IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

sent 5/4/70

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| UNITED STATES OF AMERICA,<br>Plaintiff,<br><br>v.<br><br>JOHN H. ARMBRUSTER & COMPANY, et al.,<br><br>Defendants. | CIVIL ACTION NO. 70C 108(1)<br><br>MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANT DOLAN'S MOTIONS TO STRIKE, DISMISS, AND SEVER, DEFENDANT ARMBRUSTER'S MOTION TO DISMISS, AND DEFENDANT HOWE'S AMENDMENTS TO ITS MOTION TO DISMISS AND TO STRIKE |

In this action under Title VIII of the Civil Rights Act of 1968, defendant Armbruster has filed a Motion to Dismiss, defendant Howe has filed Motions amending its Motion to Dismiss and its Motion to Strike, and defendant Dolan has filed Motions to Dismiss, Strike and Sever.

All three of these defendants attack the subsections of paragraph 4 of the Complaint, */ which alleges that the defendants have violated Title VIII in five specified ways. Defendant Dolan, the only defendant to suggest a reason why this paragraph does not state a claim upon which relief can be granted, argues that since Dolan Company Sales did not and does not own the real estate with respect to which the Complaint alleges violations of Title VIII, Dolan cannot

*/ Paragraphs 4 through 7 of our Complaint were quoted in our Memorandum opposing earlier Motions to Strike and to Dismiss and will not be repeated here.

have violated the law as the statute is only applicable to the owners of real estate, not their agents or other related parties.

Defendants Armbruster and Dolan also move to dismiss or to strike paragraph 6 of the Complaint, which alleges that the defendants' discriminatory housing practices are supported and maintained by their employment practices which have resulted in predominantly or all-white work forces. These defendants' contentions are almost identical with those made by all defendants except Dolan in earlier Motions to Strike and Dismiss - i.e., that allegations concerning these defendants employment practices can in no way be relevant to an action under Title VIII.

Finally, defendant Dolan has moved this Court for a severance, contending that the permissive joinder provisions of Rule 20, F.R.C.P., do not support the joining of the four defendants in this case in a single action.

The United States respectfully submits that none of the foregoing motions is meritorious, and requests this Court to deny all of them.

## DISCUSSION

### A. The Motions to Dismiss and to Strike

The basic considerations concerning the defendants' Motions to Strike and their application in the context of this litigation were extensively discussed in our earlier Memorandum (pp. 5-7, 14-16, and 20-23) and, since the present Motions to Strike present identical issues, will not be repeated here.

~~The only specific~~ ground put forward by any of these defendants ~~in this~~ second series of motions is that of defendant Dolan, who urges dismissal of the complaint because Title VIII of the Civil Rights Act of 1968 is asserted to be applicable only to owners of real estate, and not to real estate companies such as Dolan.

If it were a close question as to whether Title VIII reached the activities of real estate brokers, agents and salesmen, the principle that Civil Rights Acts are too broadly construed to relieve the inconvenience and humiliation of racial discrimination, Jones v. Mayer, 392 U. S. 409 (1968), Daniel v. Paul, 395 U. S. 295 (1969), Nesmith v. Y.M.C.A., 397 F. 2d 96 (4th Cir. 1968) would require reading the statute to encompass the activities of professional real estate people.

However, the statute is not ambiguous on this point. Section 804 of the Act, 42 U.S.C. 3604, provides that, subject to certain exceptions discussed below

> [I]t shall be unlawful
> (a) To refuse to sell or rent . . . because of race, color, religion, or national origin.
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental . . . because of race, color, religion or national origin.
> (c) To make . . . any . . . statement, . . . with respect to the sale or rental of a dwelling that indicates any preference . . . based on race, color, religion or national origin.

(d) To represent to any person because of race, color, religion or national origin that any dwelling is not available for inspection, sales or rental when such dwelling is in fact so available.

(e) [Blockbusting provision not here applicable]

This substantive portion of the statute does not say "It shall be unlawful for owners" or "real estate agents;" rather, it makes absolute prohibitions of certain activity. It would be anomalous for the statute not to apply to professional real estate organizations which have a far greater impact on housing and segregation therein than individual homeowners.

The exemptions to the coverage of the Act are three: (1) Religious organizations are exempted with respect to certain dwellings if the religion does not discriminate in its membership policies on grounds of race (Section 807); (2) the "Mrs. Murphy" exemption for owner-occupied buildings with four or fewer individual units (Section 803(b)(2)); and (3) certain activities by the owner of a single-family house are exempted (Section 803(b)(1)). Nowhere in the statute is there any indication that the actions of persons in the real estate business are beyond the prohibitions of the Act.

Section 813 of the Act, 42 U.S.C. 3613, under which this action was brought, authorizes the Attorney General to sue "any person or group of persons" when he has reasonable cause to believe they are "engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title." The word "person" is defined in Section 802(d) of the Act, 42 U.S.C. 3602(d) */ to include individuals, corporations, partnerships, etc.

In brief, there appears no basis in the statute for the restrictive reading of it suggested by defendant Dolan as the full thrust of the statute is toward prohibiting everyone from engaging in the discriminatory activity outlawed by Title VIII.

Defendant Dolan relies on a statement from United States v. Mintzes, 304 F. Supp. 1305, 1310 (D. Md. 1969) to the effect that the first four subsections of Section 804 "apply to actions by the owner of a dwelling who sells or rents it." A glance at the context of this language shows that it bears no relation whatever to the issue in this case. In Mintzes, Chief Judge Thomsen, in support of his holding that the "single family dwelling" exemption did not apply to blockbusting, distinguished these four subsections, (804(a)-(d)) in which the owner of a dwelling is a prospective defendant, from the blockbusting provision (804(e)) in which he is the obvious victim. He did not

*/ "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries. 42 U.S.C. 3602(d).

indicate that the Sections 804(a)-(d) were applicable <u>only</u> to owners, nor was he purporting to address himself to any such question, and any such reading would be contrary to the intent of Congress and severely undermine the thrust and effectiveness of Title VIII.

While there was little discussion of the matter, since few would question that "it shall be unlawful" applies to all, the legislative history shows that the proponents of federal fair housing legislation had no doubt that Title VIII applies to real estate brokers, agents, and salesmen. For example, former Secretary of Housing and Urban Development Weaver, in commenting on S. 1358 (90th Cong., 1st Sess.), which, with changes irrelevant to the present question, eventually became Title VIII, said:

> [The Act] would free builders, investors, lending institutions, <u>real estate brokers and agents</u> from their fear of economic loss from having to bear the burden of being among the first to support open occupancy. <u>Hearings before the Subcommittee on Housing and Urban Affairs of the Senate Banking and Currency Committee</u> on S. 1358, S. 2114, and S. 2280 (90th Cong., 1st Sess.) at p. 37.

A private individual, president of a firm in the mortgage bonding and real estate business, testifying in favor of federal fair housing legislation, said:

> I think it is to the interest of all of us in the real estate business to be put on an equal basis when it comes to accepting minority groups as buyers, borrowers or tenants. <u>Id.</u> at 398.

The Courts have entered decrees enjoining discrimination by real estate companies, both after contested litigation*/ and by consent.**/ In the Dubose case, which involved a real estate company's refusal to show Negroes its listings, the Court noted that the Civil Rights Act of 1866, 42 U.S.C. 1982, prohibits

> all racial discrimination, whether or not under color of law, with respect to the rights enumerated therein, including the right to purchase or lease property.
> Jones v. Mayer, 392 U.S. 409, 436 (1968)

The Fair Housing Act is written in language as unrestricted, in terms of persons subject to its provisions, as the language of the 1866 law. We see no basis for construing it otherwise.***/

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*/ Dubose, et al. v. Gorey Realty, ____ F. Supp. ____, No. 69 C 422 (N.D. Ill. 1969).

**/ United States v. West Suburban Board of Realtors, et al., C.A. No. 69-C-1460 (N.D. Ill. 1970).

***/ 42 U.S.C. 3604c (blockbusting), 3605 (financing) and 3606 (access to or membership in real estate organizations) are plainly directed at real estate companies. We can think of no more anomalous construction of the law than to hold that it prohibits some discriminatory conduct by realtors but other discriminatory practices only when they are performed by non-realtors.

B. Defendant Dolan's Motion to Sever

Defendant Dolan has moved for a severance, maintaining that this action as brought entails improper joinder of causes of action and parties defendant. We believe that the motion must fail. The defendants in this action are properly joined because the complaint alleges that their conduct is a part of the same pattern or practice of resistance to the enjoyment by blacks of rights secured by the Fair Housing Act. Moreover, the alleged wrongs by the various defendants are part of the same series of transactions and occurrences and involve common questions of law and fact, so that joinder is proper under Rule 20(a) of the Federal Rules of Civil Procedure.

(1) Pattern or Practice

Paragraph 7 of the complaint in this case, which follows a description of the alleged discriminatory practices of the various defendants, alleges that

> the conduct described in the preceding paragraphs constitute a pattern or practice of resistance by each defendant, and by the defendants collectively, to the full enjoyments [of the right to equal housing opporunities]

It is well established that there are two varieties of "pattern or practice" with which the civil rights laws are concerned. The first involves a policy of resistance by a single defendant, often marked by a series of unlawful acts on his part. See, e.g. United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969). The second kind of pattern or practice involves common resistance by several defendants, usually in the same geographic area, to the enjoyment of such rights, and this kind of pattern or practice may exist irrespective of whether the evidence is sufficient to establish that each defendant's resistance is sufficient to constitute such a pattern. See, e.g., United States v. The Warren Co., ____ F. Supp. ____, 10 Race Rel. L. Rep. 1293 (S.D. Ala. 1965 (three judge court)(copy attached).

The present complaint charges both kinds of pattern or practice. It spells out similar conduct by all of the defendants. It focuses especially, although by no means exclusively, on the municipality of University City, and the Answers to Interrogatories show in effect that all the defendants are alleged, among other things, to be steering Negroes to and white persons away from that location by unlawful conduct and representations. It is the joint impact of the alleged activities of all the defendants that imperils the stability of integrated areas and threatens resegregation, and the resistance to equal housing opportunities is alleged to be by all of them together, irrespective of whether or not there has been any coordination between them.

During the course of the debates of the Civil Rights Act of 1964, Senator Humphrey, the major spokesman for the bill, addressed himself to the pattern or practice provisions of the public accommodations */ and employment **/ sections of the proposed law. Referring to suits (such as this one) in which several defendants are all alleged to have engaged in one such pattern or practice, Mr. Humphrey noted that a discriminatory act by one defendant but justifiable nonracial refusals by the others would not be sufficient to make out a case. On the contrary,

> the issue would then be whether, as a matter of fact, there was a refusal of service or employment amounting to a pattern or practice, not whether the companies acted in concert or conspiracy. And the bill would authorize the Attorney General to join all or some of several defendants in the same action. 110 Cong. Rec. 14270 (June 18, 1964) (emphasis supplied)

Similarly, Senator Magnuson, alluding to the fact that only the Attorney General could request a three-judge court under Title II, stated:

> As suits by the Attorney General under Title II and suits involving a probability of a three-judge court under Title VII will involve a pattern or practice it is anticipated that most cases will involve a substantial number of defendants. 110 Cong. Rec. 12,947 (June 8, 1964) (emphasis supplied)

These statements and the judicial history of pattern or practice suits against multiple defendants clearly indicate Congress' understanding that, in pattern or practice cases, the Attorney General is authorized to join all defendants located in the same area when they will not be prejudiced

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*/ 42 U.S.C. 2000a et seq.

**/ 42 U.S.C. 2000e et seq. The "pattern or practice" provision of 42 U.S.C. 3613 closely parallels that of the earlier Acts, but omits the "intent" requirement.

by such joinder. If it were otherwise, enforcement efforts would be hampered, and the relief obtained would often be ineffective. In the present case, for example, it would take at least four suits, instead of one, to eliminate the same kinds of practices which are alleged to be threatening to resegregate University City.

United States v. The Warren Co., 10 Race Rel. L. Rptr. 1293 (S.D. Ala. 1965) involved allegations of a pattern or practice of discrimination by the operators of five unrelated and independently operated restaurants in Selma, Alabama. No collusion was charged. In fact, the incidents of discrimination at the various restaurants occurred on different dates. The three-judge court, including Circuit Judge Rives and District Judges Johnson and Thomas, found that each of the defendants had turned away Negroes, generally on single occasions shortly after the effective date of the Act. The Court entered an injunction against each defendant.

In United States v. Building Trades and Construction Council of St. Louis, 271 F. Supp 447, 271 F. Supp. 454 (E.D. Mo. 1966), the United States sued several independent labor unions in one suit, charging each with discrimination against Negroes in violation of Title VII of the Civil Rights Act of 1964. Several of the defendants agreed to consent decrees, but two of the unions took the case to trial */

*/ United States v. Sheetmetal Workers, 280 F. Supp. 719 (E.D. Mo. 1968)

and, after the District Court found in their favor, the United States appealed and the Court of Appeals reversed. */ Obviously, the relationship between the I.B.E.W. and the Sheetmetal Workers and their referral practices was much more tenuous than that between four realtors alleged to be steering Negroes to and whites from University City. Nevertheless, both the District Court and the Court of Appeals heard and decided the evidence against both unions together. The present case is _a fortiori_.

*/ _United States_ v. _Sheetmetal Workers_, 416 F. 2d 123, (8th Cir. 1969).

(2) Joinder Under Rule 20(a), F.R.C.P.:

Even absent the "pattern or practice" provision of 42 U.S.C. 3613, all defendants would be properly joined under Rule 20(a) of the Federal Rules of Civil Procedure. That Rule provides for permissive joinder of defendants if (1) the right to relief asserted against them arises out of the same transaction, occurrence or series of transactions or occurrences, and (2) some question of law or fact common to all defendants will arise in the action. */ Rule 20 also expressly states that a defendant may be properly joined even if he has no interest in all of the relief demanded.

There is a common series of transactions which is at the heart of this case - the alleged steering by all defendants of white persons to dome areas and Negroes to other areas on account of race, with particular reference to University City. Each defendant in this suit is alleged to have discriminated against Negroes in the same ways (Complaint, paragraphs 4 through 7) and the Plaintiff's Answers to several defendants' Interrogatories indicate that the times, locations, and witnesses of these alleged violations coincide in large measure. These kinds of

*/ See 2 Barron & Holtzoff, Federal Practice and Procedure Sec. 531 (Wright Ed. 1961); 3A Moore's Federal Practice ¶20.02 (2nd Ed. 1967).

factual concurrences,*/ even in the absence of a "conspiracy" (Dolan Memorandum, page 3) constitutes a "series of transactions and concurrences" within the meaning of Rule 20(a). Moreover, the cumulative result of the alleged acts of the defendants - e.g., steering blacks toward University City - may require more extensive relief against the defendants than would be appropriate if their actions were considered separately, as the snowballing or multiplier effects of their actions may call for comprehensive relief to

> eliminate the discriminatory effects of the past as well as [to] bar like discrimination in the future.
> Louisiana v. United States 380 U.S. 145, 154 (1965).

That there are common questions of law affecting all defendants, within the meaning of Rule 20(a), is apparent from the similarity of the legal issues raised by their various motions. For example, all defendants have, by motion to strike, challenged the relevance of employment practices (Complaint, paragraph 6) to a housing discrimination case. Several have questioned the Government's construction of 42 U.S.C.3604(c) (statements of racial preference with respect to sale or rental) and its constitutionality if read literally. The applicability of the Act

*/ Eastern Fireproofing Co. v. United States Gypsum Co. 160 F. Supp. 580, 581 (D. Mass. 1958).

to dealings by realtors with respect to single-family housing will undoubtedly be at issue with respect to each defendant. The issue of the nature and extent of affirmative relief, if any, which may be appropriate to correct the effects of past discrimination applies with equal force to all defendants, and all but Dolan have already raised this issue. "Good judicial husbandry" */ dictates that these issues, and others, all arising in a single context, be decided in one hearing.

The Supreme Court has recently expressed, in a different but related context, the general philosophy of the Federal Rules of Civil Procedure with respect to issues of this kind. In United Mine Workers v. Gibbs, 383 U. S. 715, 724 (1966), the Court said:

> Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.

"Fairness to the parties" does not require a severance here. The case is before the court sitting without a jury, and Dolan neither shows nor even claims that any specific prejudice would result from a trial as to all defendants together. Even if prejudice of some kind should appear later in the proceedings -- and it is difficult to see how

*/ United States v. Dogan, 314 F. 2d 767, 772 (5th Cir. 1963)

it could when the matter is before a court of equity -- Rule 20(b) authorizes the Court to order separate trials to prevent delay or prejudice.

The decisions of Courts in antitrust and other cases in which various defendants are alleged to have acted in a parallel fashion to deny rights to one or more plaintiffs -- an analogous situation to that here -- have been consistent with the liberal construction required by the Supreme Court. In Nagler v. Admiral Corporation, 248 F. 2d 319, (2d Cir. 1957) the District Court had held that a number of manufacturers, wholesalers, distributors and retailers had been improperly joined in an anti-trust suit by thirteen retailers alleging Robinson-Patman Act violations. The Court of Appeals, in an opinion by Chief Judge Clark, found that common questions of fact and law were raised by plaintiff's "suggestions" of "conscious parallelism" and reversed the decision below. Describing Rule 20(a) as "substitut[ing] principles of trial convenience and efficiency for rigid rules of interrelationship of parties," 248 F. 2d at 327, the Court said:

> Modern procedure favors the trial and disposition of similar cases together as a matter of court efficiency; this is shown by the popularity of these extensive joinder provisions, the most widely accepted of pleading reforms. This case would seem to promise gain in the employment, not repudiation, of the authority given. To force on this already overcrowded Court the

> the necessity of separate actions with accompanying pleading, discovery, pretrial and trial activities . . . would be quite intolerable." Id. at 328.

See also Gilmore v. James, 274 F. Supp. 75, 89-90 (N.D. Tex. 1967), aff'd 389 U.S. 572 (1968); Eastern Fireproofing Co. v. United States Gypsum Co., 160 F. Supp. 580 (D. Mass. 1958); CF. United States v. Mississippi, 380 U.S. 128 (1965).

The advantage to effective use of the Court's time and facilities inherent in joining all four companies in this case is apparent. If severance is granted, four separate pre-trial proceedings would be required; discovery and deposition proceedings would be more complicated; factual legal issues common to all defendants would have to be developed and considered four separate times; and the witnesses common to all defendants would have to be brought to court for four separate trials. Rule 20(a) was designed to prevent these inconveniences. It should be given an interpretation that will accomplish its purpose.

CONCLUSION

For the reasons stated above, we respectfully request this Court to deny each of the defendants' several motions.

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PUBLIC ACCOMMODATIONS
Restaurants—Alabama (Civil Rights Act of 1964)

## UNITED STATES of America, etc. v. THE WARREN COMPANY, etc., et al.

United States District Court, Southern District, Alabama, Northern Division, Civil Action No. 3437-64, June 30, 1965, ——F. Supp.——.

**SUMMARY: The United States brought suit in a federal district court under the Civil Rights Act of 1964 to enjoin operators of five restaurants in or near Selma, Alabama, from refusing to provide non-discriminatory service to Negroes. The court found that each defendant had, in pursuance of his regular policy, refused service to Negroes during July, 1964, and that under federal Supreme Court decisions, plaintiff is entitled to relief. An injunction was issued restraining defendants from refusing to admit Negroes to the premises or from refusing to make any of the goods, services, facilities, privileges, advantages or accommodations of the restaurants available to Negroes on the same basis as such are available to the general public.**

RIVES, Circuit Judge, and THOMAS and JOHNSON, District Judges.

This is a suit brought by the United States of America under the Civil Rights Act of 1964 for an injunction enjoining the defendants from refusing to admit Negroes to the premises of named restaurants, failing or refusing to sell food or meals and provide service and accommodations to Negroes on the same basis as non-Negroes.

### FINDINGS OF FACT

1. Each of the restaurants operated by the several defendants herein is principally engaged in selling food for consumption on the premises.

2. John E. Warren is the President of the Warren Company, Inc., a corporation which operates and has operated since before July 2, 1964, a business called Thirsty Boy Drive-In Restaurant in the city of Selma, Alabama.

3. The Warren Company, Inc. is now and has been since before July 2, 1964, engaged in serving and offering to serve the general public in the Thirsty Boy Drive-In Restaurant, and that its policy in the management of this restaurant is now, and has been since before July 2, 1964, to maintain a practice of refusal of service inside the Thirsty Boy Drive-In Restaurant to Negroes.

4. The Thirsty Boy Drive-In Restaurant obtained the food it served and other products which it sold from the list of suppliers set forth in the schedules attached as exhibits to the deposition of John E. Warren, in the nature and amounts set forth therein, during the periods stated therein.

5. On July 4, 1964, at approximately 3:00 p.m. in the afternoon, four Negroes, two young men and two young women, in a car, drove into the parking lot of the Thirsty Boy Drive-In Restaurant and were asked by John E. Warren to leave the parking lot; that they did so; and that immediately thereafter they returned on foot and entered the restaurant and sought to obtain service, whereupon Mr. Warren telephoned the office of Sheriff Clark of Dallas County and asked that the Sheriff come to his place of business to arrest the Negroes;

6. Sheriff Clark and some of his deputies came immediately to the Thirsty Boy Drive-In Restaurant and, after Mr. Warren had signed a complaint charging the four Negroes with trespassing after warning, removed the four Negroes from the Thirsty Boy Drive-In Restaurant under arrest.

7. The Warren Company, Inc. maintains a highway sign for the Thirsty Boy Drive-In Restaurant advertising the restaurant on Highway 80 West, outside the city of Selma, Alabama.

8. Otis G. Adams is and has been since before July 2, 1964, the sole owner and operator of the Selma Del Restaurant located at 225 Broad Street, U. S. Route 80, in the city of Selma, Alabama.

9. In the operation of the Selma Del Restaurant, Otis G. Adams is now and has been since before July 2, 1964, engaged in serving and offering to serve members of the general public, and that his policy in the management of that business is now and has been since before July 2, 1964, to maintain a practice of refusal of service to Negroes inside the restaurant.

10. The Selma Del Restaurant obtained the food it served and other products which it sold from the list of suppliers set forth in the schedules attached as exhibits to the deposition of Otis G. Adams in the nature and amounts set forth therein, during the periods stated therein.

11. On July 27, 1964, at 5:30 p.m., pursuant to the policy of the Selma Del Restaurant, Benny B. Graham, as an employee of this restaurant, refused service to two Negro women who sought to obtain service at the Selma Del.

12. Otis G. Adams maintained highway signs for the Selma Del Restaurant advertising the restaurant, on State Highway 14 and 22 and U. S. Highway 80, outside of Selma, Alabama, until October 1, 1964, when the signs were removed.

13. Otis G. Adams has maintained other advertising for the Selma Del Restaurant as set forth in a schedule attached to his deposition herein, including a travel map published by Highway Map Co., of Columbus, Ga.

14. John D. Wilson and Robert C. Wilson, partners, operate the Perrins Cafeteria located on U. S. Highway 80, 207 Broad Street, Selma, Alabama;

15. Robert C. Wilson and John D. Wilson are now and have been since before July 2, 1964, engaged in serving and offering to serve members of the general public, and that it is now and has been since before July 2, 1964, their policy in the management of that business to maintain a practice of refusal of service within the cafeteria premises to Negroes.

16. On July 27, 1964, at 5:30 p.m., two Negro men sought service within the Perrins Cafeteria and were refused service by Robert C. Wilson who informed them that they were trespassing and would be arrested after this warning if they did not leave, whereupon the Negroes left the premises of the cafeteria.

17. John D. and Robert C. Wilson stipulate that the Perrins Cafeteria obtained the food it served and other products which it sold in the amounts and kinds specified, from the suppliers named in the schedules attached to the deposition of Robert C. Wilson, during the periods stated therein.

18. Gerald A. Gilbert is now and has been since before July 2, 1964, the sole owner and operator of the restaurant called Chick-N-Treat Drive-In Restaurant which is located immediately outside of Selma, Alabama, on U. S. Highway 80 East, next to Glass House Drive-In Restaurant.

19. In the operation of the Chick-N-Treat Drive-In Restaurant, Gerald A. Gilbert is now and has been since before July 2, 1964, engaged in serving and offering to serve members of the general public, and that his policy in the management of that business is now and has been since before July 2, 1964, to maintain a practice of refusal of service to Negroes on the restaurant premises.

20. On July 3, 1964, at approximately 1:00 p.m., a car bearing New York license plates QC 7419, came to the Chick-N-Treat Drive-In Restaurant; that a Negro woman came to the window of the Chick-N-Treat to ask for service and was refused service at that time; and that the incident was reported by Gerald A. Gilbert to Sheriff Clark of Dallas County, Alabama, thereafter.

21. Lloyd Leon Walters and Nellie Mae Walters, partners, operate the Glass House Drive-In Restaurant on U. S. Highway 80 East, immediately outside Selma, Alabama, next to Chick-N-Treat Drive-In Restaurant.

22. In the operation of the Glass House Drive-In Restaurant, Lloyd Leon Walters and Nellie Mae Walters are now and have been since before July 2, 1964, engaged in serving and offering to serve the general public and that their policy in the management of that business, is now and has been since before July 2, 1964, to maintain a practice of refusal of service to Negroes within the premises of the Glass House Drive-In Restaurant.

23. On July 26, 1964, at approximately noon, two Negro airmen in uniform drove onto the premises of the Glass House Drive-In Restaurant and came to the door of the restaurant to obtain service; that Mrs. Walters refused them admission to the restaurant and that they then left the premises.

## CONCLUSIONS OF LAW

1. The Court has jurisdiction of this action under Section 207(a) of the Civil Rights Act of 1964 and under 28 U.S.C. 1345.

2. Under authority of *Heart of Atlanta Motel, Inc. v. United States*, et al., 379 U. S. 241, and *Katzenbach, Acting Attorney General, et al. v. McClung, et al.*, 379 U.S. 294 the Court finds that the plaintiff is entitled to the relief for which it has prayed.

Decree to be entered accordingly.

DECREE AND INJUNCTION

Pursuant to the Findings of Fact and Conclusions of Law of this Court made and entered on this date and for the reasons set out therein, it is ORDERED, ADJUDGED and DECREED that, John E. Warren, Gerald A. Gilbert, Lloyd Leon Walters, Nellie Mae Walters, Otis G. Adams, Bennie B. Graham, Robert C. Wilson, and John D. Wilson, Jr., their agents, employees, successors in interest, and all those in active concert or participation with them, be and each is hereby restrained and enjoined from:

(1) Refusing to admit Negroes to the premises of the named restaurants upon the same basis and under the same conditions as non-Negro members of the general public are admitted to the restaurants;

(2) Failing or refusing to sell food or meals and to provide service to Negro patrons upon the same basis and in the same manner as food, meals and service are made available to non-Negro members of the general public;

(3) Otherwise failing or refusing to make any of the goods, services, facilities, privileges, advantages or accommodations of the named restaurants available to Negroes upon the same basis and under the same conditions as they are available to non-Negro members of the general public, and

(4) Engaging in any act or practice which deprives, directly or indirectly, any Negro of the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the named establishments without discrimination or segregation on the ground of race or color.

It is further ORDERED, ADJUDGED and DECREED that all costs are to be taxed equally against the defendants.

Done, this the 30th day of June, 1965.

## CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that I have served copies of the foregoing Memorandum by mailing copies thereof, postage prepaid, addressed to counsel for the respective defendants as follows:

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This 4th day of May, 1970.

Walter W. Barnett

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