Form DJ-150
(Ed. 4-26-65)

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : John Doar
Assistant Attorney General
Civil Rights Division

DATE: June 28, 1966

CRN:lei

FROM : Charles R. Nesson
Special Assistant

171-012

SUBJECT: Bratcher, et al. v. Akron Area Board of Realtors, et al.

Here is a copy of the Anti-Trust Division's amicus brief in Bratcher v. Akron Area Board of Realtors.

Appellants, representing Negro real estate dealers, Negroes wanting to buy or rent real estate in the Akron area, and whites wanting to deal with Negroes, alleged that the white real estate brokers in Akron conspired to prevent Negroes from buying or renting real estate in various parts of the Akron area. The complaint alleged an unreasonable interference with interstate commerce.

The District Court granted a motion to dismiss, ruling that the complaint did not show either that defendants' activities occurred within the flow of interstate commerce or that their activities substantially affected interstate commerce. The Court did not pass on defendants' contention that the claim should fail for failure to show a commercial motivation in defendants' acts.

The amicus brief supports appellants' appeal, arguing that the complaint sufficiently alleges ~~that~~ activities in the flow of interstate commerce as well as activities affecting commerce were alleged.

* * *

I have looked in vain for early memoranda explaining how this matter got upstairs to Anti-Trust. The only thing I found were my own notes dated August 19, 1965 (attached). As I recall, I wrote those notes when Steve Pollak asked me to look at the case. I think I returned the papers in the case to him with a covering memorandum to the same effect as my notes, namely, that I agreed that the matter should be pursued in conference with the Anti-Trust Division. I cannot tell you exactly what happened after that, except that I remember talking to Steve Breyer about the case.

August 19, 1965

Re: <u>Bratcher</u> v. <u>Akron Area Board of Realtors</u>

The ground for deciding not to take a position that real estate boycotts violate the Anti-Trust laws by barring Negro members and refusing Negro listing is that difficulty would arise in distinguishing civil rights boycotts.

In considering whether the Anti-Trust laws apply to civil rights boycotts, the question is:

(1) Are the Anti-Trust laws limited to business motivated agreements in restraint of trade? My opinion (not based on a full scale research effort) is that they are so limited, and would not, for instance, reach Dr. King's Alabama boycott or the Catholic Churches organized boycott of "obscene" books and movies. Compare the Anti-Trust labor cases dealing with application of Anti-Trust laws to collective agreements concerning wages, hours and conditions of employment.

(2) A question then in deciding whether to go after real estate boards is whether their activities in restraint of trade is business motivated. I do not understand the operations of real estate boards and property listing services well enough to ascert with full conviction

that their exclusionary practices are good for their business, but I strongly suspect that keeping white neighborhoods white, thus maintaining property values, is n their business interest. Once such a business motivation is found I think that the Anti-Trust laws can be applied. Of course totally non-economic racial prejudices may also play a contributing part, but certainly this would immunize the discriminatory practices if they are otherwise covered.

(3) Going back then to civil rights boycotts, is there a business motivation to them?

I agree entirely that this matter should be pursued in conference with the Anti-Trust Division. It may be that civil rights boycotts can be distinguished, but until the matter has been sufficiently thrashed out to permit that conclusion, it should be followed up.

Form No. DJ-96a
(Rev. 7-17-63)

DEPARTMENT OF JUSTICE

ROUTING SLIP

TO: NAME	DIVISION	BUILDING	ROOM
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2.			
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- [ ] NECESSARY ACTION
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REMARKS: Charlie:

Did you ever dig out how that earlier request got to Anti-trust? See me.

John

2/19/66

~~Bratcher's Akron Ohio~~

FROM: NAME	BUILDING, ROOM, EXT.	DATE

Form No. CVR-17
(Rev. 12-10-64)

CIVIL RIGHTS DIVISION

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~~(3) [illegible]~~

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Did you ever dig out how that earlier request got to anti Trust?
See me —

February 16, 1966

United States Department of Justice, Anti-Trust Division
United States Court House, Room 1537
312, North Spring Street
Los Angeles, California

ATTENTION: Mr. Mort Cohen

Dear Mr. Cohen:

This letter is a supplement to the information and documents furnished your office in conjunction with the current investigation of Federal anti-trust violations involving organized real estate.

This writer is convinced that there is in fact a National Cartel in the resale of existing homes throughout the United States, such being centered in and controled by the National Association of Real Estate Boards (NAREB).

At the risk of over simplification the operation of this cartel may be described as follows: NAREB has trademarked the word "Realtor", and holds national control of this word (not withstanding the fact that former Calif. Attorney General Mosk has said that the word has lost its protectionable status and no longer is a proper noun, rather it is of such common usage that it is construed by the public to mean anyone in the real estate business).

The control of the word "Realtor" is handed down by license thru autonomous state associations to constituent autonomous local private income tax paying corporations called "Boards of Realtors". For a real estate broker to lawfully use the word "Realtor" he must join the local "Board" (in California it is a CRIME in and of itself for a broker to use this word if he does not belong to one of these private corporations; and subjects his real estate license to revocation by the Real Estate Commissioner). It is mandatory that members of local "Boards" belong to the state association as well as NAREB.

The foregoing might seem harmless in itself, however the complexity of organized real estate - as well as the economics of merchandising resale homes takes on an unusual pattern (unlike any other commercial enterprise) culminating in the concentration of inventory (real estate listings) in multiple listing services, controlled by "Boards". The activities of these multiple listing services is not unknown to the courts - US v. NAREB, 339 US 485; PEOPLE v. CREA, L.A. Superior Court C 757 100; EVANSTON-NORTH SHORE BOARD OF REALTORS v. US, 320 F2d 375; etc.

The heart of the cartel lies in the dividing up of the Nation into parochial districts by NAREB, and placing a national umbrella over the constitutent autonomous state and local entities. Thus "Boards" are allowed to run local real estate markets at will, without interference from state or federal authorities. The Alice in Wonderland thus produced is best observed by reading the By-Laws, rules, regulations, listing contracts, as well as the minutes of the kangaroo courts (commonly called courts of ethics) which these legally untrained and uneducated realtors conduct in enforcing their will on individual realtors as well as THE GENERAL PUBLIC. It is believed that the involvement in these defacto tribunals of contracts, and the constitutional and statutory obligations therein is in itself a travesty on THE DUE PROCESS OF LAW, and an insult if not a usurping of the authority of the courts of the several states.

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The legality of these Star Chambers (courts of ethics) is ostensibly under the lawful authority of the By-Laws, rules, regulations of the corpration (the fact is that this is merely a circuitous technique in defacto legislation which permits local realtors to operate free of outside intervention, regardless of whether such By-Laws constitute unscrupulous or conspiratorial practices).

Put simply the adopting of By-Laws, rules and regulations by private corporations is not normally a matter of concern to government. When these By-Laws are "touted" as codes of "ethics" they then become clothed in a panoply of sacredness and reverence. The fact is that the majority of these so-called "Codes of Ethics" are already matters of LAW, and merely offer a devious means for realtors to mislead the PUBLIC into thinking there is OFFICAL ACTION by these pseudo governmental "BOARDS".

The article sent to you yesterday: " ADVERTISING COMMISSION RATES VILATES CODE OF ETHICS" lifts a corner of the smoke screen of self protection which has been built around organized real estate. An example can be seen by comparing the decree of the U.S. Supreme Court (US v. NAREB) and the policy decision of NAREB regarding advertising COMMISSION RATES AT VARYING AMOUNTS LESS THAN THE PREDOMINANT RATE IN THE AREA OF THE BOARD. If on the one hand the U.S. Supreme Court has said that it is illegal for Boards to fix commissions, and the California Courts have said that commissions must be negotiated between principal and broker; and on the other hand NAREB says it is unethical to advertise commission rates below the PREDOMINATE RATE OF THE BOARD - brokers are faced with the delima of being branded "UNETHICAL" for offering the public a money saving service. Needless to say the intimidation of disciplinary action offers a more immediate threat than the words of the court. This is just one simple illustration of how individual realtors are forced to comply with By-Laws which are nothing more than circuitous techniques of circumventing constitutional, statutory and judicial supervision. The depth and breath of these techniques in circumventing statutory supervision of state agencies becomes, and is, even more devious.

Thus the intermixing of so called "ethics" with the economics of being shut off from the inventory (real estate listings) places "Boards of Realtors" in the position of being able to force real estate brokers to join the "Board" to get the listings, and then in turn compel brokers to conform to those By-Laws, rules and regulations which may or may not be in the PUBLIC interest (anti-trust activity in particular).

That individual "Boards" as autonomous entities are free to inject any unscrupulous or conspiratorial scheme is well known by those of us in the real estate industry who believe the public is being prostrated to a monstrous scheme which is totally lacking in social or economic benefits to society.

Conspiracy and restraint of trade is Conspiracy and restraint of trade regardless of whether it involves restricting minority citizens from free access to resale homes or whether it subjects all citizens to schemes of price fixing or other restraints of trade (and subsequent fantastic financial burdens on the home buying and selling citizen.)

The rapidly changing characteristic of our metropolitan communities warrants a careful analysis of the circuitous techniques of organized real estate, and its cartel, on the lives and fortunes of all citizens of the United States.

Hopefully your current investigation concerning possible violations of the Sherman Act will not be limited to racial discrimination; for it is believed that the U.S. Justice Department will soon find it necessary to face the problem of the organized real estate cartel, and its stifling effect on American citizens.

Sincerely,

Luther T. Mayo Jr.

Luther T. Mayo Jr.
Box 1048 , Newport Beach, California

cc: The Honorable - Donald F. Turner
- John Doar

Single Tax

Continued from page 15

the effect would be to exempt a larger number of people.

MANY PRACTICAL PROBLEMS

Aside from the philosophical reasoning behind the "single tax" as advocated by Henry George, other problems rear their ugly heads. The demand for governmental services and the necessity for such services are brought about by the number of people living in a community. These services include schools, fire protection, police protection, welfare agencies, recreational facilities, health and hospital facilities, etc. A large portion of these services is for the use of non-property owners.

The single tax application would enable these non-property owners to be completely supported as far as governmental services are concerned, without contributing a penny. By the same token, the same people would be in a position to elect non-property owners to policy-making political positions. It has been said that once government is in a position to claim ownership of real property (which it would be under a "single tax" system)—there is nothing to stop it from claiming ownership of personal property and that private ownership of real property is an insurance policy against despotism.

George C. S. Benson, Economist and President of Claremont Men's College, says, "So long as land and real estate dominate the economy and movable personal property and capital are relatively unimportant, this tax may play the leading role and be levied successfully and fairly. But when a commercial economy develops, the concept of property must be greatly expanded. If it is not, a disproportionate amount of the tax burden will be borne by those classes which depend on real property for their income."

THE OBJECTIVE OF FAIRNESS

The "single tax on land" theory ignores a more important problem. The use of non-productive land for an industrial plant could and does create a great deal of wealth. In addition, the mere existence of that plant creates an increasing demand for local governmental services. To exempt improvements, then, would do just the opposite from that which has been the aim of fair-minded governments for thousands of years—equalization of the tax burden!

The official report of the Nevada Constitutional Convention, 1864, stated "The failure of any body politic to make each and every species of property a subject of taxation has the effect to create privileged classes . . . which . . . is entirely at variance with the spirit of our institutions." On the same subject an editorial in the "Cincinnati Inquirer" in 1851 said, "No distinction should be made in different kinds of property. The state has no more right to tax real property than personal, or any other kind of property: its right of taxation is just the same in reference to them all and no stronger as to one than another. The right comes from the same common source, the consent of the people. The people are all equal; – they partake equally of the blessings of government, and their property should share equally in its burdens – in short, equality all-around, equal burdens for equal rights and privileges is the true rule and morality of taxation."

Advertising Commission Rates Violates Code of Ethics

In reply to a member Board on the subject of advertising commission rates at varying amounts less than the predominant rate in the area of the Board, James J. Spatz, Director of NAREB's Department of Board Services, quoted a report adopted unanimously by the NAREB Committee on Professional Standards:

"There are several violations of the Code of Ethics when commission rates are advertised:

Article 3: Advertising commission rates is damaging to the dignity of the real estate profession, and could have results very unfavorable to both the public and the Realtors.

"Article 21: Advertising commission rates can create an unfair advantage of a fellow Realtor. (It would probably not represent to the public a true picture of the type and amount of service to be rendered.'

"Article 30: It was thought that real estate Boards throughout the country have worked hard over the years to promote professionalism and any action by individual members to hurt this effort is a disloyalty to the Board."

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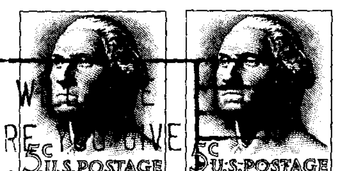

AIR MAIL

THE HONORABLE JOHN DOAR, ASSISTANT ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C.