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T. A. Smedley

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# A Comparative Analysis of Title VIII and Section 1982

*T. A. Smedley**

Future chroniclers of the struggle for racial justice in the United States may note with some perplexity that the federal government, after a century of cautiously eschewing the power to combat racially discriminatory practices in housing, suddenly in 1968 entered the battle on two fronts. On April 11, The Civil Rights Act of 1968, with its Fair Housing Title,[1] became the law of the land. Just over two months later the Supreme Court in *Jones v. Alfred H. Mayer Co.* ruled, on the basis of earlier legislation, that refusal to sell housing because of the race of the prospective purchaser is unlawful.[2]

Prior to the launching of these two major salvos by the legislative and judicial branches, the executive department had fired a few probing rounds against the bastions of housing discrimination; but because they were relatively limited in range and ineffectual in result, those preliminary efforts created little commotion. The biggest gun employed in this tentative assault by the executive was the Presidential Executive Order No. 11063,[3] issued on November 20, 1962. This became the heralded "single stroke of the pen" remedy, which John F. Kennedy had made a campaign issue back in 1960 but had not found the strength to execute until he had been in office for nearly two years. The Order cited the unfairness, injustice, and inconsistency inherent in the granting of federal funds to construct and maintain housing from which American citizens are excluded because of their race, creed, color or national origin. It invoked the power, and duty, of the executive department to assure that federal laws are fairly administered and benefits thereunder are made available on a nondiscriminatory basis. The President directed all executive agencies "to take all action necessary and appropriate to prevent discrimination," on the basis of race, creed, color or national origin, in regard to the "sale, leasing, rental or other disposition of

* Professor of Law, Vanderbilt University; Director, Race Relations Law Survey.

1. Civil Rights Act of 1968, 82 Stat. 73. Titles VIII and IX contain the fair housing provisions.

2. 392 U.S. 409 (1968).

3. 27 Fed. Reg. 11527 (1962), 7 RACE REL. L. REP. 1019 (1962).

residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof," if such property and facilities were: (a) owned or operated by the federal government, or (b) provided with loans, grants or contributions made by the federal government, or (c) provided with loans insured or guaranteed by the federal government, or (d) provided by the development of land obtained through urban renewal programs carried out by state or local government agencies with the assistance of federal funds.[4] The Order also applied to institutions making housing loans insured or guaranteed by the federal government.

The President directed the federal agencies involved to attempt to secure compliance with the Order and its implementing regulations by first employing conciliation and persuasion, but thereafter by resorting to such enforcement weapons as cancellation of agreements to provide federal financial assistance, refusal to extend federal aid to any other program proposed by the offending persons, or withholding approval of a lending institution as a beneficiary under any federal assistance program. The agencies were also authorized to refer instances of non-compliance to the U. S. Attorney General, "for such civil or criminal action as he may deem appropriate."[5] Further, a President's Committee for Equal Opportunity in Housing was established with the responsibility of coordinating the activities of the various agencies under the Order and of encouraging the elimination of discrimination in housing built with federal assistance. However, the Committee had no affirmative enforcement powers. The Federal Housing Authority,[6] the Veterans Administration,[7] and some other executive department agencies[8] drew up regulations and directives designed to implement the Order.

While this action demonstrated a commendable concern in the executive department regarding the problems of racial discrimination

4. Exec. Order No. 11063, § 101 27 Fed. Reg. 11527 (1962).

5. *Id.* § 303.

6. FHA Housing and Home Finance Agency Regulations ch. II, Nov. 27 & 29, 1962 amendments, *reprinted in* 7 RACE REL. L. REP. 1283 (1962), and Aug. 12, 1963 amendment, *reprinted in* 8 RACE REL. L. REP. 1275 (1963); 24 C.F.R. § 200.320 (Supp. 1964) (nondiscrimination pledge); 24 C.F.R. §§ 200.300, 200.330 (Supp. 1964) (sale of FHA-acquired housing).

7. VA Regulations ch. I, Nov. 20, 1962 amendment, *reprinted in* 7 RACE REL. L. REP. 1281 (1962), and Interim Issue II 26-63-3, March 8, 1963, *reprinted in* 8 RACE REL. L. REP. 748 (1963); 38 C.F.R. § 36.4363 (1968) (nondiscrimination pledge).

8. *E.g.*, Farmers Home Administration, Dep't of Agriculture, Administration Letter 777 (444), *reprinted in* 7 RACE REL. L. REP. 1280 (1962); Secretary of Defense Directive on Nondiscrimination in Family Housing, *reprinted in* 8 RACE REL. L. REP. 325 (1963).

in housing, its practical effect as a remedy against such discrimination was limited by several considerations. By its own terms, the Executive Order is applicable only to housing built with federal assistance pursuant to agreements entered *after* November 20, 1962. Further, it is not broad enough to effect the practices of mortgage lending institutions not related to FHA mortgage insurance or VA mortgage guaranties. Thus, it left untouched most of the transactions of the innumerable banking and lending institutions which are in fact under some supervision and regulation by federal agencies.[9] In addition, the regulations adopted to implement the Order expressly exempt individual homeowners with FHA-insured or VA-guaranteed loans from the prohibition against racial discrimination in sales of their homes.[10] Also, the person against whom the discrimination is directed has no remedy, either in the form of damages or an injunctive order requiring a sale to him. Rather, effectuation of the protection intended is dependent on the action of federal administrative officials, who are vested with narrowly restricted powers.

In the face of the inadequacy of the efforts of the executive department, Congress refused to enact a proposed limited fair housing law in 1966,[11] but finally responded with such legislation in April, 1968. By an unlikely coincidence, at the precise time the final debates on this statute were being conducted in Congress, the Supreme Court was hearing arguments in the *Jones* case on the question of whether another federal statute, section 1982,[12] enacted 102 years earlier, prohibits discrimination against Negroes in the sale of housing. In the course of the 1968 congressional debates, it was suggested that if the Court answered the question in the affirmative, the pending legislation would not be needed because the 1866 statute would provide adequate protection against such discrimination.[13] Since the Court's decision in June that the earlier statute "bars *all* discrimination, private as well

9. *See generally* Note, *Nondiscrimination Implications of Federal Involvement in Housing*, 19 VAND. L. REV. 865, 880-85 (1966).

10. 24 C.F.R. § 200.315(b) (Supp. 1964). *See generally* Note, *supra* note 9 at 865, 888-93.

11. H.R. Doc. No. 14765, 89th Cong., 2d Sess. 25 (1966), introduced by Congressman Celler of New York, May 2, 1966.

12. 42 U.S.C. § 1982 (1964), originally enacted in the Civil Rights Act of 1866, as part of ch. 31, § 1, 14 Stat. 27, and re-enacted in the Enforcement Act of 1870, ch. 114, § 18, 16 Stat. 140, 144. The present text of § 1982 is as follows: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

13. *Hearings on H.R. 2516 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 229 (1968).

as public, in the sale or rental of property," many people now assume that the two statutes cover the same ground.

While there is, to be sure, considerable duplication of coverage, the two statutes differ substantially in scope of application and methods of enforcement.

Initially, it should be observed that the 1968 Act was not intended to supersede the post-Civil War era statute. The content of the 1968 congressional debates points to the knowledge of the members of Congress that the 1866 statute was still in effect and that it might soon be construed to apply to housing discrimination by private individuals. Nevertheless, the 1968 Act contains no provisions repealing or revising any terms of the earlier legislation, though the Act could easily have been so drawn had that result been intended. Instead, section 815 expressly declares that: "Nothing in this title [VIII] shall be construed to invalidate or limit any law of . . . any . . . jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title. . . ." Under such circumstances, one must assume that Congress did not intend the 1968 statute to affect the validity or application of its century-old predecessor.[14] Following the *Jones* decision, accusations were carried in the public press to the effect that the Supreme Court, in construing the 1866 Act to prohibit discriminatory acts by individual home owners selling their own property, had informed Congress that the legislators did not mean what they said in the 1968 Act. Such statements apparently must be credited to mis-information or irresponsibility.

Neither statute can be accurately categorized as the broader or narrower in scope, or necessarily the stronger or weaker in effective application. In seeking to implement the common purpose of eliminating discriminatory practices in the housing field, each act reaches areas not affected by the other. First, while section 1982 protects against discrimination because of race and color, Title VIII goes further, prohibiting the designated types of discriminatory conduct based on "race, color, religion or national origin."[15] Thus, protection against discrimination extends not only to Negroes but also to other people who have on occasion been denied the right to purchase or lease residential facilities because they are, for example, Mexican-

14. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 417 n.20 (1968).

15. Civil Rights Act of 1968 §§ 804, 805, 806, 82 Stat. 73 (1968) [hereinafter cited as 1968 Civil Rights Act].

Americans, or adherents of the Jewish faith, or persons of Italian or Polish ancestry.

Second, in regard to the types of discriminatory conduct proscribed, the 1968 Act appears to be somewhat more far-reaching. The older legislation attempts to insure that all citizens of the nation shall have the same rights to inherit, purchase, lease, sell, hold, and convey real . . . property" without racial discrimination. Though the language is broad, the protection appears to center on the specific transactions by which persons obtain and maintain ownership, possession, and use of property; and the housing discrimination intended to be eliminated would generally be of the kinds engaged in by owners of property trying to avoid selling or leasing to Negroes. In section 804, the 1968 statute explicitly makes it unlawful "to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person" because of race, religion or natural origin. It also forbids: (1) discrimination in "the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith;" (2) the making, printing or publishing of any notice, statement or advertisement, regarding the sale or rental of a dwelling, which indicates any preference, limitation or discrimination based on race, etc.; (3) false representations, made on racial, etc., considerations, that any dwelling is not available for inspection, sale or rental; and (4) blockbusting—inducing, with profit motivation, any person to sell or rent any dwelling by representations that persons of a particular race, etc., are about to move into the neighborhood.

Further, the effect of Title VIII of the 1968 Act reaches beyond the owner, seller or lessor. Section 805 expressly makes it unlawful for any bank or other business engaged in making real estate loans to deny financial assistance on the basis of race, etc., when the assistance is sought for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling. Also, it is unlawful to discriminate in regard to terms or conditions of the financial assistance because of the race, etc., of the person applying or of any person associated with him in connection with the transaction.[16] It is quite possible that the general language of the 1866 Act could be

16. However, § 805 expressly states that the restrictions contained therein are not to "impair the scope of effectiveness" of the § 803(b) exception, which exempts sales or rentals of single-family houses by their owners from the application of the Act in designated situations.

interpreted to prohibit racially discriminatory practices by lending institutions in the financing of purchases or rental of housing, since such practices could readily be considered to be an infringement of the equal rights of citizens to purchase, lease, and sell real property.[17] However, the 1968 statute not only removes all doubt as to prohibition of discriminatory financing, but it also covers transactions in which no sale or leasing is involved, by forbidding discrimination in the financing of construction, improvement, repair, and maintanance of housing.

Section 806 places restrictions also on those who provide brokerage services, by broadly prohibiting them from denying any person, because of race, etc., access to or membership or participation in any multiple-listing services, real estate brokers organizations, or other facilities relating to the business of selling and renting housing.

Finally, Congress included two significant provisions against intimidation of or interference with persons who have attempted to take advantage of the benefits of the statute or who have acted to comply with the statute by respecting the rights which it grants to others. Section 817 makes it unlawful to coerce, intimidate, threaten or interfere with any person exercising his statutory rights or any person aiding other persons to exercise their rights. It provides for civil remedies for such unlawful conduct—presumably including both damages and injunctive relief. Section 901 provides criminal sanctions against anyone who, because of race, etc., "by force or threat of force, wilfully injures, intimidates or interferes with" any person (or attempts to do so) because he is exercising rights under the Act or complying with the terms of the Act, or is aiding or encouraging others to obtain the benefits or to comply with obligations of the Act, or is lawfully participating in speech or assembly to oppose denials of rights granted by the Act. The penalties prescribed are: fines up to 1000 dollars and imprisonment up to one year, or both, if no bodily injury results from the wrongdoing; 10,000 dollar fines and ten years imprisonment, if bodily injury does result; and imprisonment for any term of years or for life, if death results from the violation.

On the other hand, a comparison of the two statutes discloses that the earlier Act is much broader in at least one respect: it grants

17. In the *Jones* case, the Supreme Court noted that the 1866 Act "does not refer explicitly to discrimination in financing arrangements or in the provision of brokerage services." However, it then promptly disclaimed any intention to express a view as to whether such services or facilities might under some circumstances be deemed to constitute "property" within the meaning of § 1982. 392 U.S. at 413 & n.10.

rights to all citizens, and it makes no exceptions as to the persons who are under the duty to recognize and respect the rights granted by the Act when they are engaged in the named types of transactions.[18] By contrast, the 1968 Act contains some temporary exemptions of persons and transactions through delays in the time at which it becomes effective, and also provides for significant permanent exemptions of certain persons and transactions from the application of statute.

Title VIII was designed to take effect in three stages, depending upon the kinds of housing covered and the types of transactions involved.[19] From the date of enactment to the end of 1968, the prohibitions against discrimination designated in section 804 applied only to transactions involving dwellings already subject to the effect of the 1962 Executive Order (housing owned or operated by the federal government and housing constructed with federal financial assistance or with federally insured loans under agreements made subsequent to November 20, 1962) and on which any required repayment of the grants or loans had not yet been completed at the date of the passage of the Act. Even as to dwellings within this classification, the Act did not apply during 1968 to the sale or rental of: (1) a multiple-family dwelling containing living quarters (rooms or apartments) for four or

18. The explicit determination of the Supreme Court in the *Jones* case that the 1866 statute prohibits discriminatory conduct by *private individuals*, as well as by governmental action, is the factor in the decision which gives that statute the potential for being an effective means of combatting racial diserimination in housing. This was the issue on which the two dissenting members of the Court expressed their disagreement with the majority.

19. 1968 Civil Rights Act §§ 803(a) & (b).

**Chart of Three Stage Coverage of Dwellings Under Section 804**

| April 11, 1968 | January 1, 1969 | January 1, 1970 |
|---|---|---|
| Covered if Federally assisted under agreements made after Nov. 20, 1962 and outstanding on April 11, 1968. | Covered regardless of whether or not Federally assisted. | All dwellings covered under Stages 1 and 2 plus any: |
| 1. Multi-family dwellings of five or more units; | | 1. Single family houses sold or reuted through a broker or other person in the business of selling or renting dwellings. |
| 2. Multi-family dwellings of four or fewer units if the owner does not reside in one of the units. | | 2. Single family houses offered for rent or sale through a discriminatory written notice or advertisement. |
| 3. Single family houses uot owned by private individuals; | | |
| 4. Single family houses owned by a private individual who owns more than three such houses or who, in any two-year period sells more than one such house in which he was not the most recent resident. | | |

[Taken from a pamphlet entitled "Fair Housing in Tennessee" published by the Tennessee Commission For Human Development (1968).]

fewer families (or single individuals), when the owner of the dwelling resided in one of such living quarters; and (2) a single-family house owned by a private individual, unless (a) he owned more than three such houses at any one time, or (b) he made, within a two-year period, more than one sale of such housing of which he was not the most recent resident (in which case the Act applied to all sales after the first one).

During the second stage, the calendar year of 1969, the Act became applicable to privately-financed housing, subject however to the same exemptions as those applied to the federally-financed housing during 1968. In addition, on January 1, 1969, the prohibitions against discrimination by lending institutions, stated in section 805, and by real estate brokerage organizations, stated in section 806, became effective.

The third stage, scheduled to begin on January 1, 1970, extends the coverage to the sale or leasing of single-family houses owned by private individuals, if the transactions are carried on with the use of services or facilities of real estate agents or other persons engaged in the business of selling or renting dwellings, or if advertisements or written notices indicating any preference, limitations or discrimination based on race, etc., are used in attempting to make the sales or leasings.

Thus, upon reaching its broadest coverage, the Act still will not apply to: (1) the rental of a multiple-family dwelling with units for four or fewer families (or single individuals) if the owner lives in one of the units; or (2) the sale or rental of a dwelling by its private owner, without the assistance of a real estate agent or the equivalent, and without advertisement or written notice indicating discriminatory preferences or limitations. However, this second exemption does not apply to an owner of four or more dwellings, and beyond the first sale, does not apply to an owner who, during a two-year period, makes more than one sale of a dwelling in which he was not the most recent resident. Further, there is a specific exemption declaring that the Act does not prohibit a religious organization, or a nonprofit organization operated or controlled by a religious organization, from limiting the sale, rental or occupancy of dwellings which it owns or operates for non-commercial purposes to persons of the same religion, unless membership in such religion is restricted on account of race, color, or national origin.[20] In addition, a bona fide private club which

20. 1968 Civil Rights Act § 807.

as an incident to its primary purposes, provides lodgings owned or operated by it for a non-commercial purpose is not prohibited from limiting the rental or occupancy of such lodgings to its own members.[21]

Since the statute covers all multiple-family dwellings of over four units, all multiple-family dwellings of two to four units when the owner is not a resident of the dwelling, all single-family houses not owned by private individuals, and all single-family houses sold through real estate agencies, it has been estimated that the prohibitions against discriminatory dealings will apply to between 75 and 85 per cent of the total housing supply of the nation after January 1, 1970.[22] The *Jones* decision, however, appears to make the 1866 statute applicable to 100 per cent of the total housing supply, without delay and without exemptions favoring single-family house owners.[23]

Two additional points of contrast between the scope of the two statutes should be noted. The 1866 Act provides for equal rights in regard to "real and personal property," while the 1968 Act prohibits discriminatory practices in transactions involving a "dwelling," which is defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or for the construction or location thereon of any such building, structure, or portion thereof."[24] While both cover realty, the recent legislation seems to be concerned only with "housing" property, used or to be used to provide residences. The earlier statute, however, applies as well to purely commercial property and agricultural lands not involving residential usage.

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21. *Id.*

22. *See* Robison, American Jewish Cong. Comm'n on Law and Social Action Report, March 25, 1968, at 1 ("estimated at 80 to 85 per cent of the total housing market"); National Comm'n Against Discrim. in Housing, Trends in Housing, vol. 12, no. 5, May-July, 1968, at 1 ("about 77 per cent of the Nation's total housing supply").

23. The fact that the 1866 Act has been held to apply to individual owners selling their single family dwellings, while the 1968 Act does not so apply, seems to have produced a sudden change of sentiment among some real estate agents. Though generally opposed in the past to restrictions on owners' power to sell housing according to racial preference, these agents have recently been heard to complain that HUD officials are at fault in concerning themselves with the enforcement of the 1968 Act, with its more limited coverage, instead of stressing the more absolute prohibitions of the 1866 Act as construed in the *Jones* case. One might assume that such complaints are not based entirely on a new-found enthusiasm for fair housing laws, but rather on the fear that individual house-owners, thinking only of the 1968 Act, will try to sell their houses without calling for the services of the real estate agents.

24. 1968 Civil Rights Act § 802(b).

Moreover, the inclusion of personal property within the coverage of the 1866 Act makes it applicable to the aspects of housing transactions which relate to furniture and other non-realty features of "dwellings." Thus, it apparently provides protection against certain discriminatory devices which might be resorted to in renting or selling furnished apartments or houses—such as offering a Negro bidder the same terms as white bidders in regard to the house and lot, but imposing harsher terms in regard to the furnishings. It is not clear that the 1968 Act includes such protection, though the prohibition in section 804(b) against discrimination "in the provision of services or *facilities*" in connection with the sale or rental of a dwelling might be construed to apply to discriminatory manipulations regarding personalty located in dwellings. Also reaching beyond the field of housing, the 1866 Act surely makes it unlawful for operators of retail stores to refuse to sell to Negroes because of race. Therefore, the earlier legislation definitely carries broader significance in the commercial world than does the recent statute.[25]

Finally, some substantial distinctions between the two statutes are to be found in the means by which their respective provisions may be enforced. Section 1982 of the 1866 Act merely declares the right and does not specify any remedies for violations. The plaintiffs in the *Jones* case brought suit under 28 U.S.C. section 1343(4), which confers jurisdiction on the federal district courts in civil actions "to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote." The complaint asked for injunctive relief and a small award of compensatory damages. The Supreme Court, in reversing the district court's dismissal of the complaint and the court of appeals's affirmance of that action, stated that the plaintiffs would be entitled to an injunction, and observed generally that: "[t]he fact that 42 U.S.C. [s]ection 1982 is couched in declaratory terms and provides no explicit method of enforcement does not, of course, prevent a federal court from fashioning an effective equitable remedy."[26]

Such a remedy could, and often would, include: (1) a preliminary

25. "It is entirely possible that, in subsequent litigation, the phrase 'real and personal property,' will be given constantly wider interpretation so that it will cover services in connection with property and, ultimately, services generally. By such a process, Section 1982 could become what Senator Trumbull said it was, a law to 'break down all discrimination between black men and white men.' " Robison, American Jewish Cong. Comm'n on Law and Social Action Report, June 26, 1960, at 10.

26. 392 U.S. at 414 n.13.

injunction restraining a defendant from selling or leasing the housing in question to any person other than the plaintiff pending a determination of the merits of the case (unless the sale or lease was expressly made subject to the rights of the plaintiff as they might later be determined); and (2) after a decision in favor of the plaintiff is reached, a permanent injunction which (a) prohibits the defendant from denying the plaintiff or any other persons the right to purchase or lease the housing because of their race, and (b) orders the defendant to sell or lease to the plaintiff the housing in question or some other housing of comparable quality, location, and utility.[27] This kind of relief is commonly provided under state fair housing laws.

The Supreme Court did not determine the Jones's right to recover damages, because it appeared that they had not in fact suffered any actual loss for which the law allows compensatory damages; nor did the Court pass upon the general issue of whether compensatory damages may be awarded for violation of section 1982.[28] However, since monetary loss can obviously result directly from discriminatory refusal to sell or rent housing[29] and since section 1343(4) expressly confers jurisdiction on the federal courts in actions to recover damages for violations of federally protected civil rights, it would seem to follow that compensatory damages for actual losses for which damages can be awarded under the common law should be recoverable.[30] In instances in which the defendant's discriminatory acts against the plaintiff were willfully and maliciously done, punitive damages might also be awarded.[31]

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27. Plaintiffs in the *Jones* case sought an order requiring defendants: (1) to sell them a named type of house on a specified lot or some other lot in the subdivision which would be sufficient for the type of house selected; (2) not to sell the designated lot pending the litigation; and (3) to refrain from future discrimination in the sale of homes in the subdivision. *See* cases discussed in note 31 *infra*.

28. 392 U.S. at 414 n.14. Damages in the amount of $50 were sought in the *Jones* case; but apparently no evidence of actual loss was offered, and the Supreme Court presumed that with the aid of injunctive relief plaintiffs would be able to buy a house from defendants at the prices being charged when plaintiffs had wrongfully been refused the opportunity to buy in 1965.

29. *See, e.g.*, Barnes v. Sind, 223 F. Supp. 572 (D.C. Md. 1963), *rev'd*, 341 F.2d 676 (4th Cir. 1965), 10 RACE REL. L. REP. 325 (1965); State Comm'n for Human Rights v. Zaccaro, 12 RACE REL. L. REP. 2283 (1968) (N.Y. State Comm'n for Human Rights, No. CH-14354-67, 1967).

30. However, it seems that these damages would not include compensation for litigation expenses incurred by plaintiffs in enforcing their rights. American common law has generally refused to regard expenses of litigation as a recoverable item of damages for civil wrongs. C. McCORMICK, DAMAGES § 61 (1935). *But see* cases discussed in note 31 *infra*.

31. In two cases decided on the basis of the *Jones* case, the Federal District Court for the Northern District of California found that the defendants had refused to rent housing to the

Whatever may be the scope of the remedy for violation of rignts protected by section 1982, the enforcement of those rights is generally restricted to a single method: the prosecution of a civil action by the aggrieved party, normally in the federal courts. In the case of a conspiracy among two or more persons to deprive another person of his rights under section 1982 or to injure him because of his having exercised such rights, 18 U.S.C. section 241[32] may sustain a criminal prosecution against the conspirators, with possible punishments of a fine up to 5000 dollars, or imprisonment up to ten years, or both.

In contrast to the earlier statute, the 1968 Act specifies a variety of methods by which enforcement of the provisions of the statute may be secured. The administration of the Act is delegated to the Secretary of the Department of Housing and Urban Development (HUD). He is expressly directed to cooperate with state and local agencies in carrying out programs for eliminating discriminatory housing practices, to carry on educational and conciliation activities which will further the purposes of this statute, and to work out programs to promote voluntary compliance with and to aid in enforcement of the statute.

In cases of violations, five types of remedies are provided:

(1) Administrative proceeding before the HUD Secretary.[33] Any person claiming to be discriminated against in violation of the Act

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plaintiffs because of race, and issued temporary injunctions prohibiting defendants from showing, renting, or selling the properties in question to any persons other than the plaintiffs and from refusing to show the properties to the plaintiffs at a reasonable time within 48 hours of the service of the order. As a result, the accommodations were promptly rented to the plaintiffs. Subscquently, the court entered judgments for sums of money which represented "actual damages, punitive damages, [and] attorneys fees and costs." Vaughn v. Su, No. 49,643 (injunction issued on July 19, 1968; damages judgment for $435 entered on December 3, 1968) (single-family dwelling); Turner v. Lazarus, No. 50,366 (injunction issued on November 22, 1968; damages judgment for $832.50 entered on December 3, 1968) (apartment in multiple-unit building). *See also* Taylor v. Castagna, U.S.D.C., S.D.N.Y., No. 68 Civil 4991, Dec. 13, 1968, in which the court, in a suit charging an apartment owner with racial discrimination in violation of sec. 1982, issued a temporary restraining order prohibiting defendant from renting the apartment in question to anyone other than plaintiff pending the outcome of the suit.

32. "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, . . . they shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

33. 1968 Civil Rights Act § 810. Under § 810(c), wherever state or municipal fair housing laws are in effect prohibiting discriminatory practices and providing remedies equivalent to those of the federal Act, the Secretary must refer a complaint to the proper state or municipal agency and must take no further action if that agency has begun proceedings on the complaint within 30 days of the referral and carries them forward promptly.

may file a written complaint with the Secretary within 180 days after the occurrence of the alleged unlawful conduct. The Secretary must then investigate the complaint and notify the complainant promptly whether he intends to resolve it. If he accepts the case and finds that discrimination has occurred, he must try to eliminate the unlawful practices by persuasion and conciliation. If he is unable to obtain voluntary compliance by such means, he is not vested with any power to enforce compliance. At that point the complainant may institute a civil action in a federal district court to enforce his rights under the Act. If the court finds that a discriminatory housing practice has occurred or is about to occur, it may enjoin the defendant from so acting, "or order such affirmative action as may be appropriate."[34]

(2) Civil action by the aggrieved party in federal or state court.[35] Without resorting to the administrative remedy, a person whose rights under the Act have been violated may institute a civil action in a federal district court or in a state or local court within 180 days after the alleged discriminatory conduct. In such a case the court "may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award the plaintiff actual damages and not more than 1000 dollars punitive damages, together with court costs and reasonable attorneys fees in the case of a prevailing plaintiff." Attorneys fees are awarded only if the plaintiff is deemed not to be financially able to bear such expenses. In some circumstances, a federal court may also appoint an attorney for the plaintiff and authorize the suit to be brought without payment of fees, costs, or security.

(3) Civil action by the United States Attorney General.[36] In situations in which the Attorney General has reasonable cause to believe (a) that a person or group of persons is engaged in a "pattern or practice of resistance to the full enjoyment of any of the rights granted by [Title VIII]," or (b) that any group has been denied any rights granted by this title, and "such denial raises an issue of general public importance," he may institute a civil suit in a federal district court, requesting such injunctive relief as may be needed "to insure the full enjoyment of rights granted by this title." The extent to which this authority will be exercised is within the discretion of the Attorney

34. *Id.* § 810(d). However, this subsection requires the aggrieved party to resort first to equivalent judicial remedies under state or municipal fair housing laws, if any such remedies exist.

35. *Id.* § 812.

36. *Id.* § 813(a).

General's office. While there is little basis for supposition as to whether this potentially effective remedy will be extensively employed, in the past few years good use has been made of similar authority, conferred by almost identical language in the Civil Rights Act of 1964, to combat discriminatory practices in employment and in the operation of public accommodations.[37]

(4) Civil action for interference with the exercise of rights.[38] Intimidation of or interference with persons exercising their rights under the Act or persons aiding others in exercising those rights is declared unlawful by section 817. This provision specifies that it may be enforced by "appropriate civil action." Surely such appropriate action would include a suit for injunctive relief to prevent the continuation of the wrongful conduct in the future. It should also include a suit to recover damages for past conduct violating this section, if the complainant can prove that he has sustained actual damages from the wrongdoing.

(5) Criminal prosecution for interference with the exercise of rights.[39] Forcible interference with persons complying with or exercising rights under the Act, or encouraging others to do so, is made a criminal offense by section 901. Enforcement of this sanction is in the hands of the federal district attorneys, who, of course, will be strongly influenced by the policies and attitudes of the U.S. Attorney General's office. Vigorous early use of this remedy could be quite effective in forestalling overt opposition to the enforcement of the Act and in creating a favorable atmosphere for both the confident exercise of rights created by the Act and the willing compliance with duties imposed by the Act. However, the obvious difficulties of proving the violations beyond a reasonable doubt and the probable disinclination of many juries to support strict enforcement of the open housing principle may reduce the effectiveness of the criminal remedy.

As this examination of the provisions of the 1866 and 1968 federal statutes indicates, the existence of two different pieces of legislation dealing in substantially different terms with racially discriminatory housing practices obviously does not represent an ideal situation. Some confusion of rights, remedies and obligations and some duplication of effort undoubtedly will occur. A single, comprehensive statute, carefully drafted to eliminate overlaps, to fill gaps, and to clarify ambiguities certainly would provide a better

37. Civil Rights Act of 1964, §§ 2000a-5 & 2000e-6 (1964).
38. 1968 Civil Rights Act § 817.
39. *Id.* § 901.

instrument for combatting discrimination in housing. However, in the nation's present political climate, it is unlikely that a new piece of legislation incorporating the strong points of the two existing statutes could be agreed upon by majorities in both branches of Congress. Thus, for the indefinite future, fair housing law in the United States apparently will continue to exist in the form of a patchwork structure consisting of the reconstruction period Act of 1866, The Federal Civil Rights Act of 1968, and a variety of state statutes and municipal ordinances.