Racial Discrimination in the Private Housing Sector: Five Years After
“Five years have passed; five summers, with the length
Of five long winters.”

INTRODUCTION

It has now been five full years since the major developments of 1968 promised anew to end the widespread discrimination against blacks seeking to rent or buy housing commonly available to whites. The ringing words of the majority opinion in Jones v. Alfred H. Mayer Co. reaffirmed the nation’s pledge of freedom in the thirteenth amendment: “At the very least, the freedom . . . includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep.” This opinion was rendered on June 17, 1968, two months after enactment of the Fair Housing Act of 1968; judicial and legislative processes thus combined to form extensive and definitive national policy in the housing field, and that policy is a clear-cut commitment to equal housing opportunities for all. Now, after five years under these laws, discrimination in the housing field is still both widespread and deeply rooted. Despite rapid growth of citizens’ fair housing organizations and their unwavering support of open housing policies, despite the federal laws and enforcement mechanisms, despite the concurrent fair housing laws in many states, despite the economic qualification of black buyers and renters, discriminatory practices in housing are the common-place rather than the exceptional, the frustrating but predictable future for hopeful black buyers and renters.

Currently there are three main branches to fair housing law. There is first the Civil Rights Act of 1866, now 42 U.S.C. Section

1. W. Wordsworth, Lines Composed a Few Miles Above Tintern Abbey, lines 1 and 2.
3. Id. at 443.
1982, passed pursuant to the enforcement clause of the thirteenth amendment and revitalized by the decision in Jones. Subsequent decisions have reaffirmed the availability of this basic doctrine to an aggrieved person and defined the nature of remedies available to parties suing pursuant to it. Second, the Fair Housing Act of 1968, now 42 U.S.C. Sections 3601-3631 and commonly referred to as Title VIII, which was passed in the spring of 1968 in the aftermath of the death of Martin Luther King, Jr., embraces widespread prohibitions and provisions for both administrative and judicial remedies. And third, state law in Maryland prohibits racial discrimination in the sale and rental of housing and charges the Human Relations Commission with administrative enforcement. The relative strengths and weaknesses of these approaches to discrimination will be evaluated in the following sections, with particular emphasis on the efficacy of each in remediating the wrong each is designed to remedy. In addition to evaluating the present suitability of these laws to the housing discrimination problem, this comment will focus attention on the adaptability of these laws to the more subtle forms which discrimination is now taking and will make suggestions as to how the legislature and courts might best respond in the future.

SECTION 1982

The Civil Rights Act of 1866 and the Decision in Jones v. Mayer

The Civil Rights Act of 1866 grants to all citizens the “same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property.”5 For many years this Act was interpreted to apply to only those situations in which state action was present6 and thus was not consid-

5. 42 U.S.C. § 1982. "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." The statute as presently codified derives from the Act of April 9, 1866, ch. 31, § 1, 14 Stat. 27. For conflicting analyses of the legislative history and the circumstances in which the Act was passed, see Jones v. Alfred H. Mayer Co., 392 U.S. 409, 422-37, 454-73 (majority opinion and dissenting opinion of Mr. Justice Harlan). See also Note, The "New" Thirteenth Amendment: A Preliminary Analysis, 82 Harv. L. Rev. 1294 (1969); Note, Constitutional Law: The End of Private Racial Discrimination in Housing Through Revival of the Civil Rights Act of 1866 (42 U.S.C. § 1982), 6 Tulsa L.J. 146 (1970).

6. See, e.g., Hurd v. Hodge, 334 U.S. 24 (1948), the companion case to Shelley v. Kraemer, 334 U.S. 1 (1948). Both of these cases held that judicial enforcement of racially restrictive covenants in private conveyances was state action and therefore prohibited by the fourteenth amendment. In Hurd, the Court seemed to assume without discussion that section 1982 requires a finding of state action. 334 U.S. at 31-34. See also Corrigan v.
ered to reach purely private acts of discrimination. In the Jones decision, the Supreme Court characterized the question of statutory construction as one of first impression and then held that the language did include acts of private discrimination.

The Jones case reached the Court on a stipulation that respondents had discriminated against the Joneses solely on the basis of their race. The Court focused on the legislative history of the Act and concluded that it "... bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment." Although the Statute is declaratory only, the Court held that its broad equity power made injunctive relief appropriate and left open the question of whether damages were available in a suit under this section.

The impact of the Jones decision cannot be underestimated. The decision was announced only two months after Congress had enacted a comprehensive fair housing act, yet the Court was not deterred from proclaiming in the broadest terms its commitment to judicial relief where access to and acquisition of property is denied because of race. The Jones decision sets forth no


7. 392 U.S. at 419-20.

8. The plaintiffs responded to a newspaper advertisement for homes in a new development built and owned by defendant. When plaintiffs selected a building site and house plan, defendants refused to sell to them because they were black. See 255 F. Supp. 115 (E.D. Mo. 1966), aff'd, 379 F.2d 33 (8th Cir. 1967). The Court of Appeals decision, written by the now Mr. Justice Blackmun, suggested that a housing development of the magnitude of defendant's project could be found to be carrying out a governmental function and thus could be engaged in state action; the court declined to adopt this reasoning, however, as inappropriate for an "inferior tribunal." 379 F.2d at 45.

9. 392 U.S. at 413.

10. Id. at 414.

11. See text accompanying note 15 infra.


13. Mr. Justice Harlan, dissenting, would have dismissed the writ as improvidently
exceptions: as applied to housing, every unit in the nation is covered whenever a black desires to rent or to buy. The federal courts are thus open to any black seeking immediate injunctive relief for discrimination in the housing area. Subsequent cases indicate that the Court's decision has been valuable in fair housing litigation, as the broad interpretation of section 1982 has given relief in situations where, even with the sweeping provisions of Title VIII, relief otherwise would not have been available.\textsuperscript{14}

The Supreme Court and other federal courts have taken up some of the questions left open after the Jones decision. For example, in Sullivan v. Little Hunting Park, the Court held that a party injured by violation of Section 1982 could indeed recover damages.\textsuperscript{15} In addition, courts have allowed plaintiffs to maintain suits under both Section 1982 and Title VIII without an election of remedy,\textsuperscript{16} and one federal district court has held that even if relief under Title VIII is barred by the statute of limitations, it is still available under section 1982.\textsuperscript{17} It thus appears that the federal courts are committed to an expansive interpretation of Section 1982\textsuperscript{18} and that a plaintiff seeking relief need not look primarily to Title VIII.

\textsuperscript{14} See notes 15 through 17 infra and accompanying text.

\textsuperscript{15} See 396 U.S. 229 (1969). See also notes 34 through 49 and 123 through 125 infra and accompanying text.


\textsuperscript{17} See Brown v. Dallas, 331 F. Supp. 1033, 1035-37, (N.D. Tex. 1971) where, although suit under section 3612 was barred, the district court proceeded under section 1982.


All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Section 1982 Subsequent to the Jones Decision

A review of the cases adjudicated after the Jones decision indicates that the courts have not yet sought to narrow the scope of Jones, nor have they been deterred from recognizing discrimination, even in its more subtle forms. Thus it may be inferred that courts will be forceful and determined in fashioning relief.

Additionally, the courts have recognized several evidentiary methods available to plaintiffs seeking to establish that discrimination has taken place. For example, the court may allow the plaintiff to establish certain facts which, if unrebutted, would sustain an inference of racial discrimination. Once these facts are proven, the burden shifts to the defendant to offer evidence in rebuttal. Thus, the burden rests on the defendant to show that his actions were not discriminatory, rather than on the plaintiff to show that these actions were.

This technique apparently was used in Newbern v. Lake Loraine, Inc. In that case, plaintiff claimed that racial discrimination was the only factor in defendant’s refusal to sell one of approximately 1200 lots in a recreational development. Defendant countered with an explanation of its procedure in considering the qualifications of potential buyers and demonstrated rejection of sixty other applications for one of three stated reasons. The court rejected this explanation, saying that the evidence instead indicated that defendant had in fact rejected applications only when the deposit check was returned or when some other indication of unsatisfactory credit came to defendant’s attention. Relying on


20. For a similar legal analysis, see Griggs v. Duke Power Co., 401 U.S. 424 (1971), noted in 31 Md. L. Rev. 255 (1971). In this case, the Court held that where employment practices, including intelligence tests, operate in such a way as to discriminate against blacks, the burden of proof shifts to the defendant company to show that the questioned practice or test is related to job performance; if the company is unable to demonstrate this relation, the practice must be discontinued because of its discriminatory consequences, even absent a discriminatory intent. 401 U.S. at 431-32. The shifting of the burden of proof thus results in a more objective test than a subjective inquiry into discriminatory intent. See also Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass’n, 375 F.2d 648 (4th Cir. 1967), aff’d 251 F. Supp. 667 (E.D. Va. 1966) where the court of appeals, quoting the district court opinion, stated: “Where no Negro physicians are on the hospital staff and application in proper form is made . . . by a Negro physician who meets the ‘paper’ qualifications . . . a prima facie inference of discrimination exists. . . .” 375 F.2d at 654, quoting 251 F. Supp. at 673. The court of appeals concluded, “[T]he inference disappears when a reasonable explanation is given showing that denial of staff membership is not because of the race . . . of the applicant.” Id.

this evidence, in addition to defendant's misleading statements explaining the lengthy delay, the court held that if a black offeror meets the objective requirements of the seller-developer and if the developer has sold lots, but none to blacks, a prima facie inference of discrimination arises "as a matter of law." The defendant was enjoined from selling to anyone else the lot previously selected by the plaintiff and was ordered to deal with all persons on equal terms in the future.

Another evidentiary technique gaining acceptance in the courts is the use of "testers," a means employed primarily by citizens' fair housing groups and designed to demonstrate to the court that the denial of housing was made solely because of race. It typically works as follows. The black applicant, thinking he has been rejected on the basis of race, contacts a fair housing group and relates to them what has taken place. The group supplies a white volunteer tester who is matched as closely as possible to the black applicant in terms of age and marital, family and financial status. The white tester then applies for the same housing unit, and if the unit is made available to the white, after the black has been told it is not available, a prima facie case of racial discrimination has been established.

On facts such as these, a district court in Massachusetts held: "I find that the refusal . . . to rent . . . was purely and solely because the [plaintiffs were] members of the black race, and I rule that the refusal to rent . . . to [plaintiff] is a clear-cut and unequivocal violation of the plain terms of 42 U.S.C.A. § 1982. . . ." Similarly, in Bush v. Kaim the court considered

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22. Id. at 417.
23. In Baltimore, for example, Baltimore Neighborhoods, Inc., founded in 1959, has sponsored tester programs available both to verify alleged discrimination through the use of a white tester and to establish the prevalence of discriminatory housing practices through the use of matched black and white tester teams. See Baltimore Neighborhoods, Inc., Discrimination Against Blacks in Predominantly White Apartment Developments, July, 1972.
26. 297 F. Supp. 151 (N.D. Ohio 1969). In this case, the court, upholding the plaintiff's right to lease the property, ordered the defendant to execute a lease to the plaintiff under terms identical to those offered the tester. The landlord and tester had actually executed a lease (which contained a clause prohibiting assignment or subletting, although the tester apparently planned to assign it to the plaintiff at a later time). The court, stating that it is "not of critical significance . . . and, indeed, may not even be relevant," refused to give the lease the importance the parties had accorded it. The court held that denial of plaintiff's right guaranteed by § 1982 was more important than the lease issue and could not be made to depend on state law of contract or property. Id. at 160.
the use of a tester as persuasive evidence in meeting plaintiff's burden of proof and held that plaintiff had established a prima facie case and that the burden had shifted to the defendant.\textsuperscript{27}

Denial of housing is not the only conduct found illegally discriminatory in suits brought under Section 1982. In \textit{Contract Buyers League v. F \& F Investment,}\textsuperscript{28} plaintiffs, black home buyers in an area where apparently all sales were being made to blacks, alleged \textit{inter alia} that Section 1982 was violated by the terms and conditions on which their properties were sold to them because these terms were less favorable and the prices higher than those given whites. Defendants attempted to meet this allegation by saying that since in fact no sales had been made to whites, there could not have been any discrimination in the terms. Against a complex factual background and allegations of blockbusting, panic selling, and exploitation of black buyers, the court held that "there is no reason to distinguish a refusal to sell on the ground of race and a sale on discriminatory prices and terms."\textsuperscript{29}

\textbf{Remedies Under Section 1982}

Section 1982 remains today an important statement of federal policy and a viable statutory basis for a civil suit. Lacking the specificity and detail found in the more recent Fair Housing Act of 1968,\textsuperscript{30} it is instead admirably broad and flexible, and thus a suit brought under Section 1982 may avoid some of the limitations and disadvantages of a Title VIII suit. While Title

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\textsuperscript{27} "[T]he plaintiff must show each of the following elements: (1) that the owner (or responsible party) placed the property on the open market for sale or rental, (2) that the plaintiff was willing to rent or purchase on the terms specified by the owner, (3) that plaintiff communicated this willingness to the owner at a time when the property was available for sale or rent, (4) that the owner refused to sell or rent the property to plaintiff on terms which the owner indicated would otherwise be satisfactory, and (5) that there is no apparent reason for the refusal of the defendant to rent or sell the property to the plaintiff other than plaintiff's race." The court also suggested ways in which the defendant could rebut the presumption. \textit{Id.} at 162.

\textsuperscript{28} 300 F. Supp. 210 (N.D. Ill. 1969), \textit{aff'd sub nom.} Baker v. F \& F Investment, 420 F.2d 1191 (7th Cir. 1970), noted in 80 \textit{Yale L.J.} 516 (1971). In this case, black homeowners who had bought homes on installment contracts formed the Contract Buyers League and brought a class action for reformation of the contracts and modifications of unjust terms. On appeal, the court held that the Contract Buyers League did not have standing, as it was not the real party in interest, but that the suit could be maintained by individual party plaintiffs. \textit{See also} R. Quaemmen, \textit{To Walk the Line}, a novel based on the factual setting which gave rise to the \textit{Contract Buyers League} case.

\textsuperscript{29} 300 F. Supp. at 216.

\textsuperscript{30} \textit{See} discussion \textit{infra} at note 51 and accompanying text.
VIII has a short statute of limitations,\textsuperscript{31} section 1982 has none. Title VIII limits the successful plaintiff's recovery to actual damages and "not more than $1,000 punitive damages,"\textsuperscript{32} but section 1982 affords no such obstacle. And Title VIII limits recovery of attorney's fees to the plaintiff unable to pay,\textsuperscript{33} while again section 1982 has no such constraint. Courts have recognized these advantages of section 1982 and have made use of common law theory in fashioning relief, including monetary damages and attorney's fees.

In \textit{Sullivan v. Little Hunting Park},\textsuperscript{34} the Court relied in part on 28 U.S.C. Section 1343 (4)\textsuperscript{35} and on 42 U.S.C. section 1988,\textsuperscript{36} and in part on prior decisions, to allow damages to both white and black plaintiffs for defendants' violation of section 1982. Citing \textit{Bell v. Hood}\textsuperscript{37} and \textit{Texas & Pacific R.R. Co. v. Rigsby},\textsuperscript{38} the Court

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\item \textsuperscript{31} 42 U.S.C. § 3610(b) (1970) requires that a section 3610(a) complaint be filed within 180 days after the alleged discriminatory act. Under section 3612, a civil action similarly must be filed within 180 days of the alleged discrimination.
\item \textsuperscript{32} 42 U.S.C. § 3612(c) (1970). Actual damages include the cost of finding comparable housing, the differential in price between the housing withheld and the housing substituted, and any other amount justified as direct compensation for the injury suffered. Punitive damages, on the other hand, are payable only for wilful behavior, the intent of which is to deprive the plaintiff of his civil rights. See Lee v. Southern Home Sites Corp., 429 F.2d 290, 294 (5th Cir. 1970), where the court stated that punitive damages would be appropriate only if the defendant acted willfully and in gross disregard for the rights of the complaining party. See generally, W. ProssER, TORTS 9-14 (4th ed. 1971).
\item \textsuperscript{33} 42 U.S.C. § 3612(c) (1970) authorizes payment of "... court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, that the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees."
\item \textsuperscript{34} 396 U.S. 229 (1969).
\item \textsuperscript{35} 28 U.S.C. § 1343(4) (1970):
\begin{quote}
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person
\end{quote}
\item (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.
\item \textsuperscript{36} 42 U.S.C. § 1988 (1970):
\begin{quote}
The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.
\item \textsuperscript{37} 327 U.S. 678 (1946).
\end{itemize}
stated: "The existence of a statutory right implies the existence of all necessary and appropriate remedies." The Court concluded, "The rules of damages . . . is a federal rule responsive to the need whenever a federal right is impaired."

Following the lead of *Sullivan*, other courts have responded to the demands of the situation and have awarded payment of damages and attorney's fees. In *Brown v. Ballas*, the court said, "[I]njunctive or other affirmative relief may not provide an effective remedy. . . . Compensatory and possibly punitive damages would be the appropriate remedy." The court awarded plaintiff $750 damages plus $500 for attorney's fees. Similarly, in *Lee v. Southern Home Sites Corp.*, the defendant was ordered to sell a building lot to plaintiff and to pay damages and attorney's fees as well. Judge Wisdom stated that the court had a "... duty to fashion an effective remedy to carry out the purpose of the statute . . . ." and that an award of attorney's fees was necessary "... to encourage private litigants to initiate such suits." Citing *Newman v. Piggie Park Enterprises, Inc.*, the court also explained that "... in many cases there may be no damages or damages [may be] difficult to prove. To ensure that individual litigants are willing to act as 'private attorneys general' to effectuate the public purposes of the statute, attorney's fees should be available . . . ." In *Knight v. Auciello*, the court cast the award of attorney's fees in broad policy terms, saying, "The violation of an important public policy may involve little by way of actual damages. . . . In such instances public policy may suggest an award of costs that will remove the burden from the shoulders of the plaintiff seeking to vindicate the public right."

Section 1982 thus offers the litigant flexibility both in characterizing the conduct involved as discriminatory, and therefore illegal, and in providing effective remedies and monetary com-
pensation to the plaintiff.\textsuperscript{50} For these reasons section 1982 will continue to play a prominent role in the national policy of equal access to housing.

\textbf{TITLE VIII: THE FAIR HOUSING ACT OF 1968\textsuperscript{51}}

\textit{Provisions of the Law}

The scope of the substantive provisions of Title VIII is well indicated by the language of the first section: "[I]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."\textsuperscript{52} Except for certain types of dwellings which are exempt,\textsuperscript{53} the Act makes it

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\item [50.] A court could, on a proper showing of wilful conduct, of an intentional denial of housing rights, or of humiliation and suffering, order payment of a substantial amount as punitive damages. \textit{See}, \textit{e.g.}, Massachusetts Comm'n Against Discrimination v. Franzaroli, 387 Mass. 112, 256 N.E.2d 311 (1970) noted in 118 U. Pa. L. Rev. 1263 (1970). In this case, the state agency charged with enforcement of fair housing laws found that defendant had refused to rent an apartment to a black complainant and ordered the defendant to pay damages to the complainant, including an amount for "frustration, anger and humiliation." \textit{Id.} at 312. The state supreme court upheld the Commission's power to order such payment of damages and to obtain judicial enforcement of such an order.


\item [53.] 42 U.S.C. § 3603(b)(1)-(2) (1970):

(b) Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: \textit{Provided}, That such private individual owner does not own more than three such single-family houses at any one time: \textit{Provided further}, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: \textit{Provided further}, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: \textit{Provided further}, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of
unlawful to "refuse to sell or rent . . . or otherwise make unavailable . . . a dwelling to any person because of race, color, religion, or national origin";\textsuperscript{54} to discriminate in the terms, conditions, or privileges of the transaction;\textsuperscript{55} to indicate any preference in any advertising;\textsuperscript{56} to misrepresent the availability of a dwelling;\textsuperscript{57} or to "induce or attempt to induce" sales by representations of the present or future racial composition of the neighborhood.\textsuperscript{58} Additional sections make it unlawful for lending institutions to discriminate in the terms of or in the availability of financing\textsuperscript{59} and

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —
(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

56. 42 U.S.C. § 3604(c) (1970):
(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

This section prohibits what is generally termed "blockbusting".

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance, or of the present or prospective owners, lessees, tenant, or occupants of the dwelling.
prohibit discrimination in the availability of or services of brokers and their agents. 60

The Act provides three basic methods of enforcement. First, the Secretary of Housing and Urban Development is charged with administrative enforcement. Subject to deferral to the state agency where state law provides equivalent rights and remedies, 61 any person aggrieved may file a complaint with HUD. 62 The Secretary is then empowered to investigate and to "try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion." 63 If these efforts to conciliate fail, the aggrieved party may go to federal court, without regard to the amount in controversy, to enforce his rights. 64 Second, substantive rights may be enforced by suit in the federal district court, again without regard to the amount in controversy, and in the proper circumstances the court may appoint an attorney for the plaintiff. 65 Finally, the Attorney General is authorized to bring suit when he has reasonable cause to believe either that there is a "pattern or practice of resistance to the terms or rights of this Act," or that any group of persons has "been denied any of the rights" guaranteed by the Act and "such denial raises an issue of general public importance." 66Regardless of the method by which suit is brought, the court is authorized to enjoin the discriminatory practice and to provide preventive relief. If the complainant went first to HUD, the court may "order such affirmative action as may be appropriate." 67 If the plaintiff went directly to court, he may in addition be awarded "actual damages and not more than $1,000 punitive

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After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

63. Id.
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damages, together with court costs." 68

Despite the admirably broad scope of the Act, the inclusion of brokerage and financial institutions, and the varied means of enforcement, there are serious obstacles to quick and uniform enforcement. Should the aggrieved party turn first to HUD, the law requires a referral to the state agency if the state fair housing law is considered by HUD to afford "substantially equivalent" rights and remedies. 69 Maryland's fair housing law, for example, is deemed to have equivalent rights and remedies. Thus any Maryland complainant contacting HUD, either by letter or by toll-free telephone call to Washington, D.C., is requested to file a complaint with HUD. The Washington office, then refers the complaint to the regional HUD headquarters in Philadelphia, which in turn forwards it to the State Human Relations Commission in Baltimore. This process takes an average of two weeks 70 and clearly is not a suitable enforcement mechanism for anyone facing a situation of some urgency. Further, it is not clear whether HUD is empowered to revoke its determination of equivalency and to resume jurisdiction if state funding and staffing are not sufficient to provide equivalent enforcement. A complainant could contact HUD; he could be referred to the appropriate state agency, never again be contacted, and in the end be left without any affirmative relief. 71 This can hardly be said to offer an adequate administrative remedy to aggrieved parties.

In addition to problems related to the inevitable delays built into this remedy, the national policy depends for its administrative enforcement on the cooperation and efficacy of state agencies 72 which at present receive no federal funding. While a policy

70. Interview with Philip J. Tierney, General Counsel, Maryland Human Relations Commission, in Baltimore, Nov. 22, 1972.
71. See, e.g., Trafficante v. Metropolitan Life Ins. Co., 446 F.2d 1158 (9th Cir. 1971) rev'd, 409 U.S. 205 (1972), where plaintiffs filed first with HUD, which referred the complaint to the local agency, as required by Title VIII. The complaint was returned to HUD since the local agency did not have adequate resources to handle it. HUD then notified plaintiffs of its inability to obtain voluntary compliance, and plaintiffs brought suit in federal district court. Id. at 1159-60 n.1.
72. Title VIII apparently was modeled after similar provisions in Title VII (employment discrimination). See generally Witherspoon, Civil Rights Policy in the Federal System: Proposals for a Better Use of Administrative Process, 74 Yale L.J. 1171 (1965), for an analysis of the use of state human relations commissions to implement and enforce federal policy. Witherspoon's criticizes commission reliance on complaints filed by aggrieved parties rather than original investigation initiated by the commission; customary limitations on the commission's enforcement powers; delay in investigation and failure to process the complaint effectively; inability to preserve the status quo until final disposi-
of involving local agencies as much as possible to enforce the fair housing provisions is desirable, embodying as it necessarily does a state commitment to the same objectives, that policy offers slight comfort to a complainant who turns to the federal government, who is referred to the state, and who is unable to get prompt remedial action from either.

Further, consider the procedure and result if the complainant goes first to HUD, and HUD is unable to obtain voluntary compliance. The Act provides that the party may then go to court—something he could have done in the first place had he been so inclined. A more effective provision would be either to authorize HUD to go to court on behalf of the aggrieved party, or, even better, to empower HUD to issue cease and desist orders if it concludes that discrimination has taken place.

The complainant can, however, bypass the administrative procedure and elect to sue directly. But here he also faces obstacles: he must obtain counsel familiar with the provisions of the law, obtain such counsel quickly, and pay the legal fees. Aside from the problems of adequate legal referral services and the availability of counsel familiar with fair housing legislation, the financial risk may be such as to inhibit the very type of private suit that is needed to ensure broad-based private litigation to enforce the Act.

The congressional policy in providing for a private right of action is to place the power of enforcement in the hand of the wronged. The concept of private attorney generals suing to enjoin illegal conduct has been used by Congress in other areas\(^73\) where placing the entire burden of enforcement on the government would virtually guarantee piecemeal enforcement, due to the chronic problems of funding and staffing, and would slow progress toward the expressed congressional goal. Thus, the private right of action seems well calculated to broaden the means of enforcement and to give any aggrieved person direct access to and relief in the federal courts.

Since the plaintiff is vindicating national policy as well as remedying the wrong to himself, he should recover his

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attorney's fees in all cases in which he prevails, without regard to ability to pay, as a matter of course. Additionally, the limit on punitive damages should be removed, and the court should be empowered to award damages in any amount justified by the facts and circumstances of the case. The real injury, the injury this Act is designed to prevent, is the need to go to court at all to enforce the basic right to housing, and some financial compensation for this injury should be authorized.

While the Act authorizes the Attorney General and the Department of Justice to carry out investigations on their own initiative, this provision's usefulness is clearly tied to the funding provided for this purpose. Since investigation by the Department of Justice may be particularly effective and suitable when proceeding against widespread financial or real estate practices, the Act should make such investigation mandatory upon complaints made directly to the Department in such specified areas and should make the necessary funding mandatory.

_Cases arising under Title VIII: private suits_

Despite the limitations and problems of Title VIII, suits brought by private citizens indicate an imaginative use of the provisions of the Act. There are probably many suits seeking injunctive relief which are then settled or withdrawn if a compromise is reached or if the plaintiff finds housing elsewhere.

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74. See Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1968), where the Supreme Court, in interpreting Title II of the Civil Rights Act of 1964, said, "If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees . . . to encourage individuals injured by racial discrimination to seek judicial relief . . . ."

75. In Brown v. Ballas, 331 F. Supp. 1033 (N.D. Tex. 1971), the court held that damages were not appropriate under section 3610, but the court allowed damages under section 1982. The suit had been brought under both sections. But see Williamson v. Hampton Management Co., 339 F. Supp. 1146 (N.D. Ill. 1972), where the court awarded plaintiffs $500 each as punitive damages, plus $750 in attorney's fees. The suit was brought under section 3612(c). Note also that the court rendered an opinion on March 27, 1972, approximately one month after the discriminatory conduct occurred. See also Note, Jones v. Mayer; The Thirteenth Amendment and the Federal Anti-Discrimination Laws, 69 COLUM. L. REV. 1019, 1037-40 (1969); Note, Massachusetts Commission Against Discrimination v. Franzaroli, A Problem in Administrative Enforcement of Fair Housing Laws, 118 U. PA. L. REV. 1263 (1970).

76. See Cash v. Swifton Land Corp., 434 F.2d 569 (6th Cir. 1970). In this case, plaintiff brought suit after the defendant landlord refused to rent to him; defendant then agreed to the rental, and asked that the suit be withdrawn as moot. The court of appeals held that although the case was moot as to injunctive relief, the plaintiff still had a maintainable claim for damages, and remanded for consideration of that issue. _Id._ at 572.
Moreover, in addition to what might be characterized as the "typical" use of the private right of action, the reported cases also indicate use of the private right of action to enforce other more sweeping provisions of the Act.

In the leading case of *Brown v. State Realty Co.*, citizens brought suit alleging violation of the anti-blockbusting section. Plaintiffs, white residents of the area, charged defendants, a real estate broker and his agents, with making statements to several neighborhood residents that the area was "going colored" and with posting a "sold" sign which represented the home as sold when in fact it was not. Defendants countered that no "blockbusting" had taken place as the neighborhood had, in fact, remained calm. The court, not receptive to this argument, held that defendants had violated section 3604(e) in attempting to induce residents to list with them. This opinion has had considerable influence on other district courts, which have followed its broad reading of the statutory provisions, and indicates a general policy of carrying out the spirit as well as the letter of the law.

**Suits initiated by the Attorney General**

The authorization in section 3613 for suits by the Attorney General applies to two different factual settings. First, the Attor-

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77. See *Brown v. Lo Duca*, 307 F. Supp. 102 (E.D. Wis. 1969), where the plaintiff obtained an injunction against the defendant, preventing him from renting to anyone until he complied with the terms of the Fair Housing Act, on the basis of differing terms and representations made to the black plaintiff and to a white tester.


79. "Blockbusting" classically refers to the activities of outside speculators or real estate agents who approach a vulnerable residential area, typically one of owner-occupied homes where the residents are elderly and have a high equity in the property, and persuade them to sell directly to the speculator at prices substantially below the market price, often at a considerable loss to the seller. Fear of a swift racial change in the neighborhood is usually the main argument used by the speculator or real estate agent in inducing the sale. The speculator then resells to the black buyer, who, unable to obtain decent housing through normal channels, is only too happy to pay a high premium for owning a home. The speculator thus makes great profits and justifies his activities by arguing that he is performing a useful social function in making housing available to blacks when no one else will. See Vitchek, *Confessions of a Blockbuster*, *Saturday Evening Post*, July 14, 1962, at 58.

In recent years, blockbusting has become both less dramatic and less easily attacked. The impact of the speculator has declined, as activities of his sort were made clearly illegal; but the speculator has been replaced by mass solicitation by real estate agents, whose efforts to induce panic selling and a complete racial turnabout are furthered by the already-present fears of integration. See generally, Glassberg, *Legal Control of Blockbusting*, 1972 *Urban L. Ann.* 145 (1972); *Blockbusting*, 59 Geo. L.J. 170 (1970).

80. Standing apparently was not an issue in this suit. For a discussion of standing in general, see notes 115 through 126 infra and accompanying text.

81. 304 F. Supp. at 1241.
ney General may bring suit whenever he believes, with reasonable cause, that a person or group of persons is engaged in a "pattern or practice" of resistance to the terms of the Act; second, he may bring suit when a group of persons has been "denied any rights guaranteed by this Act and such denial raises an issue of general public importance." The courts have accorded this section its broad power by applying the provisions widely in terms of the grant of authority to bring suit, and by broadly interpreting what constitutes "pattern or practice" and what raises an issue of "general public importance."

One of the first applications of this section was an attack on blockbusting activities. In *United States v. Mintzes*, one of the earliest Title VIII suits of any kind, the Federal District Court of Maryland considered whether the exemption of private homes from the provisions of the Act (under certain conditions) would be applicable to the blockbusting section and decided that it would not. The court held that the section 3603(b)(1) exemption applied only to section 3604(a)-(d), for the very sound reason that blockbusting primarily injures private homeowners, and to exempt them would be to deny protection to the very group most likely to need this protection.

In *Mintzes*, the defendants, Baltimore real estate agents, contacted several home owners on one street and advised them to sell because of the "changing neighborhood." The court found that this was a pattern or practice: "the number of incidents necessary to show a pattern or practice depends upon the nature of the right protected and the nature of the ordinary violations of such right." Granting an injunction and retaining jurisdiction to insure compliance, the court stated that the only intent required was the intent to make the statement and that the requirement "for profit" was met if the person hoped to gain as a result and did not depend on an actual realization of profits.

The term "pattern or practice" has been construed in several other cases. Courts have stated that "pattern or practice" are not words of art; rather they should be given their generic meaning.

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83. *See* note 79 *supra*.
85. *Id.* at 1309.
86. *Id.* at 1314.
87. The court also upheld the constitutionality of this provision on thirteenth amendment grounds, rejecting alternative grounds under the fourteenth amendment or the commerce clause. *Id.* at 1312-13.
In the leading case of United States v. West Peachtree Tenth Corp.\(^89\) the court said that "pattern or practice" are not "magic words" and that no mathematical formula is required to determine that a pattern or practice exists; rather, the determination depends on the facts and circumstances of each case.\(^90\) In that case, the defendant admitted that prior to the effective date of Title VIII, his policy was not to rent to blacks. The evidence indicated that after the effective date, this policy was not modified. A black applicant had been told that his "status" had not changed after the Act became effective. The court held that a showing of pre-Act discrimination, and of "little or no evidence" of a post-Act change until suit was filed, supported a "strong inference that the pre-Act pattern or practice continued after the effective date of the Act . . . ."\(^91\) The defendant had rented to blacks after suit was filed, but the court stated that ". . . the good faith and present disposition of the defendant to adhere to the letter and spirit of the law does not preclude us from granting relief . . . ."\(^92\) and entered an order requiring that for the next two years defendant must report all applications and their disposition to the court.\(^93\)

89. 437 F.2d 221 (5th Cir. 1971).
90. Id. at 227.
91. Id.
92. Id. at 228.
93. The order reads in part as follows:

In the United States District Court for the Northern District of Georgia
United States of America,

Plaintiff,

versus
West Peachtree Tenth Corporation d/b/a One Tenth Street Apartments, et al.
Defendants.

Pursuant to the Opinion and Mandate of the United States Court of Appeals for the Fifth Circuit, It is ordered, adjudged and decreed by this court that the defendant, West Peachtree Tenth Corporation, its officers, employees, agents and successors, and all persons in active concert or participation with any of them are permanently enjoined from: (1) Failing or refusing to rent a dwelling to any person because of race, color, religion, or national origin and from making a dwelling unavailable to any person because of race, color, religion, or national origin; (2) Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin; (3) Making, printing, or publishing, causing to be made, printed, or published, any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin or an intention to make such preference, limitation, or discrimination; (4) Representing to any person because of race, color, religion, or national origin that any dwelling is not available for inspection or rental when such dwelling is in fact available.
It is further ordered that the defendants shall forthwith adopt and implement the following affirmative program to correct the effects of their past discriminatory practices:

(1) Within ten (10) days of this Order, defendants shall notify the following black applicants for housing at One Tenth Street Apartments, by registered mail with copies to counsel for plaintiff, that each is entitled to reapply for an apartment and that any reapplication will be considered without regard to race or color:

ROBERT PITTS
SANDRA THREADCRAFT

(2) Within ten (10) days of this Order, defendants shall permanently post in a prominent place in the rental office, or immediately outside the rental office, a notice, clearly visible to applicants, stating that the One Tenth Street Apartments will be rented without regard to race, color, religion, or national origin.

(3) All advertising of apartments at One Tenth Street Apartments in newspapers or other media, or in pamphlets, brochures, handouts, or writings of any kind, shall include a statement to the effect that apartments are rented without regard to race, color, religion, or national origin.

(4) The defendants shall forthwith fully instruct all of their full time and part time employees with respect to the provisions of this decree and with respect to their obligations thereunder. Within five (5) days of hiring of any new employees, defendants shall provide each employee with a copy of this decree, explain its contents to him, and advise him that he is subject to all the requirements contained therein.

(5) In the event that a firm, association, company, corporation or other person is engaged by defendants to act as a real estate agent, referral agency, or otherwise manage or promote rentals of apartments for the defendant, such firm, association, company, corporation, or person shall be notified by defendant within (5) days of its engagement that apartments are rented without regard to race, color, religion, or national origin.

It is further ordered that, no later than fifteen days after the entry of this Order, the defendants shall file with the Court, and serve upon counsel for plaintiff, proposed written objective nonracial standards and criteria (hereinafter referred to as standards or proposed standards) for the processing and approval of applications for apartments at the One Tenth Street Apartments. It is suggested that, in formulating proposed standards, the defendants consider the standards approved by the United States District Court for the Eastern District of Louisiana in United States v. Palmetto Realty Corp., C.A. No. 70-1419 (E.D. La., September 18, 1970) (See paragraph II c of decree and Policies and Procedures, Rules and Regulations attached thereto).

The plaintiff shall have ten days after the filing of such proposed written objective nonracial standards and criteria by the defendants to object to the same. In the event plaintiff files such objections, this Court will hold a prompt hearing with respect to the adequacy of the defendants' proposed standards, and with respect to the merits of plaintiff's objections thereto, and will order the implementation of objective standards and procedures either as proposed by the defendants or otherwise. Upon the entry of an Order providing / requiring the implementation of objective standards and criteria, the defendants shall forthwith implement such standards and criteria with respect to all applicants for apartments, without regard to race, color, religion, or national origin.

If, following the entry of an order requiring the implementation of objective standards, the defendants should elect to alter such standards for the processing and approval of applications for apartments, by making changes therein which are nonracial both in purpose and in effect, they shall promptly file such proposed changes with the Court, with copies to counsel for plaintiff, and the plaintiff shall have the opportunity to object thereto. Any dispute between the parties arising from such proposed changes may be raised by either party in any subsequent appropriate proceedings in this Court.
Other decisions have followed *West Peachtree* and declared that a "pattern or practice" has been established by proving a pre-Act policy of discrimination and a failure to modify this policy after the effective date of the Act. In *United States v. Real Estate Development Corp.*, defendant's stated policy had been to rent only to whites, and he had repeatedly refused to sign a compliance agreement submitted by the housing officer of the United States Air Force. These facts, together with a statement

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It is further ordered that ninety days after the entry of this decree, and at three-month intervals thereafter, for a period of two years following the entry of this decree, the defendants shall file with this Court, and serve on counsel for the plaintiff, a report containing the following information for the One Tenth Street Apartments:

(a) The name, address and race of each person making inquiry about the availability or terms of rental of an apartment during the preceding three-month period, and whether such person:

1. Made inquiry.
2. Was offered an application.
3. Filled out an application.
4. Submitted an application.
5. Was advised with respect to earnest money and security deposit procedures.
6. Made a deposit.
7. Was accepted for a waiting list.
8. Was accepted for occupancy.
9. Was rejected, and if rejected, the reason or reasons therefor, and the specific objective criterion which the applicant failed to meet.

The report shall also state the date on which each of the foregoing actions was taken.

The reports filed pursuant to this Order shall also include a description of all affirmative steps taken during each preceding reporting period in compliance with this decree, including copies of letters to Negro applicants, copies of all signs posted in accordance with this Decree, copies of all advertisements and brochures used by the defendants (or sample copies of advertisements, together with the dates and media in which they were published), and written documentation to the effect that each employee has received a copy of this Order and has been advised of its terms. The parties are directed to attempt to agree on simplified forms and procedures for carrying out this reporting provision to assure minimum inconvenience to all parties and to the Court.

For a period of two years following the entry of this decree, the defendants shall maintain and retain any and all records which are the source of, or contain, any of the information pertinent to defendants' obligation to report to the Court. Representatives of the plaintiff shall be permitted to inspect and copy all pertinent records of the defendants at any and all reasonable times, provided, however, that the plaintiff shall endeavor to minimize any inconvenience to the defendants from the inspection of such records.

The plaintiff shall recover of the defendants its costs.

The Court retains jurisdiction of this action for all purposes.

that he "'rented to whom he chose,'" supported a conclusion that his prior discriminatory policy had not changed and that there is "no reason to believe that black men could rent an apartment from defendant today." 

A "pattern or practice" was adduced in United States v. Reddoch from evidence that defendant had instructed his employees to discriminate against blacks in the rental of apartment units and that blacks had not, in fact, been given the same information as to the proper application procedures. The court, following West Peachtree, enjoined the defendant and entered an affirmative action order.

"Pattern or practice" suits have been brought against both individual defendants and against several persons together charged with a "group" "pattern or practice." Suits of the first variety allege that the defendant engaged in conduct which exhibits a "pattern or practice" of discrimination, and several cases indicate that finding a "pattern or practice" will not be particularly difficult. For example, in United States v. Gilman two acts of discrimination were found to constitute a "pattern or practice": one was a refusal to renew a lease after the white tenant married a black, and the other was a statement to a white tenant to send her friends to see an apartment if she "'made sure her friends were white.'" The court interpreted the congressional use of the words "pattern or practice" to mean only more than an "isolated or accidental or peculiar event," and therefore any showing of more than one such event could constitute the necessary pattern or practice.

In the leading case charging defendants with a "group" "pattern or practice" the court of appeals rejected two arguments which, had they been sustained, would narrow the authority of the Attorney General to bring suit under this section. In United States v. Bob Lawrence Realty, Inc. the Department of Justice brought suit against five Atlanta, Georgia, real estate brokers for

95. Id. at 781.
96. Id. The court upheld the constitutionality of the Fair Housing Act on thirteenth amendment grounds.
98. Id. at 24-26.
99. Id. at 29.
101. Id. at 896.
102. Id. at 905, quoting United States v. West Peachtree Tenth Corp., 437 F.2d 221, 227 (5th Cir. 1971).
103. 474 F.2d 115 (5th Cir. 1973).
blockbusting activities.\textsuperscript{104} Of the five original defendants, two signed consent decrees, the case against a third was dismissed, and the remaining two proceeded to trial.\textsuperscript{105} Following district court decisions against the defendants,\textsuperscript{106} they appealed arguing that the Attorney General had standing to sue a "group" only on a showing that each member of the group was engaged in an "individual" "pattern or practice" and that the Attorney General must prove either a conspiracy or concerted action on defendants' part. The Fifth Circuit rejected both arguments, saying: "Blockbusting by its very nature does not require concerted action or a conspiracy to wreak its pernicious damage. There is, for example, no need for XYZ Realty to conspire with ABC Homes to set off a pattern or practice of activities violating the act."\textsuperscript{107} The court stated that "... when a number of individuals utilize methods which violate § 3604(e)" a pattern or practice has been established.\textsuperscript{108}

It is also important to note that while "pattern or practice" inherently connotes more than one act, a single act violative of Title VIII is a sufficient basis for a suit if it works a denial of the rights of a group of persons and raises an issue of general public importance.\textsuperscript{109} Particularly significant in this context is the use of statistical evidence, such as the number of rental units available and the percentage rented to blacks compared to the percentage of black residents in the vicinity, to establish that an injunction should issue.\textsuperscript{110} Since in a suit for an injunction by the Attorney

\textsuperscript{104} Id. at 117.
\textsuperscript{105} Id. at 118.
\textsuperscript{107} 474 F.2d at 124.
\textsuperscript{108} Id.
\textsuperscript{109} 42 U.S.C. § 3613 (1970). See Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 210 (1972), where, writing for a unanimous Court, Mr. Justice Douglas erroneously states that the Attorney General may sue "only to correct a 'pattern or practice' of housing discrimination." Clearly the correct reading of the statute is to regard the circumstances under which the Attorney General may sue as alternatives rather than as branches of the same tree: "[A] pattern or practice or resistance is not an indispensable prerequisite for relief. Relief may be based on a single (unintentional) violation of the Act when by that violation a group of persons are denied their statutory rights and the case raises an issue of general public importance." United States v. Hunter, 459 F.2d 205, 218 n.17 (4th Cir.), cert. denied, 409 U.S. 934 (1972).
\textsuperscript{110} A showing that no apartment has been rented to a black, despite a significant number of blacks in the area and a number of applications, strongly suggests discrimination, and courts may accept such evidence as a rebuttable presumption. See, e.g., United States v. Real Estate Dev. Corp., 347 F. Supp. 776, 782 (N.D. Miss. 1972) (quoting United States v. Reddoch, No. 6541-71-P (S.D. Ala., Jan. 27, 1972) aff'd, 467 F.2d 897 (5th Cir.}
General there is no question of individual injury or relief, the courts would be able to enjoin the defendant on the basis of statistical evidence indicating that an issue has been raised as to possible discriminatory practices. Thus a court could order compliance and retain jurisdiction without a showing of a motive or intent to discriminate.

The Attorney General has also successfully enjoined the publication of discriminatory advertisements in a newspaper, prohibited by section 3604(c). The advertisement in question appeared in the Courier, a paper in Prince George's County (Maryland) with a circulation of approximately 29,000, and offered a basement apartment "in private white home." The court of appeals, affirming the district court, characterized the issue as one of general public importance, since the decision would set a precedent for all other newspapers. The court declared newspapers not exempt from prohibitions of the Act and denied injunctive relief only on the ground of promised future compliance by the defendant.

The combined federal policy of Title VIII and section 1982: Standing

The question of who has standing to protest discrimination in housing has regularly been before the federal courts. Standing is of particular importance in the housing area. While a black who is denied access to housing can sue for damages and injunctive relief, in many cases it is the continuing residents of a particular building or neighborhood who have the greatest "stake" in enforcement of the fair housing laws. Citizen groups seeking to stabilize racial balance in a changing neighborhood have the

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111. This would, in effect, shift the burden of proof to the defendant to come forward and demonstrate that this conduct was not discriminatory. See note 20 supra and accompanying text.
113. 459 F.2d at 213.
114. The court of appeals determined that there was no violation of the first amendment's guarantees since the context was commercial and the first amendment applies only to "freedom of communicating information and disseminating opinion." Id. at 214.
115. See discussion supra in regard to the standing of whites to protest violations of the blockbusting section. See also United States v. Bob Lawrence Realty Inc., 474 F.2d 115, 125 (5th Cir. 1973), where the court rejects the contention that the Attorney General would lack standing unless he could show a conspiracy or other concerted action.
116. Two examples are Baltimore Neighborhoods, Inc., operating in the greater
interest in and knowledge of the situation over a period of time that is needed to substantiate charges of blockbusting, illegal solicitation, or other discriminatory real estate practices. Similarly, white residents in new suburban housing developments and tenants in apartment complexes are frequently in a position to discern a pattern of regular discouragement of black applicants, which a particular black might not choose to litigate. A black seeking to rent or to buy presumably has the need for suitable housing uppermost in his mind; but the white residents, observing the situation and desiring to enforce the fair housing laws, are in a position to bring suit even if the black chooses not to.

The recent Supreme Court decision in *Trafficante v. Metropolitan Life Insurance Co.* granted standing to a white resident suing under Title VIII in this kind of situation. Plaintiffs, black and white residents of a large San Francisco apartment complex, brought separate suits for alleged violation of section 3610. In a unanimous decision granting standing to the white tenant, the Court said that the injuries alleged by plaintiff placed him properly within the "persons aggrieved" authorized by the statutory language to bring suit. Relying in part on the interpretation of "persons aggrieved" by HUD (which accorded whites standing) and in part on the legislative history, the Court stated, "While members of minority groups were damaged the most from discrimination in housing practices . . . those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered."

The plaintiff in *Trafficante* also alleged a cause of action under section 1982, but the Court, having granted standing under Title VIII, did not reach this question. However, other federal courts have granted standing to whites in suits brought under section 1982. In *Walker v. Pointer* a white tenant sued to protest
her eviction alleging that defendant sought eviction after discovering that the tenant entertained black friends. Stating, "[T]he first six words of section 1982 appear to lead inescapably to the conclusion that the statute contemplates a reach as broad as the amendment upon which it is based," the court held that relief was available to a white victim of discrimination against blacks.\textsuperscript{122}

The Supreme Court had granted standing to a white plaintiff in an earlier section 1982 suit, \textit{Sullivan v. Little Hunting Park}.\textsuperscript{123} In that case, Sullivan, a white, protested the refusal of the defendant corporation to admit Freeman, a black and also a plaintiff, to its park and swimming pool facilities; Sullivan was in turn expelled from the corporation. The Court held that "there can be no question but that Sullivan has standing to maintain this action."\textsuperscript{124} If the expulsion of Sullivan were effective "Sullivan [would be] punished for trying to vindicate the rights of minorities protected by § 1982. Such a sanction would give impetus to the perpetuation of racial restrictions on property. . . . The white owner is at times 'the only effective adversary' of black citizens' rights."\textsuperscript{125}

These decisions are well suited to implementing the national policy, for they grant standing to any person seeking to remedy the wrong done by conduct violative of national legislation and policy. The \textit{Trafficante} decision would seem to indicate that a white suing to enforce Title VIII would have standing any time he could allege injury to himself as a consequence of the discriminatory conduct of the defendant. This, then, would include plaintiffs injured in the following situations without regard to whether plaintiffs were white or black: a white buyer, seeking to buy a house in an integrated neighborhood, is refused a mortgage because the neighborhood is transitional; white buyers, seeking housing but unfamiliar with various city neighborhoods, are "steered" into integrated or transitional neighborhoods; white home owners, anxious to stabilize the racial balance in their neighborhood before the "tipping" point is reached,\textsuperscript{126} realize that real estate agents are no longer showing white buyers the avail-

\textsuperscript{122} 304 F. Supp. 56, 58 (N.D. Tex. 1969).
\textsuperscript{123} 396 U.S. 229 (1969).
\textsuperscript{124} \textit{Id.} at 237.
\textsuperscript{125} \textit{Id.}, citing \textit{Barrows v. Jackson}, 346 U.S. 249, 259 (1953).
\textsuperscript{126} The "tipping" point is the percentage of black residents which will effectively discourage whites from moving into the neighborhood at all, thus guaranteeing an all-black neighborhood.
able houses in their neighborhood; white home buyers in new residential areas are given financing on terms much more attractive than those offered potential black buyers, thus tending to make the development all-white. In all of these situations, suits by whites are justified by the terms of the law. To the extent that funding and staffing of the Department of Justice housing investigation section is not adequate to police housing practices on a nationwide basis, suits by interested whites are the next best enforcement mechanism and should be as widely authorized as possible.

MARYLAND FAIR HOUSING LAW

Provisions of the Law: The Maryland Human Relations Commission

The provisions of state fair housing law, and the procedures whereby these provisions are enforced, are of particular importance and significance since, under federal law, all administrative enforcement in the housing field is referred to the state if the state has equivalent substantive provisions. Maryland's law has in the past been deemed "substantially equivalent," thus, at present the state Human Relations Commission is the only official administrative agency enforcing the law in Maryland.

The Human Relations Commission (hereinafter referred to as HRC) was created in 1963 and was charged with enforcement of laws barring discrimination in public accommodations. Later legislation added responsibilities in the areas of discrimination in employment and, most recently, in housing. The present Fair Housing Law declares the policy of the state to be "to provide for fair housing throughout the State of Maryland, to all its citizens, regardless of race, color, religion or national origin; and to that end to prohibit discriminatory practices with respect

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127. See text accompanying notes 61 and 69 supra.
The Fair Housing Law generally parallels Title VIII in describing unlawful conduct. Prohibited are discrimination by refusal to sell, or to rent, or to negotiate for the sale or rental; in advertisements; in access to real estate brokerage services. Financial institutions are forbidden to discriminate in the financing of home purchasing or renovation. Blockbusting and solicitation (if "for the purpose of changing the racial composition of the neighborhood") are also prohibited, whether or not the person is acting for monetary gain.

While the conduct made illegal is thus generally similar to Title VIII prohibitions, the enforcement provisions are dissimilar. Under state law, the person aggrieved has no private right of action: he must file a complaint with the HRC. The staff of HRC then investigates, and, if it finds "that there is probable cause for believing a discriminatory act has been . . . committed," the staff "shall endeavor to eliminate the discrimination by conference, conciliation and persuasion." If no agreement is reached, HRC proceeds to hold a public hearing, and if after the hearing the Commission "finds that the respondent has engaged in any discriminatory act" it shall issue "an order requiring the respondent to cease and desist from the discriminatory acts and to take such affirmative action as will effectuate the purposes of the particular subtitle." If respondent refuses to obey the order, HRC is authorized to institute litigation to en-

135. Md. Ann. Code art. 49B, § 22A (1972): see also the parallel provisions in Md. Ann. Code art. 56, §§ 230A-230B (1972), which impose criminal sanctions (both fine and imprisonment) on any person found to be in violation of these sections. Section 230A was challenged on constitutional grounds in State v. Wagner, 15 Md. App. 413, 291 A.2d 161 (1972). The court upheld the validity of the provision and specifically the wording "whether or not acting for monetary gain," saying: Interpreting Section 230A as it was intended by the Legislature, nothing in its provision makes mere speech unlawful; the statute does not inhibit the expression or dissemination of ideas connected with a course of lawful conduct. To the extent that the 'practice' of 'blockbusting' involves the making of such prohibited representations, they are clearly beyond the protection of the First Amendment. Id. at 423, 291 A.2d at 166.
136. Md. Ann. Code art. 49B, § 12(a) (1972). Under section 12(b) the Commission may, upon receipt of reliable information, investigate the allegedly discriminatory practice, and on its own motion issue a complaint.
force the order. In practical operating terms, once HRC receives a complaint, the staff begins an investigation to determine whether or not there is probable cause. If the staff member concludes that there is, efforts are made to obtain voluntary compliance. Should these efforts fail, the Commission then proceeds to hold a public hearing.

In some ways the Maryland Fair Housing Law is superior to federal law. HUD, after making an investigation and attempting conciliation, has no power to issue cease and desist orders; HRC does. HUD cannot convert complainant's grievance into its own; HRC can. HUD is under the 180 day statute of limitations applicable to all of Title VIII; the Maryland law has no statute of limitations.

But there are other significant points of departure. While the powers of HRC parallel those of HUD under Title VIII, Title VIII in addition provides two alternative modes of enforcement or remedy—the private right of action and enforcement by the Attorney General. Under Maryland law, the aggrieved party has no option of proceeding directly to court; he must file with HRC.

Additionally, it is not at the present time clear that a successful complainant suing under the Maryland Fair Housing Law can recover attorney's fees and monetary damages. While theoretically the HRC process does not make it necessary for the person discriminated against to retain private counsel, in practice he may find this desirable, and he should not have to risk incurring significant legal expenses in enforcing the state law.

The most significant feature of the state law is its reliance on the administrative procedures and on the agency to enforce the law. The commission-as-enforcer idea is appealing for two reasons. First, responsibility for obtaining compliance with the law is centralized in an administrative body, staffed by persons familiar with housing laws and practices. Second, and possibly even more important, a commission provides the citizen with

141. "It is essential for the enforcement of civil rights law to have an award of monetary damages." Interview with Philip J. Tierney, General Counsel, Maryland Human Relations Commission, in Baltimore, Nov. 22, 1972. In Lord v. Malakoff, Civil No. 52005 (Law) (Prince Georges County Circuit Court), the court awarded plaintiff $1500 for humiliation. This case is now on appeal, and Mr. Tierney recommends that, should the award of damages be reversed, the statute be amended to explicitly provide for the recovery of damages by the person injured.
142. See notes 34 through 49 and 73 through 74 supra and accompanying text.
143. See note 72 supra.
an officially constituted body whose duty is to remedy the situation if the citizen has been wronged. This is potentially very powerful. A person who suspects he has been discriminated against may not desire or be able to afford consultation with a lawyer. Additionally the lawyer with whom such person might consult may or may not be familiar with the laws, procedures, and evidentiary requirements in the housing area.

But while administrative investigation and conciliation may be well adapted to ascertaining the facts and to involving the state in enforcement of civil rights, these advantages may be outweighed by the length of time which passes before an aggrieved person obtains a remedy. This problem is particularly acute in the housing area. Discrimination in public accommodations or employment can be corrected by an order to comply in the future, but in the housing area orders affecting only the future are of little value. For example, if HRC were to order a large developer or a real estate broker to comply with the law in the future, it is possible that housing previously available only to whites would become available to blacks. But HRC acts in response to an individual complaint, and the black complainant who is refused the only available rental unit in an apartment building, which is rented the next week to a white, is left without housing and without an effective remedy under state law. By the time HRC has investigated and scheduled the appropriate conciliation meetings and hearings, the complainant may have long since lost interest in obtaining the specific housing unit under discussion. While under state law HRC may seek judicial relief on behalf of the complainant, the complainant himself has no private right of action. Although the complainant has alternative and more immediate procedures available under federal law, he may not know this. Moreover, since all complaints made to the federal agency are automatically referred to the state, he may never be advised of other available procedures.

With these generalized criticisms of the administrative enforcement procedure and the limitations inherently placed on an administrative agency in mind, consider the record of HRC. The Housing Division has been in operation for approximately two years and has received 542 complaints. Of these, 365 were referred by HUD, and the remainder were filed directly with the

144. See note 65 supra and accompanying text.
Almost ninety percent of the complaints charged denial of access to the housing unit, an additional five percent concerned denial of benefits (discriminatory eviction, exclusion from swimming pools), and the remaining five percent included all other illegal activities. Two-thirds of all complaints concerned rental units, the remaining one-third, sales. Of the total number of complaints filed, voluntary compliance has been obtained in only forty-two cases, although there have been sixty-three conciliation conferences. Additionally, twelve public hearings have been held, and litigation has been started in six cases. The Commission reports a current backlog of seventy-seven complaints and estimates that this represents a delay of six to seven months.

An agency that obtains compliance less than ten percent of the time is either receiving a large volume of spurious complaints or is not responding quickly and efficiently to the complaints filed. In the case of the HRC, the latter is more likely, indicating that HRC has been beset with staffing and personnel problems. Moreover, operations have been handicapped for many months by staff vacancies and the absence of an Executive Director. The recently named Executive Director, Elbert L. A. Guillory, appears to be instituting more efficient methods and improving the results.

In order for the entire Title VIII-state law administrative enforcement mechanism to make a significant impact on discrimination in the housing area, it is essential that the agency dealing on a face-to-face and day-to-day basis with complaints and complainants be responsive and effective in its actions. It would seem that at the very least there is room for great improvement at the Maryland Human Relations Commission, and until such improvement takes place, it is unlikely that state enforcement of

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146. *Id. See also MD. COMM’N ON HUMAN RELATIONS, ANNUAL REPORT 14-15 (1973).*
148. *Id.*
150. *Id.*
151. *Id.*
153. In the opinion of Mr. Tierney, a large number of complaints have been “administratively closed.” This procedure is utilized when HRC cannot locate the complainant, the complainant chooses not to press the complaint, or the complaint has become moot. *Id.*
fair housing laws will offer substantial relief for persons discriminated against.

The Real Estate Industry

While the prospective tenant often deals directly with the owner or resident manager of an apartment building, prospective home buyers and sellers are commonly brought together by a real estate agent. The agent thus occupies a unique position of power. First, the agent has access to information not directly available to the public. Through the Multiple Listing Service, an area-wide collection of information indicating availability, price, and location of housing is at his disposal. Second, he recommends terms, suggests agreements, advises on prices, and provides expert information on financing. The buyer who is unable to obtain the cooperation and services of an agent will face serious obstacles in seeing houses on the market, and will have to rely on his own judgment and knowledge, without expert advice.

The history of discrimination in housing and the role of the real estate industry has not inspired confidence that the indus-

155. "Realtor" is the registered trademark of the National Association of Real Estate Boards. In Baltimore, "Realtor" has come to indicate a white real estate agent, and "Realtist" a black real estate agent.

156. SPECIAL COMM. ON REAL ESTATE PRACTICES, REPORT TO MD. LEGISLATIVE COUNCIL 4-5 (1971).

The Committee believes that the following comment about a 'Realtor' by a respected broker describes the impact on the public of most active real estate practitioners:

"It is the expertise of the Realtor that has contributed immeasurably to the institution of real property as we know it in this country today.

"For instance, it is Realtors who counsel newlyweds on perhaps their most significant investment, a house; . . . .

"Moreover, it is their planning that has contributed directly to housing trends, new communities and even new cities.

"Thus, they have acted as developers, counselors, financiers and sociologists.

". . . they have a role in almost every type of real estate transaction . . . .

"In working with a couple seeking shelter, it is Realtors who can best evaluate whether it is better in a particular situation to buy or rent, how much mortgage is affordable and where mortgage money can be found.

"On the other hand, they can advise couples wishing to sell their homes on ways of making them more marketable and obtaining qualified buyers quicker.

"And these are but a few of the services Realtors provide. . . ."


157. See, e.g., Hearings on S. 1358, S. 2114, and S. 2280 Before the 90th Cong., 1st
try will cooperate in bringing a speedy end to discriminatory practices. Until 1950 the Code of Ethics required that every agent promise not to show or to sell houses to anyone whose color was not compatible with that of his potential neighbors.158 Even after this rule was changed, the idea was firmly implanted in the minds of brokers and their staffs that integrating a neighborhood would result in unpleasant consequences both for the neighborhood and for themselves.159 Brokers, fearing a decline in property values and a corresponding decline in commissions, and anticipating retribution from angered whites no longer willing to list, claimed that they were merely showing their clients housing demanded by the client. Hence, such attitudes have hindered voluntary compliance with fair housing ideas and laws.

At the present time, both federal and state laws prohibit discriminatory practices in real estate brokerage activities. Under Title VIII, an owner of a single-family home, exempt from the provisions of the Act, loses his exemption if he uses the services of a real estate firm.160 Section 3606 makes it unlawful for the broker to discriminate in the access to or provision of his services.161 Under the authorization of section 3613162 the Department of Justice has investigated the practices of at least two Baltimore area real estate firms, and they have entered into consent decrees163 under which they have adopted remedial hiring and educational programs and have agreed to abide by the law in the future. Under these orders, the firms have agreed to hire black agents and salesmen; to make listings and services available on a non-discriminatory basis; and to hold training programs for all personnel to advise them of the requirements of the law and of their duties and obligations under it. Thus, it seems somewhat more likely that a black buyer looking for suburban housing today

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158. 45 L.A.B. Bull. at 476. See also D. McEntire, Residence and Race (1960) at 238-50.
159. See, e.g., Chicago Real Estate Bd. v. City of Chicago, 36 Ill. 2d 530, 224 N.E.2d 793 (1967).
163. Consent decrees have been signed by Donald R. Grempler Realty, Inc., and Piper & Co., two of metropolitan Baltimore’s largest real estate firms. Copies of the consent decrees may be found in the Prentice-Hall “Opportunity in Housing” looseleaf reporting service, July 25, 1972. The newspaper advertisements placed by these realtors
will be treated more fairly than he or she was two years ago.

Under Maryland law, the Real Estate Commission is empowered to revoke or suspend the license of any licensee who is found to be in violation of the provisions regulating real estate services. Included in the relevant article in the Maryland Code are sections prohibiting:

- Knowingly inducing or attempting to induce [a person to sell, or] discouraging another person from purchasing [by representations] regarding the existing or potential proximity of real property owned . . . by a person of any particular race . . . or representing that the existing or potential proximity will or may result in: 1. The lowering of property values; 2. A change in the racial, religious, or ethnic character of the block, neighborhood or area . . . 3. An increase in criminal or antisocial behavior . . . or 4. A decline in quality of the schools serving the area.

Also prohibited are "blockbusting," whether or not for profit, and solicitation for the purpose of changing the racial composition of the neighborhood.

The real estate industry has increasingly been involved in fair housing controversies as discriminatory practices become more subtle and the attempts to prohibit them become more sophisticated. Because of the industry's unique position of power, fair housing groups in particular have attacked brokerage practices and have focused attention on further regulation and supervision of the industry as a means to achieve the goals already expressed in fair housing laws.

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168. See note 156 supra and accompanying text.
Critics of this tactic, both within and without the industry, have responded that the industry “is being made a ‘scapegoat’ or a substitute ‘bad guy’ for the unexpressed fears of whites in integrating areas.” However, a study committee of the Maryland legislature reached a different conclusion: The evidence convinces us (testimony to this effect came consistently from black and white residents) that they know from experience or observation that neighborhood after neighborhood in the past went from all white to all black at great economic and other disadvantage. . . . It is also a fact . . . that the community concern does not develop at the initial introduction of blacks into the neighborhood; rather it develops when it becomes easily apparent that only certain neighborhoods in the midst of many similar neighborhoods of comparable housing values receive the attention of brokers representing clients of a race and comparatively little attention by brokers representing buyers of another race.

The practices which led the legislative committee to this conclusion are, as indicated previously, increasingly subtle. The solicitation of listings, apparently a standard and innocuous practice in the state for many years, takes on a new connotation if the solicitation is made in a neighborhood undergoing racial change. “Greeting cards,” sent by a local real estate agent to

Houses Wanted
Fast Action - No Commission
All Cash Paid
Call Now
Friendly Realty
0000 North Charles St. . . . . Baltimore, Md. 21201
123-4567

This realty company, a non-Maryland based firm, was the subject of an active effort by local citizens' groups, primarily the Northeast Community Organization (NECO), who succeeded in effectively ending the firm's operations in Baltimore City. See Baltimore Evening Sun, Sept. 24, 1971, at C4, col. 5.; Baltimore Sun, Sept. 10, 1971, at C24 col. 5.
everyone on the block, heralding the arrival of a new neighbor, do not appear to be a friendly gesture if the new neighbor is the first or second black family on the street. See, e.g.,

173. See, e.g.,

The same firm also sent notices to neighbors calling attention to availability of houses for sale in the area.

HOUSE FOR SALE

Date: Oct. 26, 1970

We have been selected to sell the house at:

911 MARLAW DR.

Before advertising this property for sale, we are asking those living in the vicinity if they know of someone who would be interested in buying a home in the area. You may have a friend or relative who is looking for a home nearby.

Please call us for information.

TO

Mr. Miles Ellingson
918 Marlae Dr.
Baltimore, Md. 21212

Name of Realtor

See Baltimore Sun, Sept. 10, 1971, C24 at col. 5. The practices of this particular firm led to a request by the Department of Justice that the Federal Bureau of Investigation . . . initiate a thorough investigation of the allegations regarding [the firm] and some of the
in a given neighborhood,\textsuperscript{174} promotes resegregation, denying both blacks and whites the opportunity of living in a stable integrated neighborhood.\textsuperscript{175}

These practices have recently been under scrutiny by a state legislative study group,\textsuperscript{176} in an effort to determine what legislative modifications are needed to make unlawful those practices which are not consistent with the state policy of fair housing. "Steering" has received considerable attention, and the last two sessions of the legislature considered but voted down proposals to make "steering" explicitly illegal.\textsuperscript{177} Efforts have also been directed at the industry itself, with particular attention to increasing the level of "professionalism" by requiring more training and higher standards for licensees.\textsuperscript{178} It has also been suggested that the Real Estate Commission, charged with broad supervision of licensing and ethical practices within the industry, be made more responsive to the general public through the introduction of non-

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174. \textit{See} notes 181 through 182 \textit{infra} and accompanying text.
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175. \textit{See} \textit{Byrnes Rept.}, 1971 at 9:
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[1] In the areas studied in Prince George's County, . . . the complaint of the residents, black and white, who testified against steering practices . . . identified a . . . major consequence—one that is even more troublesome and threatening to the future of our society—the collapse of multi-racial housing patterns. In these areas of our state, the residents, black and white, testified that they were being denied the opportunity to experience a multi-racial housing pattern. They were concerned, not with economics, but with the spirit of multi-racial housing. Black citizens moved into an integrated community which accepted them, and a balance was struck to the satisfaction of all residents. There was repeated testimony of a subsequent pattern of showing homes first to a disproportionate number of black prospective purchasers, and then to blacks only. This has led to a racial imbalance which, in turn, fed a greater imbalance and so on, until resegregated neighborhoods resulted which cheated both blacks and whites in the process. \textit{See also} the testimony before the Byrnes Committee by Bishop F. Joseph Gossman, Auxiliary Bishop of Baltimore for the Roman Catholic Church:
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If the real estate industry could be persuaded to abandon the practice of steering their clients into racially segregated neighborhoods, there would be a much better chance of real integration in our metropolitan housing area. Under present practices, however, the evils of segregation are encouraged and perpetuated by some members of the real estate industry.
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176. \textit{See} \textit{Byrnes Rept.} (1970), note 156 \textit{supra}.
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178. \textit{Byrnes Rept.} (1971) at 1-4; \textit{Byrnes Rept.} (1972) at 2.
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industry associated members and through increased powers to issue direct orders suspending licenses for violation of the law. Recently, for example, the Commission was empowered to order a ban on solicitation in designated areas if it would be "... damaging to the public or to the dignity and integrity of the real estate profession, or could otherwise be in violation of [the] statute ... ." Further efforts on the part of the industry itself would obviously be of enormous value and impact in achieving the goal of fair housing practices. However, it is not yet clear that either the Commission or the industry in general sees its role as one of promoting cooperation and compliance; rather, past performance indicates that legislation prohibiting "steering" and other evasionary devices will be necessary in order to bring meaning to fair housing law.

CONCLUSION

The problems of access to housing still divide, in Baltimore in 1973, along black-white lines: a true "open" housing market is not at hand. Blacks continue to encounter discrimination in access to housing; whites are able to locate housing in "safe" all-white areas; and the integrated area is pressured by "steering" and the possibility of rapid resegregation.

In addition, both blacks and whites are to some extent captives of their education, experience and prejudice. Blacks may under some circumstances not recognize conduct as an act of discrimination. Even if the conduct is clearly discriminatory, the person against whom it is directed may not recognize that such conduct is against the law or may not know how to seek legal redress. Once the administrative process is invoked, it may be lengthy and tedious, and even unsuccessful. On the other hand, misunderstanding and prejudice continues, since many whites are firmly convinced that black buyers with adequate financial resources do not exist, that rapid neighborhood deterioration is

180. Md. Ann. Code art. 56, § 230C (1972). The Real Estate Commission had apparently issued a ban by reason of its own authority under Reg. 28 (See The Maryland Real Estate Comm'r, Spring 1972, at 3) but implementation of this was enjoined in Cooper v. Real Estate Comm'n (# 44055-A, Cir. Ct. of Baltimore City).
182. For example, blacks being "steered" into areas where all sales are currently made to blacks; economic disqualification on apparently legitimate standards.
inevitable, that integration is, in sum, not "natural."

It is with these problems that the law must deal. The policy of fair and open housing is explicitly stated, both in federal and state law. The means of making that policy a reality are less apparent. The federal courts have contributed responsible judicial interpretation and supervision when suits are brought to them. But the federal courts are not the most suitable primary means of enforcement. The administrative agencies must adapt their procedures and routine practices to the peculiar needs of the housing field and at the same time promote education, among both blacks and whites, in the substantive as well as procedural aspects of the law. Citizen organizations must continue to monitor the day-to-day situation on the local level and to call attention to any practices not consistent with the spirit of the law. Finally, the legislature, especially on the state level, must respond quickly to any indications that practices in any part of the housing market are having the effect of skirting the requirements of law and must make these practices, too, illegal. Continued, vigorous support of all aspects of fair housing law by all branches of the legal system would eliminate the "badges and incidents of slavery," a goal which has so long eluded both blacks and whites.