STANDING TO CHALLENGE HOUSING DISCRIMINATION: THE LIMITS OF TRAFFICANTE V. METROPOLITAN LIFE

In *Trafficante v. Metropolitan Life Insurance Co.*,[1] the United States Supreme Court utilized its first opportunity to broaden the class of plaintiffs permitted to challenge housing discrimination under Title VIII of the 1968 Civil Rights Act.[2] Plaintiffs, tenants of the Parkmerced apartment complex in San Francisco, filed suit against the owners and proprietors of the Parkmerced,[3] alleging that defendants' racially discriminatory rental policies[4] denied tenants the benefits of living in an integrated community. Consequently, plaintiffs alleged loss of business and professional advantages by being stigmatized as residents of a "white ghetto."[5]

Pursuant to section 810(a) of the Civil Rights Act of 1968,[6] plain-

1. 409 U.S. 205 (1972).

2. 42 U.S.C. §§ 3601-31 *et seq.* (1970).

3. At the same time the suit was filed, Metropolitan Life Insurance Company was the exclusive owner of the building. While the case was pending in the district court, defendant Metropolitan Life sold a partial interest to the Parkmerced Corporation and upon motion of plaintiff, Parkmerced was joined as an additional party. Brief for Respondent Parkmerced Corp. at 6-7, Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).

4. Plaintiffs alleged that defendants systematically discriminated against members of minority racial and ethnic groups in connection with rental practices and that defendants discouraged minority applicants from applying by misrepresenting the availability of apartments, manipulating the waiting list and utilizing discriminatory admission standards. 409 U.S. at 208.

5. The Parkmerced is a 3500-unit apartment complex that is approximately 99% white even though it is situated in an area of San Francisco in which the rental units range from 11 to 56% black. U.S. BUREAU OF CENSUS, CENSUS OF HOUSING: 1970, BLOCK STATISTICS, FINAL REPORT, HC (3)-24 (SAN FRANCISCO-OAKLAND, CALIFORNIA URBANIZED AREA), 1, 219, 221, 226. *See* Brief for Petitioner at 5 n.2, Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).

6. Section 810(a) as codified in 42 U.S.C. § 3610(a) provides in part:

> Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

tiffs claimed to be "persons aggrieved" and sued for damages and injunctive relief. Based on two determinations, a lower court dismissal[7] was affirmed by the Ninth Circuit Court of Appeals.[8] First, the court of appeals narrowly construed "persons aggrieved," holding plaintiffs failed to meet the requirements of standing by their failure to allege that they were the "direct objects of any discriminatory housing practice."[9] Although the Ninth Circuit conceded that some injury may have accrued to the plaintiffs from the maintenance of a "white ghetto," the court decided that plaintiffs in order to have obtained standing should have alleged "specific acts of discrimination" directed at the individual plaintiffs.[10] The second determination was that the suit was filed to correct "patterns or practices" of discrimination and as such may only be maintained by the Attorney General of the United States.[11] The Supreme Court reversed the Ninth Circuit on both issues. The Supreme Court granted weight to an administrative decision by the United States Department of Housing and Urban Development defining "persons aggrieved" to include the plaintiffs

---

Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under sub-section (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion.

7. The district court dismissed the action on the sole ground that plaintiffs, as tenants, did not have standing to challenge racially discriminatory practices by defendant against minority applicants who were not parties to the action. Trafficante v. Metropolitan Life Ins. Co., 322 F. Supp. 352 (N.D. Cal. 1971).

8. Trafficante v. Metropolitan Life Ins. Co., 446 F.2d 1158 (9th Cir. 1971).

9. 446 F.2d at 1162.

10. *Id.*

11. *Id.* at 1163. The Court was referring to 42 U.S.C. § 3613 which provides:

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 subchapter, or 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, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.

in this case,[12] and in a unanimous decision held that vitality could be given to section 810 (a) "only by a generous construction which gives standing to sue to *all in the same housing unit who are injured by racial discrimination* in the management of those facilities under the auspices of HUD."[13] The Court also reversed the Ninth Circuit by upholding the role of plaintiffs as "private attorneys general" able to enforce the provisions of Title VIII.[14]

The fundamental question in *Trafficante* involves the liberalization of a statutory construction to an extent the judicial and constitutional restraints of standing will permit. The Court's decision in favor of plaintiffs is supported by the legislative history and administrative interpretation of Title VIII, the cases establishing the tests for standing, and case law involving similar statutory language. Is, however, the Court's decision to grant standing only to those "in the same housing unit who are injured by racial discrimination" consistent with the forces of public policy and case law that influenced the Court to liberalize the construction of "persons aggrieved," or is the decision an arbitrary boundary line with only narrow applicability?

An examination of the *Trafficante* decision must begin with the determination of whether the liberalization of the definition of "persons aggrieved" so as to include plaintiffs in this case violates basic judicial and constitutional principles of standing. The facts of *Trafficante* represent a "case" or "controversy" as required by the Constitution,[15] and an adversary conflict[16] involving neither a political question[17] nor a hypothetical set of facts.[18] The early test for standing was first enunciated in *Tennessee Electric Power Co. v. Tennessee Valley Authority*[19] and depended upon whether the parties had a legal

12. The Assistant Regional Administrator for HUD, Clifton R. Jeffers, wrote the attorneys for the plaintiffs that "It is the determination of this office that the complainants are aggrieved persons and as such are within the jurisdiction of Title VIII of the 1968 Civil Rights Act." *See* Brief for Petitioner at 21, Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).

Statutory constructions by administrative agencies have been given "great weight" by the Court. Griggs v. Duke Power Co., 401 U.S. 424, 433-34 (1971); Udall v. Tallman, 380 U.S. 1, 16 (1965).

13. 409 U.S. at 212 (emphasis added).

14. *Id.* at 211.

15. U.S. CONST. art. III, § 2.

16. Flast v. Cohen, 392 U.S. 83 (1968).

17. Baker v. Carr, 369 U.S. 186 (1962).

18. Aetna Life Ins. Co. v. Haworth, 300 U.S. 227 (1937); Muskrat v. United States, 219 U.S. 346 (1911).

19. 306 U.S. 118 (1939).

interest in the outcome of the proceedings.[20] In 1970, a more liberal two-part test was substituted by *Association of Data Processing Service Organizations v. Camp.*[21] The new standard requires first, that there exist "injury in fact"[22] to the plaintiff, and second, that the alleged injury is to an interest "arguably within the zone of interests to be protected or regulated."[23]

Plaintiffs in *Trafficante* meet the "injury in fact" test since they alleged individual injury to themselves as required by *Sierra Club v. Morton,*[24] even though the injury was not economic.[25] The Court has often discussed the injury to individuals and society that arises from racial discrimination and has held that deprivation of interracial associations is a legally cognizable injury.[26] In further support of plaintiffs' allegation of "injury in fact," affidavits were submitted discussing the adverse effects on plaintiffs of living in a segregated community.[27]

---

20. *Id.* at 137-38.

21. 397 U.S. 150 (1970).

22. *Id.* at 152.

23. *Id.* at 153. The case involved standing to review an administrative action. In *Trafficante,* both the Ninth Circuit and the Supreme Court accepted without question that these same legal standards should apply to civil rights litigation.

The *Data Processing* test for standing has been much criticized as inviting a decrease in judicial involvement and a rise in discretionary justice. Dugan, *Standing to Sue: A Commentary on Injury in Fact,* 22 CASE W. RES. L. REV. 256, 258 (1971). Some commentators have suggested that "injury in fact" should be the sole criterion; *see, e.g.,* Davis, *Standing: Taxpayers and Others,* 35 U. CHI. L. REV. 601, 613-14, 618 (1968). Justices Brennan and White agreed. In Barlow v. Collins, they said that "injury in fact" guarantees the litigant can "frame the relevant questions with specificity, contest the issues with the necessary adverseness, and pursue the litigation vigorously." 397 U.S. 159, 172-73 (1970) (dissenting opinion).

24. 405 U.S. 727 (1972).

25. In earlier cases, the Court only recognized economic injury as a basis for standing. More recent cases, however, have been litigated on other than economic injury. *See, e.g.,* Association of Data Processing Serv. Organizations v. Camp, 397 U.S. 150 (1970); Citizens Comm'n for the Hudson Valley v. Volpe, 425 F.2d 97, 103 (2d Cir. 1969), *cert. denied,* 400 U.S. 949 (1970); Office of Communication v. FCC, 359 F.2d 994, 1005-06 (D.C. Cir. 1966).

26. *See, e.g.,* Loving v. Virginia, 388 U.S. 1 (1967); Buchanan v. Warley, 245 U.S. 60 (1917); Lee v. Nyquist, 318 F. Supp. 710, 714 (W.D.N.Y. 1970), *aff'd,* 402 U.S. 935 (1971); Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969).

27. Dr. Alan F. Poussaint, Associate Dean of the Harvard Medical School and a consultant psychiatrist to the U.S. Commission on Civil Rights, submitted an affidavit dealing with the adverse psychological effect of living in a segregated community. One petitioner is black and represents one of the "token" one-half % black residents of the Parkmerced community. According to Doctor Poussaint, severe injury can accrue to "token" blacks. *See* Brief for Petitioner at Appendix E, Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).

To determine whether plaintiffs' rights were "arguably within the zone of interests to be protected" by the law,[28] the Court searched the legislative history of Title VIII. During the legislative discussions of the bill, various congressmen alluded to specific discriminatory actions for which the person denied housing would have recourse under Title VIII.[29] These references are grounds for supporting an implied congressional intent to provide a remedy only for those persons who are the direct objects of the discrimination.[30] Some congressmen, however, argued in favor of passage of Title VIII because of the adverse consequences arising from segregated housing to the entire society.[31] Remarks alluding to this aspect of Title VIII suggest a broad intent to allow access to the courts to a larger section of the community who are injured by segregated housing. Other than inadvertent comments by congressmen discussing Title VIII, the legislative hearings never directly touched the issue of standing. The Court, having noted that the legislative history was not too helpful, held that Title VIII was intended to protect the entire community since many more persons than those who are direct objects of discrimination suffer from segregated housing.[32]

Apart from the fundamental judicial principles of standing that have evolved in other areas, the Court may have been impressed by the long line of civil rights cases that have consistently expanded the class of plaintiffs able to initiate civil rights litigation in view of the

---

28. For the final form of Title VIII of the Civil Rights Act as passed by the Senate see 114 CONG. REC. 5992 (1968), and as passed by the House of Representatives see 114 CONG. REC. 9620 (1968). The final act had many predecessors and the hearings surrounding these original proposals are helpful in determining legislative intent. *See* H.R. 2511, 90th Cong., 2d Sess. (1967); S. 1358, 90th Cong., 1st Sess. (1967); H.R. 14765, 89th Cong., 2d Sess. § 401 *et seq.* (1966); *Hearings on S. 1358, S. 2114, and S. 2280 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency,* 90th Cong., 1st Sess. (1967).

29. *See* comments by Senator Javits in 114 CONG. REC. 2706 (1968); Senator Hart in 114 CONG. REC. 3247 (1968); and Senator Mondale in 114 CONG. REC. 2013 (1968).

30. Brief for Respondent Parkmerced Corp. at 18-21, Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).

31. *See* comments by Senator Mondale in *Hearings on S. 1358, S. 2114, S. 2280 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency,* 90th Cong., 1st Sess. 356 (1967); and comments by Representative Celler in 114 CONG. REC. 9556 (1968).

32. 409 U.S. at 210.

strong policy to eliminate racial discrimination.[33] In the area of public education, standing has been conferred upon parents of white as well as black children to correct patterns of racial segregation in the schools,[34] and upon students to challenge racially discriminatory faculty assignments.[35] In the area of public accommodations, black plaintiffs have been held to be "aggrieved parties" to challenge segregated public transport even though defendant's segregation policies were never enforced,[36] and white plaintiffs have been held to have standing to demand use of restaurants in the company of black patrons.[37] In employment cases, the courts have also recognized the injury suffered by white as well as black employees from racially discriminatory activities by the employer.[38] Cases concerning discriminatory housing have broadened concepts of standing to include prospective home buyers challenging a discriminatory zoning ordinance,[39] neighbors suing to enjoin construction of a low-income housing project in the immediate vicinity,[40] and white landowners challenging the city's failure to rezone on the grounds that it perpetuated racial segregation.[41]

33. The attitude of encouraging civil rights litigation as a strong public policy has been expressed often by the Court. *See, e.g.,* Carter v. Jury Comm'n of Greene County, 396 U.S. 320 (1970); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 237 (1969); Barrows v. Jackson, 346 U.S. 249, 257 (1953).

34. Hobson v. Hansen, 320 F. Supp. 409 (D.D.C. 1970); Lee v. Nyquist, 318 F. Supp. 710 (W.D.N.Y. 1970), *aff'd,* 402 U.S. 935 (1971).

35. Rogers v. Paul, 382 U.S. 198 (1965); Wheeler v. Durham City Bd. of Educ., 363 F.2d 738, 740 (4th Cir. 1966); Lee v. Macon County Bd. of Educ., 267 F. Supp. 458 (M.D. Ala. 1967).

36. Bailey v. Patterson, 369 U.S. 31 (1962).

37. Tolg v. Grimes, 355 F.2d 92 (5th Cir. 1966); Nesmith v. Alford, 318 F.2d 110 (5th Cir. 1963).

38. Carr v. Conoco Plastics, Inc., 423 F.2d 57 (5th Cir.), *cert. denied,* 400 U.S. 951 (1970); NLRB v. Tanner Motor Livery, Ltd., 349 F.2d 1 (9th Cir. 1965).

39. Kennedy Park Homes Ass'n v. City of Lackawana, 318 F. Supp. 669, *aff'd,* 436 F.2d 108 (2d Cir.), *cert. denied,* 401 U.S. 1010 (1970).

40. Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970). Plaintiffs in this case would not have been displaced, nor would they have become future occupants of the proposed project. Nevertheless, the court held the placement of the project in the neighborhood would affect "the very quality of their daily lives," and therefore plaintiffs had standing. *Id.* at 817-18.

41. Sisters of Providence v. City of Evanston, 335 F. Supp. 396 (N.D. Ill. 1971). Plaintiffs proposed to sell property that the city refused to rezone in order to allegedly keep the area segregated. Even though the white plaintiffs were not racially excluded, they had standing to test the arbitrariness of the city's action. *Id.* at 400-02.

Although the line of cases liberalizing standing in civil rights cases may be persuasive, defendant argued that a suit by a private party was usurping the right of the Attorney General to sue to correct a "pattern or practice" of discrimination.[42] The Ninth Circuit relied on specific language of section 3613 of the United States Code[43] which grants the Attorney General the right to sue, and held that this section did not create a private right of action.[44] A consistent line of cases, however, support the utilization of private attorneys general as a mechanism for enforcement of civil rights cases. In *Newman v. Piggie Park Enterprises, Inc.*,[45] the Supreme Court upheld the use of the private attorney general to vindicate the strong national policy of desegregated public accommodations under the Civil Rights Act of 1964.[46] In *Allen v. State Board of Elections*,[47] the court permitted private action to enforce the 1965 Voting Rights Act[48] and said that enforcement would be severely hampered if it were totally dependent on the Attorney General.[49] In the area of equal opportunity employment, the Fifth Circuit upheld the right to maintain a private action even though the Attorney General had the authority to sue to correct "patterns or practices" of discrimination.[50]

In addition to the line of cases supporting the use of private attorneys general, the United States as amicus curiae pointed out that the small staff of the Attorney General's Housing Section of the Civil Rights Division is not able to adequately enforce Title VIII without the assistance of private suits.[51] The Court recognized the potential enforcement limitations and held that such a finding would be contrary to the public policy of eliminating racial discrimination.[52]

In light of the recent trend of cases expanding the concept of standing in civil rights cases, the policy considerations allowing "private

42. 42 U.S.C. § 3613 gives the Attorney General the power to sue to correct a pattern or practice of discrimination. *See* 409 U.S. at 209, 211.

43. 42 U.S.C. § 3613 (1970).

44. 446 F.2d at 1162.

45. 390 U.S. 400 (1968).

46. 42 U.S.C. § 2000a *et seq.* (1970).

47. 393 U.S. 544 (1969).

48. 42 U.S.C. § 1973 (1970).

49. 393 U.S. at 556-57.

50. Miller v. Amusement Enterprises, Inc., 426 F.2d 534, 537 (5th Cir. 1970).

51. Brief for United States as amicus curiae at 33-34, Trafficante v. Metropolitan Life Ins. Co., 446 F.2d 1158 (9th Cir. 1971).

52. 409 U.S. at 211.

attorneys general" to enforce civil rights and the Third Circuit's decision in *Hackett v. McGuire Bros., Inc.*,[53] finding a "congressional intention to define standing as broadly as is permitted by Article III of the Constitution,"[54] the Court's decision to confer standing on the plaintiffs was a predictable liberalization of "persons aggrieved." The Court said that it was the entire community that suffered from discriminatory housing practices and not just the person denied housing.[55] The Court chose, however, to limit the definition of "community" to include only "residents of the same housing unit."[56] The basis for this limitation is unclear and finds little support in the Court's own decisions establishing the guidelines for standing. Arguably, a neighbor living across the street from a large segregated housing unit suffers as much "injury in fact" by being a part of the community as does a resident of the housing unit itself. Under *Trafficante,* the neighbor across the street would not necessarily have standing even though the resident of the housing unit would. Since the "housing unit" limitation imposed on the definition of "persons aggrieved" by *Trafficante* is not consistent with the Court's criteria for standing, this incongruity suggests that the limitation will be only an ephemeral boundary line in the rapidly expanding class of plaintiffs able to challenge housing discrimination.

Mark Stephen Davis

53. 445 F.2d 442 (3d Cir. 1971).
54. *Id.* at 446.
55. 409 U.S. at 211.
56. *Id.* at 212.