their statements are explained. Documentation is then compared, and discrimination or nondiscrimination is determined.

As the United States Court of Appeals for the Seventh Circuit noted in Richardson v. Howard, testers provide evidence which "is frequently valuable, if not indispensable." Testers are more likely to be dispassionate observers of the events leading to a discrimination suit than the individuals who have complained of being discriminated against. As a result, tester evidence may receive more weight than evidence from the complainant. The information provided by testers helps the investigator clarify all the issues and brings into sharp focus exactly what happened. Proper investigation also indicates whether a strong case can be presented when discrimination has occurred.

The United States Court of Appeals for the Tenth Circuit observed in Hamilton v. Miller that "[i]t would be difficult indeed to prove discrimination in housing without this means of gathering evidence." The practice of using testers to investigate and prove allegations of housing discrimination has been sanctioned by the courts. Courts have recognized that in many cases evidence gathered by test-

35. MANUAL, supra note 18, at 3 (quoting GEORGE SCHERMER, GUIDE TO FAIR HOUSING LAW ENFORCEMENT).
36. Id.
37. 712 F.2d 319 (7th Cir. 1983).
38. Richardson v. Howard, 712 F.2d 319, 321 (7th Cir. 1983).
39. Id. at 322.
40. Id.
41. CARUSO & SCHWEMM, supra note 7, at 5.
42. 477 F.2d 908 (10th Cir. 1973).
44. See Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 93-116 (1979) (determining whether testers possessed standing to sue under 42 U.S.C. § 3604 and whether there was a case or controversy between the parties).
ers is necessary because of the difficulties present in proving discrimi-
nation.\textsuperscript{45} In \textit{Richardson}, the Seventh Circuit addressed the mutual
benefit of an accurate determination of fact.\textsuperscript{46} The court stated that
"[t]he evidence provided by testers both benefits unbiased landlords by
quickly dispelling false claims of discrimination, and is a major re-
source in society's continuing struggle to eliminate the subtle but
deadly poison of racial discrimination."\textsuperscript{47}

A. PENETRATING THE PRETEXT THROUGH THE USE OF TESTERS

One common pretextual reason used to mask discriminatory con-
duct involves a housing provider's representation that desired housing
is simply not available. The record in \textit{Bullen v. Thanasouras}\textsuperscript{48} illustrates how testers may be utilized to elicit evidence of the violation of
fair housing laws where lack of availability is a pretext for unlawful
discrimination.\textsuperscript{49} In \textit{Bullen}, the United States District Court for the
Northern District of Illinois, in analyzing the defendant's summary
judgment motion, stated that the defendant might have known or sus-
pected that the homeseekers were African-American and could have
discriminated against them based on the sound of their voices over the
telephone even though the defendant had not seen them.\textsuperscript{50}

In \textit{Bullen}, Dianne McMillen, a single African-American female,
made two independent and unsuccessful attempts to rent units in a
building owned and managed by Jennie Thanasouras, a white fe-
male.\textsuperscript{51} Responding to an advertisement of an available apartment in
Thanasouras' building, McMillen called the number and was directed
to contact the current tenant for a showing. After speaking with the
tenant and viewing the apartment on June 13, 1991, she left her name
and number with Thanasouras' daughter indicating her interest in
the apartment. Thanasouras did not call her back. After two days,
McMillen phoned again and spoke with Thanasouras expressing an
interest in the apartment. During the conversation, Thanasouras
asked McMillen questions concerning her address, her jobs, the size of
her family, and her reasons for moving.\textsuperscript{52} Thanasouras told McMillen
that she would get back to her after speaking with the current tenant.
Thanasouras also indicated that there was another interested party.

\textsuperscript{45} Richardson, 712 F.2d at 321.
\textsuperscript{46} Id.
\textsuperscript{47} Id.
\textsuperscript{49} Bullen v. Thanasouras, No. 92-C-1796, 1994 WL 6868, at *1 (N.D. Ill. Jan. 10,
1994).
\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} Id. at *1 n.3. McMillen alleged that Thanasouras "constantly" asked McMillen's address, which was located in a largely African-American neighborhood. Id.
Thanasouras took McMillen's phone number and told her that she would inform her if the other party did not rent the apartment.

Thanasouras did not contact McMillen for three weeks. On July 6, 1991, McMillen again called, inquiring about the apartment's status. Thanasouras told her that another party was interested, and that she would contact McMillen if the party withdrew its interest in the apartment. However, Thanasouras never phoned McMillen. On July 9, 1991, McMillen reached the Leadership Council for Open Communities and claimed that she was being discriminated against on the basis of her race, even though Thanasouras had never seen her. The Council assigned Martha Niles, a white female, to the case as a tester.

On July 10, Niles contacted Thanasouras and inquired about the apartment's availability. After asking Niles questions concerning her family and employment, Thanasouras arranged to show her the apartment the following day. On July 11, Niles looked at the apartment and conveyed her interest in renting it. Soon thereafter, a married white couple spoke with Thanasouras concerning the apartment, and subsequently signed a lease.

No one disputes that, although Thanasouras had inquiries from numerous African-American individuals regarding her various apartments, Thanasouras had never rented any of her apartments to an African-American person. In denying summary judgment, the Court stated that "[f]acts such as employment and address, and even one's voice and demeanor, can provide another with clues about the characteristics of the speaker, and lead to an awareness that the speaker is of a certain race."53

B. EVIDENCE GENERATED BY THE USE OF TESTERS

In a recent Nebraska case, Ventura v. State Equal Opportunity Comm'n,54 the complainant, similar to the plaintiff in Bullen, attempted to test his claim of discrimination.55 In Ventura, Raymond Pina, a Mexican-American, read an advertisement that listed an apartment for rent and called the telephone number in the newspaper at 9:30 a.m. Pina was informed that the unit was available.56 After driving by the unit at approximately 10:30 a.m., Pina called the number a second time and spoke to the landlord Ventura, telling Ventura that he liked the apartment and that he wanted to see it.57 After

56. Id. at 119, 517 N.W.2d at 372-73.
57. Id.
giving Ventura his name, Ventura told Pina that the unit was already rented. 58

Pina became curious that the apartment was rented within one hour of his initial conversation with Ventura, but he could not understand why Ventura would have given him false information. Because Pina was becoming suspicious, he spoke to Deborah Surber, a white coworker, about the incident later that same day. 59 Surber thought it strange that the apartment was rented only an hour after Pina had voiced an interest in it. She agreed to call Ventura concerning the unit to determine whether any discrimination was involved in his decision to deny Pina tenancy. Surber contacted Ventura at approximately 1:30 p.m. the same day, and made an appointment to see the unit at 2:30 p.m. 60 After examining the apartment, Surber told Ventura she would take it.

As Surber was leaving, Pina arrived at the unit, asking Ventura to show it to him. Ventura replied that she had already rented it to Surber. Pina then attempted to explain to her that Surber did not want to rent the unit and stated that he instead wanted to rent the unit. Ventura did not permit Pina to view the apartment, telling him another woman was scheduled to view it at 4:00 p.m. 61

The next day, several other Mexican-Americans called Ventura requesting to examine the unit. After stating their distinctly Hispanic surnames to Ventura, Ventura became elusive and would not agree to show them the unit at any definite time. When Gerald Newton, a white individual, called for the unit on July 18, giving his full name to Ventura, Ventura stated that Newton could not view the unit on that day, but could do so the following day at 5:30 p.m. The next day Newton discovered it had been rented to a white person later on the day of his call. 62

The evidence presented at the administrative hearing disclosed that, except for one Hispanic whom Ventura knew, the unit was rented only to whites. The evidence also revealed that the units possessing the highest monthly rental amounts were rented to whites, whereas the units with lower rates were rented to individuals of Mexican descent. The hearing officer concluded that Ventura intentionally discriminated against Pina on the basis of his national origin. Furthermore, the officer found that Ventura intentionally exercised a policy of discrimination against potential Hispanic renters. 63

58. Id. at 119, 517 N.W.2d at 373.
59. Id.
60. Id.
61. Id. at 120, 517 N.W.2d at 373.
62. Id.
63. Id.
The lesson to be learned is that Pina would most likely have not been able to substantiate his claim of discrimination if his coworkers had not been willing to informally test Ventura's reaction to rental inquiries by homeseekers with traditional Hispanic surnames.

C. TESTING WITHOUT A PARTICIPATING CLAIMANT

In Cabrera v. Jakabovitz,64 a landlord who did not offer to show a minority tester vacant apartments in predominantly white neighborhoods was found in violation of the Fair Housing Act.65 In Cabrera, New York's Open Housing Center began an investigation to see whether AM Realty, a brokerage firm, was obeying a prior consent decree not to discriminate in offering housing services.66 The Open Housing Center sent a pair of testers of dissimilar races to inquire about leasing apartments in some Brooklyn neighborhoods. The two testers in each pair represented a rental "profile" with a similar family composition and income to the person he or she was paired with. In each test, the rental agent directed the white tester to look at apartments in predominantly white neighborhoods, but directed the African-American and Latino testers to look at apartments located in predominantly minority neighborhoods, or alternatively, informed the minority tester that no apartments were available.67

Cabrera demonstrates how a typical noncomplaint based test might be conducted. The actual test included four separate tests of AM Realty and one test of the landlords who listed their property with AM Realty. A Latino tester, Orlando Cabrera, conducted the first test on February 7, 1987. Cabrera inquired to AM Realty broker Carl Matos about a one-bedroom apartment located in Sheepshead Bay or Kings Highway. Subsequently, the broker told Cabrera that there were none available. Later that day, Cindy Reiman, a white tester, arrived and talked with another broker, requesting a one-bedroom apartment in Sheepshead Bay or Midwood. The broker not only offered her three apartments in Sheepshead Bay, but also drove her to one of them.

The second test was conducted on March 6, 1987 by an African-American tester, Ronald Luckett, who inquired about either a one-bedroom or studio apartment located in Sheepshead Bay or Midwood. The broker offered him an apartment in a predominantly African-American and Latino area. Susan Hamovitch, a white tester, arrived two hours later and asked for a "junior four" or a one-bedroom apart-

64. 24 F.3d 372 (2d Cir. 1994), cert. denied, 115 S. Ct. 205 (1994).
66. Id.
67. Id. at 377-78.
ment in Sheepshead Bay or Midwood. This different broker offered her a “junior four” in Sheepshead Bay, and also a one-bedroom apartment in a building she had not requested.

In the third test, an African-American tester, Linda McCoggle, went to AM Realty on May 2, 1987. The receptionist informed her that no one was available to meet with her, and gave her Matos’ business card. McCoggle called that same day, and Matos informed her that no apartments were available, and that she should call back later that week. On her second call, McCoggle was again told that nothing was available, and on the third call she left a message and no one returned her call. Another white tester, Rachel Schwartz, also arrived at AM Realty’s offices soon after McCoggle’s visit. Schwartz was told that both rental agents were unavailable and was assured that apartments were vacant. A few days later, an agent called Schwartz and gave her listings for six apartments, and subsequently called Schwartz three more times adding more apartments and inquiring whether Schwartz was interested in any of them.

In the fourth test, an African-American tester, Augustin Hinkson, met with an AM Realty broker on July 24, 1987. The broker told Hinkson that there were no available apartments in Sheepshead Bay, Kings Highway, or Midwood. After returning home, Hinkson telephoned AM Realty, leaving a message for the broker, which was never returned. Later that day, Nancy Steifel, a white tester, arrived at AM’s offices. She also sought a one-bedroom apartment in Kings Highway and Sheepshead Bay, and was subsequently offered two listings for one-bedrooms in those areas.

In the final test on July 29, 1987, testers were sent directly to the offices of landlords who listed their properties with AM Realty. A white tester, Phyllis Spiro, asked for an apartment in Kings Highway or Sheepshead Bay. The landlord informed her that a one-bedroom apartment was available in Kings Highway. The landlord also said the current tenant of the apartment had recommended a young man for tenancy and that if she acted soon, he would rent her the apartment instead. The landlord also asked Spiro if she would prefer an apartment located in Bensonhurst, and she replied she would not. After leaving the office, Spiro went to a location approximately three blocks away where she was to meet Jeanette Ramsey, an African-American tester. Ramsey then went to the landlord’s office and stated that she was seeking an apartment in Kings Highway or Borough

68. Id. at 378.
69. Id.
70. Id.
71. Id. at 378-79.
Park. The landlord replied that nothing was available in her requested areas, but asked if she would consider an apartment in Cypress, a predominantly African-American neighborhood. Ramsey indicated no interest in this neighborhood but asked the landlord to inform her if something else became available. Ramsey testified that the landlord never asked her regarding the size of the apartment she desired, the amount she could afford, or if she would consider an apartment in Bensonhurst, nor did he follow up with a phone call.  

To summarize the tests, the white apartment seekers were each informed of apartments available in buildings owned by either or both of the two landlords in question, whereas none of the minority testers were informed of any apartments in any building owned by these landlords. Based on these tests, the Open Housing Center and minority testers filed suit against the owners, realty firm, and real estate brokers, claiming that they violated Title VIII of the Civil Rights Act of 1968; the Civil Rights Act of 1870 (42 U.S.C. § 1981), involving the right to enter into a contract; and the Civil Rights Act of 1866 (42 U.S.C. § 1982), involving the right to lease real property. Following a two-week trial, the jury rendered a verdict in favor of all the plaintiff-testers except McCoggle.

IV. TESTER AND ORGANIZATIONAL STANDING TO SUE

A. TESTER STANDING TO SUE

In United States Dep't Hous. & Urban Dev. v. Blackwell, the United States Court of Appeals for the Eleventh Circuit determined that the McDonnell Douglas elements of a cause of action in Title VII employment discrimination cases apply to cases brought under the Fair Housing Act. As applied to Fair Housing Act cases, the McDonnell Douglas test requires the plaintiff, in order to establish a prima facie case of housing discrimination, to prove by a preponderance of the evidence that: (1) she is a member of a racial minority; (2) she applied for and was qualified to rent or purchase the housing; (3) she was rejected; and (4) the housing opportunity remained available.

The Court in Blackwell found that, like the bona fide applicant, the minority tester can also meet these criteria. In such a situation the minority applicant can prove that (1) she is a member of a racial

72. Id. at 379.
73. Id.
74. Id.
75. 908 F.2d 864 (11th Cir. 1990).
77. Id.
minority; (2) she applied for and was qualified to rent or purchase the housing; (3) she was rejected; and (4) the housing opportunity remained available after his visit. Once the minority tester establishes the McDonnell Douglas elements, the burden then shifts to the housing provider to articulate some legitimate nondiscriminatory reason for his actions. If the housing provider can satisfy this burden, the plaintiff can prove that the reasons asserted by him are in fact a mere pretext for discrimination.78

In Havens Realty Corp. v. Coleman,79 the United States Supreme Court addressed the issue of whether a tester incurred “injury” as required for standing to sue under section 812 of the Fair Housing Act.80 The Supreme Court rejected the defendants’ argument and held that a tester, who may fully expect to receive false information and is “without any intention of buying or renting a home,... [still sustains] injury within the meaning of § 804(d),” and thus, has standing to sue.81 Section 804(d), as amended by 42 U.S.C. § 3604, establishes the enforceable right of any person to truthful information concerning the availability of housing.82 The Court went on to find that a tester, who is the object of an unlawful misrepresentation pursuant to section 804(d) (because of race, color, religion, sex, or national origin), has complied with the statutory definition of injury intended to be guarded against and thus can recover damages under the Fair Housing Act’s provisions.83

B. Organizational Standing to Sue

Fair housing centers also have been found to have standing to sue as long as a center can demonstrate injury. In Havens Realty Corp., an organization named “HOME” alleged the defendant’s racial steering practices had “frustrated . . . its efforts to equal access to housing through counseling and other referral services . . . [causing HOME] to devote significant resources to identify and counteract the defendant’s racially discriminatory steering practices.”84 The Court in Havens Realty Corp. granted HOME standing to sue.

78. Id. at 871.
81. Havens, 455 U.S. at 373-74.
82. 42 U.S.C. § 3604(d) (1988); see supra note 2.
83. Havens, 455 U.S. at 373-74.
84. Id. (quoting Appellant’s Petition, 17 ¶ 16).
CONCLUSION

The United States District Court for the Southern District of New York in United States v. Gilman\(^8\) stated that "[d]enigration of individual rights and liberties is the hallmark of discrimination."\(^8\) Of her discrimination case, an African-American attorney states, "When they denied me they were telling me that all of my efforts, all of my training and education, my excellent credit rating didn't matter at all."\(^6\)

This intrus on rights and liberties "cannot be permitted to exist under any guise."\(^8\)

In Zuch v. Hussey,\(^9\) the United States District Court for the Eastern District of Michigan addressed the contention that "black and white people are incapable of living together in peace and harmony in close proximity to one another."\(^9\) The court acknowledged that it cannot force people of different races to live in the same neighborhood,\(^9\) and also stressed that racist agents cannot be permitted to decide where citizens can and cannot live.\(^9\) These racist agents, according to the court, "act[ ] in total disregard of the right of black and white people to enter into important contracts affecting real property without harassment, undue pressure and inflammatory appeals to racial fear and prejudice."\(^9\)

The court recognized the "responsibility under the law . . . to take appropriate measures to see that realtors who are predatory intruders in neighborhoods . . . are not free to propagandize residents . . . with the idea that they should sell their homes and move because of the changing racial composition of the neighborhood."\(^9\) The court also maintained that "there are enough fair-minded people of both races, who have respect for diversity, to ensure that there will indeed be integrated, or at least desegregated, neighborhoods — neighborhoods where people will live because they want to, not because they have to."\(^9\)

Testing plays a vital part in uncovering the racist attitudes and discriminatory housing practices that lead to segregated neighborhoods. Without evidence of this conduct, the discriminatory practices can become widespread and pervasive. However, through the evi-
dence gathered by testers and the resulting litigation, those landlord and agents engaging in discriminatory practices can be brought before the courts and damages determined. The trend in housing discrimination damage awards is upward and some individual decisions have recently awarded substantial damages. For example, the United States Department of Justice settled suits charging violations of fair housing laws by two apartment complexes and one mobile home park in the Detroit area for $424,000. An earlier Detroit case was settled for $350,000. Hopefully, these substantial damage awards will not only fairly compensate victims of discriminatory housing practices, but will also act as a deterrent so that homeseekers with similar income levels can have access to a like range of housing choices, without regard to their race, color, ancestry, national origin, religion, sex, or marital status.

96. SCHWEMM, supra note 37, at 431.
98. FAIR HOUSING TEST, supra note 6, at I-2.