



THE JOHN MARSHALL LAW SCHOOL FAIR & AFFORDABLE HOUSING COMMENTARY

Foreword

This issue marks the inauguration of a new publication by The John Marshall Law School Fair Housing Legal Support Center. The Support Center was founded in 1992 to educate the public on fair housing law and to provide legal assistance to those private or public organizations that are seeking to eliminate discriminatory housing practices. Since 1992, the Center has hosted conferences and trainings throughout the United States for attorneys and fair housing enforcement personnel at the federal, state and local levels of government, housing providers and consumers. In addition, the Center supervises The John Marshall Law School Fair Housing Legal Clinic that represents victims of discriminatory housing practices in the courts and administrative proceedings. The Clinic educates law students in fair housing law and enforcement by having them work on actual cases. The Clinic thus prepares a cadre of future lawyers who are knowledgeable in the law and committed to the cause of fair housing.

The Center has long considered publishing articles and educational materials on fair and affordable housing that will be generally available to the public. This issue of The John Marshall Law School Fair and Affordable Housing Commentary is a result of that quest. Some of the articles will be similar to those found in traditional law reviews and journals, but the Commentary will also publish shorter articles as well as studies and reports so that they are readily available to those working or interested in fair and affordable housing law. Some of the materials will be original; other materials will have been published elsewhere but will be made easily accessible here.

The Center welcomes your input and contributions.

This first issue is entirely derivative. Four articles that first appeared in The John Marshall Law Review in 1992 are reproduced so that they are available electronically for the first time. These articles were the product of a groundbreaking conference held at The John Marshall Law School on maximizing damages in fair housing cases.

This Conference was held shortly after the 1988 Fair Housing Amendments Act was passed, which introduced new remedies for fair housing violations. Even though damages were part of the relief offered by the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1982, and Title VIII of the Civil Rights

Act of 1968, 42 U.S.C. §§ 3601 *et seq.*, large damage awards for housing discrimination were rare and the primary relief awarded was equitable. Professor Robert Schwemm stated in an article published in 1981 that the range of damage awards in fair housing cases at that time was between \$1 and \$20,000. Schwemm, *Compensatory Damages in Fair Housing Cases*, 16 Harv. C.R/C.L. Rev. 83 (1981). The Kentucky Commission for Human Rights published a ground-breaking study in 1981 on Damages for Embarrassment and Humiliation in Discrimination Cases, but by the early 1990s this two volume report was out of print and difficult for the average fair housing practitioner to secure. In 1992, most fair housing advocates felt that they had done a good job for their clients if they were able to secure a damage award in the range of \$500 to \$2,000.

The 1988 Fair Housing Amendments Act expanded the fora where fair housing rights could be litigated. It also inaugurated new ways to analyze fair housing cases and the relief that should be available to victims of housing discrimination. The older damage awards did not come close to recognizing the severe damage that housing discrimination causes to victims and their families and to the community at large. The threat of an award of \$1,000 or \$2,000 was scarcely a serious deterrent to those who engaged in discriminatory housing practices.

The 1992 conference was aimed at opening the eyes of fair housing advocates to the real damages suffered by victims of housing discrimination and to educate them about how they could increase the damage awards in fair housing cases.

The centerpiece for the 1992 issue was the article of Alan Heifetz, Chief Administrative Law Judge for the Department of Housing and Urban Development (HUD), and Thomas Heinz, Administrative Law Judge for HUD. They outlined step by step the theories available to fair housing advocates and how they could separate objective evidence on damages from mere speculation. Although written almost fifteen years ago, the article is still up-to-date in its approach and still provides the best framework for an attorney to follow when presenting evidence on what a victim suffers as a result of a discriminatory housing practice. What they wrote articulates the principles that guide judges in cases, whether in the judicial or administrative processes at both the state and federal levels.

Larry Rogers and Kelly Kalus discuss what civil rights attorneys can learn from the traditional personal injury bar and why it is not unreasonable to think in terms of hundreds of thousands of dollars when litigating a fair housing case where serious damage has occurred. Dr. Larry Heinrich, a clinical psychologist, explains why mental anguish and humiliation are particularly severe in fair housing cases. Merilyn Brown, an attorney employed today in the Chicago HUD



Regional Office as an Attorney Advisor, Dr. Jay Einhorn, a clinical psychologist, and I wrote an article about counseling a victim of housing discrimination using the perspectives of the client, the attorney, and a clinical psychologist. All of these articles are still current in their content.

Future issues will reprint important articles already published in other journals and provide original articles and commentary on new developments and cases involving fair and affordable housing issues. We welcome your suggestions and submissions to The John Marshall Law School Fair and Affordable Housing Commentary. Knowledge is a powerful weapon in attacking discriminatory housing practices, and we hope that this Commentary will contribute to that knowledge.

I would like to thank Frank Young, one of our Clinical students who will graduate in June 2006, for his inspiration and hard work in inaugurating this Commentary.

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