

Use of Recorders in Fair Housing Investigations

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Why the Two-Party Consent Requirement in California
Impedes Effective Fair Housing Enforcement

THE PROBLEM:

Documenting Contemporary Housing Discrimination Is Extremely Challenging



- ❖ Language used by discriminating housing providers can often be coded or subtle. Obtaining an exact oral account of the words used can be critical in some fair housing cases.
- ❖ Some statements made by discriminating housing providers and reported by testers can be so outrageous as to evoke feelings of disbelief or denial. People who believe that the alleged discriminatory statements are incredulous are easily convinced when they are able to listen to the test recordings.
- ❖ Context matters. How information is conveyed can be just as important as what information is conveyed. Recordings can be tremendously helpful in assisting a trier of fact to better understand the complexity and context of the conversations that occur between housing providers and testers.

THE SOLUTION:

Allowing Testers to Record Conversations w/Housing Providers Will Result in More Effective Enforcement of Fair Housing Laws



- ❖ Recorded evidence can be highly probative for attorneys, judges, juries, and others who must evaluate whether fair housing laws have been violated. Value of recording tests has clearly been demonstrated in litigation brought by private fair housing organizations and the U.S. Department of Justice.
- ❖ Having an exact account of conversations virtually eliminates any credibility or bias issues concerning the testers and, at the same time, protects housing providers from facing allegations based on faulty memories, misunderstandings, or incomplete accounts of test experiences.
- ❖ For fair housing organizations, recorders provide an important quality control which helps to ensure that testers are completing their tests in compliance with assignments, instructions, and testing program guidelines.
- ❖ For testers it is no longer necessary to write lengthy narratives about their test experiences.

Concluding Thought



"Racism in America is like dust in the air. It seems invisible — even if you're choking on it — until you let the sun in. Then you see it's everywhere. As long as we keep shining that light, we have a chance of cleaning it wherever it lands. But we have to stay vigilant, because it's always still in the air."

- Kareem Abdul-Jabbar (Los Angeles Times - 6/22/20)

We need every available tool in our fair housing arsenal to eliminate illegal housing discrimination. Testers, armed only with recorders, are the best hope we have of keeping a bright light on continuing racial discrimination in the housing markets of California.