IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

UNITED STATES OF AMERICA, by RAMSEY CLARK, Attorney General, Plaintiff, v. KNIPPERS AND DAY REAL ESTATE, INC., et al., Defendants.	CIVIL ACTION NO. 68-123 MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS AND ALTERNATIVE MOTIONS FOR SUMMARY JUDGMENT

Defendants' arguments in three separate motions to dismiss and alternative motions for summary judgment cite, for the most part, grounds common to all three motions. For the convenience of the Court, the United States will summarize in one memorandum its arguments in opposition to these motions.

Defendants assert that the complaint fails to state a claim on which relief can be granted because dwellings in the subdivisions named in the complaint have not been provided with the aid of loans, advances, grants or contributions made by the Federal Government, and that such dwellings are not provided in whole or in part by loans insured, guaranteed or otherwise secured by the credit of the Federal Government within the meaning of Sections 803(a)(1)(B) and (C) of Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. §3603(a)(1)(B) and (C).

Defendants further assert that the small number of transactions they have had with prospective Negro purchasers precludes any finding of reasonable cause to believe that a "pattern or practice" of discrimination exists with respect to sales of housing in the developments named in the complaint. Finally, defendants Myer-Yarbrough Realty, Inc., Myer Development Corporation and C. Stevens Myer argue in the memorandum in support of their Motion to Dismiss that Section 813 of Title VIII is an unconstitutional delegation of legislative authority to the executive branch in violation of Article I, Section I of the United States Constitution.

I. Coverage under Section 803(a)(1)(C)

The complaint alleges, as to all three of the named subdivisions, that substantial numbers of dwellings were sold with loans insured or guaranteed by the credit of the Federal Government, that such loan agreements were entered into after November 20, 1962, and that payment on the loans had not been made in full prior to April 11, 1968 -- the date of passage of the fair housing law. Coverage under Section 803(a)(1)(B) and (C) is explicitly alleged. The complaint further alleges, in paragraph 25(D), that defendants have made dwellings available to white persons in the named subdivisions on terms and conditions not made available to Negroes with comparable financial qualifications.

These allegations are sufficient to support the plaintiff's claim that dwellings in the named subdivisions are within the coverage of Section 803(a)(1)(C) of Title VIII (42 U.S.C. §3603 (a)(1)(C)).

Defendants argue that dwellings sold within the named subdivisions were not "provided. . . by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government", within the meaning of Section 803(a)(1)(C) of Title VIII because such dwellings are not so insured, guaranteed or secured at the time defendants offer them for sale. That such a construction of Section 803(a)(1)(C) was not intended by Congress is clearly illustrated by the legislative history of Title VIII.

A. Summary of Argument for Coverage Under Section 803(a)(1)(C)

The legislative history of the statute shows with great clarity that the intention of Congress in Section 803(a)(1) of Title VIII was to parallel in all respects the coverage of Executive Order 11063, which has prohibited discrimination in federally-assisted housing since November 20, 1962. Section 803(a)(1) is virtually a statutory enactment of the Executive Order. Its language parallels, as closely as practicable, the language of the Order's coverage provisions (see Section 101(a) of the President's Executive Order 11063 on Equal Opportunity in Housing, November 20, 1962, 27 F.R. 11527, November 24, 1962).

The courts have held repeatedly that when Congress re-enacts a statute, such a statute takes on the gloss of previous administrative interpretations of its meaning. Similarly, when Section 101(a) of Executive Order 11063 was "enacted" as Section 803(a)(1) of Title VIII, Congress must have intended that the regulations of the Federal Housing Administration and the Veterans Administration adopted pursuant to the 1962

Executive Order would have great weight in determining the meaning of these coverage provisions.

Finally, the purpose of the Executive Order and of Section 803(a) was the same: to assure that the credit of the Federal Government would not be used in any manner to support or facilitate acts of discrimination.[1/] Where dwellings are provided through federally-secured financing, they must be provided on a non-discriminatory basis. The "provider" of dwellings in this civil action is the seller of the dwellings, and the prohibitions on discrimination must necessarily be read

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1/ A further indication that Congress intended, in §803(a)(1)(A)(B)(C) and (D) to cover the entire field of federally-assisted housing except where explicit exceptions were made is found in the proviso to §803(a)(1)(C):

> Provided, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution....

In approving this proviso as an amendment to the bill then being considered on the floor, the Senate sought to clarify the reach of the first stage of coverage. §803(a)(1) was seen as being broadly applicable to "federally assisted" housing, and it was feared that, without the proviso, housing provided through loans from lenders who were members of the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation would come within the first stage of coverage by virtue of the fact of such membership alone.

The proviso was approved by the floor managers of the fair housing title and passed without opposition. See remarks of Senator Mondale, 114 Cong. Rec. S. 2316 (Daily Ed.), March 6, 1968. It did not intrude on their intention to provide coverage for "federally assisted" housing reached by the Executive Order, because FDIC and FSLIC institutions were never included within the Executive Order's coverage. As Senator Mondale remarked, the proviso "makes our intention clearer."

It is a well-established rule of statutory construction that where, in a statute, an express limitation or proviso is made with reference to a given subject matter, and in the same statute no such limitation or proviso is made applicable to a related subject matter, the absence of such limitation in the second instance is strong indication that no such additional limitation is intended. Knapczyk v. Ribicoff, 201 F. Supp. 283 (N.D. Ill., 1962); cf. Richard T. Green Co. v. City of Chelsea, 149 F. 2d 927 (C.A. 1) cert denied 326 U.S. 741 (1945).

to include those sellers. Defendants' interpretation of Section 803(a)(1)(C) would allow persons to benefit from participation in federal programs that assist in financing housing even while they continued their discriminatory practices. Such a reading of Section 803(a)(1) is in opposition to the clear purpose of the statute.[2/]

B. Identity of Section 803(a) with Section 101(a) of the Executive Order

Section 101(a)(iii) of the Executive Order makes applicable prohibitions on discrimination in sales of residential property --

> provided in whole or in part by loans hereafter [3/] insured, guaranteed, or otherwise secured by the credit of the Federal Government.

Similarly, Section 803(a)(1)(C) of Title VIII refers to dwellings --

> provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962 unless payment thereon has been made in full prior to the date of enactment of this title. . . . (Emphasis supplied).

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2 / Such a reading would also exclude coverage of most federally-assisted single-family subdivision housing during 1968. There are some relatively limited Federal loan insurance programs in which housing developers are direct beneficiaries of mortgage insurance. The principal program of this kind is found in Title X of the National Housing Act, 12 U.S.C. 1749aa. This statute provides for mortgage insurance for private loans to subdivision developers for land development. Although the existence of this program offers the possibility of giving Section 803 (a)(1)(C) a construction narrower than that suggested by the United States, without rendering it totally meaningless, it would be inherently incredible for Congress to have included, within the coverage of a fair housing statute, dwelling sites assisted by the government while excluding actual dwellings for which Federal assistance had been arranged. Furthermore, Title X was not even added to the National Housing Act until 1965. Thus, this program cannot be cited as an explanation for the original language of Section 101(c)(iii) of the Executive Order -- written and adopted in 1962, or for the original administrative interpretation of that language. (See parts I B and I C, infra).

3 / "Hereafter" refers to any time after the date of Executive Order 11063 - November 20, 1962.

There has never been any question but that Executive Order 11063 was applicable to discriminatory conduct on the part of tract developers of single-family homes, even where the only Federal connection was arrangements made in advance for possible use of federally-insured mortgages in the sale of subdivision housing. FHA subdivision approval applications and VA applications for Certificates of Reasonable Value include nondiscrimination assurances that must be signed by the developer as part of the original application for federal approval of his housing for possible mortgage insurance or guaranty.[4/] Where, as in this civil action, the complaint alleges, and there will be evidence introduced to show, that housing sold by the defendants was not only approved for, but in fact provided with, Federal mortgage insurance and guarantees, it is even more clear that Federal nondiscrimination requirements are applicable to the developer-seller.[5/]

Section 200.310(b) of Subpart I of the regulations adopted by the Federal Housing Administration pursuant to the Executive Order, 24 C.F.R. §200.310(b), expressly

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4 / Section 200.305 of Subpart I of the Federal Housing Administration's regulations under the Executive Order (24 C.F.R. §200.305) provides for informing "participants in insurance programs . . . as early as possible in their negotiations" of FHA's "established policy on nondiscrimination and equal opportunity in housing."

5 / There also exists a strongly analogous case law interpretation of a similar statute illustrating that doubts as to the meaning of the language of Section 803 (a)(1)(C) should be resolved in favor of coverage. See Levitt v. Division Against Discrimination, 31 N.J. 514, 524-26, 158 ATL 2d 177, 182-84 (1960).

provides that the Order's prohibitions reach property offered for sale under terms which include financing under the provisions of the National Housing Act pursuant to an application for mortgage insurance received by the Commissioner after November 20, 1962. This has been the interpretation placed upon the language of Section 101(a)(iii) since its promulgation. See 27 F.R. 11802, November 30, 1962.

Likewise, Veterans Administration regulations require any "builder, sponsor or other seller" of housing to certify that he will not discriminate in the sale of any property included in a request for a Master Certificate of Reasonable Value on proposed or existing construction, or with respect to any request for appraisal of individual existing housing not previously occupied. 38 C.F.R. 36.4363(a). Builders, sponsors, or other sellers requesting site approval and subdivision planning services are also required by VA to submit such certifications of nondiscrimination. 38 C.F.R. 36.4363(c). These regulations, which first were published in 28 F.R. 7673 on July 27, 1963, were adopted pursuant to Executive Order 11063 and constitute an original and continuing interpretation of the authority granted by that Order. The requirements of these regulations illustrate that the Executive Order was intended to regulate the sales activities of builders and developers of homes. 6/

6 / President John F. Kennedy clearly intended such an interpretation of the order. In his statement issued on the day that he signed Executive Order 11063, President Kennedy said:

> I would like to announce that I have today signed an executive order directing Federal departments and agencies to take every proper and legal action to prevent discrimination in the sale or lease of ...housing constructed or sold as a result of loans or grants to be made by the Federal Government or by loans to be insured or guaranteed by the Federal Government...." (emphasis supplied) (Statement of the President on E. O. 11063 released November 20, 1962).

C. The Congressional Intent to Duplicate Executive Order 11063's Coverage

There is also no question that the coverage of Section 803(a)(1)(C) of Title VIII was intended to parallel the coverage of the Executive Order in all respects. 7/

Congressman Emmanuel Celler, speaking as a witness before the House Rules Committee on March 28, 1968, described the initial coverage of Title VIII as follows:

> Upon enactment - that is this year, 1968 - the bill would cover by statute the types of housing now subject to prohibition on discrimination under Executive Order -- the order I mentioned before issued by President Kennedy. This includes:
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> 3. [Housing] Provided in whole or in part by loans insured or guaranteed by the Federal Government. 8/ (Emphasis supplied).

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7 / Even without express language in the legislative history indicating the interpretation that Congress intended for the coverage provisions of the statute, this Court would have to give great weight to the Federal Housing Administration's and Veterans Administration's interpretations of the identical coverage provisions of the Executive Order. Long-standing administrative interpretations of statutory language are many times granted the same deference by courts as actual statutory language, United States v. Correll, 389 U.S. 299, 305-6 (1967), especially when the statute has been re-enacted without a change in language subsequent to the agency's interpretation. Commissioner of Internal Revenue v. Noel's Estate, 380 U.S. 678, 681-82 (1965); Skidmore v. Swift & Co., 323 U.S. 134 (1944); Cf. United States v. Jefferson County Board of Education, 372 F. 2d 836 (5th Cir. 1966), aff'd en banc 380 F. 2d 385 (1967), cert. denied 389 U.S. 840, rehearing denied, 389 U.S. 965 (1967); F.H.A. v. Darlington, Inc., 358 U.S. 84, 90 rehearing denied 358 U.S. 937 (1958). Where, as here, Congress had five years' notice of the legal implications of the language of an Executive Order and with essentially no change made that language part of a statute, certainly it intended that language to have the same legal effect as indicated by past applications of the Executive Order.

8 / Hearings before the House Committee on Rules on H. R. 1100, 90th Congress, Second Session, p. 5, March 28, 1968.

Similarly, on February 6, 1968, in introducing the fair housing provisions as an amendment to legislation pending before the Senate, Senator Mondale, co-sponsor of the fair housing title, stated:

> . . . this measure . . . would implement the principles of fair housing in three stages. First, upon adoption, it would prohibit discrimination in the sale or rental of housing now covered under the Executive Order of 1962. 114 Cong. Rec. (Daily Ed.) S. 988-89 (Feb. 6, 1968).

And Senator Scott explained:

> Immediately upon its enactment, the act would apply to housing already subject to the President's order on equal opportunity in housing of November 20, 1962. 114 Cong. Rec. (Daily Ed.) S. 1387 (Feb. 16, 1968).

It is thus beyond serious question that Congress sought to include within the coverage of Section 803(a)(1)(C) all housing covered by Executive Order 11063, and that housing eligible for government insurance or guaranty and <u>available for sale</u> on such terms is clearly housing reached by the coverage of Section 803(a)(1)(C).

II. <u>Coverage under Section 803(a)(1)(B)</u>

Sherwood Forest Place and Jefferson Terrace are subdivisions which have been furnished with technical and engineering contributions and other contributions provided by the Federal Housing Administration pursuant to the issuance of conditional commitments to insure dwellings constructed in such subdivisions by the Federal Housing Administration.

At a nominal cost, all three subdivisions named in the complaint have been furnished, by the Federal Housing Administration, the Veterans Administration,

or both, with inspection services which have made possible the final approval of individual dwellings for federal contracts of insurance or guaranty. (See depositions of Lawrence J. Dumestre, Otto F. Bubert, and Paul A. Griener). These contributions of professional services, wholly or partially at the expense of the Federal Government, have constituted a substantial financial benefit to defendants and are "contributions" within the meaning of Section 803(a)(1)(B) of Title VIII. 9/

The allegations of the complaint state the existence of FHA subdivision approval with respect to two of the three subdivisions named therein -- Sherwood Forest Place and Jefferson Terrace.

Allegations that dwellings have been inspected and approved by the Veterans Administration or the Federal Housing Administration, or both, are made in the complaint as to all three subdivisions named therein -- Sherwood Forest Place, Drusilla Place and Jefferson Terrace. These allegations are sufficient to support the plaintiff's claim that dwellings in the named

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9/ Defendants, in their depositions and affidavits, make much of the fact that no money is currently due and payable to the FHA or VA for professional services rendered by employees of these agencies. The apparent purpose of these statements by defendants is to illustrate that defendants do not come within Section 803(a)(1)(B) by reason of the receipt of contributions, because any "payment due thereon has been made in full prior to the date of enactment" of Title VIII. If this is defendants' argument, however, it is of little consequence, since it is clear that "grants or contributions" refer to aid or services for which repayment is neither due or expected. Therefore, the language of 803(a)(1)(B), referring to repayments prior to passage of the statute, must refer only to "loans [and] advances," not to "grants or contributions."

The plaintiff does not contend that defendants have received any "loans or advances" from the federal government.

subdivisions are within the coverage of Section 803(a)(1)(b) of Title VIII (42 U.S.C. §3603(a)(1)(B)).

III. Existence of Pattern or Practice

Since the defendants are covered by the Act and since the complaint states a cause of action under the Act,[10] the defendants' argument is reduced to the contention that the material facts are undisputed and that they are entitled to judgment on those facts. The argument on this point is apparently two-pronged: (1) that the facts concerning the transactions or occurrences upon which this action is based are undisputed and do not constitute a violation of Title VIII; and (2) that even if those transactions or occurrences were violations, they were insufficient to constitute a "pattern or practice of resistance."

Taking defendants' second argument first, it is the position of the United States that the alleged violations in this complaint, if proved, would clearly show a "pattern or practice of resistance to the full enjoyment of the rights granted" by Title VIII. Indeed, resistance to the rights granted by Title VIII could, no doubt, be manifested in ways other than explicit violations of §804, 42 U.S.C. §3604.[11] Where actual violations

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10/ The defendants did not clearly differentiate their arguments for dismissal from their arguments for summary judgment. Since the complaint sufficiently alleges a violation of the Act and a pattern or practice of resistance by each defendant, however, the arguments concerning pattern or practice must have been directed toward the motion for summary judgment and will be so treated in this memorandum.

11/ In United States v. Sheetmetal Workers International Association, Local Union No. 36, AFL-CIO, 280 F. Supp. 719 (E.D. Mo. 1968), the Court found that no post-Act violation by the defendant had been proved and denied relief to the United States. That case is presently on appeal to the Eighth Circuit; but in any event that holding is inapposite here where the United States has alleged and will prove a post-Act violation by each of the defendants under circumstances that indicate that the violation is part of a policy of resistance. In Section III D, infra, the United States has shown that a genuine issue of fact is presented concerning each of these violations.

are shown, however, the defendants' "resistance" would seem to be undeniable; so, in such a situation, the only remaining question is whether the proven resistance is part of a "pattern or practice."

"Pattern or practice," however, cannot be limited to the meaning implied in the motions by the defendants, who apparently assume that the United States can prove a "pattern or practice" only by proving that each defendant has violated the act on several occasions. That assumption is based on a too narrow view of the meaning of the term, for no court has ever interpreted "pattern or practice" as necessarily requiring multiple acts of discrimination. To the contrary, the legislative history of the term and the interpretation given the term by the courts indicate that a "pattern or practice" can be shown in a variety of ways.

The depositions, affidavits and other papers to be filed in response to defendants' motions show the "pattern or practice of resistance" in which the defendants are engaged in at least two ways. First, the papers show that several realtors and real estate agents in the Baton Rouge area have discriminated against a Negro in the sale of housing in all-white subdivisions. The legislative history of the "pattern or practice" statutes indicates that discrimination that affects a substantial part of a line of business is, by itself, sufficient to establish a pattern or practice of resistance. Secondly, the facts present direct evidence of discriminatory acts plus the existence

of distinct patterns of racially segregated housing in the Baton Rouge area and the historic practices of Baton Rouge real estate dealers to maintain that pattern of housing. In analogous class action cases and in more recent equal employment cases such proof has been considered sufficient to establish a pattern or practice. Finally, the United States contends that neither of the above issues need be considered on a motion for summary judgment, because, at this stage in the proceeding, proof of the existence of a pattern or practice is not a necessary part of the government's case.

A. Proof of Discrimination by Three Realtors in The Same Area Can Establish a Prima Facie Case of "Pattern or Practice"

In the Congressional debates on the Civil Rights Act of 1968, mention of "pattern or practice" is limited essentially to paraphrases of that term. This lack of discussion is understandable, however, since the term had been used in three previous civil rights statutes, and since the legislative debates on the 1964 Act and the subsequent judicial gloss placed on the term had by the time of the 1968 debates given a definite meaning to "pattern or practice."

For example, in the 1964 debates, Senator Humphrey, floor manager of the 1964 bill, described the meaning of "pattern or practice" as used in the public accommodations and equal employment titles of that bill in this way:

> The Attorney General may obtain relief in public accommodations and employment cases only where a pattern or practice has been shown to exist. Such a pattern or practice would be present only when the denial of rights consists of something more than a isolated, sporadic incident, but is repeated, routine, or of a generalized nature. There would be a pattern or practice

> if, for example, a number of companies or persons in the same industry or line of business discriminated, if a chain of motels or restaurants practiced racial discrimination throughout all or a significant part of its system, or if a company repeatedly and regularly engaged in acts prohibited by the statute. 110 Cong. Rec. 14270 (June 18, 1964) (emphasis supplied).

This statement demonstrates the understanding of Congress that a "pattern or practice" can be shown by several different sets of circumstances. Certainly one obvious circumstance is repeated discriminatory acts by a single defendant; but it is significant that the first example mentioned is the case where ". . . a number of companies or persons in the same industry or line of business discriminated. . . ." Statements by other Congressmen bolster this interpretation of "pattern or practice," such as Senator Magnuson's comment on the 1964 Act:

> To summarize, the Attorney General can initiate suit under Title II only when he believes there is a pattern or practice of discrimination designed to perpetuate discrimination in violation of title II. An example of such a pattern or practice would be a situation in which all or most of the restaurants in a city or town refused to serve persons on account of their race, color, religion, or national origin. 110 Cong. Rec. 12946 (June 8, 1964).

Thus, the legislative history clearly shows that proof that three real estate dealers in an area discriminated against a Negro could, by itself, prove a pattern or practice of resistance. Apparently, this one meaning of the term is so clear that the courts have applied it without comment, as in United States v. The Warren Company, et al., C.A. No. 3437-64 (M.D. Ala. 1965), where a three-judge court found discrimination in a pattern

or practice case brought by the Attorney General under the public accommodations section of the 1964 Civil Rights Act. In that case (see Findings of Fact and Conclusions of Law attached), the Court cited one incident of discrimination on the part of each defendant and, on that basis, found a policy of discrimination[12/] and granted relief.

Similarly, in this case the invididual act of discrimination by each defendant was not an "isolated, sporadic incident" but was part of a pattern of resistance that confronted Mr. Brown every time he attempted to buy a house in an all-white subdivision in the Baton Rouge area from a realtor or real estate dealer.[13/] In proving its case against each defendant, the United States will show that each of these groups of defendants violated Section 804 and denied to Mr. Brown the rights granted to him by Title VIII and will show in addition that Mr. Brown's

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12/ The consistent use by the courts of the term "policy of discrimination" as the equivalent of "pattern or practice" shows that if a defendant has a policy of discrimination and acts pursuant to that policy a fortiori he is engaged in a "pattern or practice of resistance." See United States v. Gulf-State Theatres, Inc., 256 F. Supp. 549, 557 (N.D. Miss. 1966); United States v. The Warren Company, C.A. No. 3437-64, 10 Race Rel. L. Rep. 1293 (M.D. Ala. 1965); United States v. Clarksdale King & Anderson Company, C.A. No. D.C. 6461, 10 Race Rel. L. Rep. 1762 (N.D. Miss. 1965).

13/ An act of discrimination based on a class prejudice can be "isolated" or "sporadic" only if the person committing the act of discrimination is otherwise in compliance with the Act. Where other circumstances indicate that the act of discrimination is the reflection of a policy that will be continued unless enjoined, however, the discrimination is "of a generalized nature" whether or not it has been repeated in the past. The important consideration for the purposes of injunctive relief is that there is a reasonable expectation that the act of discrimination will be committed again in the future.

attempts to purchase housing in other all-white areas, not yet covered by the Act, were "repeatedly" and "routinely" resisted by other real estate dealers in Baton Rouge. Whether the discrimination against Mr. Brown was dictated by the custom in the trade or for other reasons, it was not "isolated" but was a "generalized" practice in the real estate business in the Baton Rouge area. Therefore, defendants' acts of discrimination were part of a pattern or practice of resistance that is reflected in their practices and in the practices of other real estate dealers in Baton Rouge.

B. Proof of a Single Incident of Discrimination in an Area or Line of Business with a Custom of Segregation Can Establish a Prima Facie Case of "Pattern or Practice

Moreover, when the discriminatory acts of the defendants are considered in the context in which they were committed, the pattern or practice in which the defendants are engaged becomes transparently clear. A close analysis of civil rights class action cases and cases brought under the equal employment and public accommodations acts shows that, with the background of a long history, tradition, and custom of segregation, a single act of discrimination by a defendant can demonstrate the defendant's policy of discrimination and the pattern or practice of resistance in which he is engaged. Attempts to exercise rights that are contrary to a long accepted custom of segregation are infrequent, and when the first attempt proves futile, further attempts are discouraged. But absence of further attempts and, therefore, further acts of discrimination in no way

diminishes the efficacy of the one actual discriminatory act as demonstrating the defendant's policy to continue the established and accepted custom of segregation.[14] Hence, the one act of discrimination can be considered demonstrative of the defendant's general practice.

For example, in Cypress v. Newport News Hospital Ass'n, 375 F. 2d 648 (4th Cir. 1967), when the General Staff and Board of Managers of the hospital denied staff membership to two Negro doctors, the Court considered that this one act of discrimination plus the complete absence of Negroes on the medical staff and a past history of discrimination by the hospital in other areas was sufficient evidence of the "discriminatory policy" of the Board of Managers. 375 F. 2d at 653. Recognizing the close analogy between these class action

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14/ Cases in which civil actions have been brought on behalf of Negroes as a class by only one victim of discrimination are very common. See, e.g., Evers v. Dwyer, 358 U.S. 202 (1958); Homer v. Campbell, 358 F. 2d 215 (C.A. 5, 1966), cert. denied 385 U.S. 851 (1966); Gantt v. Clemson College, 320 F. 2d 611 (C.A. 4), cert. denied 375 U.S. 814 (1963); Coke v. Atlanta, 184 F. Supp. 579 (N.D. Ga. 1960); Johnson v. Board of Trustees of Univ. of Kentucky, 83 F. Supp. 707 (E.D. Ky. 1949); Whitmyer v. Lincoln Parish School Board, 75 F. Supp. 686 (W.D. La. 1948). Also, in its Notes on Rule 23(b)(2), Federal Rules of Civil Procedure, the Advisory Committee stated: "Action or inaction is directed to a class within the meaning of this subdivision even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class." 3A Moore, Federal Practice p. 58 (Supp. 1967).

cases and suits by the Attorney General under his "pattern or practice" authority,[15] the Court in United States v. Sheet Metal Workers Local 36, 280 F. Supp. 719 (E.D. Mo. 1968), an equal employment case, said:

> The absolute absence of Negroes from a group, plus evidence of specific instances of exclusion . . . for racial reasons, has been held to constitute evidence of a 'pattern or practice' of the type prohibited by the Act. (Emphasis supplied). (citing Cypress v. Newport News General Hospital Ass'n., 375 F. 2d 648 (C.A. 4, 1967), a class action brought under 42 U.S.C. 1981 and 1983.) 280 F. Supp. at 729.

Thus, the court acknowledged in the Local 36 case that the evidence necessary for a "pattern or practice" finding is similar to that required for a class action.

The kinship between "pattern or practice" cases brought by the Attorney General and class actions becomes more apparent when the purpose of the Section 813 authority is considered in the light of the Fifth Circuit's explanation of the rationale for allowing class actions based on a single act of discrimination against one Negro:

> Moreover, we think it quite clear that the complaint alleged a proper case for a class action. Since, as we have stated, this is not to be construed as a suit for interference with plaintiff Sharp's rights as a lawyer, but as a Negro citizen, he may properly sue on

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15/ The United States Supreme Court has also recognized the analogy between the two types of actions, for it has likened the private class action under Title II of the Civil Rights Act of 1964, 42 U.S.C. §2000a-3, to an action by a "private attorney general." Newman v. Piggie Park Enterprises, 390 U.S. 400, 402 (1968).

> behalf of all other Negro citizens, since they all have an identity of interest in having access to the public offices of the Parish on a non-segregated basis. Sharp v. Lucky, 252 F. 2d 910, 913 (5th Cir. 1958).

Likewise, the prohibitions of Section 804 are intended to make housing accessible to all persons without regard to class, whether the class is labeled by "race, color, religion, or national origin." In satisfying his obligations under §813 to promote the policy of the federal government to provide "fair housing throughout the United States," the Attorney General has an "identity of interest" with the members of the defined classes in insuring that they have an unfettered access to housing on a nondiscriminatory basis. Just as a discriminatory policy can be shown in a class action by one act of discrimination against one member of a class, Cypress v. Newport News Hospital Ass'n, 375 F. 2d 648, 653 (4th Cir. 1967); so a "pattern or practice of resistance" can be proved in a suit by the Attorney General on the basis of one act of discrimination against one member of a class.[16/]

As in those class actions, in suits by the Attorney General, the act of discrimination must be viewed in the context in which it was committed to determine

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16/ In fact, the wording of Section 813 indicates that the authority of the Attorney General to bring suit is broader than a class suitor's, because it extends to resistance as well as to actual violations, and thus would extend further than indicated here. Clearly, however, the Attorney General's standing encompasses at least those cases where a class action could be entertained.

if it was part of a "pattern or practice." It is the position of the United States that the defendants' violations of Section 804 are merely a continuation of a long-standing tradition, custom, and practice of maintaining segregated housing in the Baton Rouge area. That custom is reflected in the present existence of distinct patterns of segregated housing in the Baton Rouge area; it is recognized and accepted by the local community and is even stamped with the imprimatur of the state legislature.[17/] Moreover, the practices of the local realtors and real estate dealers are designed to perpetuate the tradition and custom of segregated housing. These practices are reflected in the complete absence of any Negroes on the Baton Rouge Board of Realtors, thus making the Board's multiple listing service unavailable to Negro real estate dealers and virtually[18/]

17/ La. Stat. Anno. -- Rev. Stat. §§33:5066-5068 prohibit a white person from moving into a Negro community or a Negro from moving into a white community except on the written consent of a majority of the predominant race in the community and prescribe certain penalties that can be as severe as a $100 fine and ninety days imprisonment. The Louisiana Supreme Court held the statute constitutional in Tyler v. Harmon, 158 La. 439, 104 So. 200 (1925) reaffirmed on appeal from injunction 160 La. 943, 107 So. 704 (1926). Although the United States Supreme Court reversed that ruling, Harmon v. Tyler 273 U.S. 668 (1927), in a memorandum decision citing Buchanan v. Warley, 245 U.S. 60 (1917), the statute has been retained in the Louisiana Code and, therefore, could presumably be used as the basis of a prosecution. Additionally, La. Stat. Anno. - Rev. Stat. §33:4771, allows local municipalities to deny building permits to contractors or other persons who intend to build a residence in a white area for a Negro or in a Negro area for a white. See also, Garner v. Louisiana, 368 U.S. 157, 179-81 (1961) for other statutes reflecting the official recognition of the tradition and custom of segregation in Louisiana.

18/ Only members of the Board of Realtors can sell houses listed on the multiple listing service. [See deposition of J. B. Pugh at 12].

insuring the unavailability of "white" housing so listed with the service to Negro purchasers. The present pattern of housing shows that this practice has successfully maintained segregation in the area. The defendants' practices are likewise not designed to eliminate the effects of the long-standing custom of segregation: none of the defendants have Negro salesmen, nor have they ever sold any housing in their subdivisions to Negroes. To the contrary, their discrimination against Mr. Brown shows that they have an affirmative policy of continuing the established custom of maintaining segregated housing.

The defendants may object that before Mr. Brown no Negro ever attempted to purchase one of their houses; but the fact that Mr. Brown was the first Negro to seek housing in their subdivisions is not surprising, nor does that fact aid the defendants in defending a "pattern or practice" suit. That no other Negroes have sought housing in white subdivisions does not show a lack of interest on their part; rather it indicates a sense of the futility of such an effort in the face of the well-known policy of maintaining segregated housing. Cf., Cypress v. Newport News Hospital Ass'n, 375 F. 2d 648, 653 (4th Cir. 1967). Further, it might even reflect their fear of possible reprisals should they attempt to attain their right to purchase housing in any subdivision on a nondiscriminatory basis. The absence of other attempts by Negroes to purchase housing in white areas in no way diminishes the probative value of defendants' actual refusals as showing their participation

in a pattern or practice of resistance. The telling consideration is that when each defendant was given one opportunity to obey the law and honor his repeated certifications of nondiscrimination to the Federal Housing Authority and the Veterans Administration, he chose instead to follow the established pattern and practice of discrimination customary to the real estate business in Baton Rouge. That choice to discriminate, coupled with evidence of the demographic pattern of Baton Rouge housing and evidence of the customs and practices of the real estate business in Baton Rouge raise inferences concerning the defendants' sales policies that cannot properly be resolved on summary judgment.[19/] Cf., Paul E. Hawkinson Co. v. Dennis, 166 F. 2d 61, 63 (5th Cir. 1948).

19/ A fortiori, the motion to dismiss based on the same grounds must be denied. Demandre v. Liberty Mutual Insurance Company, 264 F. 2d 70 (5th Cir. 1959). If the defendants contend that the complaint is insufficient because the Attorney General did not plead and show his "reasonable cause to believe," that contention has been uniformly rejected by the courts. United States v. International Brotherhood of Electrical Workers Local No. 683, 270 F. Supp. 233, 234-35 (S.D. Ohio 1967); United States v. Building and Construction Trades Council of St. Louis, Missouri, AFL-CIO, 271 F. Supp. 447, 452-53 (E.D. Mo. 1966); United States v. Building and Construction Trades Council of St. Louis, Missouri, AFL-CIO, 271 F. Supp. 454, 458 (E.D. Mo. 1966).

C. Proof of a "pattern or practice" is unnecessary at this stage of the trial.

What the defendants are, in fact, asking the Court to determine at this point in the proceedings is that injunctive relief should not be granted against them; for a "pattern or practice" determination is, in effect, merely an equitable judgment that injunctive relief is justified. This general meaning of the term is clearly indicated by the common rationale underlying the variety of factual situations that will disclose a "pattern or practice." As preceding arguments have shown, the generic meaning of the term, its legislative history, and the judicial gloss placed on the term show that repeated acts of discrimination by one person will show a pattern or practice[20], that one act of discrimination by each of several persons in a particular line of business will show a pattern or practice[21], and that one act of discrimination by one person when pursuant to an established custom of

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20/ United States v. Gulf-State Theatres, Inc., 256 F. Supp. 549 (N.D. Miss. 1966).

21/ See section III. A. supra.

racial segregation can show a pattern or practice.[22/] Repeated discrimination by one person indicates a policy of resistance that only legal compulsion will eliminate; and, when discrimination is practiced in a significant part of a particular line of business or is customary in an area, economic or social pressures, rather than eliminating the practice, will perpetuate it. In other words, a "pattern or practice" finding is a determination that there is a reasonable expectation that the wrong will be repeated.

Since injunctive relief is directed to the future, a grant of summary judgment based solely on the lack of a showing of "pattern or practice" would be tantamount to a statement by this Court that, although the defendants have violated the

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22/ See section III. B. supra. This situation, however, will not always present a "pattern or practice case. For example, an individual homeowner attempting to sell his house discriminatorily through a real estate dealer after December 31, 1969, could probably not be sued under the "pattern or practice" authority, even if the discrimination was pursuant to an established custom of racial segregation. Proper exercise of the "pattern or practice" authority requires two determinations: (1) that there is a reasonable expectation that the defendant will continue the illegal conduct unless enjoined and (2) either (a) that a significant group of persons are being deprived of a right granted by the Act or (b) that the conduct of the defendant or defendants adversely effect the free access to a significant amount of housing by a certain class or classes of persons. It could be argued that the second determination is solely for the Attorney General. But that argument is unnecessary here since the condition is clearly met where, as in this case, the evidence shows that a substantial group of Negroes, even though financially able to purchase new housing, are denied access to new housing and where the evidence further shows that the defendants control the access to a significant amount of new housing presently foreclosed to Negro purchasers.

Act one time[23], there is no reasonable expectation that the wrong will be repeated. On a motion for summary judgment the defendant has a heavy burden in proving this mixed question of fact and law[24]. See e.g., United States v. W. T. Grant Co., 345 U.S. 629, (1953). It is clear that the power to grant injunctive relief survives the discontinuance of the illegal conduct. Offner v. Shell's City, Inc., 376 F. 2d 574, 576 (5th Cir. 1967). Equally clear is the fact that the defendants' self-serving statements of an intention to obey the law in the future are insufficient to raise a doubt as to whether injunctive relief should be granted. United States v. Atkins, 323 F. 2d 733 (5th Cir. 1963); see also Derrington v. Plummer, 240 F. 2d 922 (5th Cir. 1956); Anderson v. City of Albany, 321 F. 2d 649 (5th Cir. 1963). Yet, besides those

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23/ Since clear genuine issues of fact are presented concerning each defendant's violation of the Act [see section III. D. infra], those violations must be taken as proved for the purpose of granting summary judgment based solely on the absence of a dispute concerning a "pattern or practice."

24/ Of course, the United States will have the untimate burden of showing the need for an injunction.

self-serving statements,[25] the defendants have shown no action taken by them to prevent the recurrence of unlawful acts such as the ones in issue in this case. In fact, the defendants have not even attempted to meet the heavy burden resting upon them to show that no genuine issue of fact is presented concerning the existence of a pattern or practice or the need for injunctive relief.

Clearly, the United States does not have to prove its whole case just to oppose the defendants' motions for summary judgment. It has met its burden when, as in this case, it produces evidence that indicates that the defendants have violated the Act, that they are likely to continue to violate the Act, and that they control a significant amount of housing that will be foreclosed to a certain class if their discriminatiory practices are not enjoined. Since the papers to be presented to this Court on this motion show that genuine issues of fact are raised on all of these points, defendants motions for summary judgment should be denied.

25/ Even if defendants' self-serving assurances are given any credence, other evidence raises a question whether the defendants would be able or willing to honor their assurances. First, the same promises were made repeatedly to the Federal Housing Authority and the Veterans' Administration, and yet the defendants still discriminated against Mr. Brown. Secondly, the defendants would be subjected to the same pressures of business and custom that caused their discrimination against Mr. Brown unless they are affirmatively enjoined from committing such discrimination. Finally, La. Stat. Anno. - Rev. Stat. §§33:5066 and 33:4771 serve as potential official threats to persons who sell housing to Negroes in "all-white" subdivisions, regardless whether an action based on those statutes could be effectively prosecuted.

D. A genuine issue of fact is presented concerning each defendants' violation of the Act

Rule 56(c), Federal Rules of Civil Procedure, requires that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," all be considered in ruling on the motion for summary judgment. If a conflict of fact appears from any of these papers, that issue of fact cannot be resolved on summary judgment. Due v. Tallahassee Theatres, Inc., 333 F. 2d 630, 632 (5th Cir. 1964). Such a conflict is presented when one party affirms and the other denies actual material facts, Bluff Creek Oil Company v. Green, 257 F. 2d 83, 88 (5th Cir. 1958); or when the moving papers show on their face that "...the matter is of a nature presenting a dispute...or there is substantial doubt on it..." United States v. Dewitt, 265 F. 2d 393, 399 (5th Cir. 1959). See also, Bruce Construction Corporation v. United States, 242 F. 2d 873 (5th Cir. 1957); Murphy v. Light, 257 F. 2d 323, 326 (5th Cir. 1958).

The affidavits, depositions and answers to interrogatories presently filed in this case show unmistakably that virtually all material facts concerning the defendants' violations of the Act are either in dispute, or defendants' own admissions disclose a violation. For example, the deposition of Paul J. Brown taken by the Gully Agency[26/] and the deposition of Kenneth C. Owens show a dispute over certain of

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26/ "Gully Agency" will be used hereinafter to designate the defendants Durward Gully, Kenneth C. Owen, and Gully Agency, Inc., as a group.

the material facts concerning that defendants' discrimination. In its motion, Gully Agency contends that it merely refused to sell to Mr. Brown by FHA or VA financing and that this decision was made for purely financial reasons. On the other hand, Mr. Brown's deposition clearly states that he was ready, willing, and able to purchase the house shown to him and his wife,[27] [See Deposition of Paul J. Brown taken by Gully (hereinafter Brown I) at 40, 41-42, 43, 44, 65] and that he was willing to purchase by FHA, VA, or conventional financing. [Brown I at 23, 41-42, 61]. Mr. Brown further deposed that Mr. Kenneth C. Owens had stated in an earlier telephone conversation that Gully Agency "could handle" the FHA or VA discount rate [Brown I at 23]; and other evidence will show that a dwelling was indeed offered with 100% VA financing, and finally sold on that basis, five days after

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27/ Any contention that a "bona fide offer" under §804 (a) requires an offer that satisfies the statute of frauds of Louisiana is completely without merit. An exchange between Senator Mondale and Senator Allott, the sponsor of the "bona fide offer" amendment, shows that this was not the intent of Congress:

> Senator Mondale: "Am I...correct in my understanding that this determination (of bona fides) can be made on the basis of facts in each instance, and it has no relationship to underlying statutes of fraud laws in particular states?"
>
> Senator Allott: "No, I do not believe it would necessarily have to go so far as a binding contract. But if it was not in fact a bona fide offer, with the capability of going through with the contract, then the proposed seller or lessor, would not be in a bind by reason of it. So I believe this amendment would clear up a necessary feature." 114 Cong. Rec. 52309-49 (3-6-68).

Mr. Brown's subsequent action in purchasing a house in the price range of defendants' offerings shows that he was in good faith attempting to buy a house and was capable of making such a purchase. See also, attached financial statement of Mr. Brown's credit standing.

Mr. Owens refused to allow Mr. Brown similarly to finance the purchase of a dwelling. [See Affidavit of Eugene P. Miller, attached] Additionally, Mr. Brown stated that Mr. Owens specifically said that he could not sell the house to a Negro. [Brown I at 46-47, see also at 40 and 44].

Moreover, Mr. Owens' own deposition shows on its face that he did not treat Mr. Brown as he would a potential white customer. He did not show Mr. Brown any other available dwellings, nor did he inform Mr. Brown of other more advantageous methods of financing or in any way assist Mr. Brown in the usual way he would have assisted a white customer. [See Deposition of Kenneth C. Owens at 26-29]. [Compare affidavits of J. F. Cannon, R. J. Cardinal, Eugene P. Miller, and Harry E. Peiper, attached]. In analogous employment cases, such disparate treatment has been deemed evidence of "resistance" to the full enjoyment of rights granted by the Act. United States v. International Brotherhood of Electrical Workers, Local 212, Civil No. 6473 (S.D. Ohio 1968) filed September 12, 1968, [see especially Conclusion of Law 25(a), (f), and (i)].

In the case of Knippers and Day[28/] the deposition of Paul J. Brown taken by Knippers and Day (hereinafter Brown II) and the deposition of William E. Day, Jr., (hereinafter Day) show not only a dispute on certain material facts but an admission of other facts that by themselves would establish a violation of the Act.

28/ "Knippers and Day" will be used hereinafter to refer to the defendants I. W. Knippers, William E. Day, Jr., Town & Country Homes, Inc., K & D Enterprises Inc., and Knippers and Day Real Estate, Inc., as a group.

Mr. William E. Day, Jr., in his deposition admitted that he told Mr. Brown that selling a dwelling in Sherwood Forest Place to a Negro would bankrupt him. [Day at 53]. Mr. Day also admitted that he realized that Mr. Brown was ready, willing, and able to buy a house [Day at 52]; but since Mr. Brown was a Negro, Mr. Day would not even show him any available dwellings until he conferred with Mr. I. W. Knippers. [Day at 52-58]. Further, Mr. Brown in his deposition states that Mr. Day first said that he would not sell to a Negro but later decided to confer with his partner and to call Mr. Brown back if such a sale could be made. [Brown II at 27 and 92-99]. But Mr. Day did not call back, and after conferring with Mr. Knippers did not reach a decision whether a house in Sherwood Forest Place would be sold to Mr. Brown. [Day at 79-81, and at 85-86]. Certainly, a white purchaser would not have been subjected to the treatment given Mr. Brown. Yet, Mr. Day asks this Court to believe that Knippers and Day at the time of Mr. Brown's inquiry had not yet resolved the simple issue of whether to sell their housing to Negroes or not to sell it to Negroes, even though they had certified to FHA and VA that they would not discriminate in the sale of their housing.

So far as Myer[29/] is concerned, the deposition of Mr. W. R. "Dicky" Myer (hereinafter Myer I) shows on its face that he did discriminate against Mr. Brown because of his race by telling him that dwellings were

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29/ "Myer" will be used hereinafter to designate defendants Myer-Yarbrough Realty, Inc., Myer Development Corporation, and C. Stevens Myer as a group.

not available for sale in Drusilla Place when they were in fact so available. [Myer I at 19-21]. Mr. W. R. Myer's deposition further shows that his phone number was listed in ads concerning houses available for sale [Myer I at 13] and together with the affidavit of C. Stevens Myer indicates that he had some responsibility in dealing with potential customers. Clearly his agency was sufficient to bind the corporations by his action, or at least the question is sufficiently in doubt to require a trial on the merits. Restatement (Second) Agency §43(2) (1958). In any case, when the other officers of the corporation learned of the action, they did nothing to repudiate it and, thus, under general agency principles could be held to have ratified the action as their own. Restatement (Second) Agency §43(2) (1958); Emco Mills, Inc. v. Isbrandtsen Co., Inc., 210 F. 2d 319, 324 (8th Cir. 1954). In the context of this case, the failure to repudiate at least raises a question concerning the sincerity of the defendants' present disavowal of Mr. W. R. Myer's action as representing their policy. Therefore, summary judgment as to Myer should be denied.

IV. The Constitutional Argument

The argument that Section 813 unconstitutionally delegates legislative authority to the Attorney General is totally without merit. Article I, Section I of the Constitution provides:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

It is difficult to understand in what sense a delegation of authority to bring suit to the federal government's chief law enforcement officer, the United States Attorney General, can be said to constitute a violation of Article I, Section I. That difficulty is compounded by the defendant's failure to cite any authority for its assertion. Section 813 of Title VIII, like many previous statutory enactments of the Congress, gives the Attorney General standing to assert the existence of a denial of rights granted by the Constitution and laws of the United States.

The adjudication of the facts of such alleged denial is the responsibility of the Federal courts, and Article III, Section 2 of the Constitution would appear to provide ample authority for the courts to assume such responsibility. It is clear that the courts, and not the Attorney General, control the nature and extent of any relief to be granted under the statute. Since such action of the court in granting relief is subject to the full safeguards of judicial review, there can be no violation of the 14th Amendment connected with the grant of authority to the Attorney General under Section 813.

It is true that the courts have occasionally stricken down delegations of legislative authority where an Executive agency has been given unfettered discretion to create, by regulation, whatever "laws" the Executive branch thought necessary to accomplish a broad or vaguely defined purpose. See, e.g., Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). Such legislation,

however, is far removed from a simple grant of authority to bring suit in the Federal courts whenever there exists reasonable cause to believe a particular condition exists.

Congress undoubtedly has the power to authorize the Attorney General to bring litigation in the name of the United States to remedy conditions that are an obstacle to the accomplishment of an explicit national policy objective. Such a policy objective in the field of housing has been expressed by Congress at least twice. See 42 U.S.C. 3601; and 42 U.S.C. 1982.

As the Supreme Court stated in Yakus v. United States, 321 U.S. 414, 424-25 (1944):

> The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct.... It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy....
>
> Nor does the doctrine of separation of powers deny to Congress power to direct that an administrative officer properly designated for that purpose have ample latitude within which he is to ascertain the conditions which Congress has made prerequisite to the operation of its legislative command.

Standards are not lacking for the Attorney General's judgment of reasonable cause to believe that there exists a pattern or practice of resistance to rights granted by Title VIII. The legislative history of the phrase defines with some exactitude the kinds of cases in which the Attorney General may seek relief. (See text at pages 13-15 supra.) It is sufficient answer to defendants' allegation that the Congress has validly created similar litigative

authority in the Attorney General in other statutes. See, e.g., the statutes granting litigative authority to the Attorney General to bring anti-trust suits, 15 U.S.C. §§4, 9, 25; and United States v. Elliott, 64 Fed. 27, 31 (E.D. Mo. 1894). See also Section 206 (a) of the 1964 Civil Rights Act, 42 U.S.C. 2000a-5, and Section 707 of the 1964 Civil Rights Act, 42 U.S.C. 2000e-6. Both of these "pattern or practice" statutes have been the subject of extensive litigation, and neither has been successfully challenged on the ground that it constitutes a delegation of power to the Attorney General in violation of any constitutional principle.

V. Conclusion

The defendants' motions to dismiss cannot be granted because the Act is constitutional and the complaint sufficiently alleges a cause of action against each of the defendants under the Act. The complaint alleges that each of the defendants has made its housing available for sale, and has sold its housing, by loans insured or guaranteed by the federal government and that each has been aided by contributions from Federal Housing Authority and the Veterans' Administration in making their housing available for sale. Each defendant is also alleged to have discriminated against a Negro in violation of Section 804; and finally the defendants are alleged to have engaged in a pattern or practice of resistance to the rights granted by Title VIII. Proof of these allegations would entitle the United States to relief; therefore, the motion to dismiss should be denied.

Defendants' motions for summary judgment cannot be granted because genuine issues are presented concerning numerous facts that are material to a determination of this case. The papers before the Court on this motion show a genuine factual dispute concerning each defendant's violation of the Act. Additionally, these papers show that a genuine issue is presented whether these violations are part of a pattern or practice of resistance to the full enjoyment by Negroes of the rights granted to them by Title VIII. Since factual disputes cannot properly be resolved on a motion for summary judgment, the defendants' motions should be denied.

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