Activists Attract HUD Thought Police

By Gayle M.B. Hanson

The Fair Housing Act, most people assume, exists to protect members of various minorities from the discriminatory whims of landlords, real estate agents or lenders. But under the Clinton administration, it is being used to harass individuals who oppose shelters or halfway houses in their communities. What happend to the First Amendment?

It is probably safe to say that no one would choose to live in Berkeley, Calif.'s Bel Air Motel. Seedy and down at the heels, its facade of peeling turquoise-and-white paint gives the two-story building a look of blowsy resignation, as if even its better days were none too good.

Right now, the Bel Air's doors are closed to business. But behind a chain-link fence, workmen are filling dumpsters with rubble from its box-like rooms as the motel is renovated — at a cost of $2.1 million — into subsidized, single-room-occupancy housing.

But the resurrection of the Bel Air, far from being welcomed by the community, set off a firestorm of controversy. When a group of residents voiced concern that the project would attract drug abusers, alcoholics and crime, they were accused of "housing discrimination" and threatened with lawsuits by the Department of Housing and Urban Development. HUD's heavy-handed response raised concern that the Clinton administration was using intimidation to deprive people of their First Amendment rights. And while the government (after the case attracted wide media attention) quickly abandoned the tactics of what some called "liberal totalitarianism," the case — and others like it — have focused new attention on HUD, the Fair Housing Act and national public housing policy.

Protests against the Bel Air renovation began almost as soon as it was approved by the Berkeley City Council in July 1992. Residents of the area saw the project as simply another social-service scheme to dump drug addicts, alcoholics and others into a neighborhood already troubled by poverty and decay.

"People like to characterize this as a NIMBY issue," says machinist Richard Graham, using the acronym for Not In My Back Yard. "But I like to say that we're FULLBY. Our back yards are full of projects like the Bel Air."

Graham, together with neighbors Alexandra White and Joseph Deringer, fought the conversion. They organized neighbors, published a newsletter, attended community meetings and filed an unsuccessful lawsuit in municipal court to try to stop the project.

Even though they lost their court battle, their efforts so angered housing advocate Marian Lawless, executive director of a nonprofit group called Housing Rights Inc., that she complained to HUD that the trio had violated the Fair Housing Act. Lawless also filed a complaint charging that Berkeley itself was discriminating against the project because it was going to require a full-time manager at the Bel Air.

While HUD has a long interest in using the Fair Housing Act to bring landlords and city governments into compliance, it is only recently, say former HUD officials, that the department has started using the Fair Housing Act against individuals. "I certainly find it more than odd to see this kind of thing happening," says John Weicher, an economist who served in the Ford, Reagan and Bush administrations, including a stint as assistant secretary for policy development and research at HUD. "From my standpoint, this is an issue that just doesn't compute. I am surprised that this is even an issue. It is a free country and people have the right to free speech."

But do they? In Texas, for instance, HUD used the Fair Housing Act against a white supremacist who harassed a public-housing resident in Vidor. An administrative judge fined him $10,000 for discriminatory housing practices and then levied an additional $300,000 for emotional distress.

In Berkeley, Graham, White and Deringer easily could have found themselves facing similar fines, but HUD dropped its lawsuit in early August after news of the Berkeley investigation gained media attention, which prompted a coalition of lawmakers, public-interest organizations and the American Civil Liberties Union to cry foul.

Perhaps the most chilling aspect of the investigation: All that was required to launch it was a pointed finger. From there the investigation snowballed; HUD investigators demanded every article, flier and letter to the editor that White, Deringer or Graham had written — as well as the minutes from

The Berkeley Three: *Investigators backed off after Graham, White and Deringer started receiving media attention.*

every public meeting at which any of the three spoke.

It was the issue of free speech that drew national attention to HUD's strong-arm tactics, but an equally important issue is how to reconcile the rights of communities with the rights of the homeless and the disabled who need somewhere to live.

That such a collision of interests has occurred now, say some, is partly due to the dramatic increase in funding to nonprofit organizations that provide services, and to a closer relationship between those organizations and the federal government. While HUD always has advised nonprofit organizations that develop housing solutions for the needy to work closely with communities, Berkeley residents say that the nonprofits have no interest in that at all. Instead, they say, such groups look at them as impediments and try to get their way through intimidation.

Rather than adopt a combative stance, say some observers, nonprofit housing providers should try to work with members of communities to understand their values and fears — particularly since most of the developments are in neighborhoods already suffering from poverty, drugs and crime.

"What you've got is a situation where one powerless group is set against another," says Anna Kondratas, who served as HUD's assistant secretary for community planning and development during the Bush administration. "And people need to pay careful attention to the politics of the local situation. One thing that you learn, though, is that you can't concentrate public housing or you end up with a mess. You cannot have isolation of the poor and you can't have services to the homeless set up in one particular area."

In Berkeley, however, that seems to be exactly what has occurred. The Bel Air Motel sits a mere mile from one of the nation's most esteemed public universities, the University of California at Berkeley, but its neighborhood is light years away from the university's affluence. The area is known locally as the "flatlands" — a multiethnic neighborhood in which longtime working-class residents live side by side with a new generation of young professional families who have gravitated to its simple, shingled bungalows and tree-lined streets.

But while the small avenues and side streets are inviting, the stretch of University Avenue from San Francisco Bay to the green college campus is pockmarked with a mix of run-down motels, liquor stores, fast-food joints and abandoned storefronts. It also has the highest concentration of low-income residents in the city, as well as the largest concentration of support services for drug- and alcohol-treatment programs. Indeed, one of the concerns residents raised about the Bel Air was that it sits between two liquor stores and directly across the street from a bar. In addition, argue opponents, the area already boasted another motel that was converted into low-income housing, with mixed results.

Based on census data, the opponents estimate that a six- by eight-block area of the flatlands (which contains both the Bel Air and the other converted motel) holds more than 400 units of subsidized housing, not including emergency shelters, halfway houses or housing for seniors. Moreover, Berkeley plans another 250 beds in the neighborhood, of which 79 percent would go to house the currently home-

less. According to opponents of the Bel Air project, the area contains some 80 percent of all low-income housing in the city.

Not only is the neighborhood being destroyed by the concentration, argue some residents, but the cost for the conversion is completely out of line with what it will provide. In addition, some believe that despite the city's denial, plans are in the offing to convert all of the remaining motels that dot the University Avenue area into similar housing projects.

There are those who might think that Graham, White and Deringer have cause for celebration. After all, it's not everyone who has a personal emissary from the office of Roberta Achtenberg, HUD's assistant secretary for fair housing and equal opportunity, show up at the front door bearing an olive branch. But today, though it appears the investigation is over, it is going to take much more than a statement from HUD acknowledging its wrongheadedness to make things right.

"Of course I'm relieved," says Graham, "although I never really believed that we would be sent to jail or given huge fines. But I'm also outraged. This whole issue has more to it than the simple right for people to assert their First Amendment rights to free speech. This is also about the issue of housing and the fact that our neighborhood has become a dumping ground. And even though HUD has stopped its attack on us, they are still going after the city of Berkeley. And the lingering effect is that there has been a real chill on public discourse. Nobody knows what they can say. I have a neighbor who is concerned about a proposed community-care facility, and he called the Berkeley city attorney asking what he could legally say about the project. And the city attorney called back and told him that he should consult his own lawyer.

"What we're left with is a situation where people are afraid to say anything, because they are afraid of being investigated," he adds. "So HUD has pulled back from our case. They were getting too much heat. But if we had written a different pamphlet, or said something differently, would the investigation be continuing? I truly believe that we would have been better off in court before the Justice Department. This is an extremely important issue. And our case is just one of many."

While Graham, White and Deringer no longer have the threat of $100,000 fines hanging over their heads, similar HUD investigations of private individuals, who appear only to have exercised their First Amendment right to free speech, are moving forward against residents of communities from Irving Place in Manhattan to the suburbs of Seattle.

RICHARD A. BLOOM/SABA

Achtenberg: *Pressure backfired.*

In fact, as news spread about the Berkeley case, the three found out that they were not alone. One particularly disturbing call came from a neighborhood group in Seattle that had tried to delay a project similar to the Bel Air. Group members were being pressured by HUD into signing a document in which HUD would agree to drop its investigation in exchange for promises of public silence. Under the agreement, residents who had any problems with the development would speak only to HUD officials. A member of the Seattle community group, when contacted, would confirm the essence of the agreement, but refused to speak publicly about the issue. "Unfortunately, I can't talk about this at the time," she said. "At this time no one feels really comfortable talking about things with the news media. We are all very, very tired. And people are afraid to speak out."

Arlene Harrison is the kind of New Yorker whose can-do attitude and ebullient personality makes her a natural organizer. So when it was accidentally discovered that a group calling itself Community Access was planning to buy an uncompleted building in her neighborhood and convert it into housing for the mentally ill, Harrison — with the support of her local City Council member, Antonio Pagan — moved quickly to try and halt the sale of the building by First Nationwide Bank.

Under current housing law, Community Access could have purchased the building and started renovating it without informing neighbors until it was a done deal. But because residents got wind of the plan, Harrison and other neighbors cleaved together and formed the Irving Place Community Coalition, or IPPC. Like the residents of Berkeley, they lobbied that the building not be sold for housing for the

LARRY FORD FOR INSIGHT

Only by accident *did Harrison and neighbors discover plans for a development.*

RICK KOZAK/INSIGHT

Connor: *Feds heed vindictive accusers.*

mentally ill, arguing that with 109 separate agencies, the neighborhood had the second-highest concentration of social-service facilities in all of Manhattan.

The sale of the building is still up in the air, but Harrison, the IPCC and First Nationwide Bank are the targets of a HUD investigation launched by an embittered Community Access.

"I think that the effect of this has been incredible," says Harrison. "We used to get 30 and 40 people at our meetings and now we get four or five. This has sent a chill through every block group in the country. I have worked in the area of mental health for 30 years and I had no idea that we had a social-service industry that was so political. My children both work with the homeless and I volunteer on a project for children in shelters, because that is the kind of people we are. When the government starts investigating people like me, something terrible is going on."

Harrison, upon learning of the investigations in other parts of the country, sought advice first from the ACLU and then from the American Alliance for Rights and Responsibilities, or AARR. In addition, as a result of lobbying by Harrison and Pagan, Rep. Carolyn Maloney, a New York Democrat, introduced an amendment to the Fair Housing Act that would protect the free speech of community residents. Action on the amendment probably won't be taken until after the fall election.

In addition, the AARR, which is the legal arm of the communitarian movement, and Pagan have launched a national campaign to reverse HUD and Justice Department policies that have led to investigations and suits against community groups. They also call for HUD Secretary Henry Cisneros and Attorney General Janet Reno to issue guidelines to their investigators around the country to prevent future threats to First Amendment freedoms. Finally, they want Congress to launch a General Accounting Office probe of the HUD policy on investigations.

"With one flimsy letter, these nonprofit renegades can bring down the whole weight of the federal government," says Roger L. Conner, AARR executive director. "Everybody is focused on the First Amendment part of this debate. But there is something more important at stake here: It is the attempt by nonprofit organizations to use the Fair Housing Act as a lever to manipulate a public-policy issue.

"The issue is, what are the responsibilities of the nongovernmental providers of government-paid services to their surrounding communities. If you talk to six different people you'll get six different responses. The problem with this current strategy of intimidation is that it is poisoning the well. You cannot shut off the debate."

Back in Berkeley, Graham, White and Deringer are reviewing their options in the wake of HUD's reversal. A large San Francisco law firm is interested in taking their cause (the three are deliberating whether to file a harassment lawsuit against the federal government) and they have become a symbol in what is emerging as a national debate about fair housing.

"This has been really exhausting for all of us," Graham says wearily. "In any other community but Berkeley we'd all be considered pretty politically correct. But here we've got a tyranny of rich liberals who sit up in their houses on the hill and are telling the middle class and the working class how to live their lives. And that is just not right." ●