Banking on the Poor

A Dallas nonprofit’s legal battles could change affordable housing programs nationwide.

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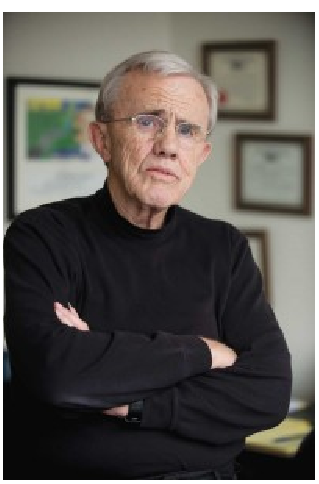
In the early 1980s, Dallas civil rights attorney Mike Daniel and his law partner Betsy Julian were fighting to desegregate public housing in East Texas.

At *The Dallas Morning News*, two reporters read the horror stories about public housing conditions from the law firm’s files and decided to do a national investigation. More than a year later, they reported that, just as in East Texas, public housing for poor families around the country was overwhelmingly located in crime-ridden, poverty-stricken neighborhoods, while federally assisted housing for the elderly — occupied largely by whites — provided significantly better housing, located in safer, cleaner middle-class neighborhoods. That project, called “Separate But Unequal,” won the *News* its first Pulitzer Prize.

A federal judge ordered East Texas officials to desegregate and equalize conditions in 36 counties, the most far-reaching desegregation order ever issued.

Another suit filed by Daniel and Julian against Dallas officials resulted in a settlement that allowed thousands of poor minority families to move into good housing in safe neighborhoods. Similar lawsuits in other cities helped improve conditions, forced governments to shut down high-rise horrors like the Cabrini Green project in Chicago, and gave the people who were living in those places a better chance at a decent life and choices in where to live.



Daniel: “For every family we helped, they were putting three more in.”

Robert Hart

What neither Mike Daniel nor a lot of housing advocates realized at the time, however, was that, just as things were improving in some ways for residents of public housing, another program was coming into play that would drive other minority families who needed help with housing back into poor, problem-filled neighborhoods rather than helping them get out. This time the numbers were much larger. And so was the payoff for a particular segment of the economy: national banks that now hold billions of dollars' worth of investments in what is called low-income tax-credit housing.

Low-income tax-credit housing is not for the poorest of the poor but for those whose income still falls significantly below the median income for an area. Developers who apply for the program receive a percentage cut in their company's income tax bill — not a reduction in taxable income but in the actual tax dollars owed. In return, the developer has to offer a certain percentage of units at below-market rates and meet other conditions. Banks and other investors contribute equity and then take advantage of the tax credits. A whole industry has grown up around building and operating tax-credit housing.

In 2008 the vast majority of tax-credit housing units were still being built in high-poverty, high-crime areas, the kinds of neighborhoods where sociologists have repeatedly found that children have a much smaller chance of getting a good education, escaping poverty, and surviving crime to become healthy, productive adults.

And so Daniel, now counsel to a Dallas nonprofit called the Inclusive Communities Project, went back to court. ICP helps low-income families find housing, provides financial help such as security deposits, and works in other ways to improve housing and communities — including by filing groundbreaking lawsuits.

Daniel, with current law partner Laura Beshara, sued the Texas Department of Housing and Community Affairs on behalf of ICP, over allegations of de facto racial segregation in tax-credit housing.

In 2012, in response to a ruling from U.S. District Judge Sidney Fitzwater in Dallas, the state housing department reformed its criteria for choosing among developers' proposals, so as to spread tax-credit housing to communities and neighborhoods all over urban areas, giving residents a much better chance at having a decent neighborhood in which to raise their kids.

That suit was argued before the U.S. Supreme Court a few weeks ago. The import of the Supreme Court's decision, expected by this summer, could go far beyond the bounds of Texas. Then-Atty. Gen. and now Gov. Greg Abbott, in deciding to appeal lower court decisions, is challenging a principle that is part of the bedrock of civil rights litigation in this country —– the idea that racial discrimination can be proved by the results of what is done, without having to show racist intent.

At her Mesquite subsidized housing complex, crime was a problem, Daniell Gillaspie said. In Sunnyvale, "You don't see that." Robert Garner

Housing market analysts and other believe the potential impact on low-income housing and civil rights lawsuits of many kinds could be devastating, if the "disparate impact" rule is overturned. U.S. Sen. Elizabeth Warren wrote a column about it in the *Washington Post*; civil rights groups submitted an amicus brief in the case.

In August ICP upped the ante again. The nonprofit filed suit against the Internal Revenue Service and the Office of the Comptroller of the Currency. Together, those two federal agencies oversee the tax-credit program and encourage the participation of national banks. The suit alleges that the tax credit program is perpetuating racial segregation in Dallas and violating the tenets of the Fair Housing Act.

Despite the attention that ICP's lawsuit against the Texas agency has received, little has been written locally about the nonprofit's suit challenging the practices of the federal agencies. But the tax-credit housing industry is watching.

Niketa Ramsey isn't troubled by the way in which reforming the tax-credit housing picture has affected her and her family. The results of the complicated situation are clear to her.

Last summer, after school let out, she and her two younger kids (she also has an adult daughter) left a neighborhood called Sunnyside in Houston's high-crime Third Ward, for Sunnyvale, near Mesquite. Despite the similar-sounding names of their old and new homes, Ramsey said the two places are worlds apart.

In the old neighborhood, she said, it was "all thugs and drugs." In the townhome development where she lives now — one of the tax-credit projects built since the Texas housing agency changed its policies — her kids can play outside, her son can ride his bike without having it taken away from him, and he has improved two grade levels in his reading abilities.

"They love it," she said. "I can see it in my kids' faces."

The way Mike Daniel sees it, while he and his allies were helping people get out of public housing in terrible neighborhoods, the federal government was helping put three times as many people into those neighborhoods through the low-income housing tax credit program. It goes by the acronym of LIHTC, pronounced "*lie*-tech."

The program was created as part of the Tax Reform Act of 1986. Since then more than 2.2 million housing units have been built "with, again, white [tenants] in middle-class neighborhoods and minorities in crappy neighborhoods," Daniel said. "For every family we helped, they were putting three more in."

The Wind River Apartments in Fort Worth were built in 1986 and remodeled in 2010, before Texas changed its rules on locating low-income tax-credit housing. The area around it is mostly low-income, and crime is a problem. Robert Garner

Some nonprofit organizations got into the tax-credit business with high ideals about community involvement and revitalizing deteriorating neighborhoods. "But that's not really happening" in most cases, he said.

It took the banks only a few years, Daniel said, to convince Congress to remove pesky provisions of the law that could actually have made a positive difference. There isn't even any language specifying that the tax-credit housing must comply with the Fair Housing Act, he said.

The big banks got into the program in a big way. In a recent two-year period, Wells Fargo, Bank of America, JPMorgan, and Citibank each invested $300 million in tax-credit housing. According to the lawsuit filing, LIHTC is the federal government's largest program for developing affordable housing, costing the government $6.5 billion per year in forgone taxes.

Generally, Daniel and others said, the quality of the LIHTC housing being built has been good. "It'll be very nice housing, usually fenced and gated," with good security and maintenance, he said. But in addition to being in high-crime neighborhoods, the apartments or townhomes might be across the street from a hazardous-waste location, in neighborhoods where there are no grocery stores and few services, and where there may already be substantial numbers of public housing units

Previously almost all tax-credit units in Texas were being built in low-income neighborhoods, and thus people who needed help with housing had little choice. Some who had never lived in bad neighborhoods before were being forced to move there to take advantage of the tax-credit units' rental rates, Daniel said.

"There are people who have never been in those areas [where the housing is located]. They live in Garland, and they don't want to go to South Dallas," Daniel said. "It's not where they're from, they hate it, and they have to go there."

Researchers have found similar problems in other states. A 2013 study in and around New York City found that almost threefourths of LIHTC affordable housing units were concentrated in areas of high or extreme poverty, while the majority of LIHTC housing for the elderly was in low-poverty suburban areas.

"This is a national problem," said John Henneberger, co-director of the Texas Low Income Housing Information Service and a housing advocate since the mid-1970s. "What is at issue here is, literally, are we going to integrate people of color into the rest of society?"

Changing the policies that put almost all tax-credit housing in the same kind of neighborhoods "gets down to both an individual rights thing and a good public policy thing," he said. "That's what we're really talking about — if you're a low-income mom trying to raise some kids, are you going have any say over what kind of neighborhood your kids grow up in?"

Some states, he said, learned the lesson long ago of not crowding too much low-income housing together. "But here in the state of Texas, we were happily going along repeating [those] mistakes, right up until the ICP case was filed" against the state housing agency.

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"There is no doubt that the impact of the ICP case [against the state agency] was transformative, in terms of changing the way the state funded subsidized housing," Henneberger said.

Because the ICP case was based on tax-credit housing conditions in Dallas, the judge ordered the state agency to propose a remedy for the Dallas area. But, "the state voluntarily elected to apply the rule changes … across the state," Henneberger said.

Fort Worth Housing Authority's complex called Hometowne at Matador Ranch provides tax-credit-financed housing for senior citizens.

As a result, "We are seeing multifamily affordable tax-credit housing going into neighborhoods that have never seen any affordable housing before," Henneberger said. "The properties being funded today are largely in neighborhoods where a reasonable person might choose to live," because of the "quality of the schools, physical safety, the presence of grocery stores, and retail opportunities near jobs." Places like Sunnyvale and Frisco and Mansfield.

"More importantly, we stopped building housing exclusively where it had been built for 80 years," Henneberger said, and where the density of such housing was already too great.

In Fort Worth, housing authority officials said, that kind of change, of building tax-credit housing in a variety of neighborhoods, started a few years before the ICP lawsuit and the judge's ruling.

"We started … in 2007. We had some ideas that [the changes] were going to come," said Brian Dennison, vice president for development and asset management with the Fort Worth Housing Authority. "For us, that has served as a funding mechanism to allow us to carry out one of our fundamental missions — the de-concentration of low-income housing."

When the state changed the rules as part of complying with Fitzwater's order, "We didn't fight it," he said. "There is such a huge need for the housing. We used it to our benefit to provide more units."

Alyce Sykes, public relations manager for the housing authority, said the change has given their tenants the option to live close to their jobs or to stay in far-flung neighborhoods that they are used to — in essence, they are empowered to choose.

Back in Sunnyvale, Daniell Gillaspie said her family understands the value of that ability to choose. She lives in the same tax-credit townhome complex as Niketa Ramsey.

In Mesquite, Gillaspie and her husband and their three kids lived in a subsidized housing development where there was "a lot of crime and a lot of noise." Maintenance was often a problem, as were vandalism and car thefts. "There were always people doing things that kids shouldn't be around," she said. "Here, you don't see that."

The low-income tax-credit housing industry is paying a lot of attention to the ICP lawsuits. It's no wonder, since the federal government estimates that about 85 percent of the billions in corporate equity that finances the projects comes from the banking sector.

Paul Kiernan of Holland & Knight LLP, a law firm that describes itself as a leader in the industry, was quoted last month in the *Law 360* publication as saying that a lot of people are “watching nervously.”

The Supreme Court’s ruling in the case against TDHCA could have a huge impact on “the entire world of multifamily and lower-income housing — and ultimately probably other real estate,” he was quoted as saying.

The newsletter of the Affordable Housing Tax Credit Coalition, representing syndicators, investors and others in the industry, noted soon after the filing of the suit against the IRS and Office of the Comptroller of the Currency that the plaintiffs seem to have done their homework and compiled “a substantial amount of evidence.” Although the case centers on Dallas, the newsletter said, “this has the potential of having national implications.”

Daniel said he believes banks have participated in continuing to pack tax-credit housing into bad neighborhoods because it is profitable for them.

“There is more money in doing it in high-poverty zones,” he said. Banks can take a piece of otherwise unsalable land, flip it a couple of times to increase its worth, and end up selling it for a housing project at many times its starting value. In one case in Dallas, he said, one property valued at $20,000 may end up being sold for as much as $1.8 million for tax-credit housing. And, he said, tax credits are higher for developments in high-poverty zones.

Opposition from neighbors has always been a problem with any kind of subsidized housing. In poor neighborhoods, Daniel said, “Nobody fights you. No one is pissed off. … They’d rather have a grocery store, but they aren’t objecting.”

If the Supreme Court agrees with Texas officials and rules that “disparate impact” is not the correct basis for determining if housing patterns are discriminatory, Henneberger said, “You basically kick the props out from under all the good work that is being done right now to break down segregation.”

American cities now are as segregated as they were in the 1940s, he said. “It is a cancer that still infects our cities.” The way to start attacking it, he said, “is with what the government does to maintain it, even before we get to individual acts of discrimination.”

One thing that clearly can be done, because it’s been done since the 1960s, he said, is “to order that federal housing shouldn’t be segregated. We’re still fighting that battle.”