IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA Plaintiff, v. WEST PEACHTREE TENTH CORPORATION, d/b/a ONE TENTH STREET APARTMENTS, TED LEVY, President, Defendants.	)	CIVIL ACTION No. 12839

PLAINTIFF'S
MEMORANDUM IN SUPPORT OF PROPOSED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW

JOHN W. STOKES, JR.
United States Attorney

FRANK E. SCHWELB
MICHAEL J. HOARE
Attorneys
Department of Justice
Washington, D.C. 20530

TABLE OF CONTENTS

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA Plaintiff, v. WEST PEACHTREE TENTH CORPORATION, d/b/a ONE TENTH STREET APARTMENTS, TED LEVY, President, Defendants.	)	CIVIL ACTION No. 12839

PLAINTIFF'S
MEMORANDUM IN SUPPORT OF PROPOSED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW

I

NATURE OF THE ACTION

This action was commenced on June 24, 1969 by the United States pursuant to 42 U.S.C. 3613. The complaint alleges that the defendant corporation has a policy of excluding qualified Negro applicants from dwellings in the One Tenth Street Apartments and that prior to and since January 1, 1969 the defendants have implemented that policy by refusing dwellings to Negro applicants and by representing to them that apartments are not available for rent when such apartments are in fact so available. The United States seeks

injunctive relief terminating the defendants' unlawful activities and requiring them to take reasonable and adequate steps to correct the effects of their discriminatory policies and practices.

The defendant corporation filed its Answer on July 11, 1969, denying the allegations outlined above.

A hearing on the question of the preliminary injunction was held in Atlanta on October 1, 1969. At this time the United States presented evidence in support of its allegations but, before the United States rested its case, the matter was continued until November 5, 1969.

At the completion of the October 1, 1969 hearing the Court requested the United States to submit a memorandum setting forth the evidence in support of its allegation together with a discussion of the relief warranted by that evidence. This memorandum is submitted pursuant to that request.

II

STATEMENT OF FACTS

A. The Defendant Corporation

The West Peachtree Tenth Corporation, which operates an apartment house known as the One Tenth Street Apartments, 975 West Peachtree, N. E., Atlanta, Georgia, has been incorporated and doing business pursuant to the laws of

the State of Georgia since May of 1965.[1] Mr. Ted Levy and Mr. Robert Miller are the only two shareholders in the Corporation.[2] As majority stockholder and President of the Corporation Mr. Levy has general responsibility for the operations of the One Tenth Street Apartments.[3] Aside from the signing of leases as representative of the defendant corporation,[4] Mr. Levy has delegated the bulk of his managerial responsibilities to his managing agent,[5] Mrs. Francis E. Price, who in turn hires and supervises three night managers and part-time rental clerks.[6]

The One Tenth Street Apartments offers 96 rental units ranging in price from $139 to $186 per month depending on the location of the particular unit.[7] The highest priced units are located on the top floor. All units are furnished studio apartments containing one large room (combination bedroom and living room), a kitchen, a dressing area and bathroom.[8] Most units are rented on a six month lease but shorter leases, from three months to one month, are also available.[9]

1/ Dep. of Levy p. 5.
2/ Ibid.
3/ Ibid.
4/ Ibid.
5/ Ibid., p.8, T. pp. 18-19, 24-27.
6/ T. 25-26.
7/ Dep. of Mrs. Price V.I, p. 6.
8/ T. p. 8.
9/ Ibid.

In addition to the 96 residential dwellings located on floors 2 through 9, the building houses four commercial lessees on the ground floor. 10/ The defendants' rental office is also located on the ground floor. 11/

The defendants advertise daily in the Atlanta Constitution and the Atlanta Journal. 12/ They also advertise in the Atlanta Apartment Hunter's Guide. 13/ The defendants' greatest source of tenants is their newspaper advertisement. 14/

Because of a high turnover rate 15/ the defendants' apartment house was able to accommodate approximately 118 new, incoming tenants during the period from January 1, 1969 to September 26, 1969. 16/ Approximately twenty of these turnovers occurred after June 26, 1969 the date on the application submitted by Mr. Franklin Biggans, the last known rejected Negro applicant. 17/

10/ Ibid, p.6.
11/ Ibid.
12/ Dep. of Price V.I, pp.7-8.
13/ Ibid.
14/ T. p.28.
15/ T. pp.9-10. Mr. Levy attributes the "higher turnover" to the fact that the apartments are furnished and, in essence, attract temporary residents.

16/ These figures were extracted from the defendants' records ("daily journal" and "daily ledger cards") introduced as Pl. Ex. 2 and Pl. Ex. 3 to the deposition of Mrs. Price. These exhibits are further summarized in Appendix A.

17/ As of June 26, 1969 the defendants already had on file the applications submitted by the other Negro applicants who were likewise denied the opportunity to qualify for any of the many available apartments. See Appendix A.

The defendants' high turnover rate is further evidenced by the fact that only 33 of the approximately 96 tenants residing at the One Tenth Street Apartments on January 1, 1969 were still residing there as of September 26, 1969.

B. The Defendants Select Tenants on the Basis of Vague and Subjective Standards.

The following procedure is used to fill vacancies at the One Tenth Street Apartments: 18/

(a) All prospective tenants are required to submit an application reflecting basic data on (1) present residence and landlord (2) occupation (3) former employer (4) two personal references and (5) two credit references. 19/

18/ With regard to unanticipated vacancies, when the tenant leaves the apartment without giving proper notice, Mrs. Price was asked on deposition (p.8 V. III): "Which applications do you consult in order to rent that apartment" Mrs. Price's Answer: "The first application that I get in the office that looks good to me, that's the one."

19/ Ibid, p.34. These ostensibly neutral considerations are reduced to vague objectionable standards when, after interviewing the applicant, Mrs. Price makes her decision as to "which one of these things [she] would consider most important with regard to the [individual applicant]" Ibid, p.48 For an example of this subjective procedure see p. 77 of the transcript wherein Mrs. Price states, with reference to the application of Mr. John Lloyd, one of the Negro victims, " ... this was another case when I did not have sufficient information, and had the personal interview worked out to my satisfaction, perhaps this wouldn't have been important, but because the personal interview did not work out to my satisfaction and I was unable to verify the other things that I require, I had to reject it."

(b) If Mrs. Price does not object to the applicant's "appearance" or "attitude" she may inform him of any existing or anticipated vacancies.[20]

(c) If the applicant is able to meet the criterion set out in (b) above and, in Mrs. Price's opinion is "definitely interested" in an apartment,[21] he is asked to leave a "deposit" of $100 or a portion thereof.[22] At this point Mrs. Price makes a bookkeeping entry which reflects that the particular apartment is no longer vacant and the applicant is considered for all practical purposes a tenant.[23]

20/ Ibid, pp. 37-40. In this connection Mrs. Price, referring to one of the Negro victims stated (T. p.66): "I did not evaluate [her] as being one that would be compatible in that building. She did not display the type of attitude that we feel is necessary." On p.73 of the transcript Mrs. Price agrees that, in her opinion, the "basic difficulty with Miss Threadcraft is her attitude." See also Dep. of Price V. III, p.43.

21/ Ibid, p.40.

22/ Ibid, p.45 Former tenants, individuals personally known to Mrs. Price and individuals referred to her by personal friends are not required to submit a deposit. Ibid, p. 46.

23/ Dep. of Levy p. 17. The white tenants who testified in this case all agreed that the "deposit" they left with the defendants was a "security deposit" and not an "earnest money deposit." Nowhere on the application is there any mention of an "earnest money deposit." However, Paragraph 18 of the Standard lease used by the defendant is captioned "Security Deposit" and states in pertinent part, "Simultaneously with the execution of this lease tenant shall deposit with landlord the sum of $100.00, which deposit shall be without interest, as security for the faithful performance by tenant of all the terms, conditions and provisions of this lease ..."

C. The Defendants' Use of Vague and Subjective Standards has Resulted in the Almost Complete Exclusion of Negroes From the One Tenth Street Apartments While White Applicants, Who in Some Cases are not as Well Qualified Objectively as the Known Negro applicants, are Routinely Accepted.

Until the initiation of this action all of the defendants' tenants were white persons.[24] The first Negro tenant entered the apartment house during the first part of July, 1969.[25]

1. The white tenants who testified in this case were, with minor variations, new in town, had no established local credit or personal references and were either unemployed or new to their jobs, yet they were accepted as tenants on the same day they made application.

Mr. Samuel W. Bourne,[26] white, is an Urban Intern with the U.S. Department of Housing and Urban Development (HUD). He was new to Atlanta from Kentucky, was technically unemployed in that although he had a commitment from HUD, he was not yet on the payroll, and had no local credit references when he applied for a unit at the One Tenth Street Apartments on June 18, 1969, yet he was able to move into his apartment that same day. He tendered a month's rent in advance together with a security deposit of $100. He did not sign a lease until several days after he assumed the status of a tenant.

24/ T. pp. 175-176.

25/ Ibid, p.177. There is some evidence that one other unidentified Negro may have resided in the subject apartment house during a portion of the summer of 1969 as a temporary roommate in an incumbent white tenant's apartment.

26/ Ibid, pp.151-158.

Mr. James Cauthran,[27] white, a June 1968 graduate of the University of Georgia, also had a promise of a job with HUD in Atlanta. In anticipation of that position he came to Atlanta in June of 1968 to seek accommodations. Although he was technically unemployed at the time and admittedly had no established credit, he was able to obtain an apartment at the One Tenth Street Apartments on the same day he applied. Mr. Cauthran's situation is different from the other white tenants because he was financially unable to tender the entire security deposit at the commencement of his lease. The defendants, however, were able to accommodate him by allowing a portion of the security deposit to be paid each month with his rent.

Miss Maurine Thompson,[28] white, came to Atlanta from Jackson, Mississippi on September 16, 1969. She and her roommate, who was also new to Atlanta, saw an ad in the newspaper and visited Mrs. Price on the morning of September 18 to inquire as to the availability of apartments. They looked at an apartment but left without making an application or leaving a deposit. The two girls returned early that afternoon to inform Mrs. Price that they would take the apartment. They submitted an application leaving a $100 deposit. Mrs. Price told them to return at 4:00 p.m. that same afternoon when the apartment would

---

27/ Ibid, pp. 158-163.

28/ Ibid, pp. 163-167.

be cleaned and the lease ready for their signatures. They returned as instructed, signed the lease and moved in that same day. At that time Miss Thompson and her roommate were unemployed. Miss Thompson is still unemployed; her roommate was subsequently able to find a position at a local hospital.

Mrs. Patricia Kirkeberg, [29/] white, is new to Atlanta from Florida. She saw the defendants' newspaper ad and, on September 26, 1969, visited the subject apartment house. She conversed with an employee of Wall Brothers Reality, whose offices are located on the ground floor of the subject apartment house, and was shown an apartment by him. Mrs. Kirkeberg was prepared to take this apartment but the defendants' maintenance supervisor, Mr. Loy Dobbs, advised her that the apartment had been rented to another party the night before. She was subsequently shown another vacant apartment and decided to take it. She moved in that evening after filling out an application and submitting a $100 security deposit with one month's rent in advance. Mrs. Kirkeberg never signed a lease.

2. In Contrast to the Ease with Which White Applicants are Able to Secure Accommodations at the One Tenth Street Apartments the Negro Applicants Who Testified in this Case all Testified to the Difficulties They Encountered.

Dr. John E. Codwell, [30/] Negro, possesses a bachelor of science degree, a Master of Arts degree and a

29/ Ibid, pp.167-173.

30/ Ibid, pp.90-94.

Doctorate of Philosophy . He is employed by the Southern Association of Schools and Colleges. On April 4, 1968 Dr. Codwell visited the defendants' apartment house, was shown an apartment and submitted a written application. He was not asked to leave a deposit. In contrast to the treatment received at the One Tenth Street Apartments, Dr. Codwell stated that another apartment house in Atlanta, the Peachtree North, where he also applied for accommodations and where he now resides, processed his application and subsequently contacted him to advise him that the application had been accepted and an apartment was available for occupancy.

Mr. Hosea Martin, 31/ Negro, graduate of the University of Chicago, is employed by the Coca Cola Company as a promotion manager. Mr. Martin works two blocks from the One Tenth Street Apartments. On February 2, 1968, he visited the rental office of the subject apartment house and was shown an apartment. Mr. Martin made a written application and was told by a male employee that he would be notified as soon as a credit check was completed. He was never contacted by the defendants. At that time Mr. Martin's income was $10,000 per year. Mr. Martin was never asked to leave a deposit with his application.

Miss Barbara Jones, 32/ Negro, has a Master of Arts degree in Reading Education and is employed by the United

31/ Ibid, pp.96-100.

32/ Ibid, pp.115-119.

States Office of Equal Employment Opportunity at a salary of $16,000 per year. In response to a newspaper ad Miss Jones visited the subject apartment house on November 12, 1968, where she submitted an application. She was not asked to leave a deposit. She was told that there were no vacancies at that time but that she could call back later to inquire. Miss Jones telephoned the defendants about two weeks later. She spoke with a party who was unable to give her any information. Miss Jones left a message requesting the rental agent to return her call. Miss Jones never heard from the defendants.

Miss Sandra Threadcraft, 33/ Negro, has a degree from Atlanta University where she is currently working on a masters degree. She is employed by HUD. Miss Threadcraft first applied for an apartment on May 24, 1968. At that time she was not shown an apartment or asked to leave a deposit. She was told that no vacancies were available. She was told by Mrs. Price to "call back" which she did in June of 1968 and was again told that there were no vacancies. Miss Threadcraft returned to the defendants' rental office several times between May of 1968 and May of 1969; she also made numerous telephone calls to Mrs. Price's office during this same period.

On one occasion prior to 1969 Miss Threadcraft telephoned Mrs. Price, identified herself, asked about

---

33/ Ibid, pp.100-112.

vacancies and was told that no apartments were available. Miss Diane Eddelan,[34] a white co-worker, called Mrs. Price's office almost immediately thereafter and was told that apartments were available and that Miss Eddelan was welcome to inspect them.

Sometime in early May of 1969 Miss Threadcraft called Mrs. Price's office and spoke with a man who identified himself as Mr. Marshall.[35] This individual told Miss Threadcraft that it was possible that her efforts to secure an apartment were unsuccessful because of her failure to submit a $100 deposit with her application. Shortly thereafter, on or about May 5, 1969, Miss Threadcraft personally visited Mrs. Price and supplemented her May 1968 application by supplying the names of additional credit references. Mrs. Price did not ask for any deposit. Again, Mrs. Price told her there were no vacant apartments but that she would be contacted before the end of that week. Approximately two weeks later after hearing nothing from Mrs. Price's office, Miss Threadcraft telephoned and was told by Mrs. Price that her application had been rejected.

Mr. Robert Pitts,[36] Negro, holds degrees from Ohio University, Kent University and the Spanish American Academy in San Miguel, Mexico. He is an Assistant

---

34/ Ibid, pp.112-115. (Miss Eddelan's Testimony)

35/ Ibid, p.7. Mr. Levy identified a Mr. David Marshall as a "night manager."

36/ Ibid, pp.119-132.

Professor of Modern Language at Atlanta University. When he first made application to the One Tenth Street Apartments on August 30, 1968 he had an annual income of $10,000. Mr. Pitts submitted a written application on August 30, 1968. He was not asked to leave a deposit. At that time Mrs. Price told him there were no vacancies but instructed him to "call back." Mr. Pitts called Mrs. Price long distance on at least two occasions between August 30, 1968 and September 17, 1968. On both occasions he was told that there were no apartments available. On September 17, 1968, Mr. Pitts returned to Mrs. Price's office inquiring as to the status of his application and the availability of apartments. On this occasion he was accompanied by Dr. Cleon Arrington, Chairman of the Chemistry Department at Atlanta University. Mr. Pitts recalls that Mrs. Price did not request a deposit but he volunteered to submit one if it would improve his chances of obtaining an apartment. In this connection he offered twenty dollars and Mrs. Price accepted it, giving him a receipt for that amount. It was on this occasion that Mr. Pitts indicated that he would take Apartment 9A, one of the most expensive units, or the first available unit; a notation to that effect was made by Mrs. Price on Mr. Pitts' receipt. 37/

37/ Pl. Ex. 13. A similar notation was made on Mr. Pitts' application: "Wants 9-A whenever available or first unit that is available." Pl. Ex. 1.

Mr. Pitts contacted Mrs. Price several times during September and October of 1968 to determine the status of his application and the availability of apartments. She continuously told him that nothing was available and instructed him to "call back."

On or about October 15, 1968 Mr. Pitts returned to Mrs. Price's office with his cousin Mrs. Verdell Pierce. On this occasion Mrs. Price told Mr. Pitts, in the presence of Mrs. Pierce, [38] that his application had been rejected because of the owners' refusal "to integrate the building until forced to do so." Mrs. Price attempted to return Mr. Pitts' deposit of $20, but Mr. Pitts declined to accept it.

Shortly after January 1, 1969 Mr. Pitts recontacted Mrs. Price to determine if there had been any change in the status of his application. Mrs. Price replied negatively and generally refused to discuss the matter with him.

Mr. Franklin Biggins, [39] Negro, has a degree from the University of South Florida and has been employed by HUD since June of 1969. He visited the defendants' rental office on June 26, 1969 and submitted an application. He was not advised of any need for an earnest money deposit. Mrs. Price told Mr. Biggins that something would be available "within three to four weeks"; she stated that she would

---

38/ T. pp.143-146. (Mrs. Verdell Pierce's Testimony)

39/ Ibid, pp.146-151

call him at that time. To date Mr. Biggins has not been contacted by the defendants. Since submitting the application to Mrs. Price, Mr. Biggins has talked to both "personal references" listed on his application; as of October 1, 1969 they had not been contacted by the defendants.

The United States took the deposition of Mr. John Lloyd on September 26, 1969. The parties stipulated that Mr. Lloyd would not be able to appear at the October 1 hearing and that his deposition could be introduced as evidence. Mr. Lloyd, Negro, responding to a newspaper ad called the One Tenth Street Apartments on or about May 21, 1969 when he spoke to an unknown male employee who gave him a telephone number and advised Mr. Lloyd to telephone Mrs. Price at her home. Mr. Lloyd did so that evening and was informed by Mrs. Price that an apartment was available. She invited Mr. Lloyd to stop at her office the next day to fill out an application. On May 21, 1969, Mr. Lloyd visited Mrs. Price's office where he was told by Mrs. Price that no apartments were available. He submitted an application and was told by Mrs. Price that he would be contacted. Ten days later Mr. Lloyd, not having heard anything from the defendants, called Mrs. Price and was told that nothing was available.

D. The Defendants' Records Reflect a Practice * of Recording the Negro Applicant's Race on the Application. 40/

The word "Colored" appears on the application 41/ submitted by Mr. Hosea Martin, one of the Negro victims who testified in this case. 42/

The letter "c" appears on the foot of the applications submitted by Miss Barbara Jones 43/ and Miss Sandra Threadcraft. 44/ An unsuccessful effort was made to obliterate the "c" on Miss Threadcraft's application. The letter "c" also appears on Mr. Sidney Phillips' application. 45/ (Mr. Phillips did not testify in this case.)

The letter "N" appears on the foot of the application 46/ submitted by Dr. John E. Codwell, a Negro.

40/ In addition to the Negro applications in question see the application of Miss Sisco (Pl. Ex. 12) which is made out in Mrs. Price's hand (T. p.87) and which reads in part, "Lexine Sisco, 24, single, white." See also the application of Mr. Juan Perez (Pl. Ex. 11) which bears the notation "Cubans ...."

41/ Pl. Ex. 9.

42/ Mrs. Price's explanation for this designation was that she was told by someone that "[Mr. Martin] had made the entry himself" (T. p.65.) Predictably, Mr. Martin, who refers to himself as "Black," is "positive" that he didn't make the entry. T. p.98.

43/ Pl. Ex. 10B.

44/ Pl. Ex. 7.

45/ Pl. Ex. 10B.

46/ Pl. Ex. 10B.

*See Avery v. Georgia 345 U.S. 559 (1953) (Jury discrimination) holding that discrimination is to be inferred where racial segregation is accompanied by the use of racial designations.

E. The Defendants have Never Taken Any Steps to Insure Negro Applicants of Treatment Equal to that Accorded White Applicants Nor, in Anticipation of the Fair Housing Act, have they Taken any Steps to Correct the Effects of Their pre-Act Discriminatory Policies.

According to Mr. Levy's testimony his discussions with Mrs. Price concerning the policies of the One Tenth Street Apartments "did not specifically mention Negroes at any time." 47/ Moreover, although Mr. Levy is familiar with the provisions of the 1968 Fair Housing Act he never discussed the Act with Mrs. Price. 48/

Mrs. Price in turn has never instructed any of her part-time clerks and managers with respect to the apartment houses' racial policy 49/ nor can the defendants contend that they were not aware of their agents' discriminatory policies. The record is clear that Mrs. Eliza Paschall as Executive Director of the Atlanta Metropolitan Summit Leadership Conference wrote to Mr. Levy on or about October 25, 1968, outlining a complaint of racial discrimination received from Mr. Robert Pitts and soliciting Mr. Levy's comments on his policy with respect to accepting Negro tenants. 50/ Mr. Levy never responded to Mrs. Paschall's letter.

47/ T. p.11, p.27.

48/ Ibid.

49/ Dep. of Price V. III, pp.15-16.

50/ Pl. Ex. 14. (Testimony of Mrs. Paschall T. pp.132-143.)

III

LEGAL POINTS AND AUTHORITIES

A. The Relevancy and Admissibility of the Defendants' Pre-Act Policies and Practices of Discrimination.

It is well settled that evidence of prior conduct is admissible to illuminate the nature of the defendants' allegedly unlawful activities. In F.T.C. v. Cement Institute, 333 U.S. 683, 705, (1948), the Supreme Court stated:

> [It is] the established judicial rule of evidence that testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny.

In employment discrimination cases under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §200e et seq., courts have considered evidence of pre-Act rejections of Negro applicants in finding that there is a pattern or practice of discrimination. See United States v. Local 73, C.A. No. IP 68-C-45 (S.D. Ind. August 15, 1969) (Memorandum Opinion pp. 3, 5); United States v. Local 38, 70 L.R.R.M. 3019, 3027-28 (N.D. Ohio 1969). In United States v. Building and Construction Trades Council, 271 F. Supp. 447, 459 (E.D. Mo. 1966) the court in permitting the United States to discover evidence of pre-Act discrimination, ruled that "in considering whether defendants have

violated the statutes, evidence of prior courses of conduct is clearly relevant." Subsequently, at the trial of that case, the court admitted evidence of pre-Act discrimination, over objection by defendants, stating; "Part of the Government's proof is they must show that there is a pattern of segregation. In order to show that they have to go back before the Act, so the objection is overruled." (Tr. p. 51) A similar rule has been applied in cases under the Voting Rights Act of 1960, 42 U.S.C. 1971(e). As the court stated in United States v. Lynd, 321 F. 2d 26, 28 (5th Cir. 1963):

> The evidence to establish a pattern and practice is not confined to the incumbency of Registrar Lynd. Neither is it limited as to the state by the effective date of the 1960 amendments to the Civil Rights Act, 42 U.S.C.A. §1971. A broad latitude is to be allowed.

See also United States v. Dogan, 314 F. 2d 767, 771 (5th Cir. 1963); Kennedy v. Lynd, 306 F. 2d 222, 228 (5th Cir. 1962), cert. denied, 371 U.S. 952 (1963).

Similarly, in actions by the United States to enjoin combinations or conspiracies in restraint of trade, the anti-trust analogy of a pattern or practice suit, the Supreme Court has permitted the introduction of evidence of conduct occurring prior to the passage of the Sherman Act, even though the conduct was legal at the time. United States v. Reading Co., 253 U.S. 26, 43-45 (1920); Standard Oil Co. v. United States,

221 U.S. 1, 46-47 (1911). In the instant case the defendants' pre-Act discriminatory policies cannot be characterized as "legal," for Jones v. Mayer 392 U.S. 409, decided on June 17, 1968, clearly stated that the right of all persons, regardless of race, to rent or buy real property is protected by 42 U.S.C. 1982.

B. The Defendants have Engaged in a "Pattern or Practice" of Discrimination Against Negroes.

The most convincing proof of a pattern or practice of discrimination is a showing of repeated discriminatory acts by the defendant committed subsequent to the effective date of the statute; such a showing was made in the instant case [51/] and, on that basis alone, the United States is entitled to an injunction. United States v. Gulf-State Theatres, Inc., 256 F. Supp. 549 (N.D. Miss. 1966).

51/ See the testimony of the Negro victims Mr. Biggins, Mr. Lloyd, Mr. Pitts, Miss Threadcraft and compare same with the situation reflected by the testimony of the white tenants Mr. Bourne, Mr. Chautran, Miss Thompson and Mrs. Kirkeberg. It is clear from the cumulative testimony of these witnesses that the defendants through their agents have discriminated against Negro applicants by (a) selecting tenants on the basis of vague subjective standards resulting in the almost complete exclusion of Negroes from the apartment house, (b) representing to Negroes that dwellings are not available for rental when such dwelling are in fact available and (c) dealing with Negro applicants on terms and conditions different from those extended to white applicants.

The United States also demonstrated herein the defendants' pre-Act discriminatory policies, [52] the results of that policy, [53] and their failure to alleviate the effects of this policy upon the effective date of the Act. [54] Under these circumstances the court would be justified in finding the requisite pattern or practice without actual post-Act refusals to rent based on race. United States v. Sheetmetal Workers, _____ F. 2d _____ (C.A. 8, decided September 16, 1969) rev'g 280 F. Supp. 719. (E.D. Mo. 1968) (Attached); In United States v. Local 189, 282 F. Supp. 39 (E.D. La. 1968), Aff'd _____ F. 2d _____ (C.A. 5, 1969). In the Sheetmetal Workers case the Court, recognizing the effect of the defendant unions' pre-Act discriminatory policies on present and future discrimination, held that it was not necessary for the United States to prove that the unions have refused membership or work referral to Negroes since the effective date of the Act; it is sufficient to show that the defendants have failed to undo the effects of its discriminatory organizational policies. Further summarized, the Sheetmetal Workers case underscores the defendants' obligation, as of the effective date of the Civil Rights Act of 1964, to take affirmative steps "designed to make it clear that Negroes now have equal [employment] opportunities." (slip opinion p. 33)

52/ See the testimony of the Negro victims Mr. Pitts, Miss Threadcraft, Dr. Codwell, Miss Jones and Mr. Martin.

53/ pp. 7-9, supra.

54/ pp. 17, supra.

If the defendant in such a case fails to voluntarily comply with this duty the district courts are authorized, upon application by the Attorney General, to compel him to do so.

C. This Court has the Power to Order the Defendants to Make Public, Through the Appropriate Medium, their Intention to Comply with the Fair Housing Act of 1968.

It is well settled that the District Courts are not limited to the issuance of prohibitory decrees. Where affirmative action is necessary in order to afford complete relief, the Courts can order specific positive conduct. Louisiana vs. United States, 380 US 145 (1965); International Salt Company vs. United States, 332 US 392 (1947); Alabama vs. United States, 304 F. 2d 583,89 (5th Cir. 1962), affirmed 371 U.S. 37 (1962); United States v. Sheetmetal Workers, supra.

In Alabama vs. United States, the district court affirmatively ordered registration of specified voters and the state appealed. The Fifth Circuit upheld the order and observed that "(i)n prescribing a suit to be brought by the sovereign for equitable relief, the statute contemplates that the full and elastic resources of the traditional court of equity will be available to vindicate the fundamental constitutional rights sought to be secured by the statute." 55/

55/ Fair Housing Act of 1968, Title VIII, Section 813 provides that the Attorney General, in the proper situation, "may bring a civil action in any appropriate United States district court ... requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order . . . as he deems necessary." (emphasis added)

In International Salt Company vs. United States, an anti-trust case, the district court ordered the defendant to deal with the public -- the beneficiaries of the anti-trust legislation -- in a specified manner. It was observed that:

> (the district courts) are invested with large discretion to model their judgments to fit the exigencies of the particular case. (citations omitted) In an equity suit, the end to be served is not punishment of past transgressions, nor is it merely to end specific illegal practices. A public interest served by such civil suits is that they effectively pry open to competition a market that has been closed by defendant's illegal restraints. If this decree accomplished less than that, the Government has won a lawsuit and lost a cause.

The above is especially apt in the area of civil rights enforcement. In cases of racial discrimination, " . . . 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 vs. United States, 380 U.S. 145, 154 (1965). Accordingly, in numerous civil rights cases brought by the United States, courts have imposed various affirmative duties on defendants. See, e.g., United States v. Sheetmetal Workers, supra; Dobbins vs. Local 212, 292 F. Supp. 413, 460-65 (S.D. Ohio 1968) (employment); Alabama vs. United States, supra. (voting); United States v. Crawford,

229 F. Supp. 898, 903 (W.D. La. 1964) (voting); United States vs. Atkins, 323 F. 2d 733, 745 (5th Cir. 1963) (voting); United States vs. Jefferson County Board of Education, 372 F. 2d 836, 901 (5th Cir. 1966), aff'd en banc, 380 F. 2d 385, cert. denied, 389 U.S. 840 (1967) (schools).

One form of affirmative relief that has developed in public accommodations suits, is the requirement that the offending proprietor conspicuously post -- by sign or advertisement -- his intention to comply with the civil rights laws. See, e.g., United States vs. Beach Associates, Inc. 286 F. Supp. 801 (D.C. Md. 1968); United States vs. Bradshaw, 12 R.R.L.R. (E.D. N.C. 1967);* United States vs. Coffee Pot, 12 R.R.L.R. 1515 (M.D. Ala. 1967); United States vs. Dennis, 12 R.R.L.R. 1024* (E.D. N.C. 1967).

In a recent district court case relating to the public accommodations and equal employment opportunities titles of the Civil Rights Act of 1964, the court demonstrated very clearly how the strong public interest in enforcement of the civil rights laws required wide discretion in the formulation of decrees. United States vs. Medical Society of South Carolina, 298 F. Supp. 145 (D. S.C. 1969). In that case, an action was instituted by the United States to restrain the Medical Society

*Consent degrees

from operating the hospital on a racially segregated basis and from discriminating against Negro employees. In its lengthy and detailed decree, the court, among other things, ordered that "(a)ll advertisements for employees placed in any newspaper or other communications medium will conspicuously reflect defendant's non-discriminatory policies." United States vs. Medical Society of South Carolina, supra at 155. 56/ Similarly, in the Beach Associates case, the defendants represented their establishment to be a private club, yet, the court found that it was a place of public accommodation and required the defendants to "replace all notices, advertising, tickets and other literature or materials which represent any of these facilities as being a private club, with similar notices, advertising, tickets and other literature or materials which represent said facilities as being places of public accommodation open to all persons of all races without discrimination." United States vs. Beach Associates, Inc., Supra. at 809.

In Sheetmetal Workers where after the initiation of litigation the defendants took some steps to make the public aware of their new policy of nondiscrimination, the Court stated at p.31:

> "We recognize that the best of publicity programs will not fully convince Negroes

56/ The court also required the defendants to communicate to at least ten prominent Negro citizens of the Charleston area, including at least three Negro physicians, the substance of the compliance program. Additionally, the hospital management is required to place conspicuous signs for all employees to see each time a vacancy became available. 1D.

> [heretofore the victims of defendants' discriminatory policies] that they now have the opportunity to qualify for apprenticeship training. We also recognize that no such program can hope to be as effective as parental guidance but a good public information program can help to persuade the doubtful and the skeptical that the discriminatory bars have been removed. Such a program is mandatory."

These cases clearly show that the courts have determined that an effective means of correcting the evils of past discrimination is to require defendants to publicize the availability of his facilities to persons of all races on an equal basis. Relief of this type seems especially appropriate in cases such as this one where the defendant has relied heavily upon mass media advertising.

CONCLUSION

This is the first "pattern and practice" case brought by the United States alleging discriminatory refusals to rent which has come to trial anywhere in the United States. Appropriately, it reflects in stark form the kind of injustice which the Fair Housing Act was designed to eliminate.

These apartments are located in downtown Atlanta. Many substantial Negroes work in Government and other offices to which One Tenth Street is conveniently located. This Court well knows, and the witnesses

called by the Government proved for the record, that there are numerous Negroes who can afford the rent and are qualified to live at these apartments. Nevertheless, prior to the institution of this suit, not a single Negro succeeded in obtaining an apartment. By contrast, for white persons with far less substantial backgrounds, admission to residency was shown to be well-nigh automatic. In some cases, Courts have had to infer pattern and practice from surrounding circumstances, but here, no inference is necessary, for the acts of discrimination have been repeated and routine.

Since this is the first case of its kind, its significance goes beyond the persons immediately affected. We think it particularly important, therefore, that the relief awarded the United States be such that the effects of defendants' discrimination, past and present, be eliminated promptly and entirely. An injunction prohibiting future discrimination is not sufficient; [57/] two federal laws already prohibit that.

57/ See Local 53 v. Vogler, 407 F. 2d 1047 (5th Cir. 1969)

We believe that the law requires positive steps to make the United States and the victims of discrimination whole, and it is in that spirit that we ask the Court to enter our Proposed Decree.

Respectfully submitted,

Frank E. Schwelb

JOHN W. STOKES, JR.
United States Attorney

FRANK E. SCHWELB
Attorney
Department of Justice

Michael J. Hoare

MICHAEL J. HOARE
Attorney
Department of Justice

PROPOSED FINDINGS OF FACT

A. THE STRUCTURE AND OPERATION OF THE DEFENDANT CORPORATION.

1. The West Peachtree Tenth Corporation, which operates an apartment house known as the One Tenth Street Apartments, 975 West Peachtree, N. E., Atlanta, Georgia, has been incorporated and doing business pursuant to the laws of the State of Georgia since May of 1965. Mr. Ted Levy and Mr. Robert Miller are the only two shareholders in the Corporation. As majority stockholder and President of the Corporation Mr. Levy has general responsibility for the operations of the One Tenth Street Apartments. Aside from the signing of leases as representative of the defendant corporation, Mr. Levy has delegated the bulk of his managerial responsibilities to his managing agent, Mrs. Francis E. Price, who in turn hires and supervises three night managers and part-time rental clerks. These agents work in the defendants' rental office located on the ground level of the apartment house.

2. The One Tenth Street Apartments offers 96 rental units ranging in price from $139 to $186 per month. All units are furnished studio apartments. Most units are rented on a six month lease but shorter leases, from three month to one month, are also available.

3. The defendants advertise daily in the Atlanta Constitution and the Atlanta Journal. They also advertise in the Atlanta Apartment Hunter's Guide.

4. The following procedure is used to fill vacancies at the One Tenth Street Apartments:

(a) Except for former tenants and those individuals whom Mrs. Price can personally vouch for, all prospective tenants are required to submit an application reflecting basic data on (1) present residence and landlord (2) occupation (3) former employer (4) two personal references and (5) two credit references.

(b) If Mrs. Price does not object to the applicant's "appearance" or "attitude" she may inform him of any existing or anticipated vacancies

(c) If the applicant is able to meet the criterion set out in (b) above and, in Mrs. Price's opinion, is "definitely interested" in an apartment he is asked to leave a "deposit" 1/ of $100 or a portion thereof. At this point

1/ At least in the cases of those white tenants who have testified in this case, this deposit is tendered with the first month's rent and can be characterized as a "security deposit" as opposed to an "earnest money deposit." Nowhere on the application is there any mention of an "earnest money deposit." However, Paragraph 18 of the standard lease used by the defendant is captioned "Security Deposit" and states in pertinent part, "Simultaneously with the execution of this lease tenant shall deposit with landlord the sum of $100.00, which deposit shall be without interest, as security for the faithful performance by tenant of all the terms, condition and provisions of this lease ..."

the applicant is considered for all practical purposes a de facto tenant [2/] and the signing of the lease is merely a pro forma task.

B. DEFENDANTS' POLICIES AND PRACTICES WITH RESPECT TO NEGRO APPLICANTS.

5. Until the initiation of this suit on June 24, 1969 all of the defendants' tenants were white persons. The first Negro tenant entered the apartment house on or about July 8, 1969. There is some evidence that one other unidentified Negro male was a temporary roommate in an incumbent white tenant's apartment during August, 1969.

6. White applicants are routinely accepted as tenants in defendants' apartment building, whereas Negro applicants with similar qualifications are rejected on account of their race. The white tenants who testified in this case were, with minor variations, new in town, had no established local credit or personal references and were either unemployed or new to their jobs, yet they were accepted as tenants on the same day they made application. In contrast to the ease with which white tenants are accepted, Negro applicants testified to the difficulty they encountered. Despite the fact that these

2/ In the deposition of Mr. Levy introduced by the United States he stated in essence, that for bookkeeping purposes the subject apartment is at this point no longer considered "vacant."

Negroes were in most cases better qualified than the white tenants in terms of the defendants' stated criteria, their applications were either summarily rejected or not acted upon by the defendants.

7. Three of the four white tenants who testified in this case applied and were accepted after June 18, 1969. Of the seven unsuccessful Negro applicants who testified, five submitted their application before January 1, 1969, and were either rejected or had no action taken on their applications; two of these five renewed their efforts to rent an apartment from the defendants subsequent to January 1, 1969. Two additional Negroes made application since the effective date of the statute. The most recent application is dated June 26, 1969, two days after this suit was initiated. 3/

8. The applications submitted by four of the Negroes who testified in this case bear racial designations demonstrating that in some instances the defendants keep a record of the applicant's race. 4/ The defendants'

3/ The United States has submitted several charts with their brief which summarize certain of the defendants' records introduced as evidence. These charts indicate, among other things, that since June 26, 1969, the date of the last known unsuccessful Negro application, to September 26, 1969, at least twenty "turnovers" occurred in the defendants' apartment house. All but one of the incoming tenants were white persons.

4/ In addition to the Negro applications in question the United States introduced the application of a tenant made out in Mrs. Price's hand and bearing the notation that the applicant is "white." On another application also introduced by the United States there is a notation to the effect that the applicants were "Cubans."

explanation of these designations was so implausible as to lead to the conclusion that race is a consideration in the approval or rejection of an application.

9. The defendants have denied that the Negro applicants have been rejected on racial grounds, and have suggested various alternative nonracial and subjective explanations. In view of the near-uniformity of rejection of Negroes, the routine manner in which whites were accepted and the objective qualifications of the rejected Negroes, the Court finds that Negroes have been denied the right to rent dwellings in defendants' apartment complex on account of their race. Specifically, the defendants through their agents have maintained a policy of discriminating against Negro applicants by

(a) selecting tenants on the basis of vague, subjective standards resulting in the almost complete exclusion of Negroes from the One Tenth Street Apartments;

(b) representing to Negro applicants that dwelling are not available for rental when such dwelling are in fact available;

(c) dealing with Negro applicants on terms and conditions different from those extended to white applicants.

10. The defendants' exclusion of Negroes on account of their race from One Tenth Street Apartments has been a general policy, and has not consisted of isolated incidents varying from their normal practices.

11. The defendants have not taken adequate affirmative steps to correct the effects of their pre-Act discriminatory practices. Since the Fair Housing Act became effective, they have not discussed either the Act or nondiscrimination with their agents.

PROPOSED CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action, 28 U.S.C. 1345; 42 U.S.C. 3613.

2. The One Tenth Street Apartments is a "dwelling" within the meaning of 42 U.S.C. 3602(b).

3. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) is a proper and constitutionally permissible exercise of Congressional power to bar all racial discrimination, private as well as public, in the sale or rental of real property. Jones v. Mayer 392 U.S. 409 (1968); Brown et al. v. State Realty Company, et al., No. 12943, N.D. Ga., decided September 2, 1969.

4. The Congressional intent in enacting Title VIII is clear from Section 801 (42 U.S.C. 3601) wherein it is stated, "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." This Act is to be accorded a liberal construction in order to carry out the Congressional intent to eliminate the inconvenience, unfairness and humiliation of racial discrimination. Daniel v. Paul 395 U.S. 298 (1968); Hamm v. City of Rock Hill 379 U.S. 306 (1964); United States v. Local 189 282 F. Supp. 39 (E.D. La. 1968), aff'd _____ F. 2d _____ (C.A. 5, 1969); Nesmith v. Young Men's Christian Association of Raleigh, N. C. 397 F. 2d

96 (C.A. 4, 1968); Miller v. Amusement Enterprises, Inc., 394 F. 2d 342 (C.A. 5, 1968); Quarles v. Phillip Morris, Inc., 279 F. Supp. 505 (E.D. Va. 1968).

5. Evidence of defendants' pre-Act conduct is admissible to illuminate the nature of the defendants' activities and policies in effect subsequent to the effective date of the statute. F.T.C. v. Cement Institute 333 U.S. 683, 705 (1948); United States v. Lynd 321 F. 2d 26, 28 (C.A. 5, 1963). This principle is particularly applicable with respect to housing discrimination, for, without regard to the Fair Housing Act of 1968, the right of any person to rent or buy real property on a racially nondiscriminatory basis is protected by 42 U.S.C. 1982. Jones v. Mayer, 392 U.S. 409 (1968). Several of the pre-Act incidents of discrimination presented in the instant case occurred after the Jones decision, and these incidents may, as a practical matter, be treated as if they had happened after the effective date of the Act since they were in violation of Federal Law.

6. Title VIII requires that properties covered by the Act be made available to Negroes and whites on the same basis without discrimination. Any procedure used by the defendants which serves to defeat this end is unlawful; conversely, upon the effective date of the statute the defendants had a legal obligation to end all existing discriminatory procedures and to take such

affirmative steps as were necessary to eliminate all vestiges of discrimination. United States v. Sheetmetal Workers, _____F. 2d _____ (C.A. 8, 1969), rev'g 280 F. Supp. 719 (E.D. Mo. 1968); United States v. Local 189, 282 F. Supp. 39 (E.D. La. 1968), aff'd _____ F. 2d _____ (C.A. 5, 1969).

7. The conduct of the defendants described in the Findings of Fact herein constitutes a pattern or practice of resistance to the enjoyment of rights secured by Title VIII within the meaning of 42 U.S.C. 3613. Where, as here, there has been ample proof of the defendants' pre-Act discrimination, and no Negroes lived in the defendants' apartments before the Act, and no affirmative steps have been taken to correct the pre-Act discriminatory image, the Court would be justified in finding the requisite pattern or practice without actual post-Act refusals to rent based on race. United States v. Sheetmetal Workers, _____F. 2d _____ (C.A. 8, 1969), rev'g. 280 F. Supp. 719 (E.D. Mo. 1968); United States v. Medical Society of South Carolina, 298 F. Supp. 145 (D. S.C. 1969). In the present case, where defendants' pre-Act discrimination has continued since the Act, the sufficiency of the evidence to form a pattern and practice is incontestable.

8. The Fair Housing Act proscribes sophisticated as well as simple minded discrimination. See Gaston County v. United States, 288 F. Supp. 678, (D.C. D.C. 1968) aff'd 395 U.S. 285 (1969);

Lane v. Wilson, 307 U.S. 268 (1939). Courts look to the substance rather than to the form of transactions. United States v. Beach Associates, Inc. 286 F. Supp. 801, 807 (D. Md. 1968) and cases cited. Where, as here, twenty new tenants, all but one white, have been admitted to the defendants' apartment house since the date the last Negro application was filed, this constitutes a denial of equal treatment to Negroes even though the Negro applications may not have been formally rejected. "Figures speak and when they do courts listen" United States v. Board of Education of City of Bessemer 390 F. 2d 44, 46 (C.A. 5, 1968); see United States v. Sheetmetal Workers _____ F. 2d _____ N. 7, (C.A. 8, 1969), rev'g 280 F. Supp. 719 (E.D. Mo. 1968).

9. In cases of racial discrimination "... 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 (1965). In order to correct the effects of past discrimination, the defendants should be required to give appropriate "notice" to the community that their discriminatory policies have been abandoned in favor of a new policy where all applicants will be treated equally without regard to race, color, religion or national origin.

See International Salt Co., Inc. v. United States 332 U.S. 392, 401 (1947); United States v. Sheetmetal Workers, _____ F. 2d _____(C.A. 8, 1969) rev'g 280 F. Supp. 719 (E.D. Mo. 1968); Dobbins v. Local 212, 292 F. Supp. 413, 460 (S.D. Ohio, 1968); United States v. Beach Associates, Inc. 286 F. Supp. 801 (D. Md. 1968); United States v. Coffee Pot 12 R.R.L.R. 1515 (M.D. Ala., 1967).

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WEST PEACHTREE TENTH CORPORATION, d/b/a ONE TENTH STREET APARTMENTS, TED LEVY, President, Defendant.	CIVIL ACTION NO. 12839 D E C R E E

Pursuant to the Findings of Fact and Conclusions of Law entered this date:

IT IS ORDERED, ADJUDGED AND DECREED that the defendants West Peachtree Tenth Corporation, its officers, employees, agents and successors, together with all persons in active concert or participation with them be and each is hereby enjoined from:

1. Failing or refusing to rent dwellings or to negotiate for the rental of dwellings on the basis of race, color, religion or national origin.

2. Discriminating on the basis of race, color, religion or national origin in terms, conditions, or privileges of rental of a dwelling.

3. Representing to any person, because of race, color, religion or national origin, that dwellings are not available for rental, when such dwellings are in fact so available.

4. Failing or refusing to take reasonable steps to correct the continuing effects of their discriminatory practices, including, at least, the following:

(1) Including, in all future advertising, a statement which makes it clear that the defendants' rental policies are racially non-discriminatory.

(2) Notifying all of the Negro victims who testified in this case, in writing, within five days of the entry of this order, that the defendants' rental policies are racially non-discriminatory and that the defendants stand ready to entertain any future applications from them without discrimination based on race or color.

(3) Listing the apartment house with the personnel office of the Department of Housing and Urban Development in Atlanta as available to all employees of that Department without discrimination based on race or color /*.

---

*/ This measure is particularly appropriate in this case where two of the Negro victims are employed by HUD and, unlike their white counterparts, have been unable to obtain accommodations at the subject apartment house.

IT IS FURTHER ORDERED that on the first day of December, March, June and September of the years 1969, 1970 and 1971 the defendants shall file with the Court, and serve on counsel for plaintiff, a report containing the following information:

a. The name, address and race of any person who has applied for occupancy during the period preceding the report; the date of application; the action taken on the application; the date of such action; and, if the application was rejected, the reason for rejection.

b. A list of apartments where vacancies and/or turnovers occurred during the period preceding the report, together with the dates of vacancies (commencement and termination) and/or turnovers.

IT IS FURTHER ORDERED that representatives of the United States 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.

IT IS FURTHER ORDERED that the defendants bear the costs and disbursements of this action.

The Court retains jurisdiction of this action for all purposes.

ORDERED this day of 1969.

UNITED STATES DISTRICT JUDGE

A.

APARTMENT	"TURNOVERS" * / 1/1/69 - 9/26/69
2A	1
2B	-
2C	1
2D	2
2E	1
2F	2
2G	-
2H	-
2I	1
2J	-
2K	1
2L	-
TOTAL SECOND FLOOR	9
3A	-
3B	1
3C	3
3D	1

---

* / The data upon which this information is based was obtained from the defendants' "daily ledger" and "ledger cards" (PL. EX. 2 and PL. EX. 3, respectively, attached to the deposition of Mrs. Price and introduced by the United States) these records reflect the names of the various leasees, the apartment for which he is paying rent and the date the rent is paid. Thus, the number of "turnovers" occurring with respect to any of the defendants' 96 units can be ascertained by tracing the unit through the "daily ledger," from the commencement of the subject period through to its completion, and noting any changes in the name of the leasees. This procedure was followed for all 96 units.

APPENDIX A

APARTMENT	"TURNOVERS" 1/1/69 - 9/26/69
3E	-
3F	2
3G	7
3H	2
3I	-
3J	3
3K	-
3L	1
TOTAL THIRD FLOOR	19
4A	3
4B	3
4C	2
4D	2
4E	1
4F	4
4G	-
4H	1
4I	3
4J	2
4K	1
4L	1
TOTAL FOURTH FLOOR	23
5A	-
5B	-

APARTMENT	"TURNOVERS" 1/1/69 - 9/26/69
5C	-
5D	2
5E	-
5F	1
5G	2
5H	2
5I	1
5J	-
5K	3
5L	-
TOTAL FIFTH FLOOR	11
6A	-
6B	3
6C	1
6D	1
6E	-
6F	1
6G	3
6H	-
6I	-
6J	-
6K	-
6L	1
TOTAL SIXTH FLOOR	10

APARTMENT	"TURNOVERS" 1/1/69 - 9/26/69
7A	1
7B	2
7C	1
7D	2
7E	-
7F	3
7G	1
7H	-
7I	1
7J	-
7K	-
7L	-
TOTAL SEVENTH FLOOR	11
8A	-
8B	1
8C	1
8D	2
8E	3
8F	-
8G	2
8H	2
8I	-
8J	2
8K	-
8L	-
TOTAL EIGHTH FLOOR	13

APARTMENT	"TURNOVERS" 1/1/69 - 9/26/69
9A	1
9B	3
9C	3
9D	1
9E	3
9F	2
9G	-
9H	1
9I	2
9J	1
9K	2
9L	3
TOTAL NINTH FLOOR	22

Mr. Franklin N. Biggins, the last known rejected Negro applicant, submitted his application on June 20, 1969, two days after this suit was filed. Admittedly, Mr. Biggins, because of self imposed financial restrictions, may not be eligible for all of the apartments listed below. However, as of June 26, 1969, the defendants already had in their files the applications submitted by the other Negro victims. The defendants' records (Pl. Ex. 2 and Pl. Ex. 3) indicate that since June 26, 1969, the defendants have had the following opportunities to make units available to Negro applicants:

APARTMENT	APPROXIMATE DATE OF AVAILABILITY
4L	June 30th
4F	June 30th
6G	July 3rd
9L	July 3rd
6H	July 6th
4I	July 6th
3H	July 7th
9A	July 7th
3G	July 8th
5G	July 9th
2C	July 10th
4A	July 12th
8E	July 13th
7I	July 14th
3F	July 15th
8J	July 16th

APARTMENT	APPROXIMATE DATE OF AVAILABILITY
6B	July 19th
3J	July 25th
2I	July 28th
6G	July 28th
5I	July 31st
3G	July 31st
4F	Aug. 2nd
8H	Aug. 6th
5H	Aug. 11th
7F	Aug. 11th
9F	Aug. 16th
8G	Aug. 17th
4F	Aug. 20th
2F	Aug. 20th
9L	Aug. 24th
7D	Aug. 26th
9K	Aug. 29th
4G	Aug. 31st
8D	Aug. 31st
7F	Sept. 1st
7B	Sept. 2nd
4J	Sept. 3rd
5K	Sept. 8th
6F	Sept. 8th
7G	Sept. 9th
5D	Sept. 10th

APARTMENT	APPROXIMATE DATE OF AVAILABILITY
9E	Sept. 11th
2D	Sept. 13th
4H	Sept. 14th
3H	Sept. 15th
8C	Sept. 15th
8D	Sept. 16th
9C	Sept. 18th
4D	Sept. 19th

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached materials have been placed in the United States mail addressed to the attorney for defendants:

Maurice Maloof, Esquire
Hayman & Sizemore
310 Fulton Federal Building
Atlanta, Georgia 30303

This 20th day of October, 1969.

Michael J. Hoare

MICHAEL J. HOARE
Attorney
Department of Justice
Washington, D. C. 20530