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Recommended Citation

Robert G. Schwemm, *Compensatory Damages in Federal Fair Housing Cases*, 16 Harv. C. R.-C. L. L. Rev. 83 (1981).

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Compensatory Damages in Federal Fair Housing Cases

Notes/Citation Information

Harvard Civil Rights—Civil Liberties Law Review, Vol. 16, No. 1 (Summer 1981), 83-127

COMPENSATORY DAMAGES IN FEDERAL FAIR HOUSING CASES

*Robert G. Schwemm**

Introduction

The federal fair housing laws became effective in 1968.¹ Since then, courts have often awarded damages to victims of housing discrimination, but their decisions have provided little guidance for assessing the amount of such awards. There is a great range of awards, with some courts awarding only nominal damages of \$1 and others setting awards of over \$20,000.² Compounding the problem is the difficulty of measuring the principal element of damages claimed by most

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¹ The Fair Housing Act (Title VIII of the Civil Rights Act of 1968), 42 U.S.C. §§ 3601-3619 (1976), was enacted in 1968, the same year that the Supreme Court held that the Civil Rights Act of 1866, 42 U.S.C. §§ 1981-1982 (1976), banned private as well as public housing discrimination. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

² Among the cases that have awarded \$1 are *Marr v. Rife*, 545 F.2d 554 (6th Cir. 1976), *Fort v. White*, 530 F.2d 1113 (2d Cir. 1976), and *Johnson v. Snyder*, 470 F. Supp. 972 (N.D. Ohio 1979). See also *Warner v. Perrino*, 585 F.2d 171 (6th Cir. 1978) (\$1 verdict for plaintiff reversed for failure to satisfy statute of limitations) and *Fountila v. Carter*, 571 F.2d 487 (9th Cir. 1978) (\$1 compensatory award accompanied by substantial punitive award). The largest award in a reported case is *Parker v. Shonfeld*, 409 F. Supp. 876 (N.D. Cal. 1976), where the jury awarded \$20,000 (\$10,000 in compensatory damages and \$10,000 in punitive damages). For a list of all of the reported federal fair housing cases that have awarded compensatory damages, see Appendix A *infra*. See also *Sutton v. Bloom*, No. C 76-767 (N.D. Ohio 1978), reported in Schwelb, *Outline of Law Relating to Discrimination in Housing*, 1 EQUAL OPP. HOUS. (P-H) ¶ 2353.1 (1979) (\$63,100 award).

The reader should be aware that three important cases involving compensatory damages for housing discrimination were decided too recently for inclusion in the analysis of this Article. See *Miller v. Apartments and Homes of N.J., Inc.*, 646 F.2d 101 (3d Cir. 1981) (\$11,252); *Phiffer v. Proud Parrot Motor Hotel, Inc.*, 648 F.2d 548 (9th Cir. 1980) (\$8,500); *Phillips v. Butler*, No. 80-C-3823 (N.D. Ill. July 22, 1981) (\$52,675).

plaintiffs in fair housing cases, noneconomic emotional harm or other forms of intangible injury.

Rarely is the basis for the amount of the court's award satisfactorily explained in the opinion. Moreover, the amount awarded often bears little relationship to any evidence of actual injury to a particular plaintiff in a given case. In one recent decision, for example, the court set its award not by reference to the facts of the case before it, but by noting the range of a number of other fair housing awards and awarding an amount somewhere in the middle.³ Of course, when the case is decided by a jury,⁴ the jury is not required to make findings or to explain its verdict. This uncertain situation has created a substantial problem for courts, for litigants, and for the proper enforcement of the federal fair housing laws, particularly as higher awards have been made in recent years.⁵ The problem of evaluating intangible injuries has also become important in other civil rights contexts,⁶ such as suits for employment discrimination⁷ and actions based on constitutional

³ *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 72 (D. Md. 1978)(\$1,000 in compensatory damages for emotional distress awarded because the court's "review of the pertinent authorities indicates that recent awards of compensatory damages for humiliation and mental anguish in cases of this sort have ranged from \$192 to \$2,500.").

⁴ In *Curtis v. Loether*, 415 U.S. 189 (1974), the Supreme Court held that a defendant was entitled to a jury trial in a Title VIII suit seeking damages.

⁵ See, e.g., *Sutton v. Bloom*, No. C 76-767 (N.D. Ohio 1978), reported in Schwelb, *Outline of Law Relating to Discrimination in Housing*, 1 EQUAL OPP. HOUS. (P-H) ¶ 2353.1 (1979) (\$63,100 award).

⁶ See, e.g., *Runyon v. McCrary*, 427 U.S. 160, 166 n.4 (1976) (action under 42 U.S.C. § 1981 challenging exclusion of black children from private schools; Supreme Court upheld awards ranging from \$500 to \$2,000 to four of the plaintiffs for their "embarrassment, humiliation and mental anguish"); *Wiggs v. Courshon*, 355 F. Supp. 206 (S.D. Fla. 1973), *appeal dismissed*, 485 F.2d 1281 (5th Cir. 1973)(diversity action based on state tort of "gross insult" to redress injury resulting from racial insults by restaurant waitress; trial judge allowed only \$2,500 of jury's \$25,000 award, which had consisted of \$6,000 in compensatory and \$19,000 in punitive damages).

⁷ The Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (1976), authorizes reinstatement, back pay, liquidated damages, and other relief, but the courts have split over whether it permits damages for intangible injuries such as mental anguish. Compare *Vazquez v. Eastern Air Lines, Inc.*, 579 F.2d 107 (1st Cir. 1978); *Dean v. American Security Ins. Co.*, 559 F.2d 1036, 1038-39 (5th Cir. 1977), *cert. denied*, 434 U.S. 1056 (1978) and *Rogers v. Exxon Research & Eng'r Co.*, 550 F.2d 834, 839-42 (3rd Cir. 1977), *cert. denied*, 434 U.S. 1022 (1978)(holding no such damages authorized) with *Buchholz v. Symons Mfg. Co.*, 445 F. Supp 706, 713-14 (E.D.

violations by governmental officials.⁸ The solutions suggested in the fair housing field may well have an influence on the judicial response to damage claims in these other types of cases.

This Article is an effort to address this problem and to determine if some systematic basis for evaluating compensatory awards in fair housing cases is possible. The legal basis for compensatory damage awards in housing discrimination cases is reviewed in Part I. That Part analyzes the provisions of federal fair housing laws and the construc-

Wis. 1978)(awarding \$7,500 for "pain and suffering"); *Coates v. National Cash Register Co.*, 433 F. Supp. 655, 663-65 (W.D. Va. 1977)(relying on advisory jury to award \$15,000 for "pain and suffering" to each of two plaintiffs, who were also awarded substantial other damages and reinstatement); *Bertrand v. Orkin Exterminating Co.*, 432 F. Supp. 952 (N.D. Ill. 1977); *Combes v. Griffin Television, Inc.*, 421 F. Supp. 841, 847 (W.D. Okla. 1976)(awarding \$500 for mental suffering and physical problems in addition to substantial liquidated damages and back pay). *See generally* Comment, *Relief Under the Age Discrimination in Employment Act of 1967*, 31 BAYLOR L. REV. 217 (1979); Comment, *Age Discrimination: Monetary Damages Under the Federal Age Discrimination in Employment Act*, 58 NEB. L. REV. 214 (1979).

A similar dispute over the availability of "pain and suffering" damages exists under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-16 (1976), though most courts have held that such damages are not authorized. *See, e.g., DeGrace v. Rumsfeld*, 614 F.2d 796, 808 (1st Cir. 1980); *Harrington v. Vandalia-Butler Bd. of Educ.*, 585 F.2d 192, 194-97 (6th Cir. 1978), *cert. denied*, 441 U.S. 932 (1979); *Van Hoomissen v. Xerox Corp.*, 368 F. Supp. 829, 836-38 (N.D. Cal. 1973). *But see Humphrey v. Southwestern Cement Co.*, 369 F. Supp. 832, 835 (W.D. Tex. 1973), *rev'd on other grounds*, 488 F.2d 691 (5th Cir. 1974)(\$1,200 awarded for emotional distress).

General compensatory damages are available in employment discrimination cases brought under 42 U.S.C. § 1981 (1976), part of the Civil Rights Act of 1866. *See, e.g., Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 460 (1975); *Garner v. Giarrusso*, 571 F.2d 1330, 1339 (5th Cir. 1978)(affirming \$5,000 award for suffering and humiliation).

⁸ Damage suits may be brought against state and local officials for violation of constitutional rights under the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1976). *See, e.g., Owen v. City of Independence*, 445 U.S. 622 (1980); *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978). Federal officers may be sued for damages directly under the Constitution. *See, e.g., Carlson v. Green*, 446 U.S. 14 (1980)(eighth amendment); *Davis v. Passman*, 442 U.S. 228 (1979)(fifth amendment equal protection component); *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)(fourth amendment). *See generally* Comment, *New Damage Remedies for Violations of Constitutional Rights*, 31 BAYLOR L. REV. 68 (1979); Note, *"Damages or Nothing—The Efficacy of the Bivens—Type Remedy*, 64 CORNELL L. REV. 667 (1979).

tion of those provisions by the courts, as well as the legal arguments for application of the doctrine of presumed damages to housing cases. Part II surveys those factors which appear to have some influence on the amount of damages awarded. Based on a review of forty-six federal housing discrimination cases,⁹ that Part examines the relationship between the size of the award and such factors as the type of housing involved, the family and employment status of the plaintiff, and the wealth of the defendant. This analysis does not lead to a set formula that can predict award amounts, but it does suggest some elements that should be considered in determining the size of a fair housing award, and it gives some sense of what the approximate value of a given case might be.

I. The Laws Governing Compensatory Damages in Federal Fair Housing Cases

A. Damages Authorized by the Federal Fair Housing Laws

Racial discrimination in housing is prohibited by two federal laws: Title VIII of the Civil Rights Act of 1968,¹⁰ also known as the Fair Housing Act, and the Civil Rights Act of 1866.¹¹ The Fair Housing Act specifically authorizes a court to award, among other forms of relief, "actual damages and not more than \$1,000 punitive damages."¹² The Act covers all types of housing, public and private, with

⁹ See Appendix A *infra*. This analysis is based on reported decisions of the federal courts. Other significant sources of fair housing damage law exist, however, such as unreported decisions, settlements, and state cases involving the enforcement of both federal and state fair housing laws. Money settlements in federal cases have sometimes been substantial. See, e.g., *Armstrong v. Hertz Homes, Inc.*, EQUAL OPP. HOUS. (P-H) ¶ 18,026 (D.N.J. 1979) (\$30,000); *Dyer v. Schecter*, EQUAL OPP. HOUS. (P-H) ¶ 18,021 (N.D. Ohio 1978) (\$41,000).

¹⁰ 42 U.S.C. §§ 3601-3619 (1976). Title VIII prohibits housing discrimination on the basis of color, religion, sex, and national origin, as well as race, see *id.* §§ 3604-3606, and some of the cases discussed in this Article involve these other forms of discrimination. See, e.g., *Morehead v. Lewis*, 432 F. Supp. 674 (N.D. Ill. 1977) (sex), *United States v. Dittmar Co.*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,730 (E.D. Va. 1975) (national origin). Since most of the reported cases concern racial discrimination, however, that is the Article's primary focus, although the same principles would apply to other forms of housing discrimination as well.

¹¹ 42 U.S.C. §§ 1982 (1976).

¹² 42 U.S.C. § 3612(c). A housing discrimination complaint under Title VIII

limited exceptions.¹³ The 1866 Civil Rights Act (section 1982) applies to all types of property,¹⁴ but it is silent as to relief. Nevertheless, one year after the Supreme Court held that the Civil Rights Act bars all racial discrimination in the sale or rental of property,¹⁵ the Court decided in *Sullivan v. Little Hunting Park, Inc.*¹⁶ that “compensatory damages” are recoverable for a violation of section 1982 because “[t]he existence of a statutory right implies the existence of all necessary and appropriate remedies.”¹⁷

Courts have occasionally used Title VIII’s \$1,000 limit on punitive damages as a guide for the award of punitive damages in section 1982 cases, although awards exceeding that amount are allowed under that statute.¹⁸ Thus, both compensatory (or actual)¹⁹ damages and punitive damages are available under both laws. The two statutes differ in the extent to which they allow recovery of court costs and attorney’s fees,²⁰ and in the transactions that they cover.²¹

may be brought either directly in court pursuant to 42 U.S.C. § 3612 or after an initial administrative complaint to the Department of Housing and Urban Development (HUD) pursuant to 42 U.S.C. § 3610. See generally *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). A court hearing a § 3610 claim may only provide injunctive and other equitable relief. See 42 U.S.C. § 3610(d); *Brown v. Ballas*, 331 F. Supp. 1033, 1036 (N.D. Tex. 1971). Title VIII authorizes actual and punitive damages only in a direct action under § 3612.

¹³ 42 U.S.C. § 3603 (1976). The Act does not apply to the sale or rental of single-family dwellings by their owner, or the sale or rental of apartments in small owner-occupied buildings. *Id.* § 3603(b).

¹⁴ 42 U.S.C. § 1982 (1976). See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968).

¹⁵ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968).

¹⁶ 396 U.S. 229 (1969).

¹⁷ *Id.* at 239.

¹⁸ See, e.g., *Dillon v. AFBIC Development Corp.*, 597 F.2d 556, 563–564 (5th Cir. 1979); *Parker v. Shonfeld*, 409 F. Supp. 876 (N.D. Cal. 1976); *Wright v. Kaine Realty*, 352 F. Supp. 222 (N.D. Ill. 1972).

¹⁹ *Curtis v. Loether*, 415 U.S. 189, 190 & n.1 (1974) (“compensatory” and “actual” used interchangeably).

²⁰ Attorney’s fees may be awarded under Title VIII only to prevailing plaintiffs who are “not financially able to assume” them, 42 U.S.C. § 3612(c)(1976), but this financial restriction does not apply to fee awards in §1982 actions, which are governed by the Civil Rights Attorney’s Fees Awards Act of 1976, 42 U.S.C. § 1988 (1976). See, e.g., *Dillon v. AFBIC Development Corp.*, 597 F.2d 556 (5th Cir. 1979); *Hughes v. Repko*, 578 F.2d 483 (3d Cir. 1978).

²¹ Unlike Title VIII, 42 U.S.C. § 3604–3606 (1976), § 1982 does not prohibit dis-

Finally, although claims for compensatory damages under Title VIII and section 1982 can be brought in either state or federal court,²² most cases based on the federal fair housing laws have been brought in the latter forum. In any event, the court must apply federal law. As the *Sullivan* opinion noted, "damages for deprivation of a federal right are governed by federal standards."²³ Although both federal and common law rules on damages may be used, depending which better serves the policies expressed in the federal statutes, "[t]he rule on damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is impaired."²⁴

B. Federal Case Law

The Supreme Court has yet to review a damage award in a fair housing case. The Court's three Title VIII decisions have dealt with procedural issues,²⁵ and, apart from *Sullivan v. Little Hunting Park, Inc.*,²⁶ its modern section 1982 cases have been solely concerned with

crimination based on religion, sex, or national origin, *see, e.g., Lee v. Minnock*, 417 F. Supp. 436, 439 (W.D. Pa. 1976), nor does it specifically ban discriminatory advertising or financial arrangements. *See Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1036 n.9 (2d Cir. 1979) (§ 1982 protects only "citizens," while Title VIII protects "persons"). In some respects, however, §1982 is broader than Title VIII, because it is not subject to the exemptions that were written into Title VIII, *see, e.g., Morris v. Cizek*, 503 F.2d 1303 (7th Cir. 1974), and because it covers all real and personal property, not just housing. *See Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 236-37 (1969).

²² Title VIII specifically provides for an action in state court, 42 U.S.C. § 3612(a)(1976). *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969) exemplifies § 1982 actions originating in state courts.

²³ *Id.* at 239.

²⁴ *Id.* at 240. Cf course, state courts are free to apply their own damage standards to claims based on state or local fair housing laws.

²⁵ *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979) (standing); *Curtis v. Loether*, 415 U.S. 189 (1974)(right to jury trial); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972)(standing).

²⁶ 396 U.S. 229 (1969). *Sullivan* held that damages could be awarded to a black homeseeker and his would-be landlord in their § 1982 action against a community organization that sought to block their transaction. The opinion neither describes what types of damages were available nor how these damages should be measured. Justice Harlan's dissent specifically criticized "the majority's failure to provide any guidance as to the legal standards that should govern *Sullivan's* right to recovery on remand." *Id.* at 252.

defining the substantive scope of that statute.²⁷ The closest the Court has come to providing any guidance on this subject is the description of the nature of a fair housing violation that appears in *Curtis v. Loether*,²⁸ a unanimous decision holding that a defendant was entitled to a jury trial in a Title VIII case where damages were sought. Justice Marshall's opinion stated that a damage action under Title VIII "sounds basically in tort—the statute merely defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach."²⁹ The Court also suggested that an action to redress racial discrimination in housing might be likened to an action for defamation³⁰ or some other dignitary tort.³¹ Professor Dobbs has defined dignitary torts as

injuries to the personality. This means that, though economic or physical loss may be associated with the injury, the primary or usual concern is not economic at all, but vindication of an intangible right.

. . . .

. . . in a great many of these cases, the only harm is the affront to the plaintiff's dignity, the damage to his self-image, and the resulting mental distress.³²

The Court apparently believes that a fair housing suit under section 1982 would also be properly characterized as a tort action.³³ The

²⁷ *Tillman v. Wheaton-Haven Recreation Ass'n*, 410 U.S. 431 (1973); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968); see also *Warth v. Seldin*, 422 U.S. 490 (1975).

²⁸ 415 U.S. 189 (1974).

²⁹ *Id.* at 195. According to *Curtis*, the trial court's authority to compensate a plaintiff for the injury caused by a Title VIII violation is not discretionary. "[I]f a plaintiff proves unlawful discrimination and actual damages, he is entitled to judgment for that amount." *Id.* at 197.

³⁰ *Id.* at 195 n.10.

³¹ *Id.*, citing C. GREGORY & H. KALVEN, *CASES AND MATERIALS ON TORTS* 961 (2d ed. 1969).

³² D. DOBBS, *HANDBOOK ON THE LAW OF REMEDIES* 509-10 (1973).

³³ *Cf. Runyon v. McCrary*, 427 U.S. 160 (1976), in which the Supreme Court held that 42 U.S.C. § 1981 prohibits private schools from denying admission to black students because of their race. In resolving a statute of limitations issue, the Court approved the application of the limitations period for personal injury actions, noting

lesson seems to be that, whatever the statutory basis, a housing discrimination claim sounds in tort³⁴ and that compensation principles applicable to tort law generally and to dignitary torts in particular should govern damage awards in fair housing cases.³⁵

There are difficult problems, however, in identifying what injuries are caused by a fair housing violation and in determining an appropriate monetary award for them. These questions have not been addressed by the Supreme Court.

There are three elements to the injury resulting from a dignitary tort: (1) economic loss; (2) emotional distress and other harm to the plaintiff's personality; and (3) loss of rights. Each of these three elements has been judicially recognized as an appropriate basis for an award of compensatory damages to a victim of housing discrimination. For example, in *Steele v. Title Realty Company*,³⁶ the Tenth Circuit affirmed a \$1,000 compensatory damage award in a Title VIII case that included elements of economic loss and emotional distress. Steele, a black university teacher, had been discriminated against in his efforts to secure an apartment near his new job in Salt Lake City, Utah. After suit was filed, Steele was permitted to inspect the apartment, but he decided not to rent it. The district court then held a hearing on damages and awarded him \$13.25 in telephone expenses, \$125.00 in moving and storage expenses, and \$861.75 for emotional distress and humiliation.³⁷ With respect to the economic losses, the court of appeals noted that the telephone expense was stipulated and that the moving and storage expenses were "necessitated by the

that the plaintiffs claimed "damage to their persons" and that therefore the period for "causes of action involving torts against persons" was appropriate. *Id.* at 182. Sections 1981 and 1982 are normally construed in a similar manner, since both were enacted as part of the Civil Rights Act of 1866. *See* 427 U.S. at 170-74; *id.* at 190 (Stevens, J., concurring) (to give §1981 and §1982 a fundamentally different construction "would be most incongruous").

³⁴ A large number of lower courts have treated fair housing cases as tort actions. *See, e.g.*, *Dillon v. AFBIC Development Corp.*, 597 F.2d 556, 562 (5th Cir. 1979); *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 901-02 (3d Cir. 1977); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 447 F. Supp. 838, 842 (E.D. N.Y. 1978).

³⁵ *Cf. Carey v. Piphus*, 435 U.S. 247, 252-66 (1978) (tort principles govern damage recovery under 42 U.S.C. § 1983 for unlawful school discipline).

³⁶ 478 F.2d 380 (10th Cir. 1973).

³⁷ *Id.* at 383.

unavailability of the property in Salt Lake City” when Steele needed it.³⁸ The court also affirmed the award for emotional distress, although it was clear that the award, conveniently yielding a total recovery of \$1,000, was arbitrary: “Damages in cases of this kind are not limited to out-of-pocket losses but may include an award for emotional distress and humiliation.”³⁹ Although the court noted that “it is difficult to measure what amount is sufficient ‘to ease one’s feelings’ for injuries of this nature,” it held that the district court’s award of \$861.75 was not unreasonable.⁴⁰

Awards in a number of fair housing cases have been based solely on the element of the plaintiff’s emotional distress.⁴¹ Perhaps the most influential of these decisions is *Seaton v. Sky Realty Company*,⁴² in which a black couple, discriminated against in connection with their

³⁸ *Id.* at 383–84. Examples of other reported fair housing cases that have awarded compensatory damages for economic loss include *Bunn v. Central Realty of La.*, 592 F.2d 891, 892 (5th Cir. 1979) (per curiam) (\$500 award primarily for “inconvenience suffered in finding another apartment”); *Crumble v. Blumthal*, 549 F.2d 462 (7th Cir. 1977) (\$322); *Jeanty v. McKey & Poague, Inc.*, 496 F.2d 1119 (7th Cir. 1974) (\$100); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 71 (D. Md. 1978) (\$88 in rent differential). See generally Lichtman, *The Cost of Housing Discrimination: Assessment of Damages and Attorney’s Fees for Violations of the Civil Rights Act of 1866 and the Fair Housing Act of 1968*, 10 SUFFOLK U. L. REV. 963, 968–70 (1976). A number of cases have rejected the plaintiff’s claim for economic losses, usually because the losses were not proved with sufficient clarity or because they were not shown to have been caused by the defendant’s discrimination. See, e.g., *Marr v. Rife*, 503 F.2d 735, 742–43 (6th Cir. 1974), *aff’d after remand*, 545 F.2d 554 (6th Cir. 1976); *Bradley v. John M. Brabham Agency, Inc.*, 463 F. Supp. 27, 32 (D.S.C. 1978); *Lamb v. Sallee*, 417 F. Supp. 282, 286–87 (E.D. Ky. 1976).

³⁹ 478 F.2d at 384. Examples of other fair housing cases that have awarded compensatory damages for humiliation, embarrassment, or other forms of emotional distress are *Bradley v. John M. Brabham Agency, Inc.*, 463 F. Supp. 27, 32 (D.S.C. 1978) (\$2,000 for emotional distress); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 72 (D. Md. 1978) (\$1,000 for emotional distress); *Stevens v. Dobs, Inc.*, 373 F. Supp. 618, 623 (E.D. N.C. 1974) (\$1,500 primarily for mental anguish, humiliation, and embarrassment).

⁴⁰ 478 F.2d at 384.

⁴¹ See, e.g., *Seaton v. Sky Realty Co.*, 491 F.2d 634 (7th Cir. 1974) (\$500 for embarrassment and humiliation); *Wright v. Owen*, 468 F. Supp. 1115, 1118 (E.D. Mo. 1979) (\$100 for distress and humiliation); *Harrison v. Otto G. Heinzerth Mortgage Co.*, 430 F. Supp. 893, 897–98 (N.D. Ohio 1977) (\$5,000 for plaintiff “upset and troubled” by a “very painful experience”).

⁴² 491 F.2d 634 (7th Cir. 1974).

efforts to inspect a home in Chicago, was awarded \$500 in compensatory damages and \$3,000 in punitive damages. In their appeal, the defendants argued that the compensatory award was improper because there had been no evidence of economic loss nor any medical evidence of mental or emotional impairment. In rejecting this argument, the Seventh Circuit determined "that an award of compensatory damages under § 1982 or 'actual damages' under § 3612 is appropriate for humiliation caused by the type of violations of rights established here,"⁴³ and that [h]umiliation can be inferred from the circumstances as well as established by the testimony."⁴⁴ The court further found that "\$500 was well within the range of reasonable amounts" in this case.⁴⁵ In two subsequent fair housing decisions, the Seventh Circuit relied on *Seaton* to hold that compensatory awards which were limited to the plaintiff's economic losses or failed to include an amount for the element of emotional distress were inadequate.⁴⁶

Loss of rights has also been recognized as an independent element of damages in fair housing cases. In an early appellate decision, the Seventh Circuit found that the defendants had discriminated against a black apartment applicant and directed the district court to compensate the plaintiff "for the loss of her civil rights and any mental anguish suffered by her."⁴⁷ Therefore, even when no mental anguish, emotional distress, or economic loss is shown, damages may be awarded simply for loss of rights.⁴⁸ For example, in *Hodge v. Seiler*,⁴⁹ the district court refused to award Mrs. Hodge damages because she had testified that she was not upset by the defendants' discrimination.

⁴³ *Id.* at 636.

⁴⁴ *Id. Accord.* *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977). *Compare* *Fort v. White*, 530 F.2d 1113, 1116 (2d Cir. 1976)(denial of compensatory damages for humiliation affirmed where there was "no evidentiary basis which would allow the trier of fact to estimate or assess such damages").

⁴⁵ 491 F.2d at 638.

⁴⁶ *Crumble v. Blumthal*, 549 F.2d 462, 467 (7th Cir. 1977); *Jeanty v. McKey & Poague, Inc.*, 496 F.2d 1119, 1121 (7th Cir. 1974). *Accord*, *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977); *Smith v. Anchor Bldg. Corp.*, 536 F.2d 231, 236 (8th Cir. 1976).

⁴⁷ *Smith v. Scl D. Adler Realty Co.*, 436 F.2d 344, 351 (7th Cir. 1971).

⁴⁸ *See, e.g., Lane v. Wilson*, 307 U.S. 268 (1939)(upholding damage claim based on deprivation of plaintiff's right to vote).

⁴⁹ 558 F.2d 284 (5th Cir. 1977).

The Fifth Circuit agreed that this testimony precluded an award for emotional distress, but it held that the plaintiff was entitled to at least nominal damages for her loss of rights, because "the deprivation of a constitutional right carries with it damages distinct from those which are embodied in the concept of humiliation and which deserve compensation."⁵⁰

Damages for loss of rights are not always nominal.⁵¹ In *Bradley v. John M. Brabham Agency, Inc.*,⁵² a black couple was awarded \$5,000 for loss of civil rights as well as \$2,000 for emotional distress for the discrimination they suffered in trying to inspect a house. The \$7,000 award of compensatory damages in *Bradley*, among the highest compensatory awards to date in a fair housing case, was made even though the plaintiffs failed to prove that they suffered any economic loss as a result of the defendant's discrimination.

C. *The Problem of Evaluating Intangible Injuries*

The difficulty of assessing housing discrimination damages varies with each of these three elements. The easiest element to calculate is economic loss. Such losses are usually not significant; a typical case is *Steele v. Title Realty Company*,⁵³ where economic losses caused by the discrimination were limited to plaintiff's telephone calls, storage costs, and other expenses related to finding other housing. These claims rarely amount to more than a few hundred dollars.⁵⁴ Occasionally, however, changes in interest rates or in the cost of housing can render damages for economic loss significant.⁵⁵ Moreover, the question of

⁵⁰ *Id.* at 287.

⁵¹ "[T]he courts tend to presume some harm of more than nominal nature in the dignitary tort cases." D. DOBBS, *supra* note 32, at 531. *But cf.* *Carey v. Phipus*, 435 U.S. 247, 266-67 (1978) (in a § 1983 suit involving an award of damages for a deprivation of procedural due process, the Court held that the plaintiffs will be entitled to recover nominal damages not to exceed one dollar").

⁵² 463 F. Supp. 27 (D.S.C. 1978).

⁵³ 478 F.2d 380, 383 (10th Cir. 1973).

⁵⁴ See cases cited in note 38 *supra*.

⁵⁵ See, e.g., *Moore v. Townsend*, 577 F.2d 424 (7th Cir. 1978) (\$9,685.46 in increased interest costs and lost tax benefits awarded under a supersedeas bond given by defendants to stay the execution of a judgment of specific performance in favor of plaintiffs).

whether an expense incurred by the plaintiff was in fact caused by the defendant's discrimination or is a proper subject for compensation at all has often been hotly contested.⁵⁶

Calculating damages for emotional injury and loss of rights is much more difficult. Evaluating the loss of rights element is particularly complicated because the concept is not quantifiable and because only a few decisions have actually included a separate award for this injury. More cases have involved awards for emotional distress, but they have not yielded any definitive guides for future awards. It is clear that as a matter of law, both juries and trial judges have a great deal of discretion in setting the amount of the compensatory damage award.⁵⁷ Indeed, while a number of punitive damage awards in fair housing cases have been set aside,⁵⁸ no compensatory award has ever been overturned. But to say that the factfinder has broad discretion in determining the amount of the award does not identify the factors which are or should be taken into account in exercising that discretion. After more than a decade of fair housing litigation, this subject is still little more than a guessing game.

D. The Case for Presumed Damages in Fair Housing Litigation

1. *Carey v. Piphus*

*Carey v. Piphus*⁵⁹ involved section 1983 suits by two students who claimed that their fourteenth amendment rights to procedural due

⁵⁶ See, e.g., *Hodge v. Seiler*, 558 F.2d 284, 287 (5th Cir. 1977); *Steele v. Title Realty Co.*, 478 F.2d 380, 383-84 (10th Cir. 1973); *Bradley v. John M. Brabham Agency, Inc.*, 463 F. Supp. 27, 32 (D.S.C. 1978).

⁵⁷ See, e.g., *Zarcone v. Perry*, 572 F.2d 52, 56 (2d Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979)(dictum)(standard for setting aside a compensatory award on appeal is "whether the award is so high as to shock the judicial conscience and constitute a denial of justice."); *Marr v. Rife*, 545 F.2d 544, 555 (6th Cir. 1976)(\$1 award affirmed as "not clearly erroneous"); *Seaton v. Sky Realty Co.*, 491 F.2d 634, 638 (7th Cir. 1974)(\$500 award affirmed as "well within the range of reasonable amounts"); *Steele v. Title Realty Co.*, 478 F.2d 380, 384 (10th Cir. 1973)(\$1,000 award affirmed as "not unreasonable"); *Cf. Bills v. Hodges*, 628 F.2d 844, 846 (4th Cir. 1980) (trial court's decision not to award compensatory damages "is largely a question of fact finding" and will be upheld unless "clearly erroneous").

⁵⁸ See, e.g., *Foutila v. Carter*, 571 F.2d 487, 495 (9th Cir. 1978); *Steele v. Title Realty Co.*, 478 F.2d 380, 385 (10th Cir. 1973).

⁵⁹ 435 U.S. 247 (1978).

process were violated when they were suspended from their Chicago public school without a hearing.⁶⁰ The students sought declaratory and injunctive relief and damages, and as a result of preliminary injunction proceedings, each was readmitted to school within a few days of his suspension. Holding that they had been denied procedural due process, the trial court stated the students were entitled to declaratory relief and to have the suspensions expunged from their school records, but that no damages could be awarded because “[p]laintiffs put no evidence in the record to quantify their damages and the record is completely devoid of any evidence which could even form the basis of a speculative inference measuring the extent of their injuries.”⁶¹ The Seventh Circuit reversed on the damages issue, holding that the students could recover general damages “for the injury which is ‘inherent in the nature of the wrong’ ” caused by a denial of procedural due process.⁶² The appeals court held general damages could be recovered without proof of mental distress or any other individualized injury and ordered that the damage award should be “neither so small as to trivialize the right nor so large as to provide a windfall.”⁶³ In addition, if the suspensions were not shown to be for a just cause, the students would also be entitled to special damages, to be based on whatever mental distress or other particularized injury they could show they suffered as a result of their suspensions.⁶⁴

The Supreme Court reversed. Without dissent⁶⁵ it rejected the doctrine of presumed damages for plaintiffs who had been

⁶⁰ One of the plaintiffs in *Carey* was suspended for 20 days for violating a rule against smoking marijuana on school property, and the other was suspended for 20 days for violating a rule prohibiting male students from wearing earrings to class. 435 U.S. at 249–50.

⁶¹ Petition for Certiorari, *Carey v. Phipus*, 435 U.S. 247 (1978), at A-14 (reprinting district court’s unreported decision).

⁶² 545 F.2d 30, 31 (7th Cir. 1976), *rev’d and remanded*, 435 U.S. 247 (1978) (quoting *Hostrop v. Board of Junior College Dist. No. 515*, 523 F.2d 569 (7th Cir. 1975), *cert. denied*, 425 U.S. 963 (1976)).

⁶³ *Id.* at 32. In support of this proposition, the Seventh Circuit cited three decisions, one of which was *Seaton v. Sky Realty Co.*, 491 F.2d 634 (7th Cir. 1974), a fair housing case in which the plaintiffs recovered \$500 in compensatory damages without a showing of financial injury. 545 F.2d at 32 n.3.

⁶⁴ 545 F.2d at 31–32 (citing *Hostrop v. Board of Junior College Dist. No. 515*, 523 F.2d 569 (7th Cir. 1975), *cert. denied*, 425 U.S. 963 (1976)).

⁶⁵ 435 U.S. 247 (1978). Justice Marshall concurred in the result, and Justice Blackmun took no part in the consideration or decision of the case. *Id.* at 267.

deprived of procedural due process;⁶⁶ plaintiffs could not recover damages based simply on the "inherent . . . nature of the wrong" done to them.⁶⁷ According to Justice Powell's opinion, that wrong might well cause mental and emotional distress, but "such injury cannot be presumed to occur, and . . . plaintiffs at least should be put to their proof on th[is] issue, as plaintiffs are in most tort actions."⁶⁸ In addition to provable compensatory damages, the *Carey* Court left open the possibility that punitive damages might be awarded "in a proper case under § 1983"⁶⁹ and then held that nominal damages "not to exceed one dollar" should be awarded, because the right to procedural due process is "absolute" and "because of the importance to organized society that procedural due process be observed."⁷⁰

According to *Carey*, whether tort law principles should fully control a section 1983 case depends upon the extent to which the interests protected by the particular constitutional right involved parallel an analogous branch of the common law of torts.⁷¹ If the parallel is a close one, the tort rules may be applied directly to a section 1983 action. If, on the other hand, no body of tort law is sufficiently analogous to adequately protect the constitutional interests involved in a section 1983 case, the resolution of the damage issue "will be the more difficult one of adapting common-law rules of damages to provide fair compensation for injuries caused by the deprivation of a constitutional right."⁷²

Applying these principles to the procedural due process claims in *Carey*, the Supreme Court held that the doctrine of presumed damages was inappropriate. The Court noted that tort law did not generally permit recovery of compensatory damages without evidence of actual injury. The doctrine of presumed damages was applicable only to certain torts, like defamation *per se*, where serious injury to the plaintiff's

⁶⁶ *Id.* at 260-263.

⁶⁷ *Id.* at 260-51.

⁶⁸ *Id.* at 262.

⁶⁹ *Id.* at 257 n.11. Punitive damages were not to be awarded to the plaintiffs in *Carey*, however, because the trial court had found that the defendants had not acted "with malicious intention to deprive [plaintiffs] of their rights or to do them other injury. . . ." *Id.*

⁷⁰ *Id.* at 266-67.

⁷¹ *Id.* at 258.

⁷² *Id.*

reputation was “virtually certain” and the type of injury involved was “extremely difficult to prove.”⁷³ These two elements, the Court held, were not present in procedural due process cases. Every departure from procedural due process was not likely to cause mental or emotional distress, and when distress did result, a plaintiff could be expected to produce evidence of it with no particular difficulty. Thus, the Supreme Court held that in procedural due process cases, “neither the likelihood of such injury nor the difficulty of proving it is so great as to justify awarding compensatory damages without proof that such injury actually was caused.”⁷⁴ The Court believed the issue of damages in a procedural due process case could not be resolved by reference to damages decisions in cases where different constitutional or statutory rights were involved. The damage issue in a given case depends upon “the nature of the interests protected by the particular constitutional right in question.”⁷⁵ The *Carey* opinion made clear that “the elements and prerequisites for recovery of damages appropriate to compensate injuries caused by the deprivation of one constitutional right are not necessarily appropriate to compensate injuries caused by the deprivation of another.”⁷⁶

2. *The Carey Principles Applied to Fair Housing Cases*

a. *The Interests Protected by the Fair Housing Laws*

At least four separate types of interests are protected by Title VIII and section 1982. The first is the interest of the individual black home-seeker in buying or renting the home of his choice limited only by the financial means available to him. Essentially, this is the black consumer’s interest in being able to obtain housing on the same terms as white consumers. The best description of this interest is the Supreme Court’s

⁷³ *Id.* at 262.

⁷⁴ *Id.* at 264.

⁷⁵ *Id.* at 265.

⁷⁶ *Id.* at 264–65. Commentators have generally refused to read *Carey* to foreclose presumed damages for deprivations of anything but procedural due process rights. See, e.g., Love, *Damages: A Remedy for the Violation of Constitutional Rights*, 67 CALIF. L. REV. 1242, 1266 (1979); Note, *Damage Awards for Constitutional Torts: A Reconsideration After Carey v. Phipps*, 93 HARV. L. REV. 966, 971–74 (1980) [hereinafter cited as Note, *Damage Awards*].

opinion in *Jones v. Alfred H. Mayer Co.*,⁷⁷ which noted that racial discrimination makes people's "ability to buy property turn on the color of their skin."⁷⁸ According to *Jones*, Congress responded to this problem by enacting section 1982 "to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man."⁷⁹

Of course, the right to buy or rent a home, free from racial discrimination, carries with it the opportunity to find new employment, to enroll one's children in different schools, and many other advantages. Indeed, the *Jones* opinion specifically recognized that the freedom promised black persons by section 1982 was the "freedom to 'go and come at pleasure' and to 'buy and sell when they please.'"⁸⁰ Important as these additional opportunities are, however, they are all derived from the consumer's basic interest in equal spending power that Title VIII and section 1982 protect.⁸¹

The second interest is protection from the feeling of inferiority—the "stigmatic" injury—resulting from racial discrimination.⁸² A victim of housing discrimination not only is denied a particular house or apartment, but he suffers that denial because of his race. This is the type of injury the Court had in mind in *Curtis v. Loether*, when it described a Title VIII action by a black plaintiff as a dignitary tort and likened it to an action for defamation.⁸³

Two other groups of people also have interests that, while related to the black homeseeker's interests, have been separately recognized as

⁷⁷ 392 U.S. 409 (1968).

⁷⁸ *Id.* at 443.

⁷⁹ *Id.*

⁸⁰ *Id.* (footnotes omitted).

⁸¹ The black homeseeker's interest in equal spending power is shared directly by his or her spouse, their children, and other family members (regardless of their race). See, e.g., *Pughsley v. 3750 Lake Shore Drive Coop. Bldg.*, 463 F.2d 1055 (7th Cir. 1972)(suit by white couple allegedly denied housing because they had a black child living with them); *Lamb v. Sallee*, 417 F. Supp. 282 (E.D. Ky 1976)(housing suit by unmarried interracial couple).

⁸² See generally *Palmer v. Thompson*, 403 U.S. 217, 266–68 (1971)(White, J., dissenting); *Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954); Brest, *Palmer v. Thompson: An Approach to the Problem of Unconstitutional Legislative Motive*, 1971 SUP. CT. REV. 95, 116 n. 110 (1971); Heyman, *The Chief Justice, Racial Segregation, and the Friendly Critics*, 49 CALIF. L. REV. 104, 113–15 (1961).

⁸³ 415 U.S. 189, 195 n.10 (1974).

specially protected by the federal fair housing laws. One group is made up of those housing suppliers who would sell or rent to black home-seekers. An example of this group is the white lessor in *Sullivan v. Little Hunting Park, Inc.*,⁸⁴ who was held to have a cause of action under section 1982 against third parties who tried to block the rental of his home to a black.⁸⁵ The interest of these housing suppliers is access to a discrimination-free market for the sale or rental of their properties.⁸⁶

Residents of a community whose racial composition has been kept segregated as a result of the defendant's discrimination hold the fourth interest. In both *Gladstone, Realtors v. Village of Bellwood*⁸⁷ and *Trafficante v. Metropolitan Life Insurance Co.*,⁸⁸ the Supreme Court upheld Title VIII claims by white and black residents who alleged that the defendant's racial discrimination against others prevented their neighborhood (*Gladstone*) or apartment complex (*Trafficante*) from being racially integrated. The *Trafficante* opinion noted that congressional supporters of Title VIII sought by its passage to foster "integrated and balanced living patterns" and that the intended beneficiaries of this goal were the residents of the entire community and not merely the direct targets of racial discrimination.⁸⁹ In the *Gladstone* and *Trafficante* cases, the plaintiffs' loss of the "benefits from interracial associations"⁹⁰ might include both financial damage

⁸⁴ 396 U.S. 229 (1969).

⁸⁵ Other examples are *Smith v. Sol D. Adler Realty Co.*, 436 F.2d 344 (7th Cir. 1971) and *Williamson v. Hampton Management Co.*, 339 F. Supp. 1146 (N.D. Ill. 1972).

⁸⁶ See *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 109-11 (1979); *Tillman v. Wheaton-Haven Recreation Ass'n*, 410 U.S. 431, 437 (1973). Housing suppliers may also have non-financial interests in making housing available to minorities. See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 262-63 (1977).

⁸⁷ 441 U.S. 91 (1979).

⁸⁸ 409 U.S. 205 (1972).

⁸⁹ 409 U.S. at 211 (quoting 114 CONG. REC. 3422 (1968)(remarks of Sen. Mondale)). The view that a major goal of Title VIII was "integrated and balanced living patterns" and not just increased opportunities for minority homeseekers has been widely accepted by the courts. See, e.g., *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1289, 1294 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978); *Otero v. New York City Housing Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973). See generally Schwemm, *Discriminatory Effect and the Fair Housing Act*, 54 NOTRE DAME LAW. 199, 210 (1978).

⁹⁰ *Gladstone*, 441 U.S. at 112; *Trafficante*, 409 U.S. at 210.

(e.g., lower property values and missed business opportunities)⁹¹ and intangible injuries (e.g., embarrassment and lost social benefits).⁹² While no reported decision has yet put a dollar value on these injuries, *Gladstone* and *Trafficante* make clear that they are compensable under Title VIII.⁹³

Lower courts have recognized that various fair housing claims may involve more than one type of interest and may be likened to different kinds of common law actions. For example, in *Meyers v. Pennypack Woods Home Ownership Association*,⁹⁴ the Third Circuit considered a section 1982 claim brought by a black who was denied the right to contract for the purchase of a home in the defendant's subdivision. The court compared the nature of the plaintiff's section 1982 claim to such state causes of action as a personal injury, breach of contract, trespass and wrongful appropriation of property, defamation and intentional infliction of mental distress, invasion of privacy, and other unspecified torts.⁹⁵ Although the court eventually focused on the black homeseeker's contractual rather than dignitary interest,⁹⁶ the importance of the opinion lies in its general approach, which accepted the need to analyze each type of fair housing claim individually in order to determine what interests are involved. Indeed, after *Carey v. Piphus*,⁹⁷ the issue of whether damages may be presumed to flow from a fair housing violation must be resolved on the basis of which of the four interests protected by Title VIII and section 1982 are at stake in a given case.

⁹¹ *Gladstone*, 441 U.S. at 110-11; *Trafficante*, 409 U.S. at 208.

⁹² *Gladstone*, 441 U.S. at 111-12; *Trafficante*, 409 U.S. at 208.

⁹³ There is still some question whether such injuries are compensable under § 1982. Compare *Broadmore Improvement Ass'n v. Stan Weber & Assocs.*, 597 F.2d 568 (5th Cir. 1979) and *Sherman Park Community Ass'n v. Wauwatosa Realty*, 486 F. Supp. 838 (E.D. Wis. 1980) (upholding *Gladstone*-type claims under both Title VIII and § 1982) with *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 128-29 (1979) (Rehnquist, J., dissenting) (claim in *Gladstone* would not be actionable under § 1982). See generally Schwemm, *Standing to Sue in Fair Housing Cases*, 41 OHIO ST. L.J. 1, 49-51, 69-71 (1980).

⁹⁴ 559 F.2d 894 (3d Cir. 1977).

⁹⁵ *Id.* at 900-03. Such a comparison was necessary to determine the appropriate statute of limitations.

⁹⁶ *Id.* at 902.

⁹⁷ 435 U.S. 247 (1978).

b. The Carey Requirements for Presumed Damages Applied to the Four Fair Housing Interests

The strongest case for presumed damages in housing discrimination litigation would be based on the second of the four fair housing interests—the black homeseeker’s interest in being protected from the stigma of racial discrimination. This is the interest that was involved when the Supreme Court described a fair housing action as a “dignitary tort” and likened it to an action for defamation.⁹⁸ This description is extremely significant to a discussion of presumed damages after *Carey v. Phipps* because the Court in that case recognized that presumed damages are appropriate in some forms of defamation cases.⁹⁹

The two conditions in *Carey* for the doctrine of presumed damages in defamation *per se* cases—that serious, intangible injuries are very likely to result from such a tort and that these injuries are difficult to prove¹⁰⁰—are present in housing discrimination cases. The decisions to date show that most plaintiffs who are the direct objects of housing discrimination suffer some degree of emotional distress, at least when the defendant’s discrimination is intentional. Moreover, the wide range of awards for this type of injury shows that serious difficulties do exist in proving it. A plaintiff who merely testifies that he was distressed by the defendant’s treatment of him may well receive a higher award than a plaintiff who produces expert and other corroborative testimony of his emotional distress.¹⁰¹ In addition, although the Supreme Court views it as treating the damage issue as a question of fact,¹⁰² the now widely accepted technique of inferring an award for intangible injuries from the circumstances of a fair housing case¹⁰³ is essentially based on the presumption that plaintiff’s response to discrimination will be that of a “reasonable person” (*i.e.*, that he will suffer intangible damages).

⁹⁸ *Curtis v. Loether*, 415 U.S. 189, 195 n.10 (1974).

⁹⁹ 435 U.S. at 262 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349 (1974)).

¹⁰⁰ *Id.*

¹⁰¹ *Compare Seaton v. Sky Realty Co.*, 491 F.2d 634 (7th Cir. 1974)(\$500 compensatory award based solely on plaintiff’s testimony and the circumstances of the case) with *Marr v. Rife*, 503 F.2d 735 (6th Cir. 1974), *aff’d after remand*, 545 F.2d 554 (6th Cir. 1976)(\$1 award in case where wife was hospitalized as a result of severe emotional distress allegedly caused by defendant’s discrimination).

¹⁰² *Carey*, 435 U.S. at 264 n.22 (1978).

¹⁰³ *See, e.g., Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7th Cir. 1974).

It is a logical extension to use this inference to presume damages whenever a black homeseeker is victimized by intentional discrimination.

On the other hand, the *Carey* principles seem to prevent an award for presumed damages for the first, third, and fourth interests protected by the fair housing laws. For example, the third interest—the home supplier's interest in a discrimination-free housing market—is primarily economic, although other considerations may occasionally be involved.¹⁰⁴ Because most violations of this interest will not cause distress or other intangible injury, the doctrine of presumed damages enunciated in *Carey* indicates that aggrieved housing suppliers “should be put to their proof on the issue” of damages.¹⁰⁵

The black homeseeker's interest in equal spending power is also primarily economic.¹⁰⁶ Other, less tangible interests may be dependent on this economic interest, such as the opportunity to secure a better job or to live in a different neighborhood, but in many cases, injuries to these interests would also be susceptible to proof. Furthermore, to the extent that the plaintiff's emotional distress results from being prevented from living in the particular apartment or house he desires, the Supreme Court has hinted that this type of injury should be considered a question of fact subject to proof.¹⁰⁷ Thus, the basic nature of this first interest and its “provability” suggest that presumed damages may not be available for its violation.

The fourth interest—the interest of residents in integration in their community—is comprised of both economic and intangible elements. With respect to the economic claims of lower property values, lost business opportunities, and the like, *Carey* would seem to require that the plaintiffs be put to their proof. The question of presumed damages is more difficult, however, when the difficulty of proving the less tangible, social injuries of living in an illegally segregated community is considered. With respect to the difficulty-of-proof issue, the

¹⁰⁴ See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 263 (1977) (in which the Corporation's interest resulted “not from a desire for economic gain, but rather from an interest in making suitable low-cost housing available in areas where such housing is scarce”).

¹⁰⁵ *Carey*, 435 U.S. at 262.

¹⁰⁶ *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 899-903 (3rd Cir. 1977).

¹⁰⁷ *Carey*, 435 U.S. at 264 n.22. See *Love*, *supra* note 76, at 1266.

Court has stated that the presence of these injuries “should be ascertainable on the basis of discrete facts presented at trial.”¹⁰⁸ This comment, however, was addressed primarily to proof concerning the causal link between the defendant’s discrimination and the plaintiff’s injuries and not so much to proof about the nature of those injuries. Moreover, *Carey’s* second justification for presumed damages—the likelihood of intangible injuries occurring in a given case—may also exist in a loss-of interracial-associations claim.¹⁰⁹

c. *The Enforcement Interest and Presumed Damages*

In holding that Title VIII protected the plaintiffs’ interests in *Trafficante*, the Supreme Court pointed out that “complaints by private persons are the primary method of obtaining compliance with the Act,” and thus for “vindicating a policy that Congress considered to be of the highest priority.”¹¹⁰ The congressional decision to give private plaintiffs the primary responsibility for enforcing Title VIII means that their claims not only vindicate their own interests, but also deter discriminatory activities.

Similarly, damages in dignitary tort actions serve the dual functions of compensation and deterrence. Because presumed damages are recognized as a legitimate device for vindicating those two interests in dignitary tort cases¹¹¹ and because of the Court’s prior recognition of the similarity between those torts and housing discrimination claims,¹¹² this dual enforcement scheme of vindication and deterrence is another reason to apply presumed damages to housing suits.

Title VIII’s authorization of punitive damages and attorney’s fees¹¹³ does not undercut this argument. Title VIII specifically limits an award of punitive damages to \$1,000. An award of attorney’s fees is available only to plaintiffs of limited means, and if its availability provides incentives to initiate litigation, the incentive is not for the victim

¹⁰⁸ *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 114 (1979). See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972)(indicating that proof of the plaintiffs’ injury would be required at trial).

¹⁰⁹ See *Trafficante*, 409 U.S. at 208–10.

¹¹⁰ *Id.* at 209, 211.

¹¹¹ See *Love*, *supra* note 76, at 1260–61.

¹¹² *Curtis v. Loether*, 415 U.S. 189, 195 n. 10 (1974).

¹¹³ 42 U.S.C. § 3612(c)(1976).

of housing discrimination, but for his lawyer.¹¹⁴ Furthermore, that these limitations on punitive damages and attorney's fees do not exist in section 1982 suits has not resulted in more vigorous private enforcement of fair housing requirements under section 1982 than under Title VIII.

Indeed, the overall record of enforcement under both federal fair housing laws has been extremely disappointing. Individual cases have been won, but "if anything, housing segregation and discrimination has become more pervasive and more intractable" in the years since Title VIII was enacted.¹¹⁵ By now, it is generally recognized that the inadequate enforcement mechanisms of the fair housing laws are the primary cause of their failure to achieve integration goals.¹¹⁶ Enforcement by private suits has failed because damage awards are generally too low to justify the cost of bringing suit.¹¹⁷ As one prominent fair housing advocate described the situation to Congress, blatant housing discrimination "still exists and the only way it is stopped is through damage awards, making housing bias too expensive to practice."¹¹⁸

The part of the *Carey v. Phipps* opinion¹¹⁹ that indicates that an award of nominal damages should not exceed \$1 has made the economic obstacles to private enforcement even higher. Prior to *Carey*, some lower courts had indicated that amounts greater than \$1 might

¹¹⁴ See Note, *Damage Awards*, *supra* note 76 at 983. See also *Hearings on H.R. 3504 and H.R. 7787 Before the Subcomm. on Civil Constitutional Rights of the House Comm. on the Judiciary*, 95th Cong., 2d Sess. (1978) (hereinafter cited as *1978 Hearings*), at 5 (statement of Patricia Harris, Secretary of HUD):

Many complainants do not have the necessary funds to initiate litigation, even with the prospect of having attorney's fees awarded should the complainant's position prevail. Thus, as a practical matter, many complainants are unable to utilize their right to seek a remedy through the courts, and therefore, must rely solely on the administrative process.

¹¹⁵ *Hearings*, *supra* note 114, at 2 (remarks of Cong. Edwards). See Note, *Benign Steering and Benign Quotas: The Validity of Race-Conscious Government Policies to Promote Residential Integration*, 93 HARV. L. REV. 938, 938-39 (1980).

¹¹⁶ See, e.g., *1978 Hearings*, *supra* note 114, at 5 (testimony of HUD Secretary Harris) ("The most significant deterrent to litigation remains its high cost").

¹¹⁷ *1978 Hearings*, *supra* note 114, at 5 (testimony of HUD Secretary Harris) ("The most significant deterrent to litigation remains its high cost.").

¹¹⁸ *1978 Hearings*, *supra* note 114, at 147 (testimony of Avery S. Friedman).

¹¹⁹ *Carey*, 435 U.S. at 267.

be awarded as “nominal damages” for fair housing violations.¹²⁰ This technique of awarding high nominal damages to increase compensatory awards in the absence of proven economic losses or emotional distress will presumably be no longer available after *Carey*.

In summary, congressional reliance on private suits as the primary enforcement mechanism of the fair housing statutes means that damage awards must be substantial enough to serve the functions of deterrence and vindication as well as compensation. This is a significant difference between fair housing cases and procedural due process cases like *Carey*, where compensation is the only objective of a damage award. The enforcement objectives of damage awards in fair housing cases provide an additional reason in support of presumed damages in such cases.

II. An Analysis of Compensatory Damage Awards

Because the cases give little explicit guidance on the factors that have influenced the size of awards, it is necessary to analyze the relationship between the results reached and certain case variables. To do this, I have listed all of the reported federal fair housing cases that have awarded compensatory damages in Appendix A.¹²¹ The cases are listed in descending order according to the amount of their compensatory awards.¹²² For each case, the Appendix shows the amount of the compensatory award, whether punitive damages were also awarded, whether the award was made by a judge or jury, and certain other fac-

¹²⁰ See, e.g., *Hodge v. Seiler*, 558 F.2d 284, 288 (5th Cir. 1977); *Bradley v. John M. Brabham Agency, Inc.*, 463 F. Supp. 27, 32 (D.S.C. 1978) (\$5,000 award for loss of civil rights).

¹²¹ The method used to identify all of the reported federal fair housing cases was to check for references to Title VIII and to § 1982 in the “Statutes Construed” section of each volume of the Federal Reporter, Second Series and the Federal Supplement from 1968 to the present and to read all of the cases reported in the Prentice-Hall Equal Opportunity in Housing service. Of the cases thus identified, only those in which the plaintiff was awarded compensatory damages were selected for the chart. Decisions for the defendant, decisions for the plaintiff that resulted in only equitable relief or punitive damages, and decisions on pre-trial procedural issues were not included.

¹²² Cases in which multiple plaintiffs were awarded individual damages are listed according to the amount of the *total* award in the case.

tors that might be significant. Forty-six awards are listed, and they may be categorized as follows:

Summary Table 1

<i>Number of Awards</i>	<i>Amount of Award</i>
12	Over \$1,500
6	\$1,500
3	Between \$1,000 and \$1,500
3	\$1,000
3	Between \$500 and \$1,000
5	\$500
14	Under \$500

Source: Appendix A *infra*.

A. Jury Trials

Whether the trier of fact is a judge or a jury appears to affect the size of the award. Juries have awarded most of the large and most of the small awards. Though ten jury trial awards have thus far been reported, only one has resulted in a compensatory award in the range of \$100-\$1,300, an area in which some 22 judge decisions have been reported.

The explanation for this relationship is not readily apparent. The low jury awards might have been compromise verdicts, in which a number of the jurors initially believed that the defendant's liability had not been established; juries are probably less able than judges to separate the liability and relief phases of the case in their decisions. Certainly, the suggestion that the strength of the plaintiff's case on the liability issue may influence the size of the damage award is worth considering.¹²³ Additionally, the racial prejudice of jurors cannot be

¹²³ See, e.g., *Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7th Cir. 1974) ("Humiliation can be inferred from the circumstances" in a fair housing case).

overlooked as a possible factor.¹²⁴ Still, compromise and prejudice alone do not supply a complete explanation for the low jury awards. In *Fountila v. Carter*,¹²⁵ for example, the jury's \$1 compensatory award was accompanied by a \$5,000 punitive damage award, indicating its belief that the defendant's discrimination was deliberate and had been clearly shown.¹²⁶

That juries have been responsible for most of the high fair housing awards is somewhat surprising. In the early years of housing discrimination litigation, plaintiffs' lawyers, afraid of jury prejudice, often fought against jury trials.¹²⁷ Because jury verdicts for defendants are not generally reported, it cannot be said with certainty that these fears have proved to be entirely without substance, but it is clear that at least some juries are capable of more generous awards in fair housing cases than are judges.¹²⁸

¹²⁴ In *Curtis v. Loether*, 415 U.S. 189, 198 (1974), the Court noted "the possibility that jury prejudice may deprive a victim of discrimination of the verdict to which he or she is entitled."

¹²⁵ 571 F.2d 487 (9th Cir. 1978).

¹²⁶ The *Fountila* jury's award of \$5,000 in punitive damages was held excessive on appeal, although the Ninth Circuit did conclude that some award of punitive damages was warranted because the evidence showed that the defendant "discriminated in conscious and deliberate disregard of the plaintiffs' rights." 571 F.2d at 492.

¹²⁷ See cases cited in *Curtis v. Loether*, 415 U.S. 189, 191 n.2 (1974).

¹²⁸ [A] strong argument can be made that substantial damages are more likely to be awarded in a particular fair housing case by a jury than a judge. Despite the historic and generally legitimate mistrust of juries in civil rights cases, experience indicates that when the facts are clear and the violation is particularly egregious, a jury may be more inclined to express its outrage through a large money award than would a court (see, e.g., *Wiggs v. Courshon*, 355 F. Supp. 206 (S.D. Fla. 1973)). A judge may require more particular proof of actual financial damages and may fear he is establishing a precedent if he makes a substantial award, whereas a jury, which has only one chance to exercise power as the moral voice of the community, may react more emotionally and may include in a compensatory award what amounts to a fine or penalty, even if all of the elements technically required for punitive damages are not present.

LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES, *Jury Trials in Fair Housing Cases* 4-5 (1975). Juries also seem capable of higher awards than judges in other civil rights contexts. See, e.g., *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977)(jury verdict of \$7,500 for each plaintiff who was falsely arrested in demonstration reversed as excessive under the circumstances); *Rogers v. Exxon Research and Eng'r Co.*, 404 F. Supp. 324 (D. N.J. 1975), *rev'd*, 550 F.2d 834 (3d Cir. 1977), *cert.*

B. Punitive Damages and the Defendant's Intent

While it is possible for a defendant to violate the federal fair housing laws without engaging in intentional discrimination,¹²⁹ the reported damage cases listed in Appendix A have generally been based on the allegation that the defendant actually intended to discriminate against the plaintiff. The nature of the defendant's behavior and his motivation are indeed relevant considerations in determining the size of a compensatory damage award in the dignitary tort field, since these factors "will affect the plaintiff's sense of outrage and distress."¹³⁰

Nevertheless, because so many of the highest compensatory awards in fair housing cases have been made by juries who do not explain their decision, it is often difficult to tell whether the defendant's discrimination was considered outrageous or even intentional by the factfinder. In many of these cases, the most that can be gleaned from the case report is whether the judge or jury thought that the defendant's discrimination was sufficiently deliberate to justify an award of punitive damages. The standard for awarding punitive damages in fair housing cases has been stated in various ways by the courts, but at a minimum, proof must show that the defendant's discrimination was intentional and that he knew or should have known that his conduct was illegal, so that he might be said to have acted "in conscious and deliberate disregard of the plaintiff's rights."¹³¹

denied, 434 U.S. 1022 (1977)(jury verdict of \$750,000 for pain and suffering in age discrimination case remitted to \$200,000 by trial court; then held unauthorized by appellate court).

That judges are not incapable of awarding substantial compensatory damages is demonstrated quite clearly by the three recent cases referred to in note 2 *supra*, all of which involved trials before a judge.

¹²⁹ A number of courts of appeals have held that a showing of discriminatory effect is sufficient to establish a violation of Title VIII. *See, e.g.*, *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1036-1038 (2d Cir. 1979); *see generally* Schwemm, *supra* note 89.

¹³⁰ *D. DOBBS, supra* note 32, at 530.

¹³¹ *Fountila v. Carter*, 571 F.2d 487, 492 (9th Cir. 1978). *But see* *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 233 (1970)(Brennan, J., concurring in part and dissenting in part)(award of punitive damages in § 1983 case appropriate if it is shown that the defendant acted "with actual knowledge that he was violating a right . . . or that the defendant acted with reckless disregard of whether he was thus violating such a right.").

Summary Table 2

<i>Size of Award</i>	<i>Punitive Damages</i>	
	<i>Yes</i>	<i>No</i>
Over \$1,500	10	2
\$1,500	5	1
Between \$1,000 and \$1,500	2	1
\$1,000	1	2
Between \$500 and \$1,000	2	1
\$500	3	2
Under \$500	5	8

Source: Appendix A *infra*.

As Summary Table 2 shows, punitive awards were made in ten of the twelve highest compensatory damage cases but in only five of the thirteen lowest award cases. Thus, although a punitive award does not guarantee a high compensatory award, its absence is correlated with low compensatory awards.

C. Other Aspects of the Defendant's Behavior

Often a defendant who has been found to have intentionally discriminated against a minority plaintiff has engaged in some form of duplicity that tends to aggravate his offense. Indeed, if he has dealt with the plaintiff personally, it is almost certain that the defendant has either (1) told the plaintiff to his face that the plaintiff was being discriminated against, or (2) lied to the plaintiff about the reason that the desired housing was not available.

Most of the reported fair housing decisions in which compensatory damages of \$500 or more have been awarded have called specific attention to such behavior by the defendant. For example, in *Allen v. Gifford*,¹³² where the court awarded \$3,500 compensatory damages and \$5,000 punitive damages against a subdivision developer, the defendant told the plaintiffs that he would not sell them a homesite because he felt that his investment would be ruined if a black family

¹³² 368 F. Supp. 317 (E.D. Va. 1973).

moved into his development.¹³³ In other cases the defendant announced his racially discriminatory policy to “testers” or other third parties likely to report the defendant’s remarks to the plaintiff.¹³⁴ On the other hand, a substantial compensatory award may also result if the defendant tries to hide his discriminatory policy by lying to the plaintiffs about his real reason for rejecting them, as was done in *Seaton v. Sky Realty Company, Inc.*¹³⁵ In some cases, such as *Todd v. Lutz*,¹³⁶ in which \$1,500 was awarded in compensation, both of these elements were present.

In addition to examining the defendant’s behavior at the time of the discrimination, a number of fair housing decisions have scrutinized the defendant’s conduct after the discrimination had occurred. Two related questions have seemed to interest the factfinder in such cases: 1) whether the defendant took any steps to rectify the situation, such as offering the desired housing to the plaintiff once the discrimination had been discovered, and 2) whether the defendant continued to maintain his original position, which sometimes included lying at trial about his reasons for refusing to deal with the plaintiff. For example, the corporate defendant in *Marr v. Rife*¹³⁷ was assessed only \$1 in compensatory damages in a suit involving an “isolated” act of one of its employees that was “promptly rectified” by the company’s offer of the

¹³³ *Id.* at 320. Other high compensatory award cases in which the defendant told the plaintiffs directly that their race was the reason he would not deal with them include: *Bradley v. John M. Brabham Agency, Inc.*, 463 F. Supp. 27, 29-30 (D. S.C. 1978); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 71 (D. Md. 1978); *Bishop v. Pecsok*, 431 F. Supp. 34, 36 (N.D. Ohio 1976); *Lamb v. Sallee*, 417 F. Supp. 282, 286 (E.D. Ky. 1976).

¹³⁴ In the typical case, “testers” are white individuals who pose as prospective home buyers or renters in order to determine if a potential defendant would sell or rent to a white, even though the defendant has refused to deal with a similarly-situated black applicant. *See, e.g., Northside Realty Assocs. v. United States*, 605 F.2d 1348, 1354-55 (5th Cir. 1979); *Grant v. Smith*, 574 F.2d 252, 254 n.3 (5th Cir. 1978).

¹³⁵ 491 F.2d 634, 636 (7th Cir. 1974). Other cases in which the defendant lied to the plaintiffs about his real reason for rejecting them include *Knight v. Auciello*, 453 F.2d 852 (1st Cir. 1972) and *McNeil v. P-N & S, Inc.*, 372 F. Supp. 658, 659 (N.D. Ga. 1973).

¹³⁶ 1 EQUAL OPP. HOUS. (P-H) ¶ 13,787 (W.D. Pa. 1976).

¹³⁷ 545 F.2d 554 (6th Cir. 1976).

desired housing to the plaintiff five days after it discovered the incident.¹³⁸ No punitive damages were awarded against the company, and the trial judge's nominal compensatory award was affirmed by the Sixth Circuit.¹³⁹

In general, therefore, it appears that the defendant's duplicity, his communication of a discriminatory policy to the plaintiff or others, and his intransigence following the incident and even during trial are not only relevant to whether punitive damages will be awarded in a fair housing case, but are also likely to affect the size of the compensatory award. Of course, evidence of these facts also means that the plaintiff probably has a strong case on the issue of liability. It may be that the principal conclusion to be drawn from this section is simply that a connection generally exists between the strength of the plaintiff's evidence on liability and the size of the compensatory award he receives. If, as the Seventh Circuit has held, "[h]umiliation can be inferred from the circumstances as well as established by the testimony,"¹⁴⁰ then strong evidence of an intentionally discriminatory policy aggravated by publicizing that policy or by lying about it to the plaintiff and the court seems likely to encourage a judge or jury to believe that the plaintiff has indeed suffered substantial emotional distress as a result of the defendant's behavior.

D. The Defendant's Size and Corporate Status

As a matter of law, the amount of punitive damages awarded may well depend on the defendant's size or net worth,¹⁴¹ but this factor is not generally considered relevant to a determination of the plaintiff's

¹³⁸ *Id.* at 556. See also *Fountila v. Carter*, 571 F.2d 487, 492 (9th Cir. 1978) (\$1 compensatory award for "single, isolated incident"). But see *Buxton v. Patel*, 595 F.2d 1182, 1185 (9th Cir. 1979) ("isolated" incident of discrimination produces jury award of \$7,500 compensatory damages and \$7,500 punitive damages).

¹³⁹ 545 F.2d 554 (6th Cir. 1976).

¹⁴⁰ *Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7th Cir. 1974). *Accord*, *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977).

¹⁴¹ See, e.g., *Fountila v. Carter*, 571 F.2d 487, 492 (9th Cir. 1978); *Parker v. Shonfeld*, 409 F. Supp. 876, 881 (N.D. Cal. 1976). See also *D. DOBBS*, *supra* note 32, at 218.

actual injuries.¹⁴² However, a victim of housing discrimination might well suffer greater loss, both economically and emotionally, if he is rejected by a large apartment complex or subdivision rather than an individual offering only a single unit. More of the housing market is closed off to a plaintiff when a relatively large defendant discriminates against him, and the rejection by a major firm may be more painful because it is perceived as reflecting the opinion of a more important and powerful segment of society. In addition, it seems likely that a large corporate defendant might be assessed a higher compensatory award than an individual simply because of the factfinder's reaction to the company's deeper pockets.¹⁴³

Summary Table 3

<i>Size of Award</i>	<i>Wealthy or Corporate Defendant or More Than 10 Units Controlled by Defendant?</i>	
	<i>Yes</i>	<i>No</i>
Over \$1,500	9	0
\$1,500	1	3
Between \$1,000 and \$1,500	1	2
\$1,000	2	0
Between \$500 and \$1,000	1	2
\$500	3	1
Under \$500	8	5

Source: Appendix A *infra*.

Nine of the reported cases do not contain information concerning the defendant's corporate status or size.

¹⁴² See, e.g., D. DOBBS, *supra* note 32, at 218 ("The existence or non-existence of the defendant's wealth or financial support is wholly irrelevant when it comes to compensatory damages."); see generally note 32 *supra*.

¹⁴³ In addition to judging a defendant's conduct in awarding damages, the trier of fact may also be concerned with his standing in the community and especially the size of his firm. A large real estate management firm will almost surely be subject to much higher damages for discrimination than

As Summary Table 3 suggests, there is some correlation between size of defendant and size of the compensatory award. Of the top twelve awards (those above \$1,500), three were made in jury trials in which the defendant's size cannot be ascertained, but the other nine were all made against defendants whose wealth, corporate status, or number of units controlled indicated "deep pockets."

Conversely, the defendants in many of the low award cases were individuals who were renting or selling only one or two units that they personally owned. The \$1 award in *Fort v. White*¹⁴⁴ against defendants who controlled some 1,500 apartments and in *Marr v. Rife*¹⁴⁵ against a real estate agency are exceptions to this rule, but it is worth noting that in neither of these cases were punitive damages assessed against the corporate defendant. Perhaps more significant as a qualification on the "large defendant-large award" rule is the fact that no less than eight of the middle range award cases (from \$500 to \$1,500) involved very modest defendants. Thus, it is possible to win a respectable compensatory award against a small defendant, but the highest awards are likely to come only against sizable defendants.

E. Evidence of the Plaintiff's Emotional Distress

Most compensatory awards in fair housing cases are primarily based on the element of the plaintiff's emotional distress.¹⁴⁶ In all of the nonjury cases awarding \$1,000 or more in compensatory damages, the court has either specifically found that the plaintiff suffered humiliation, embarrassment, or some other form of emotional distress

will a "little old lady" who discriminates in renting a unit in her only building, even if the same type of prohibited behavior is involved.

LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES, GUIDE TO PRACTICE OPEN HOUSING LAW 16 (1974). Compare *Parker v. Shonfeld*, 409 F. Supp. 876 (N.D. Cal. 1976)(\$10,000 in compensatory damages awarded against defendants with net worth of \$500,000) with *Warner v. Perrino*, 585 F.2d 171 (6th Cir. 1978)(reversing on other grounds the district court's unreported award of \$1 and attorney's fees against a 72 year old woman with only one house to rent).

¹⁴⁴ 530 F.2d 1113 (2d Cir. 1976).

¹⁴⁵ 503 F.2d 735 (6th Cir. 1974), *aff'd after remand*, 545 F.2d 554 (6th Cir. 1976).

¹⁴⁶ See, e.g., cases listed in note 39 *supra*.

caused by the defendant's discrimination,¹⁴⁷ or implied such a finding by making an award for the plaintiff's emotional distress.¹⁴⁸ It also seems probable that this type of evidence was adduced in the jury trials that resulted in large compensatory awards.¹⁴⁹

Evaluating the effect of this factor on the size of compensatory awards is not an easy matter. First of all, many of the low award cases also involved claims by the plaintiff of emotional distress. Second, many of the very high and very low awards have resulted from jury trials, and although it is generally impossible to know the nature of the plaintiff's evidence, it does seem likely that the plaintiff would claim emotional distress in both low award and high award cases. Third, the plaintiff's emotional distress can be shown in a variety of ways. Emotional distress can be inferred from the circumstances or established by the testimony,¹⁵⁰ though a common form of proof is simply the plaintiff's testimony that he was humiliated, embarrassed, troubled, or otherwise distressed by what the defendant did to him.¹⁵¹

¹⁴⁷ *Bradley v. John M. Brabham Agency*, 463 F. Supp. 27, 32 (D.S.C. 1978); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 72 (D. Md. 1978); *Harrison v. Otto G. Heinzerth Mortgage Co.*, 430 F. Supp. 893, 897 (N.D. Ohio 1977); *Todd v. Lutz*, 2 EQUAL OPP. HOUS. (P-H) ¶ 13,787 (W.D. Pa. 1976); *Adams v. Hempstead Heath Co.*, 2 EQUAL OPP. HOUS. (P-H) ¶ 13,781 (E.D.N.Y. 1976); *Clemons v. Runck*, 402 F. Supp. 863, 868 (S.D. Ohio 1975); *United States v. Dittmar Co.*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,370 (E.D. Va. 1975); *Hughes v. Dyer*, 378 F. Supp. 1305, 1310 (W.D. Mo. 1974); *Stevens v. Dobs*, 373 F. Supp. 618, 623 (E.D.N.C. 1974); *Branch v. Deaver*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,689 (N.D. Cal. 1974); *Mason v. Ward*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,688 (S.D. Ohio 1974); *McNeil v. P-N & S, Inc.*, 372 F. Supp. 658, 659 (N.D. Ga. 1974); *Allen v. Gifford*, 368 F. Supp. 317, 322 (E.D. Va. 1973); *Franklin v. Agostinelli*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,555 (W.D. Wash. 1971).

¹⁴⁸ *Steele v. Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973); *Bishop v. Pecsok*, 431 F. Supp. 34, 38 (N.D. Ohio 1976); *Lamb v. Sallee*, 417 F. Supp. 282, 287 (E.D. Ky. 1976); *Marshall v. Pendley*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,615 (N.D. Ga. 1973).

¹⁴⁹ *See, e.g., Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Cal. 1976); *Clemons v. Runck*, 402 F. Supp. 863, 867 (S.D. Ohio 1975).

¹⁵⁰ *See, e.g., Bradley v. John M. Brabham Agency, Inc.*, 463 F. Supp. 27, 32 (D.S.C. 1978); *Harrison v. Otto G. Heinzerth Mortgage Co.*, 430 F. Supp. 893, 897 (N.D. Ohio 1977); *Hughes v. Dyer*, 378 F. Supp. 1305, 1310 (W.D. Mo. 1974); *McNeil v. P-N & S, Inc.*, 372 F. Supp. 658, 659 (N.D. Ga. 1973).

¹⁵¹ *See, e.g., Crumble v. Blumthal*, 549 F.2d 462, 467 (7th Cir. 1977); *Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7th Cir. 1974); *Steele v. Title Realty Co.*, 478 F.2d 380, 384 (10th Cir. 1973); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 72 (D.

On occasion the plaintiff will claim that his emotional distress has manifested itself in weakened relationships with, for example, his spouse, his friends, or his employer.¹⁵² Claims of physical ailments resulting from emotional distress are rare, but the ones made in *Allen v. Gifford*¹⁵³ and *Marr v. Rife*¹⁵⁴ are worth noting because of the different judicial responses they produced. In both cases, the plaintiffs were a married couple, and the wives claimed to have been hospitalized as a result of severe emotional distress caused by the defendants' discrimination.¹⁵⁵ The court in *Allen v. Gifford* accepted this testimony and awarded \$3,500 in compensatory damages, one of the highest awards by a judge to date, while the court in *Marr v. Rife* found the plaintiff's claim "speculative and unconvincing" and awarded only \$1 in compensatory damages.¹⁵⁶

Emotional distress resulting from discrimination may damage personal relationships.¹⁵⁷ Rarely, however, have fair housing plaintiffs produced witnesses, such as friends, co-workers or employers, to corroborate their own testimony of emotional distress.¹⁵⁸ Perhaps no corroboration is required when a husband whose efforts to secure housing for his family were illegally blocked testifies that he was humiliated "as a man" and stripped of his rights "as a father to my kids."¹⁵⁹ While the quality of the plaintiff's testimony on this point is important, its acceptance by the judge or jury has thus far depended less on its par-

Md. 1978); *Bishop v. Pecsok*, 431 F. Supp. 34, 36 (N.D. Ohio 1976); *Lamb v. Sallee*, 417 F. Supp. 282, 287 (E.D. Ky. 1976); *Allen v. Gifford*, 368 F. Supp. 317, 322 (E.D. Va. 1973).

¹⁵² *Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7th Cir. 1974) (plaintiff humiliated as a father and a man); *Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 72 (D. Md. 1978) (co-workers testify that plaintiff was shocked and upset); *McNeil v. P-N & S, Inc.*, 372 F. Supp. 658 (N.D. Ga. 1973) (strain on plaintiffs' marriage).

¹⁵³ 368 F. Supp. 317 (E.D. Va. 1973).

¹⁵⁴ 503 F.2d 735 (6th Cir. 1974), *aff'd after remand*, 545 F.2d 554 (6th Cir. 1976).

¹⁵⁵ *Allen*, 368 F. Supp. at 321; *Marr*, 503 F.2d at 742.

¹⁵⁶ *Allen*, 368 F. Supp. at 322; *Marr*, 554 F.2d at 555.

¹⁵⁷ For expert testimony on the damaging effects of housing discrimination on an individual's mental condition and personal relationships, see LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES, EXPERT WITNESSES IN FAIR HOUSING CASES 9-41 (1975). See also *Litthman*, *supra* note 38, at 970 n.41.

¹⁵⁸ *But see Young v. Parkland Village, Inc.*, 460 F. Supp. 67, 72 (D. Md. 1978) (co-workers testify that plaintiff was shocked and upset).

¹⁵⁹ *Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7th Cir. 1974).

ticularity or corroboration than on such intangible and varying factors as whether the plaintiff is believable, likeable, or vulnerable to stress¹⁶⁰ and whether the factfinder is receptive to this type of claim.¹⁶¹

F. The Plaintiff's Family and Employment Status

The plaintiff's marital status and the nature of his work may in theory affect the injury he suffers. A married couple with children whose search for a home is illegally frustrated simply has more personal relationships that are subject to disruption than a single plaintiff. Additionally, a person with a particularly important or lucrative job might be more harmed in his work by the added stress of housing discrimination than a plaintiff with a less demanding position.

For example, in *Allen v. Gifford*,¹⁶² where the plaintiff had both a family and a high level job, compensatory damages of \$3,500 were awarded. The plaintiffs were a married couple with two children who had moved from Miami, Florida, to Norfolk, Virginia, so that Dr. Allen could accept a position as Assistant Superintendent of Schools in Norfolk. The court found that his job made Dr. Allen particularly interested in living in an area with white families, such as the housing development constructed by the defendant. Indeed, the plaintiffs did eventually secure a home in the defendant's subdivision some 110 days after they were initially rejected. During this time, they lived in a motel, and Mrs. Allen became ill and was hospitalized. Although the judge did not include the amount of the motel bill in his damage award, his substantial award for the plaintiffs' emotional distress perhaps reflected consideration of the added pressures that a family would feel as a result of extended motel living and a major job change.

¹⁶⁰ See, e.g., *Steele v. Title Realty Co.*, 478 F.2d 380, 384 (10th Cir. 1973) (previous discrimination relevant in setting amount of compensatory award for emotional distress).

¹⁶¹ See, e.g., *Jeanty v. McKey & Loague, Inc.*, 496 F.2d 1119, 1121 (7th Cir. 1974) (court remanded issue of compensatory damages because trial court failed to consider emotional distress, and in questioning failure to award punitive damages, court stated that trial court erred in considering plaintiff's personality rather than defendant's motive and attitude).

¹⁶² 368 F. Supp. 317 (E.D. Va. 1973).

Summary Table 4

Size of Award	Plaintiff's Family Status		
	Couple	Single	Family
Over \$1,500	4	6	2
\$1,500	3	2	1
Between \$1,500 and \$1,000	2	1	0
\$1,000	2	0	1
Between \$1,000 and \$500	1	0	2
\$500	1	3	1
Under \$500	3	9	2

Source: Appendix A *infra*.¹⁶³

As Summary Table 4 indicates, it is hard to demonstrate the influence of family status on the size of compensatory awards. Six of the top twelve compensatory award cases involved single plaintiffs. Indeed, there are some striking examples of low awards to family plaintiffs, such as the \$1 awards to the couples in *Marr v. Rife*¹⁶⁴ and *Fountila v. Carter*.¹⁶⁵

The significance of the nature of the plaintiff's job is also unclear. Few plaintiffs in the reported fair housing decisions had positions as public as Dr. Allen's, and in only two other cases did the court specifically find that the defendant's discrimination had an adverse effect on the plaintiff's professional standing.¹⁶⁶ Still, many of the plaintiffs who received awards of \$750 or greater have been teachers, university students, or career military personnel.¹⁶⁷ These higher awards to middle-

¹⁶³ The plaintiffs in Case 5 are treated as a couple. Those in Cases 8 and 33 are treated as families. Those in Cases 18 and 20 are treated as singles.

¹⁶⁴ 545 F.2d 554 (6th Cir. 1976).

¹⁶⁵ 571 F.2d 487 (9th Cir. 1978).

¹⁶⁶ *United States v. Dittmar Co.*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,730, at 14,628 (E.D. Va. 1975); *McNeil v. P-N & S, Inc.*, 372 F. Supp. 658, 659 (N.D. Ga. 1973).

¹⁶⁷ *See, e.g., Steele v. Title Realty Co.*, 478 F.2d 380, 383 (10th Cir. 1973) (university teacher); *Bradley v. John M. Brabham Agency, Inc.*, 463 F. Supp. 27, 28 (D. S.C. 1978) (Air Force sergeant); *Bishop v. Pecsok*, 431 F. Supp. 34, 35-36 (N.D. Ohio 1976) (university students); *Lamb v. Sallee*, 417 F. Supp. 282, 284 (E.D. Ky. 1976) (students); *Clemons v. Runck*, 402 F. Supp. 863, 870 (S.D. Ohio 1975) (high school teachers); *Stevens v. Dobs, Inc.*, 373 F. Supp. 618, 620 (E.D.N.C. 1974) (university employee-graduate student).

and upper-class blacks may reflect greater factfinder sympathy for those plaintiffs. The higher awards may also reflect a greater degree of emotional distress. When blacks attain a certain economic status, their expectations naturally rise. When confronted with housing discrimination, they face the stark reality that they cannot spend their money everywhere a white person can. Disappointment, resentment, humiliation, and anxiety understandably result.

G. The Type of Housing Involved

The degree of emotional distress suffered by a minority home-seeker might be affected by whether he was trying to buy a house when he was discriminated against or was merely looking for an apartment. In general, a house purchase suggests a greater financial and emotional commitment than a rental situation. Indeed, buying a home in the United States—whether it is a “dream house” or a starter bungalow—is usually one of the major decisions in a person’s life. It may also coincide with the family and employment factors discussed in the previous section, since buying a house is often prompted by a growing family and generally reflects achievement of a certain economic status.

Summary Table 5

<i>Size of Award</i>	<i>Type of Transaction</i>	
	<i>Rental</i>	<i>Sale</i>
Over \$1,500	7	4
\$1,500	4	2
Between \$1,000 and \$1,500	3	0
\$1,000	2	1
Between \$500 and \$1,000	3	0
\$500	4	1
Under \$500	10	3
Totals	33	11

Source: Appendix A *infra*.¹⁶⁸

¹⁶⁸ Cases 11 and 43 do not disclose the type of transaction involved.

Summary Table 5 indicates that a fair housing award may be higher in sale cases than in rental cases. Even though three-fourths of the reported decisions for which such information is available involved rentals (either for an apartment or a house), more than one-third of the compensatory awards of \$1,500 or over were made in house-sale cases. Conversely, in awards of less than \$1,000, rental cases predominated, accounting for seventeen of the bottom twenty-one awards. Although Summary Table 5 exhibits some exceptions, it does appear that discrimination in house purchases tends to result in higher awards than discrimination in apartment rentals.

H. The Date of Decision

Fair housing has been the law in the United States since 1968,¹⁶⁹ and reported decisions awarding compensatory damages have appeared since 1971. It is reasonable to expect that increased familiarity with¹⁷⁰ and acceptance of¹⁷¹ these suits by judges and juries would lead to increased awards in the more recent housing discrimination cases.

Greater acceptance of the law also means that judges and juries might view a particular type of discriminatory conduct as more outrageous now than if it had taken place ten years ago, and they might also feel that a victim of housing discrimination would be more shocked and distressed by it today. More recent cases might involve higher awards than earlier ones simply because of inflation in the intervening decade.

¹⁶⁹ See note 1 *supra*.

¹⁷⁰ See, e.g., *Fort v. White*, 530 F.2d 1113, 1116 (2d Cir. 1976) (plaintiff's lawyer erroneously believed that damages for emotional distress are punitive in nature); *Crumble v. Blumthal*, 549 F.2d 462, 467 (7th Cir. 1977) (trial judge erroneously limited plaintiff's compensatory damages to his economic losses); *Jeanty v. McKey & Poague, Inc.*, 496 F.2d 1119, 1121 (7th Cir. 1974) (same).

¹⁷¹ Public acceptance of fair housing may be greater in some parts of the country than in others. For example, a number of the higher compensatory damage awards have been made in cases arising in California. See, e.g., *Buxton v. Patel*, 595 F.2d 1182 (9th Cir. 1979); *Samuel v. Benedict*, 573 F.2d 580 (9th Cir. 1978); *Parker v. Shonfeld*, 409 F. Supp. 876 (N.D. Cal. 1976); *Branch v. Deaver*, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,689 (N.D. Cal. 1974). *But see Fountila v. Carter*, 571 F.2d 487 (9th Cir. 1978).

The decided cases, however, do not seem to reflect any strong correlation between a later date of decision and a higher award. Although the five highest awards were made during or after 1976, there are three 1973 cases among the top twelve awards, and almost half of the awards of \$1,000 or more were made in the first half of the 1970s. In addition, a number of recent cases have resulted in very low awards, including three decisions in 1978 and 1979 that awarded \$1.

One possible explanation for the absence of a strong relationship between dates of decisions and large awards is that the typical defendant's conduct may be less egregious or more difficult to detect over time. Thus, it may be that the same fact situation would indeed result in a higher compensatory award today than in the early 1970's, but that housing discrimination has become more subtle in recent years.

I. The Personality of the Parties and the Skills of the Lawyers

Experienced trial lawyers know the difficulty of predicting the amount of an award for something as elusive as emotional distress. Some factors, such as the wealth of the defendant, that may affect the outcome can be identified in advance, but more intangible factors will often influence the judge or jury. Two specific intangibles—the parties' personalities and the lawyers' skills—have been specifically referred to in some fair housing cases in ways that suggest that they influenced the amount of the verdict.¹⁷² Nevertheless these factors are

¹⁷² For example, in *Jeanty v. McKey & Poague, Inc.*, 496 F.2d 1119 (7th Cir. 1974), the trial judge awarded only \$100 in compensatory damages and no punitive damages. Apparently his refusal to award any punitive damages was based on his negative reaction to the plaintiff's personality at trial. *Id.* at 1121. The Seventh Circuit reversed, holding that this consideration was not relevant to the issue of punitive damages, but the case strongly suggests that the trial court's low compensatory award may also have resulted in part from its personal dislike of the plaintiff. *Id.*

With respect to the lawyers' skills, a verdict in any litigation might reflect how well the case was presented. Two of the lower award decisions include at least implied criticisms of the plaintiffs' lawyers. In *Fort v. White*, 530 F.2d 1113, 1116 (2d Cir. 1976), the Second Circuit upheld a \$1 award where the plaintiffs' attorneys did not press the claim for compensatory damages at trial, apparently because they mistakenly believed that damages for humiliation and embarrassment were punitive and not compensatory in nature. Similarly, the trial court in *Morehead v. Lewis*, 432 F. Supp. 674, 677 (N.D. Ill. 1977), where the compensatory award was only \$150 for each

inherently unquantifiable, and their significance will vary from case to case.

Conclusion

For over a decade, federal judges and juries have struggled with the difficult problem of evaluating the largely intangible injuries to victims of housing discrimination. Their decisions present a wide range of responses to this problem, and when viewed as a whole, they appear arbitrary and provide little guidance for future cases. Nevertheless, the reported cases reveal that factfinders are particularly sensitive to the degree of intent underlying the defendant's discrimination and the size of the defendant's business. Additionally, cases of discrimination involving purchases generally result in higher compensatory awards than cases involving rentals. Belief by the judge or jury that the plaintiff has actually suffered emotional distress is also significant. As in all litigation, certain intangibles, such as the personalities of the parties, the relative skills of the lawyers, and the factfinder's predisposition, influence the size of the compensatory award. Jury awards are usually high or low; judges make awards somewhere in the middle.

In light of the enforcement structure of Title VIII and section 1982, it is distressing that fair housing awards have generally been so small, particularly when compared with awards in related fields.¹⁷³ Only a handful of the reported fair housing awards have exceeded a few thousand dollars. The few sizable awards and the correspondingly inadequate level of private enforcement have meant that Title VIII has

plaintiff, commented that the plaintiffs' lawyers were inexperienced and that their complaint was "sketchily drafted and barely [met] the minimum standards of literacy." *But see Jeanty*, 496 F.2d at 1121 (plaintiff's counsel described as "highly qualified" in case in which trial judge awarded only \$100 in compensatory damages). Conversely, tactical mistakes by the defendant's lawyer may result in higher compensatory awards in fair housing cases, *see Friedman, Damages in Housing Bias Litigation*, 21 N.Y.L.F. 551, 555-56 (1976).

It has also been suggested that plaintiff's recovery may be enhanced by the reputation of his lawyer, especially if the case is settled before trial. ASSOCIATION OF TRIAL LAWYERS OF AMERICA, *ANATOMY OF A PERSONAL INJURY LAW SUIT* 214 (1978).

¹⁷³ *Compare* cases cited in notes 6-8 *supra*. Dean Bell has observed that compensatory damage awards in fair housing cases "present a marked contrast with damages recovered in other emotional distress cases." (D. BELL, *RACE, RACISM AND AMERICAN LAW* 517 n.4 (2d ed. 1980).

generally failed to achieve its goal of replacing ghettos with truly integrated and balanced living patterns.

One response to the problem of inadequate enforcement is to apply the doctrine of presumed damages in fair housing cases. The Supreme Court's rejection of this doctrine in procedural due process cases in *Carey v. Phipps* expressly left open the possibility that presumed damages might be appropriate in other constitutional and civil rights cases. An analysis of the interests protected by the federal fair housing laws in light of the *Carey* principles suggests that presumed damages should be awarded for certain injuries under Title VIII and section 1982.

Even if the doctrine of presumed damages were accepted as part of fair housing law, however, the problem of deciding how much to award for such damages would remain. Perhaps the best solution would be for Congress to establish a fixed minimum compensatory recovery of \$1,000 for victims of housing discrimination, as it has done in other fields.¹⁷⁴ In the absence of legislative guidance, the courts will no doubt be reluctant to set an arbitrary floor for recovery.¹⁷⁵ At the very least, however, courts that have heretofore considered Title VIII's \$1,000 limit on punitive damages to be a "target" figure should adjust their sights upward.

As long as the amount of a compensatory damage award is left to the unstructured discretion of the trial judge or jury, substantial variations in fair housing awards are likely to continue. While the overall *level* of compensatory awards should grow in the future, the *relative* size of these awards will probably still be influenced by the factors identified in this Article.

¹⁷⁴ See, e.g., The Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510-2520 (1976 & Supp. VII 1979), which provides for liquidated damages of \$1,000 or \$100 a day for each violation, whichever is greater, *id.* at § 2520(2)(a); The Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801-1811 (Supp. III 1979) which includes a similar \$1,000-or-\$100-per-day provision. See § 1810.

¹⁷⁵ Judicial reluctance to establish a minimum recovery may stem in part from the fear that such judge-made determinations might be inconsistent with the defendant's constitutional right to a jury trial in these cases. See *Curtis v. Loether*, 415 U.S. 189 (1974); see also *Damage Awards*, *supra* note 76, at 990.

APPENDIX A

REPORTED FEDERAL FAIR HOUSING CASES AWARDING COMPENSATORY DAMAGES

Case Name and Citation	Amount of Compensatory Damage Award	Jury?	Punitive Damages Also Awarded?	Wealthy or Corporate Defendant or More than 10 Units Controlled by Defendant?	Plaintiff's Claim or other Evidence of Emotional Distress?	Plaintiff's Family Status	Type of Trans- action and Housing Involved
1. <i>Ragin v. Kahan & Kahan Realty, Inc., Equal Opp. Hous. (F-H) Report Bulletin ¶ 16.2 (S.D.N.Y. 1980)</i>	\$15,000	Yes	Yes	Yes	?	Couple	Rent-Ap't
2. <i>Parker v. Shonfeld, 409 F. Supp. 876 (N.D. Cal. 1976)</i>	10,000	Yes	Yes	Yes	Yes	Single	Rent-Ap't
3. <i>Buxton v. Patel, 595 F.2d 1182 (9th Cir. 1979)</i>	7,500	Yes	Yes	?	?	Single	Rent-?
4. <i>Bradley v. John M. Brabham Agency, 463 F. Supp. 27 (D.S.C. 1978)</i>	7,000	No	Yes	Yes	Yes	Couple	Sale-House
5. <i>Harrison v. Otto G. Heinzeroth Mortgage Co., 430 F. Supp. 893 (N.D. Ohio 1977)</i>	5,000	No	Yes	Yes	Yes	Couple (since divorced)	Sale-House (Financing)
6. <i>Allen v. Gifford, 368 F. Supp. 317 (E.D. Va. 1973)</i>	3,500	No	Yes	Yes	Yes	Family	Sale-House

7. Adams v. Hempstead Heath Co., 2 EQUAL OPP. HOUS. (P-H) ¶ 13,781 (E.D.N.Y. 1976); See also 426 F. Supp. 1141 (E.D.N.Y. 1977)	3,180	No	Yes	Yes	Yes	Single	Rent-Ap't
8. United States v. Dittmar Co., 1 EQUAL OPP. HOUS. (P-H) ¶ 13,370 (E.D. Va. 1975)	2,750	No	No	Yes	Yes	Family and 3 singles	Rent-Ap't
9. McNeil v. P-N & S, Inc., 372 F. Supp. 658 (N.D. Ga. 1973)	2,500	No	Yes	Yes	Yes	Couple	Sale-House (Lot)
10. Samuel v. Benedict, 573 F.2d 580 (9th Cir. 1978)	2,000	Yes	Yes	?	?	Single	Rent-Ap't
11. Stepter v. Burke, 2 EQUAL OPP. HOUS. (P-H) ¶ 15,270 (S.D. Ohio 1978)	2,000	Yes	No	?	?	Single	?
12. Marshall v. Pendley, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,615 (N.D. Ga. 1973)	1,813	No	Yes	Yes	Yes	Single	Rent-Ap't
13. Bishop v. Pecsok, 431 F. Supp. 34 (N.D. Ohio 1976)	1,500	No	Yes	No	Yes	Couple	Rent-Ap't
14. Clemons v. Runkel, 402 F. Supp. 863 (S.D. Ohio 1975)	1,500	Yes	Yes	?	Yes	Couple	Sale-House (Lot)
15. Branch v. Deaver, 1 EQUAL OPP. HOUS. (P-H) ¶ 13,689 (N.D. Cal. 1974)	1,500	No	Yes	?	Yes	Single	Rent-Ap't
16. Todd v. Lutz, 2 EQUAL OPP. HOUS. (P-H) ¶ 13,787 (W.D. Pa. 1976)	1,500	No	Yes	No	Yes	Family	Rent-House
17. Hughes v. Dyer, 378 F. Supp. 1305 (W.D. Mo. 1974)	1,500	No	Yes	No	Yes	Couple	Sale-House

18. Stevens v. Dobs, Inc., 373 F. Supp. 618 (E.D.N.C. 1974)	1,500	No	No	Yes	Yes	Single	Rent-Ap't
19. Hughes v. Repko, 429 F. Supp. 928 (W.D. Pa.), <i>rev'd on other grounds,</i> 578 F.2d 483 (3rd Cir. 1978)	1,250	Yes	No	No	?	Couple	Rent-Ap't
20. Young v. Parkland Village, Inc., 460 F. Supp. 67 (D. Md. 1978)	1,088	No	Yes	Yes	Yes	Single	Rent-Ap't
21. Lamb v. Sallee, 417 F. Supp. 282 (E.D. Ky. 1976)	1,048.50	No	Yes	No	Yes	Couple	Rent-House
22. Mason v. Ward, 1 EQUAL OPP. Hous. (P-H) ¶ 13,688 (S.D. Ohio 1974)	1,000	No	Yes	Yes	Yes	Couple	Sale-House (Lot)
23. Franklin v. Agostinelli, 1 EQUAL OPP. Hous. (P-H) ¶ 13,555 (W.D. Wash. 1971)	1,000	No	No	?	Yes	Couple	Rent-?
24. Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973)	1,000	No	No	Yes	Yes	Family	Rent-Ap't
25. People v. Doughtie, 1 EQUAL OPP. Hous. (P-H) ¶ 13,528 (M.D. Ala. 1971)	750	No	Yes	No	Yes	Family	Rent-Ap't
26. Brown v. Ballas, 331 F. Supp. 1033 (N.D. Tex. 1971)	750	No	No	No	?	Family	Rent-House
27. Hodge v. Seiler, 558 F.2d 284 (5th Cir. 1977)	500 (to be added to on remand)	No	Yes	Yes	No	Couple	Rent-Ap't
28. Seaton v. Sky Realty Co., 372 F. Supp. 1322 (N.D. Ill. 1972), <i>aff'd</i> , 491 F.2d 634 (7th Cir. 1974)	500	No	Yes	Yes	Yes	Family	Sale-House

29. <i>Guillory v. Bryan</i> , 1 EQUAL OPP. HOUS. (P-H) ¶ 13,642 (S.D. Tex. 1974)	500	No	Yes	Yes	Yes	Single	Rent-Ap't
30. <i>Walker v. Fox</i> , 395 F. Supp. 1303 (S.D. Ohio 1975)	500	No	Yes	No	Yes	Single	Rent-Ap't
31. <i>Knight v. Auciello</i> , 453 F.2d 852 (1st Cir. 1972)	500	No	No	?	?	Couple	Rent-Ap't
32. <i>Bunn v. Central Realty of Louisiana</i> , 592 F.2d 891 (5th Cir. 1979)	500	No	No	Yes	?	Single	Rent-Ap't
33. <i>Dennis v. Bethune</i> , 1 EQUAL OPP. HOUS. (P-H) ¶ 13,719 (S.D. Miss. 1975)	490	No	No	Yes	?	(Single parent Family)	Rent-Ap't
34. <i>Crumble v. Blumthal</i> , 549 F.2d 462 (7th Cir. 1977)	322 (to be added to on remand)	No	No	No	Yes	Couple	Sale-House
35. <i>Sanborn v. Wagner</i> , 354 F. Supp. 291 (D. Md. 1973)	300	No	Yes	Yes	No	Single	Sale-House
36. <i>Morehead v. Lewis</i> , 432 F. Supp. 674 (N.D. Ill. 1977), <i>aff'd without opinion</i> , 594 F.2d 867 (7th Cir. 1979)	300	No	No	?	?	Single	Rent-Ap't
37. <i>Lyles v. Hampton</i> , 1 EQUAL OPP. HOUS. (P-H) ¶ 13,738 (S.D. Ohio 1975)	250	No	Yes	Yes	Yes	Single	Rent-Ap't

38. Jeanty v. McKey & Poague, Inc., 496 F.2d 1119 (7th Cir. 1974)	100 (plus)	No	?	Yes	Yes	Single	Rent-Ap't
39. Martin v. John C. Bowers & Co., 334 F. Supp. 5 (N.D. Ill. 1971)	100	No	No	Yes	Yes	Single	Rent-Ap't
40. Wright v. Owen, 468 F. Supp. 1115 (E.D. Mo. 1979)	100	No	No	No	Yes	Couple	Rent-Ap't
41. Williamson v. Hampton Management Co., 339 F. Supp. 1146 (N.D. Ill. 1972)	57.50 + security deposit	No	Yes	Yes	No	Single	Rent-Ap't
42. Fountila v. Carter, 571 F.2d 487 (9th Cir. 1978)	1	Yes	Yes	No	?	Family	Rent-House
43. Johnson v. Snyder, 470 F. Supp. 972 (N.D. Ohio 1979)	1	Yes	No	?	?	Single	?
44. Warner v. Perrino, 585 F.2d 171 (6th Cir. 1978) (Plaintiff's judgement reversed for failure to satisfy statute of limitations)	1	Yes	No	No	?	Single	Rent-Ap't
45. Marr v. Rife, 503 F.2d 735 (6th Cir. 1974) and 545 F.2d 544 (6th Cir. 1976)	1	No	Yes	Yes	Yes	Couple	Sale-House
46. Fort v. White, 530 F.2d 1113 (2d Cir. 1976)	1	No	No	Yes	No	Single	Rent-Ap't