IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, v. BILL R. HUNTER, d/b/a, THE COURIER, Defendant.	CIVIL ACTION NO. 70-816T PLAINTIFF'S PRE-TRIAL MEMORANDUM

This action was filed by the plaintiff, United States of America, on July 14, 1970, alleging that the defendant, Bill R. Hunter, owner and publisher of a weekly newspaper named The Courier, was engaged in a pattern or practice in violation of Section 804(c) of the Civil Rights Act of 1968, 42 U.S.C. 3604(c), by the publication of advertisements for apartments indicating a preference based on race. The defendant's Answer, served on August 5, 1970, denied the violation and raised the following defenses:

(a) The Complaint failed to state a cause of action;

(b) The advertisements published did not violate the statute;

(c) Title VIII of the Civil Rights Act of 1968 is not applicable to the operation of a newspaper in printing and disseminating such advertisements;

(d) If Title VIII is applicable to the defendant operating as a newspaper and not as owner of a dwelling, then to that extent it violates the freedom of the press clause of the First Amendment, and constitutes invidious discrimination against the defendant in violation of the due process clause of the Fifth Amendment;

(e) Congress has no power to regulate the activities of the defendant under Title VIII with regard to the alleged violation in this case.

In the interest of efficiency, the plaintiff will try to discuss in this memorandum all of the substantial issues likely to arise in the course of the litigation, in order that they might be disposed of with a single hearing. Thus the memorandum will include discussion of the disputed item of evidence and the relief sought by the plaintiff, as well as the merits of the case. The text of a proposed order, to be entered in the event that the plaintiff is successful in proving a cause of action, is attached as Appendix A. At the conclusion of the hearing, or earlier if the Court prefers, we will also submit proposed Findings of Fact and Conclusions of Law.

THE STATUTE

Title VIII of the Civil Rights Act of 1968 provides as follows:

Section 802.*/ As used in this title--

* * * *

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single person.

* * * *

(e) "To Rent" includes . . . . to grant for a consideration the right to occupy premises not owned by the occupant. (42 U.S.C. 3602(b), (c), (e))

Section 803.

(a) Subject to the provisions of subsection (b) and Section 807, the prohibitions against discrimination in the sale or rental of housing set forth in Section 804 shall apply:

* * * *

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Nothing in Section 804 (other than subsection (c)) shall apply to . . . [listing certain exemptions]. (42 U.S.C. 3603)

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*/ Section 801 of the Act is 42 U.S.C. 3601; Section 802 is 42 U.S.C. 3602, and so on.

Section 804. As made applicable by Section 803 and except as exempted by 803(b) and 807, it shall be unlawful--

* * * *

(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. (42 U.S.C. 3604(b)).

FACTS

The defendant, Bill R. Hunter, a resident of Maryland, is publisher and editor of a weekly newspaper, The Courier. (Stipulations 1 and 2) The Courier is published in Prince Georges County, Maryland, and has a circulation of approximately 29,000 copies per week, mostly distributed in the same county. (Stipulation 3) The Courier carries advertisements, including classified advertisements, with respect to the sale or rental of dwellings. Such advertisements are carried by contract with the advertisers, and the advertisers pay the newspaper for their printing and publication. (Stipulation 4) The content and composition of such advertisements are furnished by the advertisers, but the defendant refuses to accept an advertisement if, in his judgment, it is either offensive or deceptive, or the advertiser is not acting in good faith and in good taste. (Stipulation 9)

In January 8, 1970, The Courier carried the following advertisement:

"FOR RENT - Furnished basement apartment. In private white home. Call JO 3-5493." (Emphasis added)

(Stipulation 5) On January 26, 1970, the plaintiff sent a letter to the defendant, over the signature of Frank E. Schwelb, Chief, Housing Section, Civil Rights Division, Department of Justice, expressing the view that such advertisements violate the federal fair housing law of 1968 because they indicated a racial preference, and requesting that he instruct his employees to cease accepting such advertisements. That letter was received by the defendant. (Complaint, Paragraph 8(a) and Exhibit B; Answer, Second Defense, Paragraph 8) The defendant returned the letter with a note written by hand on the last page, stating:

> "The advertisement to which you refer does not specify that the apartment will be rented only to white occupants. It is the policy of this newspaper to accept no advertising which in any way is racially offensive, however, the statement that the home in which the apartment is located is occupied by white people should not in our opinion be offensive to anyone. We have given no further instructions to our employees."
>
> "/s/ Bill R. Hunter
> Publisher and Editor"

(Stipulation 6)

On February 17, 1970, and March 19, 1970, the plaintiff again sent letters to the defendant, setting forth in greater detail why the plaintiff considered such advertisements to violate the statute, and stating the responsibility of the plaintiff to obtain compliance with the law through the courts if voluntary compliance could not be obtained. The defendant received these letters but did not respond. (Complaint, Paragraphs 8(b) and (c), Exhibits C and D; Answer, Second Defense, Paragraph 8, which admits receipt and does not deny the failure to respond)

On June 18, 1970, The Courier carried the following advertisement:

> "FURNISHED APARTMENT, well located, clean, quiet. In white home. Gentlemen only. $17.50 a week. Call JO 3-5493."
> (Emphasis added)

(Stipulation 7)

This suit was filed on July 14, 1970. On July 18, 1970, the defendant published an editorial in The Courier entitled "A Free Press" which stated that what advertisements were to be published:

> "is a decision and a policy established by this newspaper, to be carried out by this newspaper and, in our opinion, is not the province of the Department of Justice.
>
> We remain steadfast in our belief in the freedom of the press and the right

> of every homeowner to decide who shall or shall not live in the house with him."

(Stipulation 8, Exhibit A)

The same edition of The Courier carried a front page article on this suit entitled "Justice Department Files Suit Against Courier for Want Ad on Room to Rent 'In White Home," which stated that the advertisements had both been placed by Harry Crawford, a resident of southeast Washington, D. C., and that:

> "When questioned about his motive in indicating a white home in his ads, Crawford said, 'it's really a kindness to colored people. There's no use making them spend money to call here or come here when I'm not going to rent to them. I don't legally have to rent to anyone I don't want to.'"

(Defendant's Answer to Request for Admission)

DISCUSSION

A. The Advertisements Cited in the Complaint Indicate a Preference Based on Race in Violation of Section 804(c)

Section 804(c) provides that it shall be unlawful to "print or publish . . . any . . . advertisement, with respect to the sale or rental of a dwelling that indicates any preference . . . based on race [or] color . . ." 42 U.S.C. 3604(c). As part of a civil, remedial statute, this language is to be given a broad and liberal interpretation to effect the stated policy of Congress "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. See

United States v. Beach Associates, Inc., 286 F. Supp. 801, 808-09 (D. Md. 1968) and cases there cited. The purposes to be served by such a policy include elimination of the economic and physical burdens placed on the roughly twenty million non-white citizens of the United States by housing discrimination which restricts many of them to inferior but relatively more expensive housing and denies them suburban employment opportunities. Remarks of Senator Proxmire, 114 Cong. Rec., 2984-86 (Feb. 14, 1968). See Shannon v. HUD, ____ F. 2d ____ (3d Cir., No. 18,397, Oct. 6. 1970). The statute is also designed to end the "daily affront and humiliation" of racial discrimination. Daniel v. Paul, 395 U.S. 298, 307 (1969) (public accommodations act). Accord, Nesmith v. Young Men's Christian Association of Raleigh, 397 F. 2d 96,100 (4th Cir. 1968), quoting with approval Miller v. Amusement Enterprises, Inc., 394 F. 2d 342 (5th Cir. 1968). See remarks of Senator Mondale, 114 Cong. Rec. 2993 (Feb. 14, 1968).

The use of advertising which indicates a racial preference is economically burdensome and socially harmful. Racial advertising reinforces existing racial segregation. Since the results are the same whether the racial preferences are explicit or merely implied in the advertisements, the statute forbids any advertisement which "indicates" a preference, a word which covers not only the direct statement, such as "for colored" or "whites only," but also the more

or less subtle hint. The civil rights laws forbid sophisticated as well as simple-minded modes of discrimination. See, e.g., Lane v. Wilson, 307 U.S. 268, 275 (1939); Dobbins and United States v. Local 212, IBEW, 292 F. Supp. 413, 447 (S.D. Ohio 1968).

In this case the hint is not even very subtle. The advertisements set forth in the Complaint variously describe the apartments advertised as being in "a white home" and "a private white home." A grammar book might say that these phrases are merely descriptive, not prescriptive. Their true import, however, is in the effect that they are likely to have on the intended reader or potential applicant in the context of a society in which discrimination is so common that even graveyards are subjected to racial restrictive covenants.*/ As one Court has said in a somewhat analogous situation "the presence of all Negro teachers at a school attended solely by Negro pupils in the past denotes that school a 'colored school' just as certainly as

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*/ See "Court Tells Florida Cemetery to Bury Black G.I.," New York Times, August 28, 1970; "Judge Orders Cemetery to Bury Black," Washington Post, August 28, 1970; Cf. Terry v. Elwood Cemetery, 307 F. Supp. 369 (N.D. Ala. 1969). The Supreme Court has had to deal not only with housing cases, but also suits on voting, jury service, court room seats, schools, marriage, railways, parks, restaurants, beaches, golf courses, amusement parks, buses and libraries. Justice Douglas, concurring, in Jones v. Alfred H. Mayer Co., 392 U.S. 409, 444 (1968). And the many incidents of intimidation, violence and murder caused by efforts to achieve equal treatment need no citation.

if the words were printed across the entrance in six inch letters." Brown v. County School Board of Frederick County, 245 F. Supp. 549, 560 (W.D. Va. 1965). Read in such a racial context, the purportedly descriptive phrase "in white home" spells out "No Negroes need apply" far more clearly than the phrase "changing neighborhood" means that Negroes are moving in, United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969), or the term "private club" applied to a public establishment means "whites only," United States v. Beach Associates, Inc., 286 F. Supp. 801, 806 (D. Md. 1968); United States v. Jordan, 302 F. Supp. 370, 379 (E.D. La. 1969). Certainly no one could reasonably think that the advertiser was wasting his money to describe the paint on his house. Finally, the common sense meaning of the words in the advertisements conform, as the defendant knows, to the advertiser's intention.

B. The Defendant, as a Newspaper Publisher, is Subject to Section 804(c)

The basic argument of statutory construction urged upon the Court by the defendant is that the prohibition against discriminatory advertising does not apply to newspapers, the principal vehicles for the publication of such advertising. Section 804, 42 U.S.C. 3604, however, does not specify any particular class of persons as being subject to its prohibitions; it states simply that, subject to "Mrs. Murphy" type exemptions not here applicable,"it shall

be unlawful", among other things, to print or publish any racially preferential advertisement with respect to the sale or rental of a dwelling. The unqualified "it shall be unlawful" means that nobody is allowed to do the forbidden acts. This includes publishers of newspapers.

Congress knew how to write exemptions into the Act. Section 807, for example, contains limited exemptions from the statute for certain activities of religious organizations and private clubs. The defendant has made no claim to exemption under that provision. The prohibitions in Section 804 against discrimination in sale and rental are also subject to certain exemptions for small dwellings, e.g., certain single family houses sold or rented by an owner and "Mrs. Murphy" boarding houses. By the very terms of Section 803, however, these exemptions do not apply to the prohibition against unlawful advertising.

The structure of the statute thus indicates that it applies not only to those who seek to exclude minorities from their properties, but also to those (such as newspaper publishers) who carry their advertisements. Cf. New York Times, Co. v. Sullivan, 376 U.S. 254 (publisher of a defamatory statement subject to liability for libel as well as its author). By including in the prohibitions of Section 804(c) even the "Mrs. Murphy" type of dwelling and single family house being sold or rented by their owners, the statute covers many persons doing business on

a very small scale. In dealing with such a class, enforcement against each individual advertiser would be as impractical as draining the sea with a thimble. The logical option would be to build a dam at some strategic spot in the flow of publication, such as the newspaper office. The language of the statute compels the conclusion that that is what Congress intended to do, for it forbids not only causing unlawful advertisements to be published, the role of the advertiser, but the acts of printing or publishing them as well, and the newspapers have usually effected printing and publication.

This application was not lost on Congress. Senator Ellender cited Section 804(c) in the course of debate, saying :

> "Apparently, under this provision any publisher who accepted an advertisement indicating a preference by the owner of a certain race or religion would be in violation of the law. Apparently, freedom of speech and press guaranteed in the Bill of Rights is to be abolished with the inauguration of this open housing amendment." (114 Cong. Rec. 3134, Feb. 15, 1965)

While, for reasons set forth below, we disagree with Senator Ellender's conclusion of unconstitutionality, there is little doubt in view of the statutory language that he accurately stated the fair meaning of Section 804(c) in his first sentence. None of the bill's proponents challenged that interpretation.

Section 804(c) places no unreasonable burden on the publisher of a newspaper. The defendant here has stipulated that his policy is "to refuse to accept any . . . advertisement if, in his judgment, the advertisement is either offensive or deceptive, or the advertiser is not acting in good faith and in good taste." (Stipulation 9) In fact, in his handwritten response to our first letter (Stipulation 6), he made it quite clear that he would accept these advertisements because they were not, in his view, "racially offensive", and not because he could not spot them. He should have no difficulty adding illegal advertisements to the list of those he will refuse to publish, and taking reasonable steps to instruct his employees on what such advertisements are -- another action which he has openly refused to take. The blanket ban on racial advertising makes such implementation relatively easy, since the employees do not have to be instructed on what housing is covered, nor determine from the advertiser the facts relevant to coverage, nor as the defendant would have it, make subjective judgments as to "offensiveness."

C. The Statute, as Applied to the Defendant, is Constitutional

1. Congressional Authority

Congress has the authority under the Thirteenth Amendment to enact legislation forbidding racial discrimination in the sale and rental of housing. Jones v. Alfred H. Mayer Co., supra. A prohibition against racial advertising

of housing is a rational and appropriate exercise of that authority, in view of the impact such advertising can have on housing patterns. Cf. United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969); Brown v. State Realty Corp., 304 F. Supp. 1236 (N.D. Ga. 1969); United States v. Bob Lawrence Realty, Inc., 313 F. Supp. 870 (N.D. Ga. 1970).

2. First Amendment

The defendant's principal contention in this case is that he has a constitutional right under the First Amendment to accept and publish advertisements of the kind here at issue, and apparently any advertisements, and that the Government's attempt to enjoin him from doing so would, if successful, constitute prior censorship. We disagree. We believe that the restrictions contained in Section 804(c) limit speech only in a commercial context rather than in relation to the dissemination of ideas, and that the protections of the First Amendment are therefore inapplicable.

Section 804(c) is but one part of a comprehensive attempt by Congress to deal with all of the varieties of conduct by which racial discrimination in housing is carried out. Some of the prohibited conduct is non-verbal, */

*/ E.g., provision of inferior services and facilities on account of race, 804(b).

but much of it */ consists of accomplishing the unlawful end by means of words. All of these words, in order to be actionable, must be uttered in the context of business rather than of ideological discussion. In view of that limitation, the power of Congress to deal with such discrimination is not restricted by the fact that it is effected by the spoken or written word. Also in a number of analogous areas, the Supreme Court and other courts have ruled that commercial activities are not entitled to the same First Amendment protections that are afforded to the expression of racial, religious or political views. See e.g., Breard v. Alexander, 341 U.S. 622 (1951) (upholding ban on door to door solicitation for sale of "goods, wares and merchandise," including magazines); Valentine v. Chrestensen, 316 U.S. 52, 54 (1942) (state may prohibit use of streets for distribution of purely commercial handbills); Jamison v. Texas, 318 U.S. 413, 417 (1943) (religious handbills distinguished from commercial); New York State Broadcasters' Assn., v. United States, 414 F. 2d 990 (2d Cir. 1969), cert. denied, 396 U.S. 1061 (1970) (upheld ban on commercials for particular lotteries, as distinguished from news stories and editorials concerning lotteries); Halstead v. Securities & Exchange Commission, 182 F. 2d 660, 668-69 (D.C. Cir. 1950) (SEC prohibition against soliciting fees in a certain manner upheld).

*/E.g., statements and advertisements of racial preference, Section 804(c); misrepresentations on racial grounds as to the existence of a vacancy, Section 804(d); and "blockbusting" representations, Section 804(e).

"The First Amendment was designed to aid and support the existence of a democratic society by preserving, free from interference, an unlimited market place for the exchange of ideas." Halstead v. SEC., 182 F. 2d 660, 668 (D.C. Cir. 1950). It does not protect matters which "are no essential part of any exposition of ideas," cf. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). Moreover, these principles apply, and no constitutional infirmity arises because the defendant runs a newspaper, for

> "The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others." Associated Press v. N.L.R.B., 301 U.S. 103, 132-33 (1937)

It may be well to state what is not involved in this case. Section 804(c) does not, nor could it, inhibit the defendant from publishing editorials calling for the repeal of the Fair Housing Act. It does not prevent him from stating his preference for segregation in the political arena as a matter of conscientious belief. */ It does preclude him from discriminating, by use of words, in business dealings. In the present case, the commercial context

*/ See N.L.R.B. v. Virginia Electric Power Co., 314 U.S. 469, 471 (1941), where the Court held that an employer could be barred from using verbal conduct amounting to coercion, although not "from expressing its views on labor policies or problems" generally.

could not be clearer, for what is involved is that classic of the commercial scene -- a real estate advertisement.

One who seeks to discriminate on account of race may not do by indirection what he is forbidden to do directly. See United States v. Beach Associates, Inc., 386 F. Supp. 801, 807 (D. Md. 1968). It would be incongruous to prevent a landlord from turning down applicants on account of race, but to permit him to keep non-whites away by resort to discriminatory advertising. Accordingly, Congress has not permitted this kind of evasion and has prohibited discriminatory advertising by newspaper as well as landlords; such a prohibition is well within the power of Congress. Gompers v. Buck Stove & Range Co., 221 U.S. 418, 439 (1911), (where Congress can prohibit a labor boycott, courts may enjoin use of words contributing to the boycott).

The decisions to date under the Fair Housing Act uniformly support our position. Section 804(c) appears after the prohibitions against refusal to sell or rent and against discrimination in the terms of sale or rental, and before the proscription of racial misrepresentations as to availability of dwellings. It is part of the overall scheme to assure nondiscrimination in sales and rentals, and it can therefore only reasonably be applied to transactions relating to sale and rental. Indeed, the section contains the express qualification "with respect to the

sale or rental of a dwelling." This qualification, in the light of the location of the section within the statute, has the same general character as the phrase "for profit" in the prohibition of blockbusting in 804(e), which also deals with speech. This Court's comments as to the words "for profit" in United States v. Mintzes, 304 F. Supp. 1305, 1312 (D. Md. 1969), are therefore just as pertinent here:

> "They were evidently included in § 3604(e) to distinguish and eliminate from the operation of that subsection statements made in social, political or other contexts, as distinguished from a commercial context, where the person making the representations hopes to obtain some financial gain as a result of the representations. See Halstead v. S.E.C., 86 U.S.App.D.C. 352,182 F.2d 660, 668 (1950). The inclusion of statements made in social or political contexts would have raised serious First Amendment problems."

In United States v. Bob Lawrence Realty Co., 313 F. Supp. 870 (N.D. Ga. 1970), the defendant, a real estate broker in Atlanta, Georgia, attacked the constitutionality of 804(e) under the First Amendment, alleging, among other things, that it makes no distinction between truth and falsity, that it deprives the defendant of the right to speak the truth, and that it is overbroad. The Court, rejected the defendant's contentions noting that the constitutionality of the statute had been sustained in

Mintzes, supra, and in Brown v. State Realty Co., 304 F. Supp. 1236 (N.D. Ga. 1969), the Court went on to hold:

> "It is evident that the statute does not make mere speech unlawful. What it does make unlawful is economic exploitation of racial bias and panic selling. We conclude that the statute is one regulating conduct, and that any inhibiting effect it may have upon speech is justified by the Government's interest in protecting its citizens from discriminatory housing practices and is not violative of the First Amendment." 313 F. Supp. at 872.

In United States v. West Peachtree Tenth Corp., ____ F. 2d ____ (No. 29431, 5th Cir. Jan. 4, 1971) (copy attached), the Court found that the defendant, a corporation which operated an apartment house, had engaged in a pattern or practice of resistance to the enjoyment of rights secured by the Fair Housing Act. A substantial part of the evidence of the pattern or practice consisted of oral statements by the defendant's agents to Negro applicants. In prescribing a decree for entry by the District Court, the Court of Appeals required inclusion of a prohibition against

> "making, printing or publishing, or 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 a preference, limitation or discrimination."

Turning to affirmative relief, the prescribed decree requires that:

> "All advertising of 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."

It is evident that the Court of Appeals for the Fifth Circuit saw no constitutional infirmity in Section 804(c).

* * * * *

The essentially commercial character of the advertisements at issue in this case and of the prohibitions in 804(c) also disposes of the defendant's claims of unlawful prior restraint, based on such authorities as Near v. Minnesota, 283 U.S. 697 (1931). In West Peachtree Tenth, supra, the decree prescribed by the Court expressly prohibited, on a prior restraint basis, the publication of pamphlets, brochures, handouts or writings, as well as newspaper advertisements, without the required fair housing statement, and cases in other fields have enjoined the unlawful use of speech. Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949) (injunction against picketing to force employer to violate state law did not violate First Amendment); International News Service v. Associated Press, 248 U.S. 215 (1918) (wire service enjoined from copying from competitor's bulletin board and early editions and submitting copied matter for publication); Gompers v. Buck Stove & Range Co., 221 U.S. 418, 439 (1911) (First Amendment not violated by injunction against stating in

union newspaper that company was "unfair" and "We don't patronize," where statements promoted boycott); United States v. Tijerina, 412 F. 2d 661 (10th Cir.) cert. denied, 396 U.S. 990 (1969) (upheld contempt conviction against defendant in criminal case who violated order against pre-trial publicity). See also Lorain Journal Co. v. United States, 342 U.S. 143 (1951) (newspaper enjoined under anti-trust laws from refusing to accept advertising from companies which also advertised with competing radio station); Associated Press v. United States, 326 U.S. 1, 7 (1945) (news distribution as a business not protected by First Amendment; exclusion of competitors of members enjoined); N.L.R.B. v. Virginia Power Co., 314 U.S. 469, 477 (1941) (finding that anti-union speeches were coercive and constituted unfair labor practices, and entering cease and desist order held not to violate First Amendment).

3. Fifth Amendment

With regard to the defendant's Fifth Amendment claim, the Supreme Court noted in Currin v. Wallace, 306 U.S. 1, 14 (1939), that "there might be discrimination of such injurious character as to bring into operation the due process clause of the Fifth Amendment." In Bolling v. Sharpe, 347 U.S. 497, 500 (1954), the Court held that segregation based on race "imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause." The defendant in this case would now have us

believe that the due process clause protects his right to contribute to the segregation of Negro homeseekers. It would be irony indeed if that contention were to be upheld. Since the defendant has not yet stated the facts upon which he bases that defense, however, and has identified neither the class he alleges to be subject to discrimination nor that which allegedly receives preferential treatment, the plaintiff will withhold further comment until those facts are set forth.

D. The Defendant's Articles are Relevant

A few days after this suit was brought, the defendant wrote in his newspaper that the owner of the advertised premises, one Harry Crawford, told him that he used the phrase "white home" to discourage Negroes from fruitlessly applying for a room which he would not rent to them. In the very same issue, the defendant editorially proclaimed that he would remain steadfast in his defense of the homeowner's right to choose his tenants and the publisher's right to advertise as he sees fit.

The foregoing statements show at least that the defendant had earlier recognized the racial character of the advertisement -- the editorial as a whole (Exhibit A, Stipulation 8) evidences no surprise at Crawford's explanation -- and that despite the explicit statement of racial purpose he would still "remain steadfast" in his policy of printing such advertisements regardless of the law. Under

such circumstances, the defendant cannot now be heard to complain, as he did in his cryptic response to the Justice Department, that this was only a descriptive advertisement which "does not specify that the apartment will be rented only to white occupants." (Stipulation 6) Nor is he in a position to argue that there is no policy, or "pattern or practice", of accepting discriminatory advertisements, or that an injunction is unnecessary.

Moreover, the advertiser's explicit communication of his policy of exclusion to the defendant, and the defendant's rise to the defense of that policy, shed further light -- if indeed further light is needed -- on the nature of the advertisement. It is true that the words "white home" hardly need elaboration. When their author has admitted their exclusionary purpose, however, the corollary of the principle that a man is presumed to intend the natural consequences of his conduct */ must surely apply -- the advertiser used the language because he presaged what its effect would be. One engaged in a libel may not be heard to tell of his non-defamatory intent when the words used defame, **/ but here Crawford's stated intent, and the defendant's recognition of and defense of that intent,

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*/ Radio Officers v. Labor Board, 347 U.S. 17, 45 (1954)

**/ VII Wigmore, Evidence §1971, at 112 (3d ed. 1940)

corroborate the discrimination appearing from the face of the advertisement.

E. The Complaint States A Cause of Action

The defendant's claim that the Complaint fails to state a cause of action depends entirely on his argument that Section 804(c), as applied to him, is unconstitutional. The determination by the Attorney General that he has reasonable cause to believe that the defendant is engaged in a pattern and practice of conduct in violation of Title VIII and that the case raises issues of general public importance, as a jurisdictional prerequisite, is not reviewable by the court. United States v. Mitchell, 313 F. Supp. 299 (N.D. Ga. 1970). The facts alleged in the Complaint, and admitted in the Answer and in the Stipulations, are sufficient, assuming the law is applicable, to support the issuance of an injunction. United States v. West Peachtree Tenth Corp., supra; United States v. Mintzes, supra; United States v. Alexander and Cloutier Realty Co., ____ F. Supp. ____ (N.D. Ga., Atlanta Div., C.A. No. 13805, Nov. 3, 1970) (copy attached). See also Swift & Co. v. United States, 276 U.S. 311, 326 (1928).

F. The Plaintiff is Entitled to the Relief Requested in Appendix A

The proposed decree attached as Appendix A contains two elements. The first is a prohibition on the printing or publication of any further illegal advertisements, including a definition of such advertisements. The second is an affirmative provision, requiring the printing of a statement

on the classified page in some future editions of The Courier to the effect that discrimination in housing is a violation of federal law. Such action is required to eliminate the continuing effects of defendant's past illegal conduct, since the public display of advertisements indicating racial preferences may have had the effect of convincing some readers that federal fair housing laws did not cover such housing or were not enforced. Affirmative relief is appropriate under Title VIII, United States v. West Peachtree Tenth Corp., supra.*/ The burden it would impose on the defendant would be minimal, certainly much less than the burden on cigarette manufacturers, who must caution purchasers against using their product.

CONCLUSION

For the reasons stated above, the plaintiff contends that the advertisements which are the subject of this suit indicate a preference with respect to the rental of a

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*/ The Court "has not merely the power but the duty to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future." Louisiana v. United States, 380 U.S. 145, 154 (1965); United States v. Beach Associates, Inc., 386 F. Supp. 801,808(D. Md. 1968).

dwelling based on race or color in violation of the federal fair housing law of 1968, that the statute applies to the defendant, and that as so applied it is constitutional, and that the plaintiff is entitled to the relief requested.

Respectfully submitted,

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APPENDIX A

BODY OF PROPOSED DECREE

IT IS ORDERED, ADJUDGED, and DECREED that the defendant, Bill R. Hunter, and his agents, employees, and all those in active concert or participation with any of them, are hereby enjoined, in the operation of any newspaper, from accepting for publication, or printing or publishing, any notice 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. Such prohibited notices or advertisements shall include any which sets forth the race, color, religion, or national origin of the owner or occupant of the dwelling advertised, or of the residents of the area in which the advertised dwelling is located, or any phrase or description which indicates the probable race, color, religion, or national origin of any such person and has no apparent non-racial business purpose.

IT IS FURTHER ORDERED that for one year after the entry of this Decree the defendant shall print once each month in The Courier, on each page where classified advertisements for dwellings are set forth, a statement,

in bold-faced print, easily legible, and prominently placed, to the effect that discrimination on the basis of race, color, religion or national origin in the sale or rental of dwellings is a violation of federal law.

The court shall retain jurisdiction of this action for all purposes.

CERTIFICATE OF SERVICE

I, Robert J. Wiggers, hereby certify that I have served a copy of the attached Plaintiff's Pre-Trial Memorandum on the attorneys for the defendant, by mailing a copy of same, postage prepaid, to them at the address shown below, this 26th day of January, 1971.

Frank W. Stickle, Jr., Esq.
Hanson, O'Brien, Birney and Stickle
888 Seventeenth Street, Northwest
Washington, D. C. 20006

/s/
ROBERT J. WIGGERS
Attorney
Department of Justice