Blockbusting: Judicial and Legislative Response to Real Estate Dealers' Excesses

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The term "blockbusting," alternatively but less popularly called "panic peddling," has been used to encompass a wide variety of activity by real estate brokers, agents, and speculators directed at influencing and exploiting the racial turnover in a neighborhood. Congressman Bingham of New York has defined it as "the practice of some unscrupulous real estate agents to scare property owners in a neighborhood into selling their property below its value by telling them that members of a minority group—for example, Negroes—are moving in." The representations made, however, expressly or impliedly include other related inducements for a homeowner to sell, such as a decline in property values, a decline in the quality of education available in the community, or an increase in the crime rate in the changing neighborhood. Although such phenomena arguably do occur when racial turnover begins, their pervasiveness is often exaggerated.

The purpose of this comment will be (1) to delineate and discuss the various techniques employed by a real estate blockbuster in exploiting a

1. "Blockbusting," although apparently the more accepted term today to describe exploitive activities by realtors relating to every stage of the racial turnover of a neighborhood from all white to all black, technically means the first sale in a previously all white area to a black—so that the racial homogeneity of the block is "busted" and the inhabitants are ready to be subjected to abuse. CHICAGO COMMISSION ON HUMAN RELATIONS, PANIC PEDDLING: WHAT YOU CAN DO ABOUT IT 6 (1971). It also applies, however, to the technique employed to bring a neighborhood to its breaking point, where the block is more than fifty percent black and the most persistent whites submit and begin their exodus. Marciniak, Breaking the Housing Barrier, 77 COMMONWEAL 588, 589 (1963). The term "panic peddling" more graphically describes the whole process of scare tactic inducements to elicit sales.

2. 112 CONG. REC. 18177 (1966) (remarks of Congressman Bingham).

3. See Marcus, Racial Composition and Home Price Changes: A Case Study, 32 J. AM. INST. PLANNERS 334 (1968), as authority for the proposition that whites may choose to move from a neighborhood not merely because of race or class prejudice, but because of changes in community services resulting from the black influx.

4. Some studies have shown, for example, that property values do not actually decline when blacks enter a neighborhood, and that the values might even increase. L. LAURENTI, PROPERTY VALUES AND RACE 47, 51-52 (1960); R. HELPER, RACIAL POLICIES AND PRACTICES OF REAL ESTATE BROKERS 68, 86 (1969).
changing neighborhood for his personal profit; (2) to analyze in depth the anti-blockbusting provision of the Fair Housing Act, the judicial interpretation of the provision and the problems surrounding its constitutionality; and (3) to conduct a brief survey of the various state and local controls on blockbusting, focusing on the remedies available to a resident of Chicago.

THE NATURE OF THE PROBLEM

A look at Chicago’s highly ethnic, generally lower middle class south-west side provides an illustration of how various factors make the inhabitants of a changing neighborhood vulnerable to the pressure tactics of a blockbuster. With the influx of blacks, insurance rates on automobile and homeowner policies are increased, cancelled, or made non-renewable. Neighborhood savings and loan associations might refuse to grant a second mortgage or a home-improvement loan because of the poor risk on an uninsured piece of property in a changing neighborhood. White homeowners may become frustrated in their attempts to maintain upkeep on or improve their property, thus further encouraging their exodus. Public schools quickly become overcrowded with the immigration of blacks. The impact of large black families upon public school enrollment is multiplied by the fact that few black children go to parochial schools. When whites leave, the parochial school enrollment might decline while the public school enrollment proportionately increases. Sporadic instances of violence are twisted out of proportion because of racial overtones—for example, a fight between a white street gang and a black street gang might cause panic, whereas, in the past a violent incident between two white street gangs might have been an accepted fact of community life.


6. The Chicago Southwest Community Congress [hereinafter referred to as the S.C.C.] is an “umbrella group” organization, comprised of and funded principally by other smaller organizations in the community (PTAs, church groups, local community block clubs). The S.C.C. is based in and encompasses most of Chicago’s heavily ethnic southwest side, undoubtedly the most volatile area with respect to racial change in Chicago at the present time. Such community organizations as the S.C.C. in Chicago not only perform an effective informational function in combating blockbusters, but are often instrumental in effecting, directly and indirectly, changes in the law to adapt to community needs and in implementing the law at a grass roots level. Interview with James Capraro of the S.C.C., at 5911 South Kedzie Avenue in Chicago, October 19, 1972 [hereinafter referred to as Capraro Interview].

7. Automobile insurance rates are substantially affected by the location of the insured’s residence. The S.C.C. calls this practice “red lining.” Capraro Interview.
The blockbuster typically takes advantage of such a situation, where a myriad of factors are already causing community unrest and discontent, and adds fuel to the fire in order to enhance his personal profit. Armed with this formidable evidence, he contacts individual homeowners by letter, leaflet, telephone, or door-to-door solicitation, expressly or impliedly alluding to the desirability of getting out now "before you lose the full value of your property." The overuse and misuse of "for sale" and "sold" signs add further credibility to his statements about other neighbors' decisions to sell and leave.

Once the white homeowner can be persuaded into selling, the blockbuster's financial gains are realized through various methods. Most simply, he can obtain listings on the homes and merely collect his commissions on the sale directly from a white to a black. The greatest profits can be reaped, however, by the real estate speculator, who buys the homes from whites himself at a deflated price because of his representations about the decline of property values, and then sells them to blacks at an inflated price. Financial institutions generally avoid financing the purchase of a home in a changing area, categorizing it as a bad credit risk to do so, unless an FHA insured mortgage can be obtained. The blockbusting speculator can therefore step in and finance the black's purchase on his own terms, with inflated credit charges, retaining title to the building so that in the event of default the house can be repossessed and resold to another black on the same terms. Any payments made by the first buyer are retained by the blockbuster and his profit is multiplied. A broker might also collaborate with a black purchaser to defraud the FHA into


Consider a more graphic description: "Now, you'd probably ask why a [black] buys from guys like me, if my credit charges are so criminal. Simple. Blacks can't get credit. The places that give a white guy a conventional mortgage turn thumbs down on blacks. Savings and loan companies and commercial banks think blacks are a bad risk. But my credit is great. It's good with any bank in town. It's also good with insurance companies. And just by putting an ad in a daily newspaper I can raise cash by selling my contract paper at a discount to some of the most reputable doctors, dentists, lawyers, and other professionals in town.

"Still, you might wonder what happens if [the black] doesn't pay. No sweat to me. When it does happen in my business, I take no loss since I retain title to property until contracts are completed. I keep all payments made until that time, evict the owners and either rent the building or resell it on about the same terms." Id.
insuring a mortgage when the black is really unable to assume the financial burden, only to increase the probability of a foreclosure.\textsuperscript{11}

Blockbusting can be a lucrative venture, outweighing for many real estate speculators the fear of legal sanction, or the pangs of conscience. Those who are so far removed from the situation as to doubt this observation need only digest the following documented example from Chicago's southwest side:

In one block in [the community of] South Lynne, for example, Marshfield, one block west of Ashland ave. [sic]: 6427 S. Marshfield, sold June, 1968, for $11,500, purchased October, 1968, for $20,000; 6429 S. Marshfield, a residence approximately 70 years old, purchased by a numbered bank trust in June, 1968, for $6,800, sold two and one-half months later, under an FHA loan, for $14,000; 6356 S. Marshfield, sold to a real estate dealer for $6,500, purchased for $15,500; 6347 S. Marshfield, sold for $11,000, purchased for $18,500; 6415 S. Marshfield, purchased by a trust for $10,000, soon sold for $17,500.\textsuperscript{12}

Consider the more graphic hypothetical of a self-confessed blockbuster:

Let's look at a typical sale. I buy a house from a white couple for $12,000. The house is worth $15,000 but I convince them that as soon as the blacks get in and begin to wreck the neighborhood, it would only be worth seven. Next I sell the same house to a black named Dunbar for $18,000. . . . I finance the deal myself "on contract." When the contract is fulfilled, Dunbar will have paid me principal and interest totaling $36,000. So my profit is $24,000. Not bad for a day's work. Now multiply that times 40 houses on a block and you begin to see what I'm talking about.\textsuperscript{13}

As one commentator has put it, "blockbusting is a durable, dynamic institution, richly powered by that bedrock American fuel, profit."\textsuperscript{14}

It must not be forgotten that the racially changing neighborhood is not an isolated phenomenon necessarily limited in space and time—it is a permanent process of the modern urban environment. According to the latest national census, the proportion of blacks in the city has grown from 17.7 percent to 23.3 percent, and in the suburbs from 4.2 percent to 4.5 percent.\textsuperscript{15} The increase in the larger urban areas has been proportionately greater. The New York metropolitan area, for example, has an increased black population of 53 percent.\textsuperscript{16} And there seem to be no sig-

\textsuperscript{12} Adams, People Next Door, Southwest News Herald (Chicago), Dec. 3, 1970, at 20, col. 5.
\textsuperscript{13} Blockbusting: The Tale of a Rat, supra note 10.
\textsuperscript{14} Adams, supra note 12, at 21, col. 3.
\textsuperscript{15} N.Y. Times, Feb. 11, 1971, at 1, col. 5 as quoted in Note, Blockbusting: A Novel Statutory Approach to an Increasingly Serious Problem, supra note 11, at 538.
ntific factors at this point militating against the continuing urban migration of blacks in even greater proportions. Thus, the opportunities for blockbusting may change location within a city, but they may never disappear.

The blockbuster's determination is perhaps surpassed only by his ingenuity in plotting tactics. A blockbusting speculator might elicit a lower selling price from residents fearful enough to have already decided to sell by listing their home for 60 days under an exclusive agreement and then telling the owners, once the 60 days had elapsed, that the house cannot be sold for the asking price because the neighborhood is "too far gone." Of course, little or no effort is made in finding a buyer during the 60 days, and the door is then open to the broker to offer to take the house off the owner's hands.17 A realtor might sell a house to a black family peculiarly unsuited for the property—perhaps because of their financial situation or because of the size of the family in relation to the house—and then use them as an example to white residents of "how blacks cannot handle their property."18 Much less subtle and ingenious tactics have also been reported, however. A real estate speculator might hire young blacks to turn over garbage cans,19 throw bricks through windows,20 hire black welfare mothers to stage parades down the streets of the neighborhood,21 or arrange for residents to receive phone calls asking for people named "Chlorox Johnson" or "Eustice Mae."22

Some commentators have felt that the blame for the constant re-segregation and instability of changing neighborhoods cannot really be placed upon the blockbuster, and that community racial prejudice and other related factors would cause a complete racial turnover in any event.23 This argument may have some validity, but it certainly does not in any way justify or legitimaze the activity of the blockbuster. It would be difficult to persuade concerned community inhabitants who are trying to achieve some stability and to dispel misunderstanding that the real estate blockbuster, and especially the speculator who buys low and sells high by ex-

17. Adams, supra note 12, at 20, col. 5.
23. See Glassberg, supra note 10, at 149.
exploiting stereotypes and playing on emotions, is legitimately "making the best out of a bad situation."

The blockbuster might even justify his actions as constituting needed assistance to blacks who are otherwise unable to buy in a predominantly white neighborhood and thus actually promoting integration. But the tactics and motives of the typical blockbuster hardly support this notion. The blockbuster's activity seems aimed at ultimately bringing the neighborhood to its tipping point, where there is a fast and irreversible emigration of whites and a corresponding influx of blacks. This is when his greatest profit is realized and his activity becomes most intense. Furthermore, realtors are known to show homes in a racially changing area only to blacks, thereby aiding the racial turnover without technically engaging in blockbusting.

Racial blockbusting destroys the tenuous structure of integration which many neighborhoods try to build to forestall that fatal pattern of white exodus and black influx. Blockbusting—"panic peddling"—inflames the already-sensitive wound of racial fear and distrust; it envelops one neighborhood, takes startlingly high profits from both fleeing white and incoming Negro, and leaves a neighborhood exhausted.

It leaves a corrosive trail of vicious attitudes: a black associating all whites with the real estate pirate (score another one for "white racism"), and so debt burdened that he cannot improve his property. Whites also victimized financially, and running away from their roots and their best instincts into a suburban sanctuary of hardened attitudes and bitter memories.

FEDERAL CONTROL OF BLOCKBUSTING: CONGRESSIONAL-JUDICIAL CONCERN

"[B]lockbusting" is perhaps the most pernicious device used by realtors and by others today to frighten people. Certainly, if we seek to eliminate the racial hatreds attendant upon a change of neighborhood, and if we intend to try to have stabilized neighborhoods, the acceptance of this amendment is one of the most important devices to achieve that end.

Although various state and local governments had already been dealing with blockbusting for a number of years, national control of the problem arrived with the passage of the Civil Rights Act of 1968 and the inclusion of an anti-blockbusting amendment in the Fair Housing section of

27. 112 CONG. REC. 18178 (1966) (remarks of Congressman Dingell).
28. See text, pp. 833-38 infra.
the Act. Subsection 3604(e) of Title 42 of the United States Code makes it unlawful

[f]or profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.81

The relatively simple language of the provision belies the intricacies which are often involved in blockbusting. Narrow judicial interpretation of subsection 3604(e) could seriously hamper its effectiveness, but the courts have thus far generally interpreted it to accommodate the broad purposes for which it was seemingly enacted.82 Although the prohibitions against discrimination in the sale of housing (contained in sections 3604 (a) (b) and (d)) do not apply, within statutorily defined limitations, to "any single family house sold or rented by an owner" by virtue of subsection 3603(b)(1),83 United States district courts have recognized that the exemption does not apply to the blockbusting provision of subsection 3604(e). In United States v. Mintzes84 the court rejected the petitioner's contentions that representations made to the owners of a single-family residence were not a violation of subsection 3604(e), finding that the exemption in section 3603 applies only to single-family houses sold or rented by the owner. Where the owner does not "sell or rent" and resists the blockbuster's representations, the exemption is not applicable and a violation of the section has been committed by the blockbuster. Although the court found that the statute might be clearer, the draftsmen could not have intended to leave the owner of a single-family residence who does not sell without any recourse against the blockbuster:

This construction is in accord with the general purpose of the Act. Any other construction would weaken the thrust of the Act by perpetuating the right of blockbusters to prey on the fears of the owners of single-family houses which are not sold or rented or offered for sale or rent.85

The court's analysis still leaves open the possibility that the exemption might apply and free the blockbuster from liability where the owner of a single-family residence does sell after the representations are made. But it seems clear that, under subsection 3604(e), the homeowner is being protected from the blockbuster, whose disruptive activity is the real object of the subsection's concern, and that Congress could not have hinged

31. Id.
34. 304 F. Supp. 1305 (D. Md. 1969). This was the first action brought by the Attorney General to enforce § 3604(e).
35. Id. at 1309.
an infraction of the subsection on the quite irrelevant point of whether
the homeowner later sells or does not. This seems to be the interpretation
of the court in United States v. Mitchell, where it held that subsection
3604(e) "forbids 'blockbusting' representations made by an agent to an
owner to induce him to sell, whether successful or not. . . . And while
certain sales are exempt under section 3603(b)(1), blockbusting represen-
tations are not exempted anywhere or at any time."36

At least one court has held that no specific intent to deny to persons
protected by the Act a right granted by the Act need be found, but only
that the representations be made to induce, for profit, one to sell or rent.37
And the words "for profit" have been interpreted as meaning for the pur-
pose of obtaining financial gain in any form, including the mere listing
of property and not just the purchases and resale transaction of a spec-
culator.38

A delineation of the exact content of the representations required to
make them actionable has aroused some judicial concern. In United
States v. Mitchell39 the defendants claimed that some of their salesmen's
representations did not explicitly articulate to the homeowners the fact
that blacks were moving in, and that as a result property values would
decline and that therefore they had better sell. The court countered
this argument by stating,

. . . Congress surely did not intend that in order to violate the Act a salesman must
say, "For my own profit, I would like to induce you to sell your house by telling
you that Negroes are moving into your neighborhood." On the other hand Congress
did not intend for a man to be deemed a blockbuster merely by driving through
a transitional neighborhood with a sign "XYZ Realty Co." lettered on his car door.
To avoid both extremes, it would seem necessary to ask: How would a reasonable
man interpret the acts and words of the salesman under the circumstances in which
these acts were done and these words were said. . . . A § 3604(e) "representation,"
then, would be any acts or words that would be likely to convey to a reasonable
man, under the circumstances, the idea that members of a particular race, color,
religion or national origin are or may be entering his neighborhood.40

Representations made by the blockbuster need not be false to be ac-
tionable,41 nor need they be successful in convincing the owner of a home

37. 304 F. Supp. at 1311.
38. Id.
40. Id. at 479.
tra, regarding a state regulation, Abel v. Lomenzo, 25 App. Div. 2d 104, 267
N.Y.S.2d 265 (1966) (truth held to be a defense).
to sell—the statute clearly includes the words “induce or attempt to induce” as constituting a violation.\footnote{42. See Brown v. State Realty Co., 304 F. Supp. 1236, 1241 (N.D. Ga. 1969).}

The first cases under the section, as expected, attacked the constitutional basis for Congress’ power to enact the provision. Although Congress intended to rest its questioned constitutional authority to pass the entirety of the Fair Housing Act primarily on the commerce clause,\footnote{43. See generally as examples of case authority for this proposition, Katzenbach v. McClung, 379 U.S. 294 (1964); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Wickard v. Filburn, 317 U.S. 111 (1942).} a Supreme Court decision rendered a month after the Act was enacted paved the way for the courts to utilize the thirteenth amendment’s grant of power to Congress to enforce the prohibitions against slavery and the “badges and incidents” thereof\footnote{44. See Civil Rights Cases, 109 U.S. 3, 20 (1883). The thirteenth amendment provides: “[N]either slavery, nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. Const. amend. XIII, § 1.} as a constitutional basis for the Act. In \textit{Jones v. Alfred H. Mayer, Co.},\footnote{45. 392 U.S. 409 (1968).} the Supreme Court found that all racial discrimination in the sale or rental of property, whether there is state involvement or not, could be legitimately prohibited by congressional action by virtue of the thirteenth amendment. The case did not involve, however, the Fair Housing Act of 1968, but was specifically decided under section 1982 of the Civil Rights Act of 1866,\footnote{46. 42 U.S.C. § 1982 (1970).} whose general language the Court construed as prohibiting such discrimination by individuals. The Court, in specifically noting the differences between section 1982 and the Fair Housing Act provisions in order to quell any fear that “section 1982 in any way diminishes the significance of the law recently enacted by Congress,” unveiled some problems in using the thirteenth amendment as a constitutional basis for certain provisions in the 1968 Act.\footnote{47. 392 U.S. at 413. For example, “the statute in this case deals only with racial discrimination and does not address itself to discrimination on grounds of religion or national origin ... [nor does it] prohibit advertising or other representations that indicate discriminatory preferences.” \textit{Id.}}

The first cases based on subsection 3604(e) of the 1968 Act nevertheless followed the example of \textit{Jones} and used the thirteenth amendment as the basis for federal jurisdiction over blockbusting, rejecting any reli-
ancence on the commerce clause. In Brown v. State Realty Co., the court found "no evidence that the activities proscribed . . . are in interstate commerce," presumably because none was offered by plaintiffs. The court also rejected the plaintiff's contention that the enabling clause (section five) of the fourteenth amendment gives Congress the power to enforce the equal protection guarantee of that amendment without regard to state action or involvement. In so doing, the court held itself to a restrictive reading of the Supreme Court decision in United States v. Guest, in which six of the eight deliberating justices read a state action requirement into the fourteenth amendment. In United States v. Mintzes, another federal district court, in a terse one sentence proclamation, indicated unequivocally that it felt the commerce clause could not sustain the constitutionality of subsection 3604(e), without further elaboration. In the next breath the court rejected any fourteenth amendment basis because of the absence of any state action, footnoting a Maryland statute and a Baltimore ordinance prohibiting blockbusting to buttress its judgment that the State of Maryland, where the case originated, in no way condoned the actions of defendants. The court then went on to adopt the reasoning of the Brown case in basing the constitutionality of subsection 3604(e) on the thirteenth amendment, even though, as with Brown, the case in no way directly involved blacks as parties.

It is recognized that the practices condemned by the provision impede the rights granted in §1982 and constitute a fundamental element in the perpetuation of segregated neighborhoods, racial ghettos and the concomitant evils which have been universally recognized to emanate therefrom. Such iniquitous conduct, trafficking as it does on the fears of whites and the desperation of Negroes, clearly affects equality in housing and is abhorred by all citizens, regardless of their personal views on the racial question.

To use such reasoning to tie up subsection 3604(e) with the badges and incidents of slavery and the thirteenth amendment may be morally persuasive, but vulnerable to questioning by a conservative court. Those judges concerned with the future vitality of subsection 3604(e) might well begin to articulate an interstate commerce clause justification for the defendant with having sold them homes for a price above what a white would have been charged in a normal market. It would be difficult to extend relief, on the basis of the 1866 Act, to white homeowners who are induced to sell for less than the normal market price, since that Act only alludes to discrimination based on race.

49. Id. at 1239.
provision, which a less than expansive reading of Supreme Court decisions in the area could well provide.  

It seems clear that although subsection 3604(e) prohibits certain representations, it would withstand any attack on first amendment freedom of speech grounds, since the representations proscribed must be made in a commercial context, as indicated by the words "for profit" in the provision itself. An infringement upon free speech has been justified more easily in a commercial context by the Supreme Court on more than one occasion; and at least one court has characterized subsection 3604(e)'s prohibitions in this manner, in noting that the words "for profit" were evidently included in §3604(e) to distinguish and eliminate from the operation of that subsection statements made in social, political or other contexts, as distinguished from a commercial context, where the person making the representations hopes to obtain some financial gain as a result of the representations. . . . The inclusion of statements made in social or political contexts would have raised serious First Amendment problems.

Other courts have dealt with the contention that subsection 3604(e) flies in the face of the first amendment freedom of speech guarantee in a slightly different manner. The court in United States v. Bob Lawrence Realty, Inc. in balancing the right of the real estate agent to conduct his business with the right of the citizen to be free from the pressure of panic peddling, characterized the statute as being directed at conduct, not speech.

It is evident that the statute does not make mere speech unlawful. What it does make unlawful is economic exploitation of racial bias and panic selling. We conclude that the statute is one regulating conduct, and that any inhibiting effect it may have upon speech is justified by the Government's interest in protecting its citizens from discriminatory housing practices and is not violative of the First Amendment.

In the situation where a representation is given only after a homeowner has first initiated an inquiry, a more difficult first amendment problem is presented. A Maryland district court in United States v. Mintzes


felt that such representations would be protected by the first amendment. The court in Brown v. State Realty Co.\textsuperscript{59} disagreed, finding that even if the homeowner initiates contact with the agent or even first raises the subject of Negro purchasers, the agent's subsequent representations are still properly proscribed. "The conduct condemned and the responsibility placed by the statute on the agent is to refrain absolutely from any such representations."\textsuperscript{60} Even if the Mintzes analysis is adhered to, however, it would not require the statute to be deemed unconstitutional on its face; and the effect of such an interpretation would not seriously hamper enforcement in any event, since the blockbuster typically makes uninvited representations.\textsuperscript{61}

Other problems concerning the effectiveness of subsection 3604(e) are found in the procedural framework set up to implement and enforce the provisions of the Fair Housing Act. Under the Act an individual is provided a choice of procedures in redressing his grievances. He may file an action himself, civil in nature, in the federal courts,\textsuperscript{62} or he may lodge a complaint with the Department of Housing and Urban Development (hereinafter referred to as HUD).\textsuperscript{63} Given the choice of hiring one's own counsel\textsuperscript{64} to file an action against a blockbuster or of merely lodging a complaint with HUD and letting that federal administrative agency do all the work and bear the cost, the latter would seem to be the more travelled avenue, especially considering the economic status of most of those who are the object of blockbusters' interest. But the administrative procedure seems to be decidedly inferior as a means of getting results. Most importantly, HUD, as a result of an amendment proferred by Illinois's late Senator Everett McKinley Dirksen, was stripped of any real enforcement power in the final version of the Act.\textsuperscript{65} Under the HUD procedure, a person may file a written complaint with the agency, whereupon an investigation ensues culminating in a decision by HUD
as to whether or not it will attempt to resolve the matter. If HUD decides to handle the matter, it proceeds "by informal methods of conference, conciliation, and persuasion."66 Furthermore, HUD must first determine whether a state or local agency acting under the authority of parallel law could resolve the matter before it proceeds to take further action.67

Additional factors would seem to limit the desirability of proceeding through HUD. Although an individual is not precluded from later filing an individual court action if HUD fails in its efforts, he must wait at least thirty days after his original complaint with HUD was filed before doing so.68 This seemingly rather short time period may be crucial when viewed in the context of panic peddling, especially in light of the fact that during the thirty days HUD itself is not empowered to issue any restraining orders. In addition, a federal court is denied jurisdiction if, after a HUD complaint has proved to be ineffective and the state agencies which HUD is required to notify also cannot get results, "... the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided [by the Act]."69 There is no such limitation where a person goes directly into court himself without first complaining to HUD—the federal court has jurisdiction without regard to the adequacy of state law.70 The provisions for appointment of counsel and waiver and/or the awarding of costs and fees71 also appear not to apply to the provisions granting an individual the right to proceed on his own after HUD's failure,72 at least under a strict construction of the Act.73 Another strict construction of the Act might deprive an individual, who had first resorted to HUD, of relief as extensive as that granted to those who enter the federal court in the first instance. Under section 3612, dealing with individual actions in the first instance, a court is empowered to grant "any permanent or temporary injunction, temporary restraining order, or other order and ... actual damages and not more than $1,000 punitive dam-

69. Id.
71. 42 U.S.C. §§ 3612(b), (c) (1970).
ages . . ." while under subsection 3610(d), after HUD's failure to resolve the matter to the complainant's satisfaction, a court can only "enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate." In view of the type of attitude the courts have thus far taken toward the substantive provisions of the Act, however, especially the blockbusting provision, such constructions at this point seem improbable. And in any event, as noted earlier, an aggrieved individual might of course still choose the HUD procedure over filing an individual action because of financial considerations.

A third means of enforcing the provision is provided for in the Act, however. The Attorney General is authorized, under section 3613, to bring an action, civil in nature, to seek injunctive or other appropriate relief whenever he "has reasonable cause to believe [1] that any 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 this subchapter . . . or [2] that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance." The key language under these two alternatives, upon which Justice Department intervention is conditioned, has also been the subject of judicial interpretation. One district court has held that whether or not the Attorney General has "reasonable cause to believe" that a violation authorizing his intervention has taken place is not a proper subject for judicial inquiry. In United States v. Mitchell the defendants sought answers to interrogatories which would reveal how the Attorney General had concluded that reasonable cause existed. The court, citing two analogous cases involving similar statutory provisions and the remarks of the Chairman of the House Judiciary Committee, held that "the Attorney General . . . decides whether reasonable cause exists and that the

74. 42 U.S.C. § 3612(c) (emphasis added).
75. Note, supra note 72, at 179 (emphasis in original). Damages may also pose a problem under 3612(c), however, since punitive damages are limited to $1000. "Such an amount may be significant in the case of the discriminator who seeks no profit, but it will not suffice to deter a blockbuster or compensate an injured homeowner. The blockbuster is likely to view this amount as a small overhead expense in a highly profitable financial endeavor." Id. at 180.
76. See discussion in text at p. 823 supra.
80. 110 CONG. REC. 15895 (1964) (remarks of Congressman Celler).
issue of reasonable cause does not present a 'separate litigable issue.'” 81 "[T]he Court's function is to determine whether the defendants have, in fact, engaged in such a 'pattern or practice,' and to do so as expeditiously as possible.”82 The adoption of this court's interpretation of the "reasonable cause" requirement would effectively facilitate Justice Department action in thwarting the blockbuster.

Regarding the requirements of alternative two, authorizing Justice Department action, at least one court has refused to find that "an issue of general public importance" existed in view of the facts presented, and the Attorney General was thus found to have wrongly intervened.83 It should be noted, however, that here the court felt that "in at least some instances the agents were more sinned against than sinning."84

Apparently the most litigated issue thus far regarding Justice Department intervention under section 3613 has been whether a "pattern or practice" of blockbusting, the sine qua non of Justice Department action under alternative one, has been engaged in by a realtor or group of realtors. Since this provision has been used most often by the Attorney General in justifying his initiative, a narrow judicial construction of the "pattern or practice" requirement might pose a formidable obstacle to responsible enforcement of the substantive blockbusting provision. Thus far, however, courts have been reluctant to restrict Justice Department intervention and have not construed this requirement too narrowly.

One court has found unlawful representations to three homeowners, repeated and reiterated on other occasions, sufficient to justify the Attorney General's intervention.85 Another court has, however, recognized some limitation to the meaning of a "pattern or practice" regarding the actions of an individual real estate dealer by finding that three representations made by two agents of the defendant working together on the same afternoon amounted only to "isolated incidents," thereby precluding Justice Department action.86 In United States v. Mitchell,87 the court relied upon the criterion of whether the representations were "isolated instances" or recurring acts and also on the judicial interpretation of a sim-

84. Id. at 1006.
ilar "pattern or practice" provision in the Civil Rights Act of 1960 to reject a contention that the provision requires that there be a "repeated widespread practice and policy of a particular defendant." The court's extensive discussion of the meaning of the pattern or practice provision finally culminated, however, with unanswered questions, a colloquy on the practical difficulties raised by such an inquiry, and a final determination that the issue could be dealt with more judiciously on an ad hoc basis in the trial court, "where all the circumstances and credibility of each witness can be weighed and correct inferences drawn."

There is a split of authority as to what constitutes a pattern or practice of a "group of persons" under alternative one of section 3613. One court has found that although isolated instances of representations by individual agents of various defendant real estate firms did not constitute a pattern or practice, the combined effect of these instances constituted a "group" pattern or practice by all the defendants' agents in the area. Another court has held, however, that if the actions of individual real estate companies do not amount to a pattern or practice, the combined effect of many real estate companies' isolated actions does not legitimately make them, as a group, the object of the Attorney General's action.

Even in the face of favorable judicial interpretation of section 3613, however, one practical limitation has been cited concerning the effectiveness of Justice Department intervention in halting the blockbuster: the shortage of manpower in the Housing Division of the Department.

STATE AND LOCAL CONTROL OF BLOCKBUSTING: AN OVERVIEW

As noted earlier, various state and local governments had already taken legislative action in controlling the blockbuster before the passage of the federal Fair Housing Act and its anti-blockbusting provision discussed above. Although some serious conflict might exist between the right of a state and a municipality to enforce, concurrently, prohibitions against blockbusting, the federal Fair Housing Act in no way diminishes the

89. 327 F. Supp. at 480.
90. Id. at 483.
93. Note, supra note 71, at 182.
effect of existing or subsequent state and local legislation. The federal Fair Housing Act explicitly provides that its provisions, including subsection 3604(e) related to blockbusting, shall not be construed to invalidate any law of a state or political subdivision thereof, and calls for cooperation between HUD and “State and local agencies charged with the administration of State and local fair housing laws.”

Those state and local proscriptions against blockbusting which supplement the federal Act are varied in scope and technique, encompassing both criminal and non-criminal sanctions. They are most often aimed at forbidding specific representations, limiting the use of “for sale” and/or “sold” signs, and prohibiting certain door-to-door solicitation.

Many state statutes and municipal ordinances prohibit the making of certain specific representations to induce the transfer of real property. These representations are categorized most frequently as direct allusions to anticipated racial change in the neighborhood or to indirect references to the anticipated lowering of property values, the increase in criminal or anti-social conduct, or the decline in the quality of educational facilities in the area.

Some states have imposed criminal sanctions directly on the practice of blockbusting as defined by the making of such representations. The Wisconsin statute, for example, labeled “Representations Designed to Induce Panic Sales,” requires a fine from $10 to $200 upon conviction. In Maryland, where reference is made specifically to “blockbusting,” such representations are a misdemeanor punishable by up to a $500 fine or one year imprisonment or both. Two possible inadequacies of a criminal penalty are first, that such penalties, especially fines, would not be a sufficient deterrent where such a substantial profit is possible, and, sec-

(1970) [hereinafter referred to as ST. LOUIS COMMENT]; Note, Intergovernmental Conflict in the Regulation of Blockbusting Activities, 1971 URB. L. ANN. 212. See also Chicago Real Estate Board v. City of Chicago, 36 Ill.2d 530, 224 N.E.2d 793 (1967); Summer v. Township of Teaneck, 53 N.J. 548, 251 A.2d 761 (1969).

97. MD. ANN. CODE art. 56, § 230A (1957); MINN. STAT. ANN. § 363.03(2)(4) (Supp. 1973); OHIO REV. CODE ANN. § 4112.02 (Supp. 1972); WIS. STAT. ANN. § 101.22(2m) (Supp. 1973).
98. MD. ANN. CODE art. 56, § 230A (1957); OHIO REV. CODE ANN. § 4112.02 (H)(9) (Supp. 1972); WIS. STAT. ANN. § 101.22(2m) (Supp. 1973).
100. MD. ANN. CODE art. 56, § 230A(b) (1957); see Mason v. State, 9 Md. App. 90, 262 A.2d 576 (1970).
ond, that guilt must be proved beyond a reasonable doubt in a criminal prosecution.\textsuperscript{101}

Many other governmental units have attacked blockbusting by enacting laws prohibiting or restraining uninvited solicitation of the homeowner.\textsuperscript{102} This can be a most effective tool in combatting the blockbuster since such laws limit his opportunity to communicate with the homeowners in a changing neighborhood and to arouse community tension.

Legislation such as this, of course, raises serious constitutional problems. Appellants in \textit{Breard v. City of Alexandria},\textsuperscript{103} for example, argued that the city's ordinance prohibiting uninvited door-to-door solicitation violates due process because it unreasonably restrains their right to pursue a lawful occupation. The United States Supreme Court rejected the validity of this argument, noting that "[t]he usual methods of solicitation—radio, periodicals, mail, local agencies—are [still] open."\textsuperscript{104} The Court also rejected a first amendment abridgement attack on the ordinance, distinguishing a case wherein the Court had held bans on solicitation to be unconstitutional as not arising in a solely commercial context.\textsuperscript{105}

The efficacy of anti-solicitation ordinances which unquestionably comply with the \textit{Breard} formula by only prohibiting door-to-door solicitation seems rather slight, since, although in-person contact with homeowners might be effective, mail and telephone communication seem to be more prevalent with blockbusters.\textsuperscript{106} Ordinances do exist which prohibit any direct or indirect solicitation, but unless narrowly construed, their constitutionality could be seriously questioned.\textsuperscript{107}

Some anti-solicitation statutes require only the securing of a permit

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\begin{itemize}
\item \textsuperscript{101} See Glassberg, \textit{supra} note 10, at 162.
\item \textsuperscript{103} 341 U.S. 622 (1951).
\item \textsuperscript{104} Id. at 631-32.
\item \textsuperscript{105} Martin v. Struthers, 319 U.S. 141 (1943).
\item \textsuperscript{106} Capraro Interview. See also Glassberg, \textit{supra} note 10, at 164.
\item \textsuperscript{107} Consider the constitutionality of the following ordinance based on the \textit{Breard} criteria: "It shall be unlawful for any real estate broker, real estate agent, real estate salesman, or any agent thereof, directly or indirectly to solicit, or attempt to solicit, any owner of residential real property located within the City of Vinita Park for the purpose of having such owner sell or lease any residential real property, or for the purpose of having said owner list for sale or lease any residential real property located within the City of Vinita Park . . . ." Vinita Park, Mo. Ord. 250, cited in St. Louis \textsc{Comment}, \textit{supra} note 94, at 687 n.11 (1970). \textit{See also} City of St. Louis, Mo. Ord. 55381 (Committee Substitute Board Bill No. 26), approved July 30, 1969, cited \textit{id.} at 687, which prohibits solicitation by direct contact, by leaflets, by telephone, or by mail, but only in \textit{certain districts}.\end{itemize}
\end{small}
from the municipality as a pre-requisite to solicitation. Strict scrutiny of permit applications by the municipality under such ordinances could effectively curtail the instance of blockbusting. And since licensing does not seem to be an unreasonable restraint on the real estate agent’s means of livelihood, such ordinances would clearly survive any due process attack, even if more than just door-to-door solicitation were circumscribed.108 A similar scheme provides that a real estate agent must give notice to the municipality before engaging in uninvited solicitation in a certain area.109 Another variation which, unlike many of the foregoing anti-solicitation laws, is aimed directly at the blockbuster, provides that any solicitation must be stopped after a real estate agent or broker is notified of the homeowner’s desire not to be solicited.110

Another form of legislative control, aimed primarily at minimizing the degree of panic engendered in a changing neighborhood with regard to concern over real estate property values, is the ban on or regulation of “for sale” signs, the overuse and misuse of which can aid the blockbuster in inducing sales.111 Such signs add credence to the blockbuster’s express or implied representations to the homeowner that “he had better get out while he still can do so without a substantial loss.”

Such prohibitions usually appear at the local level. Some municipalities limit the size and location of only “for sale” signs. Others include “sold” signs,112 “open” signs,113 and other signs conveying a similar meaning.114 Any constitutional attack on such sign posting limitations on the basis of freedom of expression would also seem to lack merit because of the commercial nature of the expressions sought to be regulated.115

Residents of Chicago have available to them various statutory provisions either directly aimed at blockbusting or which can be utilized in

108. Glassberg, supra note 10, at 164.
114. MUNICIPAL CODE OF CHICAGO § 198.7B (I) (1972).
115. ST. LOUIS COMMENT, supra note 94, at 717.
combatting it, and a short description of these provisions aptly illustrates the various types of local controls discussed.

State of Illinois provisions against blockbusting are found in the Criminal Code, chapter 38, sections 70-51 to 70-53. These provisions forbid soliciting real estate sales "on the grounds of loss of value due to the present or prospective entry into the vicinity of the property involved of any person or persons of any particular race, color, religion or national origin or ancestry," and also forbid representations designed to induce sales on such grounds. Another subsection of the same state provision forbids the inciting of community tension with respect to neighborhood transition through the transmission of such representations.

Subsection (d) of section 70-51 sets up a statutory scheme whereby it is made unlawful for one to solicit a residential homeowner to sell or list his property after the homeowner has (a) notified the potential solicitor of his desire not to be approached, or (b) has submitted his own name to the Chicago Commission on Human Relations, and the latter has submitted a list including the homeowner's name to the potential solicitor. Violation of this and the foregoing provisions of section 70-51 by a first-time offender is a Class A misdemeanor and subsequent violations are Class 4 felonies under Illinois's new sentencing structure.

The new Illinois Consumer Fraud Act may also have some application to a blockbusting situation. A provision is included in this Act whereby a buyer, who is induced to purchase "merchandise" having a cash sales price of $25 or more "as a result of or in connection with a salesman's direct contact with or call on the consumer at his residence without the consumer's soliciting the contact or call," can cancel the contract if notice is given to the seller within three days. The effectiveness of this provision regarding real estate sale contracts, however, is questionable. The short grace period within which to rescind the contract would be impractical in a real estate sale situation where there is generally not an on the spot decision to buy made, nor an immediate re-evaluation of the

117. ILL. REV. STAT. ch. 38, § 70-51(a) (1971).
118. Id. at § 70-51(b).
119. Id. at § 70-51(c).
120. Id. at § 70-51(d).
122. ILL. REV. STAT. ch. 38, § 1005-5-1 to -5-3 (Supp. 1972).
propriety of the transaction. In addition, a quick resale would prevent recission because of the unique nature of the real property.

The city of Chicago also has specific provisions of its Municipal Code aimed at the control of blockbusting, included in its Fair Housing Ordinance, section 198.7B, passed September 11, 1963. Subsection 3 thereof provides, among other things, that it shall be an unfair housing practice and unlawful for any real estate broker:

[T]o solicit for sale, lease or listing for sale or lease, residential real estate within the City of Chicago on the ground of loss of value due to the present or prospective entry into any neighborhood of any person or persons of any particular race, color, religion or national origin or ancestry.

[T]o distribute or cause to be distributed, written material or statements designed to induce any owners of residential real estate in the City of Chicago to sell or lease his property because of any present or prospective change in the race, color, religion, or national origin or ancestry of persons in the neighborhood.

The Ordinance also makes it unlawful for anyone:

[T]o construct, place, maintain or install a “For Sale” sign or “Sold” sign of any shape, size or form on premises located in Residential Districts, zoned RI through R8...

with the term “for sale” sign being defined as any structure used for advertising or display purposes containing words such as “for sale,” “sold,” “open house,” “new house,” “home inspection,” “visitors invited,” “installed by,” or “built by,” or phrases of similar import. Violations of the Ordinance are punishable by a suspension or revocation of the broker’s city license, a recommendation for a suspension or revocation of the broker’s state license, and a fine up to $500.

The phenomenon of the racially changing neighborhood cannot be avoided, but perhaps it can be treated with less divisiveness than blockbusting might and does create. Control of blockbusting does much to assist in the stable and rational solution of local problems at the community level.

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124. Glassberg, supra note 10, at 163 n.103.
125. Id.
127. Id. at § 198.7B (1).
128. Id. at § 198.7B(9).
129. Id. at § 198.7B(10).
130. Id. at § 198.7B(12).