DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410

January 21, 1983

OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO:

Mr.Michael M. Uhlmann
Assistant Director for Legal Policy
Office of Policy Development
Washington, D.C. 20500

Dear Mike:

As discussed, enclosed are copies of (1) my memo to the Secretary describing the content and objectives of our legislative proposal, and (2) a talking paper of sorts on the matter of proof required in Title VIII cases.

Sincerely,

John J. Knapp
General Counsel

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THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

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MEMORANDUM FOR: Secretary Pierce

FROM: John J. Knapp

SUBJECT: Fair Housing Amendments

This will summarize the provisions of the Fair Housing Amendments bill which we have drafted and are prepared to propose through the Cabinet Council on Legal Policy. It will also summarize briefly why we believe that the enforcement reforms which we propose are preferable to alternative mechanisms that have been suggested.

Objective of the Proposal. The principal criticism of the Fair Housing Act has been of its enforcement mechanisms. The statutory process relies principally upon conciliation of complaints. In principle, conciliation is, we believe, still regarded as the most productive method of resolving Fair Housing complaints. The major defect is that the conciliation process does not work because there is no backup mechanism: the Secretary has no place to go if it fails. Thereafter, except in the "pattern or practice" cases that can be referred to the Attorney General, it is up to the private complainant to pursue the matter in Court. Without any power to back up its conciliation efforts, HUD is unable to get respondents to take the conciliation process seriously. As expressed by former Secretary Carla Hills, "the present law, in relying upon conciliation, is an invitation to intransigence."

Our objective is to give credibility and effectiveness to the conciliation effort by giving the Secretary someplace else to go if it fails. We recommend a simple proposal under which the Secretary, upon failure of conciliation, can go straight to Court for equitable relief or a civil penalty or both, thus skipping intervening administrative or magistrate hearings that remain subject to de novo review.

Existing Mechanism. The existing enforcement mechanism can be summarized briefly. An "aggrieved person" may file a complaint with HUD, which must investigate (with subpoena powers and power to administer oaths) and attempt to resolve the complaint "by informal methods of conference, conciliation, and persuasion." If this fails, HUD has no place further to go. A person aggrieved may commence a District Court action within 60 days after the filing of a complaint with HUD if conciliation

fails. Also, persons injured by an alleged discriminatory housing practice may file an independent action in District Court within 180 days after the discriminatory act regardless of whether a complaint is filed with HUD. In an action filed independent of prior resort to the conciliation process, the plaintiff can obtain equitable relief or actual damages and up to $1,000 punitive damages. There is some question as to whether a plaintiff who commences Court action only after failure of conciliation can seek damages as well as equitable relief. Attorney's fees may be granted to a prevailing plaintiff, but only if the plaintiff "in the opinion of the Court is not financially able to assume said attorney's fees."

The statute also provides that where a State or local law provides rights and remedies for discriminatory housing practices "substantially equivalent" to that provided under Title VIII, HUD must advise the local agency of any Title VIII complaint filed with it which appears to violate the local law, and HUD will abstain if the local agency then commences proceedings and "carries forward such proceedings with reasonable promptness." However, HUD can proceed with its own processing if the Secretary "certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action."

In addition to the foregoing, the Attorney General is authorized to commence an injunctive action in District Court if he "has reasonable cause to believe 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 title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance." These are the so-called "systemic discrimination" cases that are referred by HUD to Justice, or that are initiated by Justice independently.

HUD Proposal. Our legislative proposal would enact the following procedures:

1. Upon filing of a complaint, the Secretary would invetigate and attempt to conciliate, as now provided. (We would retain essentially the same provisions regarding State referrals, as well as recall from those proceedings, as now exist.)

2. Upon a determination by the Secretary not to continue conciliation attempts, the Secretary would be authorized to commence a District Court action for equitable relief or civil penalty. Supreme Court cases indicate clearly that civil penalty imposition by a Court requires jury trial. The proposal authorizes a civil penalty up to $10,000, and up to $25,000 for a second offense.

3. A private complainant would retain its right to commence an independent District Court action for damages or equitable

relief, with an expanded statute of limitations from 180 days to 2 years.

4. The proposal does not authorize the Secretary, in his District Court action, to seek damages on behalf of the private aggrieved person. We have elected not to include such a parens patriae element mainly because it detracts from the clear characterization of the Secretary's action as vindicating a public right. In addition, the actual damage element in a single-victim case ordinarily is not significant enough to justify becoming an important issue. Further, because the Secretary's action requires jury trial, there should be liberal allowance of intervention in the action by the private complainant seeking damages.

5. "Pattern or practice" jurisdiction would be retained by the Attorney General (but not exclusively). In addition, the bill provides for mandatory referral to the Attorney General of unsuccessfully conciliated cases where the respondent is a government, a governmental agency other than a public housing authority, or a political subdivision. (The Mathias bill also provides for mandatory referral of land-use cases to the Attorney General).

6. The Secretary will be given authority to seek appropriate preliminary or temporary judicial relief pending final disposition of an administrative complaint.

7. Award of attorney's fees will be available to a "prevailing party" without necessity of showing financial necessity. Title VIII currently is the only civil rights statute requiring financial necessity for the award of attorney's fees to a successful plaintiff. The amendment will conform the Fair Housing Act to the Civil Right Attorney's Fee Awards Act. (It therefore will result in attorneys' fees being available to prevailing defendants as well as plaintiffs. However, by judicial practice, counsel fees are awarded to defendants on a less liberal standard than to plaintiffs.)

8. The proposal will provide for judicial enforcement of conciliation agreements, at the instance of the Secretary or a party.

Alternatives. There have been at least three alternative enforcement procedural formats proposed, generally involving administrative law judges or magistrates.

1. The bill introduced by Senator Mathias in 1981, which is substantially what was reported by the Senate Judiciary Committee in late 1980, would create a system of administrative law judges appointed by a 3-member Fair Housing Commission appointed by the President. If the HUD conciliation effort fails, the Secretary would be authorized to file a complaint before an administrative law judge, who after hearing could grant "such relief as may be

appropriate (including compensation for out of pocket costs incurred by the aggrieved person as the result of the discriminatory housing practice), and may impose a civil penalty of not to exceed $10,000." The order of the administrative law judge would be appealable by any party (including any "aggrieved person" who intervenes) to the Fair Housing Commission or directly to the Court of Appeals. The final order of the Fair Housing Commission, if appeal is taken there, is also appealable to the Court of Appeals. On judicial review, the "substantial evidence in the record considered as a whole" rule applies as to the findings of fact by the administrative law judge.

2. The House bill in late 1980 was similar, except that the administrative law judges were HUD employees and their orders were reviewable in the District Court, which was to make a "de novo determination of the adequacy of the findings of fact and conclusion of law as to which objection is made." When the House bill reached the floor, it passed after an amendment which took the administrative law judges out of HUD and made them appointees of the Attorney General. A bill providing for this system was introduced in the House in 1981 by Representative Railsback.

3. When the Senate bill reached the floor in late 1980, off-the-floor compromises eliminated the administrative law judges in favor of a magistrate system with de novo review by a District Court.

We believe that our proposal is superior to any of the foregoing alternatives for these reasons:

1. We believe that the civil penalty remedy is crucial, because it removes reliance upon the continued interest of a complainant in continuing to press a complaint after alternative housing may have been obtained. However, any system permitting imposition of a civil penalty by any tribunal except an Article III Court with a jury is vulnerable to Constitutional attack.

2. An objective is speedy disposition. Any administrative law judge or magistrate system will be subject to a form of de novo review in either a District Court or a Court of Appeals. This will only lengthen the process, not shorten it. A respondent unwilling to take conciliation seriously is unlikely to be any different in an administrative proceeding.

3. An administrative law judge system will be seen as an "additional layer of bureaucracy."

Fair Housing Act (Title VIII) - Intent and Effects

A. Disparate treatment cases

> "'Disparate treatment' . . . is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or national origin. Proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of the differences in treatment." International Brotherhood of Teamsters v. United States, 431 U.S. 324, 325 n. 15 (1977) (Title VIII).

"Prima facie" case requirements of Title VII disparate cases have been carried directly to Title VIII. Second Circuit, by analogy to a Supreme Court Title VII case, held that in order to establish a prima facie case a plaintiff who alleges a discriminatory denial of housing must show:

(1) that he is black;

(2) that he applied for and was qualified to rent or purchase the housing;

(3) that he was rejected; and

(4) that the housing opportunity remained available.

Robinson v. 12 Lofts Realty, 610 F.2d 1032 (2d Cir. 1979).

"When the plaintiff has proved a prima facie case of discrimination, the defendant bears only the burden of explaining clearly the nondiscriminatory reasons for its actions." "The employer need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." "If the defendant meets the burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry proceeds to a new level of specificity." Plaintiff has "the opportunity to demonstrate that the proferred reason is not the true reason for the employment decision." Plaintiff may succeed "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." Although the burden of production shifts during trial, the "plaintiff retains the burden of persuasion." Texas Department of Community Affairs v. Burdine, 450 U.S. 298 (1981).

Conclusion: based on Supreme Court analysis of "disparate treatment" discrimination under other discrimination statutes, Title VIII "disparate treatment" cases require intentional discrimination - but "prima facie" case requirements permit intent to be inferred from the mere fact of the difference in treatment.

Question: Is the burden too great in "disparate treatment" cases?

B. Disparate Impact cases

Practices "that are facially neutral in treatment of different groups but . . . in fact fall more harshly on one group than on another and cannot be justified by business necessity." International Brotherhood of Teamsters v. United States, 431 U.S. 324, 336 n. 15 (1977) (Title VII).

In employment discrimination cases under Title VII, Supreme Court has held that discriminatory motivation is not required, based on legislative history: "Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation." Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971).

In Washington v. Davis, 426 U.S. 229 (1976), the Supreme Court first held that the Constitutional standard for discrimination requires intent. "We have never held that the constitutional standard for adjudicating claims of invidious racial discrimination is identical to the standards applicable under Title VII, and we decline to do so today . . . our cases have not embraced the proposition that a law or other official act, without regard to whether it refects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact." 426 U.S. at 239. Court went on to state that "invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than others." 426 U.S. at 242.

The Supreme Court has not passed upon the standard of proof required in a Title VIII case, either in a "disparate treatment" or "disparate impact" context. In Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), the Supreme Court, following Washington v. Davis, held that plaintiffs had failed to carry their burden of proving that racially discriminatory intent was a motivating factor in a rezoning decision but remanded for consideration of whether the actions violated Title VIII (without indicating any view of what the Title VIII requirements may have been). On remand, the Seventh Circuit held that "at least under some circumstances a violation of [Section 804(a)] can be established by a showing of discriminatory effect without a showing of discriminatory intent." Metropolitan Housing Development Corp v. Village of

Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977). The Seventh Circuit refused to adopt a per se rule that "every action which produces discriminatory effects is illegal," but held that "courts must use their discretion in deciding whether, given the particular circumstances of each case, relief should be granted under the statute." 558 F.2d at 1290. The Seventh Circuit named four "critical factors":

> (1) how strong is the plaintiff's showing of discriminatory effect;
>
> (2) is there some evidence of discriminatory intent, though not enough to satisfy the constitutional standard of Washington v. Davis;
>
> (3) what is the defendant's interest in taking the action complained of;
>
> (4) does the plaintiff seek to compel the defendant to affirmatively provide housing for members of minority groups or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing.
>
> [As a comparison, the Supreme Court, in its Arlington Heights decision, stated that racially discriminatory intent sufficient for a constitutional claim could be evidenced by such factors as disproportionate impact, the historical background of the challenged decision, the specific antecedent events, departures from normal procedures, and contemporary statements of the decisionmakers. 429 U.S. at 264-268.]

Subsequent to Arlington Heights, the Supreme Court, in Bakke (1979), appeared to hold that Title VI incorporated the constitutional standard, requiring that prohibited discrimination be purposeful. See Guardians Association v. Civil Service Commission, 633 F.2d 232 (2d Cir. 1980), to which the Supreme Court has granted certiorari and heard argument. Recent Title VIII "disparate impact" cases, while not holding that the Seventh Circuit decision in Arlington Heights was erroneous, have found both constitutional and Title VIII liability premised on adequate showing of intentional discrimination. See, e.g., Smith v. Town of Clarkson, 682 F.2d 1055 (4th Cir. 1982) (town withdrawal from multimunicipality low-income housing authority) (but Court agrees with Arlington Heights II analysis); United States v. City of Birmingham, 538 F. Supp. 819 (E.D. Mich. 1982) (city interference with low-income housing project, including placing referendum on ballot); Atkins v. Robinson, 545 F. Supp. 852 (E.D. Va. 1982) (county board veto of low-income project).

Question: If the Supreme Court addresses the issue, is it likely to find that "disparate impact" cases under Title VIII are

more similar to Title VII employment discrimination than to constitutional discrimination cases? or to Title VI cases (if the Supreme Court affirms Guardians)?

B. If Title VIII requires a showing of purposeful discrimination equivalent to the constitutional standard, what does that in fact require, and in what respects is the burden too great?

- not necessary that racially discriminatory purpose be the dominant or primary factor but only a motivating factor. ". . . it is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified." Arlington Heights, 429 U.S. at 265-66; see also U.S. v. City of Birmingham, 538 F. Supp. 819, 827 (E.D. Mich. 1982).

- In determining whether actions are based on discriminatory intent, District Courts may rely upon "intensely local appraisal" (White v. Regester, 412 U.S. 755, 769-770 (1973).

- concern over lowered property values is not protected if fear of lowered values equates with fear of minorities. "A city that takes steps to exclude black people violates the Fair Housing Act, regardless whether they do so out of a desire to protect property values and not out of any animus against black people generally." U.S. v. Birmingham, 538 F. Supp. at 830.

C. Legislative Alternatives

1. Voting Rights Act comparison.

"Sec. 2. (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), a provided in subsection (b).

"(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political

> processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

The above provision imposes a "results" test - but focused on access to participation, not on voting outcomes. What would be an analogous provision for the Fair Housing Act that would cover the range of housing case circumstances?

Would such a provision - focusing on "results" in access - invite enactment of Hatch redefinition of purpose of Fair Housing Act as "equal access to housing"?

> "Such policy means that individuals shall not be denied access to housing which they desire and can afford, because of race, color, religion, sex, handicap, or national origin. Such policy does not mean that any particular proportion of individuals of a particular race, color, religion, sex, handicap, or national origin will be assured housing within housing units, neighborhoods, or communities except as such proportions are the natural result of free housing choice." S. 1670 (97th Cong. 1st Sess.).

Would such an amendment have undesirable effects? Would process of debate on such an amendment have potential for undesirable outcome?

Would an attempt to fashion a fine-tuned legislative standard invite debate and possible enactment of something akin to the Mottl-Ashbrook rider. (See 2 below.)

2. Mottl-Ashbrook Rider

In September 1981, a rider to the Justice Department appropriations bill was defeated 202-188. It was thereafter threatened to be introduced in the Senate by Senator Helms but was deferred by him. The rider would provide that no funds appropriated by the bill could be used

". . .to require, request or recommend, in connection with any cause of action that is or may be brought for a violation of the Fair Housing Act of 1968, that a State or unit of local government make available, or permit to be made available, housing with respect to which Federal financial assistance is provided [by HUD under public housing and rent subsidy programs]."

The immediate provocation for the rider was the Parma decision; its defeat in the House and deferral in the Senate may have been attributable in part to the procedural vehicle (appropriations rider) and in part to the limited provocation. Will the same concern arise in connection with a legislative "effects test" initiative?

3. Dole compromise (drafted but not introduced)

"(a) Except as provided in [new section on handicapped], nothing in this title shall prohibit any action unless such action is motivated, in whole or in part, by an intent or purpose to discriminate against a person or persons on account of race, color, religion, sex, handicap, or national origin. Provided, that in actions brought to enforce this title, a prima facie violation may be established by a showing that the defendant took actions having an actual and foreseeable discriminatory effect on a class of persons protected by this title. Provided further, that the plaintiff shall not be entitled to relief if the defendant is able to prove, by a preponderance of the evidence, the existence of a legitimate, nondiscriminatory justification for his or her actions and the plaintiff is unable to thereafter demonstrate that the proffered justification is a pretext for discrimination prohibited under this title. In determining whether the proffered explanation is pretextual, the court shall consider evidence concerning whether reasonable, alternative means were available to the defendant which would have had less discriminatory impact.

"(b) Except as provided in [section on handicapped], the Attorney General, or the Secretary of Housing and Urban Development, as the case may be, shall not initiate proceedings to enforce this title unless they have cause to believe that the defendant's actions were, in whole or in part, motivated by an intent or purpose to discriminate against a person or persons on account of race, color, religion, sex, handicap, or national origin."

Dole analysis indicates that above provisions are intended to apply to disparate impact cases and not to affect present prima facie case approach in disparate treatment cases.

Comment: burden on defendant of proof by preponderance of evidence of nondiscriminatory justification conflicts with Burdine.

4. Limited exception to presumed "effects" test.

The 1980 bills reported by both Senate and House Committees contained a provision that "Nothing in this title prohibits a minimum lot size requirement for residences unless such requirement is imposed with respect to intent to discriminate against a class protected by this title." The Committees viewed this provision as "reaffirming" that the effects test constituted the existing case law regarding the Title VIII standard of proof.

Questions:

- is there need for a legislative initiative to enact a "results" test? What would be its focus? (access? balance?) What would be outcome?

- in the absence of legislative initiative to enact an intent test, is it best to rely upon judicial development?

- in response to legislative initiative to enact an intent test - or simply in response to inquiry as to interpretation of present law - can it be stated that Title VIII embodies constitutional standard?

- If there is a legislative initiative to enact an intent test, would the preferable response be (i) to seek a Dole "compromise" enactment, or (ii) to rely upon judicial development?

- would a limited "exception" requiring intent in certain zoning cases (i) succeed in confirming effects test in other contexts, (ii) invite broadening of the exception beyond minimum lot size cases, or (iii) otherwise be desirable?

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

February 1, 1983

Honorable William Bradford Reynolds
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Brad:

Senator Hatch has re-introduced his Fair Housing Act amendments, described and set out in full in the enclosed extract from the Congressional Record of January 26. Note that the basic rationale for improving the enforcement mechanism is the same as we have cited: outside pattern and practice and "general public importance" cases, if conciliation fails, there is no authority for further Federal enforcement action. The bill

- removes HUD from the statute, giving the conciliation process, as well as the duty to administer housing and urban development programs in a manner affirmately to further the purposes of the Act, to the Attorney General.

- authorizes the Attorney General to file an action on behalf of an aggrieved person who filed a complaint, but provides that an action by the Attorney General bars a private action, and vice versa (except that the Attorney General can intervene in a private suit but a private party cannot intervene in an Attorney General suit). The Attorney General may obtain "money damages" plus punitive damages up to $1,000.

- defines "aggrieved person" in such a manner as to preclude standing for testers.

- provides that when a referral is made to a State agency, the case cannot thereafter be recalled unless the Attorney General finds that the agency no longer qualifies for certification. (Current law permits HUD to recall a complaint from a State agency if the Secretary finds it necessary for "the protection of the rights of the parties or the interests of justice.")

- legislates an intent standard, but describes this as permitting consideration of "the totality of circumstances, including evidence of racially disparate effects."

- re-names the Act as the Equal Access to Housing Act, and defines the policy of equal access as not requiring proportions "within housing units, neighborhoods, or communities except as such proportions are the natural result of free housing choice."

- adds the handicapped provision, but without the separate provision regarding group homes and limiting the definition of "handicap" to physical impairments.

- includes a legislative veto provision. (As I said in a conversation last week, inasmuch as the statute does not, on its face, grant or contemplate substantive rulemaking power, I don't see point of this provision.)

Please note the assertion that "use of the effects test by HUD and the Civil Rights Division of the Justice Department has been the basis by which they have sought to impose their own notions of proper racial balance upon communities which have had no intent or purpose of discriminating against protected groups." Would it be too much to inquire as to what cases they have in mind?

Sincerely,

John J. Knapp
General Counsel

Enclosure

cc: Michael Uhlmann

S.140 "Equal Access to Housing Act" -- Fair Housing Title VIII

to migrate away from school systems subject to such assignment or by inducing large numbers of families to seek alternatives to public school education.

SEC. 3. (a) The Congress finds the remedies listed in subsection (b) are available for unconstitutional segregation exclusive of court orders which assign students to public schools on the basis of or with regard to race, color, or national origin, finding that such orders themselves have the effect of excluding students from public schools on the basis of or with regard to race, color, or national origin.

(b) The remedies which the Congress finds are available are—

(1) legal injunctions suspending all implementation of a segregative law or other racially discriminatory Government action;

(2) contempt of court proceedings where such injunctions are not scrupulously obeyed;

(3) programs without coercion or numerical quotas of specific grounds based on racial balance that permit students to voluntarily transfer to other schools within the school district where they reside; and

(4) other local initiatives and plans to improve education for all students without regard to race, color, or national origin.

SEC. 4. The Congress, pursuant to its authority and powers granted under article III of the Constitution, and under section 5 of the fourteenth amendment to the Constitution, enacts the provisions of this Act in order to protect public school students against discrimination on the basis of or with regard to race, color, or national origin.

SEC. 5. Section 1343 of title 28, United States Code, is amended by designating the current language as section (a) and adding at the end thereof the following:

"(b)(1) Notwithstanding any other provision of law, no inferior court established by Congress shall have jurisdiction to issue any order requiring the assignment or transportation of any student to public elementary or secondary schools on the basis of or with regard to race, color, or national origin or to issue any order which excludes any student from any public school on the basis of or with regard to race, color, or national origin.

"(2) In the case of court orders entered prior to the date of this Act that require the assignment of transportation of any student to a public elementary or secondary school on the basis of or with regard to race, color, or national origin or which excludes any student from any school on the basis of or with regard to race, color, or national origin, any individual or school board or other school authority subject to such an order shall be entitled to seek relief from such order in any court and unless that court can make conclusive findings based on clear and convincing evidence that—

"(1) the acts that gave rise to the existing court order intentionally and specifically caused, and in the absence of the order would continue intentionally and specifically to cause, students to be assigned to or excluded from public schools on the basis of or with regard to race, color, or national origin; for purposes of this finding, these 'acts that gave rise to the existing court order and intentionally and specifically caused, and in the absence of the order would continue intentionally and specifically to cause, students to be assigned to or excluded from public schools on the basis of race, color, or national origin' (including but not limited to school district reorganization, school boundary line changes, school construction, and school closings) shall not include legitimate efforts to employ public education resources to meet public education needs without regard to race, creed, or national origin,

"(2) the totality of circumstances have not changed since issuance of the order to warrant reconsideration of the order,

"(3) no other remedy, including those mentioned herein, would preclude the intentional and specific segregation, and

"(4) the economic, social, and educational benefits of the order have clearly outweighed the economic, social, and educational costs of the order,

then such plaintiffs shall be entitled to relief which is consistent with the provisions of this subsection and the Public School Civil Rights Act of 1981 from such order.".

SEC. 5. Chapter 89 of title 28 of the United States Code (relating to district courts' removal of cases from State courts) is amended by adding after section 1455(c) the following new subsection:

"(d) A civil action in any State court seeking a judgment for any relief described in this Act may not be removed to any district court of the United States.".

By Mr. HATCH:

S. 140. A bill to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes; to the Committee on the Judiciary.

EQUAL ACCESS TO HOUSING ACT

Mr. HATCH. Mr. President, I am introducing legislation today—the Equal Access to Housing Act—that would enhance the ability of the Federal Government to enforce title VIII of the Civil Rights Act of 1968. Title VIII is designed to protect individuals from discrimination in the sale or rental of housing because of race, color, religion, sex, or national origin. The Equal Access to Housing Act would reaffirm more strongly than ever before this Nation's commitment to the elimination of discriminatory housing policies. At the same time, it would avoid many of the problems contained in legislation to amend title VII rejected by this body during the 96th Congress.

Last night in his state of the Union address, President Reagan stated that "Effective enforcement of our Nation's fair housing laws is also essential to insuring equal opportunity." This legislation would significantly improve current enforcement procedures and standards in harmony with the President's statement.

The proposed act would effect a number of important changes in the 1968 law. Included among these are the following:

ADMINISTRATION

Primary administrative authority for the act would be transferred from the Department of Housing and Urban Development to the Department of Justice. While the Justice Department already has major responsibilities in enforcing title VIII, the proposed act would concentrate all administrative responsibilities in the Department.

The experience of HUD in enforcing the act over a period of years has demonstrated a fundamental conflict between its obligation to fairly administer the law and it's primary mission to set national housing policy. Enforcement of title VIII is, first and foremost, a matter of insuring compliance with the law; too often, it has been used by HUD as an instrument of social engineering policy.

The Justice Department is not only in a better position to avoid this conflict—in part, because it is independent of the various constituencies that have attached to HUD—but also possesses far more expertise in the enforcement of civil rights laws than does HUD. I am confident that the proposed transfer of administration will bring a new clarity of purpose to the act while better enabling both the Justice Department and HUD to carry out their primary policy responsibilities.

ENFORCEMENT

Under present law, an allegedly aggrieved individual—one whose rights under title VIII have been violated—can either institute a civil action in the appropriate Federal or State court, or can file a complaint with the Secretary of HUD. If, after a HUD investigation of such complaint, the Secretary finds reasonable cause to believe that a violation of title VIII has occurred, the Secretary is limited to resolving the complaint through informal methods of conference, conciliation, and persuasion. There is no power in the Secretary to take further action. The Attorney General, after appropriate investigation, may institute a court action only in pattern and practice cases and in certain other limited cases involving issues of general public importance.

The Equal Access to Housing Act would add teeth to this enforcement mechanism. In the process, it would address one of the major criticisms of the original law.

Not only would an allegedly aggrieved individual be able to pursue an independent civil action—with new authority in the Attorney General to intervene in such actions on his behalf—but the Attorney General would be authorized to initiate actions on behalf of such individual. For the first time, an aggrieved person would have access to the resources of Government in pursuing complaints of title VIII violations.

The proposed act would encourage the use of Federal magistrates in actions brought under its provisions in an effort to expedite such cases, while retaining the basic elements of due process that are guaranteed by our laws and Constitution.

The Equal Access to Housing Act, however, attempts to insure that such adversarial litigation will be a last, not a first, step in the process of resolving complaints. It does this by establishing a new conciliation process in the Justice Department designed to resolve controversies informally. At any time after the filing of a charge, the Attorney General may attempt conciliation. Such conciliation may culmi-

nate in an agreement, including one providing for binding arbitration among the parties, or it may lead to a decision by the Attorney General either to dismiss the charge or to initiate an action on behalf of the individual filing the charge.

As the Secretary is required to do under present law, the Attorney General would be required to refer all charges of title VIII violations to certified State housing discrimination agencies where they are in existence. Certified agencies are those which administer laws providing rights and remedies which are reasonably equivalent to the rights and remedies provided by Federal law.

HANDICAPPED PERSONS

The proposed measure would extend the protections of title VIII, for the first time, to handicapped individuals. Because of the differing nature of such discrimination, however, from other forms of discrimination, it is necessary to define in far greater detail what constitutes a discriminatory housing practice in this context. The act is clear in defining handicap in such a way as to exclude alcoholics and drug addicts, and others whose impairment would represent a direct threat to the safety or property of others.

APPRAISERS

Although HUD has chosen to interpret the act in the past to include coverage of real estate appraisers, the proposed measure would make this explicit. Discriminatory practices by property appraisers would constitute violations of title VIII.

DISCRIMINATION

The Equal Access to Housing Act would clarify that the standard of proof in identifying discrimination under title VIII is an intent standard. While I believe that the present language of the act, as well as its legislative history, indicate clearly that this is already the appropriate standard, there is a conflict on this issue among the Federal circuits, some of which have substituted an "effects" or "disparate impact" standard. The Supreme Court, although never interpreting the specific provisions of title VIII in this regard, has made clear that violations of the 14th amendment require proof of a discriminatory intent or purpose, *Arlington Heights* v. *Metropolitan Housing Corporation* 429 U.S. 252 (1977); *Washington* v. *Davis* 426 U.S. 229 (1976).

With respect to this extremely important issue, I would call the attention of my colleagues to my statement of December 1, 1980—S15191—in which I discuss this issue in some detail. At this point, however, I would only like to observe that use of the effects test for identifying discrimination carries with it tremendous potential for involving the Federal Government in zoning and land-use affairs that have always been the prerogative of State and local governments. Already, use of the effects test by HUD and the Civil Rights Division of the Justice Department has been the basis by which they have sought to impose their own notions of proper racial balance upon communities which have had no intent or purpose of discriminating against protected groups.

The intent test for identifying discrimination, allows courts to consider the totality of circumstances, including evidence of racially disparate effects. Unlike the pure effects test, however, the use of statistical evidence is not dispositive in and of itself in determining violations of title VIII and the burden of proof remains fully with the plaintiff.

Mr. President, the proposed bill makes a number of other changes that I believe to be positive changes in the present law: It would enable the Attorney General to pursue an injunction or temporary restraining order where prompt judicial action is necessary, it would limit the use of testers to those instances in which such a practice was necessary to confirm an alleged violation of the act; it would establish a legislative veto over rules and regulations promulgated under the authority to title VIII; and it would clarify the definition of aggrieved person in such a way to limit standing to individuals who are bona fide renters or purchasers.

I believe that the Equal Access to Housing Act draws the proper balance between the need to create a more effective enforcement mechanism under title VIII and the equally important need to protect the due process rights of local communities and individual realtors, home-sellers, and landlords. I do not believe that the legislation rejected by this body during the 96th Congress achieved this balance.

On the one hand, the person who suffers discrimination in housing will, for the first time, be able to draw upon the resources of the Federal and State governments. On the other hand, the respondent will, in fact, have his day in court—not simply his day before a HUD administration law tribunal. In addition, he will be assured that, before he is labeled a civil rights violator, there will have been some evidence of a discriminatory intent on his part, not simply evidence that his apartment building or his subdivision lacked the right proportion of white, black, yellow, red, and brown faces.

The individual who is denied an apartment because of his skin color or a home because of his ethnic background will, in short, have more and stronger protections than he has ever had before. He will have access to the full resources of the Federal and State governments when he is treated, not as an individual, but as a member of some collective group, in his pursuit of a dwelling. At the same time, some of the so-called public interest groups, which have little to do beyond harassing small businessmen and communities, and some of the more creative and innovative minds in the bureaucracy who wish to remake America in their image, may have a more difficult time of it all. That is the way it ought to be, in my opinion.

I ask unanimous consent that the text of the proposed Equal Access to Housing Act be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Equal Access to Housing Act of 1983".

SHORT TITLE FOR 1968 ACT

SEC. 2. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the comma at the end of the enacting clause, the following: "That this Act may be cited as the 'Civil Rights Act of 1968'.".

SHORT TITLE FOR TITLE VIII

SEC. 3. Title VIII of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the title's catchline the following:

"SHORT TITLE

"SEC. 800. This title may be cited as the 'Equal Access to Housing Act'.".

AMENDMENTS TO POLICY SECTION

SEC. 4. (a) Section 801 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out "for fair housing" and inserting in lieu thereof "for equal access to housing".

(b) Section 801 of such Act is amended by adding at the end thereof the following: "Such a policy means that individuals shall not be denied access to housing which they desire and can afford, because of race, color, religion, sex, handicap, or national origin. Such policy does not mean that any particular proportion of individuals of a particular race, color, religion, sex, handicap, or national origin will be assured housing within housing units, neighborhoods, or communities except as such proportions are the natural result of free housing choice.".

AMENDMENTS TO DEFINITIONS SECTION

SEC. 5. Section 802 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by—

(a) striking out subsection (a) and inserting in lieu thereof the following:

"(a) 'Attorney General' means the United States Attorney General."; and

(b) adding at the end the following:

"(h) 'Handicap' means, with respect to a person, a physical impairment which substantially limits the capacity to see, hear, or walk unaided or the capacity to live completely unattended. Such term does not include any alcohol, drug abuse, or any other impairment which would be a threat to the safety or the property of others.

"(i) 'Aggrieved person' includes any person whose bona fide attempt or bona fide offer to purchase, sell, lease, or rent, or whose bona fide attempt to obtain financing

for a dwelling has been denied on the basis of race, color, religion, sex, handicap, or national origin, or made subject to terms of purchase, sale, lease, rental, or acquisition which discriminate on any such basis.".

DISCRIMINATORY HOUSING PRACTICE AMENDMENTS

SEC. 6. (a) Section 804(e) of such Act is amended by striking out the words "For profit, to" and inserting in lieu thereof "To".

(b) Section 804 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284) is amended by adding at the end the following:

"(f)(1) 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 such handicap of a prospective buyer or renter or of a person or persons to be occupying a dwelling with such buyer or renter unless such handicap would prevent a prospective dwelling occupant from conforming to such rules, policies, and practices as are permitted by paragraph (2) of this subsection.

"(2) To discriminate against any person in the terms or conditions of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of a handicap. For purposes of this subsection, (A) discrimination shall include: (i) refusal to permit reasonable modifications of premises occupied, or to be occupied by persons with a handicap where such modifications are necessary to afford such handicapped persons access to premises substantially equal to that of nonhandicapped persons: *Provided, however,* That with respect to such premises, such handicapped persons have agreed to return them to their original condition if requested to do so by the landlord; or (ii) refusal to make reasonable accommodations in existing policies, practices, services, or facilities when such accommodations are necessary to afford handicapped persons enjoyment of dwellings substantially equal to that of nonhandicapped persons; but (B) discrimination shall not include (i) refusal to make alterations in premises at the expense of sellers, landlords, owners, brokers, building managers, or persons acting on their behalf; (ii) refusal to make modifications of existing policies, practices, services or facilities where such modifications would result in unreasonable inconvenience to other persons; or (iii) refusal to allow modifications of dwellings which would alter the marketability or appearance of a dwelling or the manner in which a dwelling or its environs has been, or is intended to be, used.".

(c) Subsections (c), (d), and (e) of section 804 and section 806 of such Act are each amended by inserting "handicap", immediately after "sex", each place it appears.

(d) Section 805 of such Act is amended by adding at the end thereof the following: "It shall also be unlawful for any person or other entity whose business includes the appraising of real property to discriminate in the estimation of the property value on the basis of race, color, religion, sex, handicap, or national origin. It shall not be unlawful for such a person or other entity to take into consideration or to report to the person for whom the appraisal is being done all factors relevant to the appraiser's estimate of the fair market value of the property: *Provided,* That such factors are not used by the appraiser for the purpose of discriminating or denying rights guaranteed by this title.".

(e) Section 807 of such Act is amended by adding at the end the following: "Nothing in this title shall prohibit any action unless such action is taken with the intent or purpose of discriminating against a person on account of race, color, religion, sex, handicap, or national origin.".

ROLE OF THE ATTORNEY GENERAL

SEC. 7. Section 808 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended—

(1) in subsection (a) by striking out "Secretary of Housing and Urban Development" and inserting in lieu thereof "Attorney General";

(2) by striking out subsection (b);

(3) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively;

(4) in subsection (b) as redesignated by this section by striking out—

(A) "Secretary" each place it appears and inserting in lieu thereof "Attorney General";

(B) "Department of Housing and Urban Development" each place it appears and inserting in lieu thereof "Department of Justice";

(C) "sections 3105, 3344, 5362, and 7521 of title 5 of the United States Code" and inserting in lieu thereof "law"; and

(D) "5362" and inserting in lieu thereof "5372";

(5) in subsection (c) as redesignated by this section, by striking out "Secretary" and inserting in lieu thereof "Attorney General";

(6) in subsection (d) as redesignated by this section, by striking out "Secretary of Housing and Urban Development" and inserting in lieu thereof "Attorney General"; and

(7) by adding at the end the following:

"(e)(1) Simultaneously with the promulgation of any regulation or rule issued for the purpose of compliance with this title, the Attorney General shall transmit a copy thereof to the Committees on the Judiciary of the House of Representatives and the Senate. Such rule or regulation, other than an emergency rule, shall become effective at the end of the first period of sixty calendar days of continuous session of Congress, unless between the date of transmittal and the end of the sixty-day period, either House of Congress passes a resolution stating in substance that that House does not approve of the proposed rule or regulation.

"(2) Either House of Congress may adopt a resolution directing agency reconsideration of a rule other than an emergency rule. If such resolution is adopted within sixty calendar days of continuous session of Congress after the date the rule was transmitted to Congress, the rule shall not go into effect. The agency shall reconsider the rule and take such action as they deem appropriate.

EDUCATION AND CONCILIATION

SEC. 8. Section 809 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by—

(1) striking out "Secretary" each place it appears and inserting in lieu thereof "Attorney General";

(2) striking out "Secretary's" and inserting in lieu thereof "Attorney General's"; and

(3) adding at the end thereof the following sentence: "Nothing in this section shall authorize any payment of funds to any organization or entity formed by or pursuant to any agreements entered into under this section.".

ENFORCEMENT CHANGES

SEC. 9. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by—

(1) redesignating sections 815 through 819 as sections 816 through 820, respectively; and

(2) striking out sections 810 through 815 and inserting in lieu thereof the following:

"PRELIMINARY MATTERS OF ENFORCEMENT

"SEC. 810. (a) Whenever an aggrieved person, or the United States Attorney General on the Attorney General's own initiative, files a charge alleging a discriminatory housing practice, the Attorney General shall serve a notice of the alleged discriminatory housing practice on the party charged (hereinafter in this title referred to as the 'respondent') within ten days after such filing, and shall make an investigation thereof. Upon receipt of such charge, the Attorney General shall serve notice upon the aggrieved person acknowledging receipt of the charge and advising the aggrieved person of the time limits and alternative means of enforcement provided under this title. Such charge shall be in writing, under oath or affirmation, and shall contain such information and be in such form as the Attorney General may require, including detailed information regarding: (1) specific discriminatory practices alleged; (2) the dates of such alleged practices; (3) the names of parties involved; and (4) other relevant facts. An aggrieved person shall file a charge under this section with the Attorney General not later than six months after the alleged discriminatory housing practice occurred or terminated.

"(b)(1) In connection with any investigation of such charge, the Attorney General shall, at reasonable times, have access to, and the right to copy, any information that is reasonably necessary for the furtherance of the investigation. The Attorney General may issue subpoenas to compel such access to or the production of such information, or the appearance of persons, and may issue interrogatories, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Attorney General may administer oaths.

"(2) Upon written application to the Attorney General, a respondent shall be entitled to the issuance of a reasonable number of subpoenas and interrogatories by and in the name of the Attorney General to the same extent and subject to the same limitations as subpoenas issued by the Attorney General under paragraph (1) of this subsection.

"(3) Witnesses summoned by subpoena of the Attorney General under this title shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts.

"(4) The Attorney General or other party at whose request a subpoena is issued under this title may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

"(5) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence in such person's power to do so, in obedience to the subpoena or lawful order of the Attorney General

under this title, shall be fined not more than $1,000. Any person who, with intent thereby to mislead the Attorney General, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to the Attorney General's subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than $1,000.

"STATE ENFORCEMENT

"SEC. 811. (a) Whenever a charge alleges a discriminatory housing practice within the jurisdiction of a State or local public agency certified by the Attorney General under this subsection, the Attorney General shall, within twenty days after receiving such charge and before taking any action with respect to such charge, refer such charge to such agency. The Attorney General shall notify all parties involved of the referral to such agency. The Attorney General shall, after that referral is made, take no further action with respect to such charge unless the Attorney General determines that such agency no longer qualifies for certification. Wherever a State or local law provides rights and remedies which are reasonably equivalent to the rights and remedies provided by this title, the Attorney General shall certify the appropriate State or local agency administering such law. Any State or local agency may submit a written request for certification to the Attorney General. Unless the Attorney General offers a written objection within ninety days after such submission, such State or local agency shall be deemed certified within the meaning of this title. If the Attorney General objects within the prescribed ninety-day period, he shall provide the State or local agency with an explanation for his decision and such decision shall be subject to review by the appropriate United States district court.

"(b) The Attorney General shall not require, as a condition of such certification, that the State or local law enforcement agency agree, to waive, its exclusive authority over charges alleging discriminatory housing practices.

"CONCILIATION PROCESS

"SEC. 812. (a) If the Attorney General concludes, on the basis of a preliminary investigation of a charge, that prompt judicial action is necessary to carry out the purposes of this title, he may seek appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure.

"(b) At any time after the filing of a charge, the Attorney General shall endeavor to resolve such charge by conciliation. If the respondent refuses to participate in the conciliation process, the Attorney General may grant to the aggrieved person not more than $1,000 for legal fees and other expenses of initiating a civil action under this title against such respondent. Nothing said or done in the course of the conciliation process may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Attorney General who makes public any information in violation of the immediately preceding sentence shall be fined not more than $1,000. The conciliation process may result in a conciliation agreement. Such agreement may provide for binding arbitration of the dispute arising from the complaint or may award appropriate specific relief to the aggrieved person including damages of not more than $1,000. The Attorney General may issue such orders as are necessary to enforce any conciliation agreement, including, if the Attorney General has determined that there has been a breach of such agreement, an order that the breaching party pay to the other party not more than $1,000.

"(c)(1) If the Attorney General determines, after an investigation and after initiation of the conciliation process under this section, that reasonable cause exists to believe a charge is true, the Attorney General shall file an appropriate civil action under section 814(b) of this title. Such determination in the case of a charge filed by an aggrieved person may not be made later than six months after the date of the filing of such charge.

"(2) After each investigation under this section, the Attorney General shall provide to each party a copy of the report of such investigation.

"(d) The Attorney General shall not employ the services of any person or organization, or provide direct or indirect assistance to any person or organization, to make an offer to purchase, rent, or obtain financing for a dwelling that is not a bona fide offer, except where such action is undertaken for the purpose of verifying a violation of this title which the Attorney General has reason to believe has occurred.

"PRIVATE ENFORCEMENT

"SEC. 813. (a)(1) An aggrieved person may commence a civil action in an appropriate United States district court or State court at any time not later than six months after the alleged discriminatory housing practice occurred or terminated.

"(2) The Attorney General may, upon timely application, intervene in such civil action, if he personally certifies that the case is of general public importance.

"(b) Any court, upon application by an aggrieved person or a respondent, may, in such circumstances as it deems just, appoint an attorney for such party and may authorize the commencement or continuation of the action without the payment of fees, costs, or security.

"(c) In a civil action under this section, a court may award such relief as may be appropriate, including money damages, equitable and declaratory relief, and punitive damages not to exceed $1,000.

"(d) It is the sense of the Congress that, except in cases in which a municipality or State is involved, the use of United States magistrates should be encouraged to the maximum extent feasible in order to expedite litigation under this section.

"ATTORNEY GENERAL ENFORCEMENT

"SEC. 814. (a) Whenever the Attorney General has reasonable cause to believe 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 title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may bring a civil action in an appropriate United States district court.

"(b) The Attorney General may bring a civil action in an appropriate United States district court to remedy any discriminatory housing practice with respect to which the Attorney General has made a finding that reasonable cause exists under section 812(c)(1) of this title.

"(c) The court may award such relief in any civil action under this section as is authorized in section 813(c) of this title in cases brought under that section.

"(d) The filing of a civil action pursuant to a charge filed by an aggrieved person under this title by the Attorney General or by any State or local agency shall preclude the filing of a civil action under this title growing out of the same discriminatory housing practice by such aggrieved person. The filing of a civil action under this title by an aggrieved person shall preclude the filing of a civil action under this title growing out of the same discriminatory housing practice by the Attorney General or by any State or local agency pursuant to a charge filed by such aggrieved person.

"(e) It is the sense of the Congress that, except in cases in which a municipality or State is involved, the use of United States magistrates should be encouraged to the maximum extent feasible in order to expedite litigation under this section.

"ANCILLARY AND PROCEDURAL MATTERS

"SEC. 815. (a) In any action or proceeding under this title, the court may allow a prevailing party (other than the United States with respect to attorney fees) reasonable attorney and expert witness fees as part of the costs. The United States shall be liable for such costs the same as a private person. Such costs may also be awarded upon the entry of any interlocutory order which determines substantial rights of the parties.

"(b) Any court in which a proceeding is instituted under this title shall assign the case for hearing at the earliest practicable date and cause the case in every way to be expedited.

"(c) Any sale, encumbrance, or lease executed before the issuance of any order under this title, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a charge or civil action under this title shall not be affected by such court order.

"(d) Any court having jurisdiction of an action brought under this title which enters a temporary restraining order or other order providing permanent or temporary relief sought by the Attorney General may, in such circumstances as it deems just, if a violation of this title is not ultimately found, enter an order providing reimbursement from the United States to the defendant for unavoidable economic losses incurred during the time that the temporary restraining order or preliminary or temporary relief was in effect which were a direct result of such temporary restraining order or preliminary or temporary relief.".

COOPERATION WITH STATE AND LOCAL AGENCIES

SEC. 10. Section 817 as redesignated by section 9 of this Act is amended by striking out "Secretary" each place it appears and inserting in lieu thereof "Attorney General".

CONFORMING AMENDMENT TO TITLE IX OF 1968 CIVIL RIGHTS ACT

SEC. 11. Section 901 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting ", handicap (as defined in section 802 of this Act)," immediately after "sex" each place it appears.

By Mr. HATCH (for himself and Mr. THURMOND):

S. 141. A bill to provide a special defense to the liability of political subdivisions of States under section 1979 of the Revised Statutes (42 U.S.C. 1983) relating to civil actions for the deprivation of rights; to the Committee on the Judiciary.

Bill -

Pls. follow up Monday A.M. to make sure package is ready for transmittal. Think they want to go on Tuesday.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 8, 1983

FOR: EDWIN L. HARPER
JAMES E. JENKINS

FROM: MICHAEL M. UHLMANN

SUBJECT: Answers to Fair Housing Questions

With regard to Ed Meese's questions on Fair Housing legislation:

1) Legislative status: OMB transmitted the package to Darman today for final Senior Staff circulation. The package should be ready for transmittal to the Hill early next week. Sensenbrenner will be the lead man in the House, and we expect all the Republicans on the House Judiciary Committee to sign on with the exception of Fish. Howard Baker will be taking the lead in the Senate.

2) Federal law overriding State law on handicapped provisions: If local laws are more limited than federal law in the extent to which they require expenditures for modifications, then the more expansive federal law will override the local law. If, on the other hand, local law goes beyond the federal requirements and imposes greater obligations on landlords, then these local requirements will continue to be effective as long as they do not conflict with the federal law.

Make sure this ready Monday COB.