IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, v. ELAINE MINTZES and ALLEN S. MINTZES, d/b/a CASTLE REALTY COMPANY, Defendant.	CIVIL ACTION NO. 20698 PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW

1. The 42 U.S.C. §3603(b)(1) exemption for any single-family house "sold or rented by an owner" was designed "to preserve to the individual homeowner a significant amount of discretion to discriminate, if he chooses, in selling or renting his personal dwelling." 114 Cong. Rec. H2488 (Daily ed. April 2, 1968). See also, e.g., 114 Cong. Rec. S2232-38 (Daily ed. March 5, 1968); 114 Cong. Rec. S2356 (Daily ed. March 7, 1968). [But see Jones v. Mayer, 392 U.S. 409 (1968)]. This purpose, to permit discrimination by the owners of single-family houses, has no relevance to blockbusting practices by real estate dealers. The civil rights acts are to be afforded a liberal construction in order to carry out the congressional purpose to eliminate the inconvenience, unfairness and humiliation of racial discrimination.

United States v. Beach Associates, Inc., 286 F. Supp. 801, 808-09 (D. Md. 1968); United States v. Medical Society of South Carolina, 298 F. Supp. 145, 151-52 (D. S.C. 1962). The corollary of this principle is that exemptions to the coverage of the acts are to be narrowly construed. A fortiori, such exemptions should be narrowly interpreted where a broader interpretation would achieve a result inconsistent with the purpose of the exemption. It would be incongruous to construe the single-family exemption in such a way as to allow single-family homeowners, the very group sought to be protected, to be victimized by racial representations.

In addition, the single-family house involved in this case, the Lincoln home, was not in fact sold. Therefore, it is not a "single family house sold or rented by an owner" and is not within the exemption of Section 3603(b)(1).

2. 42 U.S.C. §3604(e) prohibits inducing an owner to sell by means of racial representations. Such inducements are naturally made before the owner determines to offer the property for sale. The intent of Congress to prohibit such inducements must be considered in construing the definition of "dwelling," contained in section 3602(b), as it applies to the practices prohibited by section 3604(e). The words "offered for sale or lease for the construction or location thereon of any such buildings,

structure, or portion thereof," modifying the words "any vacant land" in Section 3602(b) relate to the proposed use for the vacant land and serve to distinguish land to be used for residential purposes from land to be used for commercial,mining or agricultural purposes. A vacant lot which is sought to be purchased expressly for residential use and which is zoned for residential use is within the coverage of the Act, regardless of whether the owner resisted or succumbed to the racial inducements to sell.

3. Even if the Lincoln or Ragonese property is not at present covered under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq., (and it is the position of the government, as stated in paragraphs 1 and 2 of this memorandum, that both these properties are covered), evidence of racial representations made to these owners is admissible to show that similar racial representations made to owners of covered dwellings are part of a pattern or practice. Such evidence is particularly relevant where such acts are in violation of state law.[1/] Cf. Dobbins v. Local 212, 292 F. Supp. 413 (S.D. Ohio 1968), at 443.

1/ Art. 56 Ann. Code. Md. §230A provides:

> It is unlawful for any person, firm, corporation or association, whether or not acting for monetary gain, knowingly to induce or attempt to induce another person to transfer an interest in real property or to discourage another person from purchasing real property, by representations regarding the existing or potential proximity of real property owned,

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It is well settled that evidence of prior conduct is admissible to illuminate the nature of the defendant's 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. §2000e 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); [1a/] United States v. Local 38, 70 L.R.R.M. 3019 (N.D. Ohio 1969). In United States v.

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> used, or occupied by persons of any particular race, color, religion or national origin, or to represent that such existing or potential proximity will or may result in: 1. the lowering of property values; 2. a change in the racial, religious or ethnic character of the block, neighborhood or area in which the property is located; 3. an increase in criminal or anti-social behavior in the area; or 4. a decline in quality of the schools serving the area.

This statute applies to all real property, including vacant land and single-family houses.

1a/ A mimeographed copy of the court's opinion is attached to this Memorandum.

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 or 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 present case, the evidence which defendants seek to exclude is of even greater relevance than evidence of prior conduct. It is evidence of contemporaneous activity (in violation of state law) which, together with the activities directed toward the owners of the admittedly covered housing, constituted part of the same plan to assemble a real estate package.

4. The phrase "pattern or practice" is not defined by the 1968 Civil Rights Act. The history of this term -- which was also used in the Civil Rights Act of 1960, 42 U.S.C. §1971(e) (voting) and in Title II (public accommodations) and Title VII (employment) of the Civil Rights Act of 1964, 42 U.S.C. §2000a et seq., 2000e et seq. -- shows that this term was intended to exclude the situation of an isolated, accidental or peculiar incident which was an aberration from a non-discriminatory policy normally followed by the defendant. See, e.g., 106 Cong. Rec. 7223 (1960 Act); Hearings before the House Committee on the Judiciary on H.R. 10327, 86th Cong. 2d Sess., p. 13 (1960 Act); 110 Cong. Rec. 14239, 14270, 15895 (1964 Act); United States v. Mayton, 335 F. 2d 153, 158-59 (5th Cir. 1964).

In the present case, defendants made unlawful racial representations to the owners of four properties on a single block. In several instances, the racial representations did not consist only of a single remark but were persistently and repeatedly presented.[2/] A form of racial representation was made in every transaction before the court. There is no evidence to indicate that these activities are accidental or constitute a peculiar departure from defendants' general methods for securing real estate listings. Rather, all the evidence before the court indicates a disposition on the part of defendants to use racial representations in circumstances where it appears that such representations may be effective in inducing the owner to sell.

"Pattern or practice" has not been rigidly defined. Courts have found a pattern or practice of discrimination in a variety of circumstances, without discussion of any required minimum number of incidents. In a number of cases a pattern or practice was found where there were

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2/ Defendants suggest that the representation made by Alvin Mintzes to Mrs. Abel is an isolated incident. However, this representation must be considered in conjunction with the representations made by Elaine Mintzes to Mrs. Abel and to other owners in determining whether the defendants, together, are engaged in a pattern or practice. See, e.g., United States v. The Warren Company, et al., C.A. No. 3437-64 (M.D. Ala. 1965), where a three-judge court, citing one incident of discrimination on the part of each defendant, granted relief in a pattern or practice case.

relatively few actual instances of discrimination, but where the policy of the defendant could be inferred from the circumstances.[3/] See, United States v. Local 73, C.A. No. IP 68-C-45 (S.D. Ind. Aug. 15, 1969) (Memorandum Opinion, pp. 3-7) (employment); United States v. Local 38, 70 L.R.R.M. 3019 (N.D. Ohio 1969) (employment); United States v. Local 212, 292 F. Supp. 413, 448 (S.D. Ohio 1968) (employment); United States v. Medical Society of South Carolina, 298 F. Supp. 145, 148 (D. S.C. 1969) (public accommodations); United States v. Ward, 349 F. 2d 795, 799 (5th Cir. 1963) (voting); United States v. Richberg, 398 F. 2d 523, 529 (5th Cir. 1968) (public accommodations); United States v. Gulf-State Theaters, Inc., 236 F. Supp. 549 (N.D. Miss. 1966) (public accommodations); United States v. Northwest Louisiana Restaurant Club, 256 F. Supp. 151 (W.D. La. 1966)(public accommodations).

5. The words "for profit" in Section 3604(e) mean for the purpose of obtaining financial gain in any form. As the Court stated in Heli-Coil Corp. v. Webster, 352 F. 2d 156, 167 (3rd Cir., 1965) (en banc):

3/ Defendants cite United States v. Knippers & Day, 298 F. Supp. 551 (E.D. La. 1969), a pattern or practice case under Title VIII where one Negro was discriminatorily refused housing by each of three defendants. The court ruled that approval of a development for FHA and VA financing was not a federal "contribution" within the meaning of 42 U.S.C. 3603(a)(1)(B), and that therefore none of the housing was covered by the Act. The court did not decide whether, if some of all of the housing were covered, these three incidents would constitute a pattern or practice.

> The term "profit," being undefined by the Act [Securities Exchange Act of 1934], must also be assumed to have its ordinary and usual meaning. The word "profit" is defined by the same authority [Webster's International Dictionary] as meaning "gain" as well as "the excess of the price received over the price paid for goods sold."

See also Early v. Atkinson, 175 F. 2d 118, 122 (4th Cir. 1949); Feine v. McGowan, 188 F. 2d 938, 740 (2nd Cir. 1951). Section 3604(e) clearly states the actions which Congress prohibited. The fact that, during the extensive Congressional debates on the various fair housing bills, a few members of Congress denounced the tactics of the "blockbuster" who himself purchases and resells the property (113 Cong. Rec. 11598, 11603-04) does not mean that Congress intended to restrict the prohibitions of Section 3604(e) to transactions where the profit takes this particular form and to exclude instances where racial representations are made to induce the owner to sell but where the person making the representations derives his profit in the form of a commission rather than through purchase and resale.[4/] In view of the First Amendment problems which would arise if this section were not limited to the commercial context (see cases cited in paragraph 8 of plaintiff's pre-trial memorandum), it is

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4/ See Brown, et al. v. State Realty, et al., C.A. No. 12943, N.D. Ga., decided September 2, 1969 (a mimeographed copy of the court's opinion is attached to this Memorandum), a private action not unlike the present case.

reasonable to assume that Congress included the words "for profit" to distinguish representations made in a commercial context from representations made in any other context (social, political, etc.) and not to distinguish one kind of profit from another.

6. The United States is entitled to injunctive relief herein to ensure the full enjoyment of the rights granted by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq. The propriety and need for injunctive relief in this case are measured by the standards of the public interest, not the requirements of private litigation. Cf. Hecht Co. v. Bowles, 321 U.S. 321 (1944). In civil rights actions, courts have granted injunctions even where the defendants have discontinued the unlawful practices. See, e.g., United States v. Atkins, 323 F. 2d 733, 739 (5th Cir. 1963); Cypress v. Newport News Gen. Hospital, 375 F. 2d 648, 658 (4th Cir. 1967); Brooks v. County School Board, 324 F. 2d 303 (4th Cir. 1963); United States v. Beach Associates, Inc., 286 F. Supp. 801, 808 (D. Md. 1968). A fortiori, an injunction is required where, as in the present case, defendants have given no indications of repentance or reform. There is no reason to believe that there is any intention on the part of defendants to desist from such unlawful conduct in the future. See United States v. Richberg, 398 F. 2d 523, 530-31 (5th Cir. 1968).

7. The court's order should include reporting and maintenance of records provisions. Such provisions are necessary to permit review of defendants' compliance with the court's order and to insure that future discrimination does not occur. In other civil rights cases brought by the United States, courts have imposed such duties on defendants. See, e.g., Dobbins v. Local 212, 292 F. Supp. 413, 460-65 (S.D. Ohio 1968) (employment); Alabama v. United States, 304 F. 2d 583, 585 (5th Cir.), aff'd 371 U.S. 37 (1962) (voting). United States v. Crawford, 229 F. Supp. 898, 903 (W.D. La. 1964) (voting); United States v. Atkins, 323 F. 2d 733, 745 (5th Cir. 1963) (voting); United States v. Jefferson County Board of Education, 372 F. 2d 836, 901 (5th Cir. 1966), aff'd en banc, 380 F. 2d 385 (per curiam), cert. denied, 389 U.S. 840 (1967) (schools).

The trial court should also retain jurisdiction to insure compliance with the decree. Cf. Dobbins v. Local 212, 292 F. Supp. 413, 453 (S.D. Ohio 1968) (employment); Raney v. Board of Education, 391 U.S. 443 (1968)

(schools); Goss v. Knoxville Board of Education, 406 F. 2d 1183 (6th Cir., 1969) (schools); United States v. Louisiana, supra, 380 U.S. at 155 (voting).

Respectfully submitted,

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