
◆ Open House ◆

Newsletter of the Fair Housing Council of Montgomery County

Winter 2003

The Fair Housing Council of Montgomery County is committed to ensuring equal housing opportunities regardless of race, religion, gender, age, disability, familial status or national origin.

We carry out our mission through education & outreach, complaint reception & resolution, advocacy, monitoring of discriminatory housing practices & assistance in finding open & affordable housing.

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This Issue: FAIR HOUSING BASICS FOR HOUSING PROVIDERS

How Much Do You Know about Fair Housing Laws?

TAKE THE FAIR HOUSING QUIZ!!!!

1. Does familial status discrimination mean discrimination against unmarried people?
2. Can residents who use a wheelchair be charged a higher security deposit due to greater wear and tear in the apartment?
3. Where there is a clear "no pets" policy, must a landlord allow a tenant to have an assistance animal nonetheless?
4. Is a maintenance person's repeated sexual advances towards a tenant sexual harassment under fair housing laws?
5. If an applicant shares that she has a disability, should a landlord request a copy of her medical records so he can determine what special needs the applicant may have?
6. Must a landlord direct a husband and pregnant wife to a two bedroom apartment based on occupancy standards?
7. Are boys and girls required by law to have separate bedrooms?
8. May landlords restrict residents with children to ground floor units for safety purposes and to decrease noise levels?
9. Must a property manager comply with an owner's stipulation to not rent to Hispanics because it is part of that job?
10. Where a criminal background check reveals that a black applicant has a lengthy criminal history, must a landlord approve the application nonetheless because rejecting the application would constitute racial discrimination?

ANSWERS ON PAGE 2

Fair Housing Quiz, cont.

1. **NO.** Familial status discrimination means discrimination against families with children in the household (including children under the age of 18 living with parents or legal custodians, pregnant women and people securing custody of children under 18).
2. **NO.** Setting different terms for renting (such as a higher security deposit) on a particular person or group based on their being a member of a protected class (person with a disability) is a violation of the fair housing laws.
3. **YES.** A landlord must allow for a reasonable accommodation in her “no pets” policy where a person with a disability has a need for an assistance/service animal to aid his disability and to fully enjoy the use of his home. The service animal is not considered a “pet” in this situation.
4. **YES**—if it is unwelcome. Sexual harassment in housing is gender discrimination under fair housing laws which protect women & men from coercion, threats, or intimidation when interfering with their housing rights.
5. **NO.** A tenant must first specifically request reasonable accommodations or modifications for a landlord to take any particular action regarding a tenant’s disability—such as requesting medical documentation.
6. **NO.** Housing providers may not inquire about pregnancy or children under the fair housing laws; inquiries may be made only about the number of occupants that will live in the home.
7. **NO.** Mandating that boys and girls have separate bedrooms is a violation of the fair housing laws. The decision over sleeping arrangements in a household is left to that family, not the housing provider.
8. **NO.** Such policies limit the housing choices for families with children (which are not limiting for people without children) and violate the fair housing laws.
9. **NO.** To comply with those types of discriminatory policies, excluding people of a particular group (race—Hispanic), is a violation of the fair housing laws. Both the property manager and the owner could be held liable for practicing under those policies.
10. **NO.** A housing provider may reject an applicant based on a criminal history despite their being a member of a protected class (African American)—**as long as** the decision is not based on their status as a member of a protected class.

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OVERVIEW OF FAIR HOUSING LAWS

Fair housing laws protect people against housing discrimination in rental, sales, lending or homeowner's insurance decisions. In those situations it is illegal to consider:

- RACE
- DISABILITY
- FAMILIAL STATUS (Having Children in the Home)
- COLOR
- SEX
- PREGNANCY OR
- RELIGION
- NATIONAL ORIGIN
- AGE (40 & over)
- ANCESTRY

Sexual harassment in housing also is prohibited under the fair housing laws. Tenants and homeseekers are protected against sexual harassment by landlords, property owners, and/or agents.

Hate crimes too are prohibited under the fair housing laws. It is illegal to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of their housing situation. The law prohibits all persons from harassing or interfering with other persons who are enjoying their fair housing rights—the right to live freely in the neighborhood of their choice without the fear of threats or violence.

WHAT ARE DISCRIMINATORY PRACTICES?

Everyone must be treated the same and be offered the same information, use of facilities and opportunities. To not offer a person the same opportunities as everyone else because of their status as a member of one of the protected classes is discrimination. Under the fair housing laws, it is illegal.

In the sale or rental of housing, no one may take any of the following actions based on a person being a member of a protected class:

- refuse to rent or sell housing;
- set different terms, conditions or privileges for sale or rent of housing;
- provide different housing services or facilities;
- falsely state that housing is not available for inspection, sale or rental;
- deny housing because of children;
- restrict families with children to certain buildings or certain floors of a building;
- demand children of opposite sex have separate bedrooms;
- deny reasonable accommodations;
- deny reasonable modifications;
- make or publish advertisements that indicate preferences or limitations based on race, color, sex, etc.; and
- for profit, persuade owners to sell or rent (blockbusting).

There are specific exceptions for personal residences, boarding houses and religious organizations. Additionally, housing for older persons is exempt from the prohibition against familial status discrimination where certain criteria are met.

HIGHLIGHTS OF PROTECTED CLASSES

—FAMILIAL STATUS—

Familial status discrimination is most common and most commonly misunderstood. Many housing providers believe it is perfectly legal to say “we won’t accept children”—but it’s not; it’s a violation of the fair housing laws.

“Familial status” means having in the household one or more individuals who have not attained the age of eighteen years being domiciled with: (1) a parent or other person having legal custody of such individuals); or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. Also protected under “familial status” is any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

COMMON WAYS IN WHICH FAMILIES WITH CHILDREN ARE DISCRIMINATED:

- flat out refusal to rent to families with children—No Children Policy;
- requiring families to live in specific buildings of an apartment complex, in specific sections of a building, or on the first floor of a building;
- demanding that children of opposite sex have separate bedrooms;
- refusing to rent based on perceived risks and dangers of the property (such as lead paint, steep steps, located near train tracks);
- inquiring about pregnancy;
- inquiring about childcare arrangements;
- inquiring about the ages of the occupants &/or how many will be children; &
- charging extra for children.

ILLEGAL “OPPOSITE SEX/SEPARATE BEDROOM” POLICIES

Mandating that boys and girls have separate bedrooms violates the fair housing laws. Such policies force people into making housing arrangements that they would not have otherwise made and have a disparate impact upon families with children.

The result of opposite sex/separate bedrooms policies can be devastating on families with children—forcing them into larger apartments at a greater expense or limiting the field of available apartments unnecessarily. For example, families with a boy and a girl would be forced into looking for a three bedroom apartment, not a two, or forced to look elsewhere when only two bedrooms are available. Specific living arrangements as to where each family member will sleep is a choice left solely to that family. A landlord may not dictate where each tenant sleeps.

ILLEGAL SEGREGATING AND STEERING OF FAMILIES

Requiring families with children to live in specific buildings of an apartment complex, in specific sections of a building, or on the first floor of a building or steering the family to another complex altogether is illegal and a violation of the fair housing laws. Such policies limit the housing choices for families (which are not limiting for people without children) and have a disparate impact upon families with children.

Often apartment complexes and buildings have designated areas set aside for families. They promote their facilities as having singles and families separated out. Advocates for such policies argue that the policies are nurturing and benefiting the family community by having other families nearby and child-friendly facilities at hand. They argue as well that policies are based on the safety and welfare of the children.

Nonetheless, segregation policies greatly affect families with children because they limit the

housing that is available to families. They preclude families from the other housing opportunities that are available to the rest of the world. Such limitations have the effect of forcing families into substandard housing, or homelessness. Policies that restrict families' choices violate the fair housing laws.

ILLEGAL OCCUPANCY LIMITATIONS

Legally, housing providers can set occupancy limits that are **in compliance** with local laws covering occupancy standards. These occupancy standards are devised to prevent overcrowding and other health and safety hazards. The general rule of thumb is that a two-persons-per-bedroom limit is a reasonable occupancy standard for an owner to set. However, coupled with that general rule, an occupancy limit must fairly reflect the capacity and character of the particular unit.

NOTE: housing providers must check with their local authorities for their area's specific occupancy law. (They vary from township to township in Pennsylvania.)

Landlords, however, **are not** allowed to limit the number of occupants in an apartment in a fashion that is less than local occupancy standards. Doing so would have a disparate impact upon families with children who would be required to look for more bedrooms than necessary or who would end up homeless, unable to afford the larger unit.

Limiting occupancy based on landlord preference and not on occupancy standards is a violation of the fair housing laws.

—NATIONAL ORIGIN/ANCESTRY/ETHNICITY—

Included in this class are individuals whose country of origin or ethnic heritage is the basis for the discriminatory conduct. A landlord cannot inquire about a person's national origin or direct inquiries regarding national origin toward selected applicants. It is national origin discrimination and illegal under the fair housing laws.

Nor can a landlord require proof of U.S. citizenship in order to rent an apartment. Persons with legal residency status would be denied housing solely based on the fact that they are not U.S. citizens and of a different national origin despite their legal status.

—DISABILITY—

"Disability" defined. Protection from discrimination is provided to individuals who:

- have a physical or mental impairment which substantially limits one or more of life's major activities, such as performing manual tasks, personal care, walking, seeing, hearing, speaking, etc.;
- have a record of having such an impairment, whether or not the impairment still exists; or
- are perceived as having such impairment, whether or not the perception is accurate.

This protection extends to persons with HIV status or AIDS and alcoholics. However, in the case of alcoholics, that while a housing provider cannot discriminate against someone who is an alcoholic, he/she may restrict or prohibit the consumption of alcohol on rental premises.

Such term does not include current, illegal use of or addiction to a controlled substance. Nonetheless, individuals who are **recovering** from a prior drug addiction are protected in this class.

NOTE: Excluded from protection in this class is any individual whose presence poses a "direct threat to the health or safety of other individuals or whose tenancy would result in a substantial physical damage to the property of others." A landlord must base his/her decision only on recent objective evidence of behavior that will put others at risk of harm.

REASONABLE ACCOMMODATION & REASONABLE MODIFICATIONS

Persons with disabilities have unique protections under the fair housing laws. They are entitled to request various types of reasonable accommodations and modifications which would allow them to have an equal opportunity to use and enjoy their home fully as well as any common space they may share with others in a complex. Requesting a reasonable accommodation or modification does not mean that a person with a disability can violate their lease.

WHAT IS A "REASONABLE ACCOMMODATION"

A "reasonable accommodation" is a change in rules, policies and practices or a change in the way services are provided. (PHR Act). Fair housing laws require landlords to grant reasonable accommodations in order to enable a person with a disability to have an equal opportunity to use and enjoy their housing accommodation or any of a development's public areas, such as a community room or laundry service. Reasonable accommodations can be necessary when someone is applying for housing, during tenancy or to prevent eviction.

Accommodations are considered "reasonable" when they are practical and feasible. Landlords do not have to grant an accommodation request if it would pose an undue burden (financial or administrative) on the landlord or require a fundamental alteration of the property. However the costs of the reasonable accommodation (if any) are assumed by the landlord and NOT the tenant.

EXAMPLES OF "REASONABLE ACCOMMODATIONS"

- with a first-come, first-served, parking policy, making an exception by creating a reserved parking space for a tenant who, because of her disability, has difficulty walking and needs to park close to the building;
- notifying a tenant with multiple chemical sensitivity in advance of painting and pest treatments;
- waiving "guest fees" and parking fees for a disabled tenant's home health care aide;
- assisting an applicant with mental retardation in filling out the standard application form;
- if the applicant needs oral reminders to pay the rent, agreeing to call or visit to remind the person before each month's rent is due;
- moving the monthly tenants' or owners' association meeting, usually held in an inaccessible building, to a building with a ramp;
- permitting a tenant with mobility impairment to move from a third-floor unit to the first floor;
- making an exception to the building's "no pets" rule for people with disabilities who use guide dogs or other "service" animals;
- accepting rent payments at the time of the month when the tenant receives his/her Social Security payments.

(What "Fair Housing" Means for People with Disabilities, Bazelon Center for Mental Health Law.)

WHAT IS A "REASONABLE MODIFICATION"

A reasonable modification is when a physical or structural change is required. The landlord must allow a tenant to make a reasonable modification if the modifications are reasonable and necessary for the tenant to use the dwelling.

In many instances, the tenant/buyer is responsible for the cost of these changes or modifications, and, if the landlord's request is reasonable, the tenant may also be required to return the unit to its original condition. Landlords may not require an increased security deposit from a tenant making a physical modification to the dwelling, however, housing providers, when necessary, may require the tenant to pay into an escrow account to cover the costs of returning the place to its original condition.

EXAMPLES OF "REASONABLE MODIFICATIONS"

- installing an automatic water faucet shut-off for people who can't remember to turn off the water;
- installing a ramp for a tenant who could not otherwise access her mobile home;
- installing pictures, color-coded signs or pathways for people whose cognitive disabilities make written signs impossible to use;
- installing carpeting or acoustic tiles to reduce noise made by a person whose disability causes him or her to make a lot of noise;
- disconnecting a stove and installing a microwave for a person unable to operate a stove safely.

**** The Fair Housing Act requires that any new multifamily housing built for first occupancy after March 13, 1991 must meet certain Fair Housing design and construction requirements that make units accessible and adaptable for people with disabilities. If the housing does not meet these accessibility standards, the housing provider must pay the cost of bringing it into compliance.**

**** If a landlord receives federal funds and is, therefore, covered by Section 504 or Title II of the ADA, the landlord most likely will be required to make and pay for requested reasonable modifications.**

REMEDIES UNDER THE LAW

When an individual believes that he or she has been harmed by an unlawful discriminatory housing practice, three alternative legal options are available. The following is a brief overview.

- **PRIVATE SUIT:** The individual may institute a private lawsuit in federal, state or local court. The statute of limitations is two (2) years from the alleged discriminatory practice. Unlimited damages may be sought.
- **FEDERAL/HUD:** The federal government provides that a complaint may be filed with the Office of Housing & Urban Development (HUD). The statute of limitations is 365 days from when the alleged discriminatory practice occurred. HUD is authorized to investigate and conciliate complaints but can refer complaints to states or localities that have fair housing laws which provide substantially equivalent rights and remedies. HUD may order a respondent to pay damages, civil penalties and attorney's fees if discrimination is found.
- **STATE/PHRC:** A complaint may be filed with the Pennsylvania Human Relations Commission (PHRC) within 180 days of the alleged discriminatory action. Currently, the PHRC is the substantially equivalent agency to HUD which means that individual cases may be referred to the Commission by HUD. If discrimination is found the Commission may order an award for actual damages, damages for humiliation and embarrassment, and assess a civil penalty.

EXEMPTIONS

Housing for Older Persons

“Housing for older persons” is exempt from the prohibition against familial status discrimination. “Housing for older persons” is housing:

- provided under any federal or state program that the PHRC determines is specifically designed and operated to assist elderly persons as defined in the federal or state program;
- is intended for and solely occupied by persons 62 years of age or older; or,
- is intended and operated for occupancy by at least one person 55 years of age or older per unit.

In determining whether housing qualifies as “housing for older persons” under this clause, the PHRC’s requirements shall include, but not be limited to, the following:

- at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit;
- there is publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older; and
- the housing complies with regulations declared by the PHRC for verification of occupancy.

Religious Organization

Religious organizations are permitted to limit the sale, rental and occupancy of dwellings they own for noncommercial reasons to persons of the same religion. The exemption is only valid if membership in the religion is not restricted on the basis of race, color, or national origin.

GENERAL RULE OF THUMB:

APPLY POLICIES & PRACTICES UNIFORMLY

HATE CRIMES

Under the Fair Housing laws, it is illegal to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of their housing situation. The law prohibits all persons from harassing or interfering with other persons who are enjoying their fair housing rights—the right to live freely in the neighborhood of their choice without the fear of threats or violence. Under this provision, liability extends to neighbors who engage in harassment, municipalities that take discriminatory actions in housing, as well as landlords, owners, building managers, etc.

SEXUAL HARASSMENT

FAIR HOUSING LAWS

Both the federal Fair Housing Act and the Pennsylvania Human Relations Act protect women from sexual harassment in housing. Sexual harassment in housing is sex/gender discrimination under the law—targeting a specific protected class, women, based on their gender. The laws also protect women from coercion, threats, or intimidation when interfering with their housing rights. (Note: The laws against gender discrimination protect men, as well as women, from sexual harassment.)

The courts have recognized two forms of sexual harassment—"quid pro quo" and "hostile housing environment".

"QUID PRO QUO" SEXUAL HARASSMENT

"Quid pro quo" sexual harassment (literally, "this for that") involves harassment in situations in which sex or sexual favors are demanded of women by those in control of their housing in return for housing or a housing benefit. For example, quid pro quo harassment occurs if a landlord evicts a tenant or [negatively impacts upon her housing voucher] because she refuses to have sex with him." Sherry Leiwant, *Sexual Harassment in Housing: A Primer*, Clearinghouse Review, December 1996, 817.

The Fair Housing Act prohibits denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors. One incident alone is enough to sustain a claim of quid pro quo sexual harassment.

"HOSTILE ENVIRONMENT" SEXUAL HARASSMENT

"A hostile housing environment claim involves unwelcome behavior of a sexual nature that creates an intimidating, hostile, or abusive housing environment or has the effect of unreasonably interfering with the tenant's housing." Leiwant at 819. The conduct must be sufficiently severe or pervasive as to create an environment that a reasonable person would find intimidating, hostile, offensive, or otherwise significantly less desirable.

Whether or not conduct constitutes sexual harassment will depend upon the totality of the circumstances in each situation, on a case by case basis. Critical factors to examine include, but are not limited to: context; nature; severity; scope; frequency; duration; location of incident(s); and identity, number, relative ages and relationships of the persons involved.

Where in a quid pro quo claim, one incident can be enough to establish sexual harassment, in a hostile environment claim it is usually necessary to demonstrate a series of harassing incidents to prove sexual harassment. Whether conduct creates a hostile environment will be evaluated from the perspective of a reasonable person in the aggrieved person's position.

HUD REPORT:

Discrimination in Metropolitan Housing Markets 1989-2000 Report

A recent HUD study, *Discrimination in Metropolitan Housing Markets: Phase I*, shows that housing discrimination nationwide against African Americans and Hispanics looking to buy a home is down since 1989. Still, African Americans can expect adverse treatment 22% of the time in rental and 17% in sales. Hispanics experience discrimination 26% of the time in rental and 20% when looking to buy a home.

Results were collected by numerous private fair housing agencies across the country. The Fair Housing Council of Montgomery County participated in the research study and provided data for the Philadelphia Metropolitan area. The full release and report can be found at: www.hud.gov

CASE UPDATES

DISCLAIMER: The following cases have been filed in local forums and/or have been referred for litigation pending further investigation. In all settled cases reported in this newsletter, the defendant, unless otherwise noted, denies the allegations of discrimination made by the plaintiff and the parties have agreed to resolve the case prior to a trial or hearing.

FHCMC vs. Barry Court Apartments

Westrum Partners LTD and owner Lee Balten of Barry Court Apartments in Ambler Pa. have agreed to settle a fair housing discrimination case filed by the Fair Housing Council of Montgomery County with the U.S. Dept. of Housing and Urban Development for \$10,000.00.

The Council filed a complaint with HUD in February 2002 alleging that African American callers to Barry Court were given different information than white callers when inquiring about renting a unit at Barry Court. The complaint was based upon evidence gathered over 3 years by the Council. In one piece of evidence, Lee Balten told an African American caller that there were no vacancies at Barry Court but encouraged a white caller to apply for an available unit on the very same day.

“Racial discrimination has become subtle”, according to Elizabeth Albert, Executive Director of the Fair Housing Council of Montgomery County. “ In this case African Americans were denied the opportunity to rent apartments because they sounded African American over the phone. When we analyzed the information we had collected there was no other way to explain the different treatment between whites and blacks except discrimination based upon the sound of someone’s voice”.

The Council called upon the expertise of Dr. John Baugh, a professor of Education and Linguistics from Stanford University. Dr. Baugh, a nationally known expert in racial linguistics, provided an analysis of the voices and reported on the likelihood that a caller’s race could be identified by the sound of their voice. Dr. Baugh has provided linguistic analysis in other fair housing discrimination cases.

Terms of the settlement include development and implementation of non-discriminatory policies, fair housing training and Cultural Proficiency Training. The goal of Cultural Proficiency training is to provide skills that individuals and organizations need in understanding differences in people. Kirk P. Perucca, President/CEO, Project Equality, is pleased partner with the Fair Housing Council. “Providing training in Cultural Proficiency as a part of a Fair Housing settlement is a valuable step in helping to end discrimination in housing.”

Other discrimination found by HUD during their investigation included discrimination against families with children and people with disabilities.

Arthur Haywood, Esq. of Lord & Haywood, represented the Council.

Miller, FHCMC vs. REMAX International, REMAX Achievers, Don Peters et al.

With the assistance of attorney Arthur Haywood of Lord and Haywood, the Council and Kelly Miller filed a lawsuit in US District Court for the Eastern District of Pennsylvania on October 18, 2002. Mrs. Miller had contacted the Council in early October 2002 with a complaint of familial status discrimination. The facts of the case filed are that the REMAX Agent, Don Peters, rejected the Millers application for a rental house because he preferred to rent to people with no children. Mr. Peters told Mrs. Miller he had found a “landlord’s dream – professionals, no children and no pets.” The Council conducted testing which confirmed the discrimination.

Smith, Dickerson, Simmons, FHCMC vs. Greco

The Council and three female plaintiffs settled a lawsuit which had been filed in US Eastern District Court alleging that Gary Greco had sexually harassed female tenants in the course of renting or attempting to rent apartments in Norristown. The terms of the settlement included an apology to the victims, mandatory utilization of a management company for at least two years, and a monetary settlement to the victims. Michael Churchill of the Public Interest Law Center of Philadelphia represented the plaintiffs.



FAIR HOUSING SCHOOL PROGRAM

Since 1997 we have held our annual Fair Housing children's program on combating housing discrimination. T-shirts have been made of the winning posters every year. All the t-shirts are available for \$10 and come in various sizes. Call for details & orders.

TO PLACE YOUR ORDER,
Mail a \$10 check to:

**Fair Housing Council of
Montgomery Co.
105 E. Glenside Ave., Suite E,
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Help us fight against discrimination... BECOME A MEMBER!!!

The Fair Housing Council of Montgomery County invites you to become a member. The Council is a private, non-profit organization dedicated to fighting housing discrimination in Montgomery County. As the only local agency whose sole mission is to ensure equal housing opportunities in Montgomery County, the Council has been working hard for you! By becoming a member, you can help guarantee that fair housing remains a part of your community.

With your support, the Council will continue providing educational programs to consumers and real estate professionals, advocacy for victims of housing discrimination and access to information on open and affordable housing in Montgomery County.

YES, I'D LIKE TO BE A MEMBER OF THE FAIR HOUSING COUNCIL!

Name or Organization _____

Address _____

Phone _____ Fax _____

Choose One— T-shirt

SIZE: ___ Small ___ Large ___ X-Large

MEMBERSHIP RATES:

Individual (\$25)

Nonprofit Org. (\$35)

Corporate (\$50)

MAKE CHECK PAYABLE TO: FAIR HOUSING COUNCIL OF MONTGOMERY COUNTY
MAIL TO: 105 E. Glenside Ave., Suite E
Glenside, PA 19038

Questions? Call us at (215)576-7711

**Thank you for supporting the fight against
housing discrimination!**



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In This Issue...

FAIR HOUSING BASICS FOR HOUSING PROVIDERS

SAVE THE DATE For Upcoming Fair Housing Month Events

Annual Fair Housing in Our Community

When: Friday April 16, 2004

Where: TBA

Topic: Fair Housing and People with Disabilities

Our guest speaker Micahel Allen, Esq. is a nationally known expert on fair housing laws and disability issues. He is the at the Bazelon Center in Washington DC and co – editor of the NIMY Report

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