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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
J. S. DISTRICT COURT E.D. N.Y.

★ FEB 28 1974 ★

TIME A.M.
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UNITED STATES OF AMERICA :

-against- :

73 C 1529

F. C. TRUMP, D. TRUMP and
TRUMP MANAGEMENT, INC., :

Defendants :

-----x

United States Courthouse
Brooklyn, New York

January 25, 1974
10:00 o'clock a.m.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

BURTON H. SULZER

OFFICIAL COURT REPORTER

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APPEARANCES:

**EDWARD J. BOYD V, ESQ.,
Acting United States Attorney for the
Eastern District of New York**

**BY: HENRY A. BRACHTL, ESQ.,
Assistant United States Attorney.**

**FRANK E. SCHWELD, ESQ.,
MS. ELYSE GOLDWEBER
Attorneys for Housing Section, Civil Rights
Division.**

**ROY COHN, ESQ.,
Attorney for Trump Management Inc.
F. C. Trump and D. Trump.
.**

1
2 THE CLERK: United States against F.C. Trump,
3 D. Trump and Management, Inc.

4 MR. BRACHTL: Your Honor, the first matter of
5 several to which we'll be addressed this morning will
6 be Mr. Cohen's motion, but before we get to that
7 I would like to first introduce to the Court Frank E.
8 Schweld, who is the Chief of the Housing Section of
9 the Civil Rights Division of the Department of Justice,
10 and Attorney Elyse Goldweber, also of the Housing
11 Section of the Civil Rights Division.

12 With respect to the matters which are on the
13 calendar this morning, there are three concerning this
14 case: first, there is the defendant's motion to dismiss
15 the complaint, or in the alternative, for a more
16 definite statement.

17 There is, secondly, the plaintiff's motion to
18 compel an answer to interrogatories; and, thirdly,
19 there is the plaintiff's motion to dismiss the defend-
20 ant's counterclaim.

21 With respect to counsel for the government on
22 those several matters, Ms. Goldweber will address the
23 arguments with respect to the motion to dismiss, or
24 in the alternative for a more definite statement, and
25 as we think a necessary corollary to that argument,

1 our argument in support of our motion to compel
2 answers to interrogatories.

3 At the conclusion of that argument I will have
4 a few remarks to make in support of our application
5 for the dismissal of the defendant's counterclaim.

6 MR. COHEN: Your Honor, I am afraid that I will
7 have to be affirmative and negative with respect to
8 this battery of distinguished legal talent from the
9 government all by myself on all motions, but I will do
10 my very best.

11 THE COURT: Well, Mr. Cohen, I recognize you as
12 a big gun, too.

13 MR. COHEN: You are very kind, your Honor. I wish
14 it was so.

15 Judge Neaher, I guess the best thing to do here
16 is start at the beginning. Back in the fall one day
17 the Trumps and the Trump organization -- well, I ought
18 to start by telling you the Trump Management Company,
19 which is a defendant, and Frederick Trump and his son,
20 Donald Trump, who are associated with Trump Manage-
21 ment, is one of the largest management and most success-
22 ful and most respected management companies in this
23 area, and I suppose in the country.

24 One fine day back in the late fall, without
25 having been served with any legal papers or any such

1 formality, all of a sudden the Trumps turn on the
2 radio and heard themselves being blasted all over,
3 pursuant to a press release issued out of the Depart-
4 ment of Justice in Washington -- not up here -- as
5 people who are discriminating, adopting discriminatory
6 policies.

7 The next day, the bulldog editions of the Daily
8 News and the front page of the New York Times emblazoned
9 the facts for all to see and all to read, and I guess
10 some time thereafter the court papers finally turned up
11 someplace and we found out what this was all about.

12 I noticed in some papers submitted to your Honor
13 it is said that somebody made or was supposed to make
14 a phone call to somebody in the Trump organization
15 simultaneously with the release of this press release.
16 But what I am saying now, really, is not actionable by
17 us at the moment, except with reference to our counter-
18 claim which I will come to in a few minutes. I tell it
19 to your Honor as the background as to how this whole
20 thing started.

21 I know that the Eastern District and the
22 Southern District and the Second Circuit have had
23 things to say about this idea of these press releases
24 being handed out in the first instance, but the fact
25 is, and the government concedes that they did hand out

1 one and they have been candid enough to attach that
2 press release to the papers which are submitted to your
3 Honor.

4 The damage done to the Trumps and the defendants
5 here was, I suppose, something that is never going to,
6 no matter what the outcome of this case, I suppose the
7 damage is never going to be completely undone because
8 you are never going to catch up with these initial
9 headlines.

10 When these motions were filed, we had a somewhat
11 reserved press conference in which we tried to contact
12 the same people, the same representatives of the media
13 to whom the government had distributed its press
14 release originally, and we acquainted them with the
15 papers we were filing in Court and Mr. Trump acquainted
16 them with his position, which is a denial which he felt
17 he wanted to have before the thousands of people who
18 do business with him commercially and his tenants and
19 banks and everybody else, have before them his position,
20 which is that the charges made and emblazoned over the
21 front pages were without foundation. In any event,
22 here we are where we should be, in court.

23 Now, Judge Neaher, the complaint in this case
24 is one of the most unusual things I have ever seen. I
25 must admit that in recent years I suppose my practice

1 has gone from between office matters and trial of crim-
2 inal cases, and I frankly have not been in a civil
3 rights case before and I must say I am amazed and con-
4 founded by some of the principles of law which the
5 government urges apply to this type of case.

6 First of all as to the complaint. You have before
7 you a motion to dismiss this complaint on the grounds
8 it totally fails to set forth facts sufficient to con-
9 stitute a cause of action. It is a bare bones complaint.
10 And we ask in the alternative, if your Honor disagrees,
11 we of course ask you to dismiss the complaint. If your
12 Honor should disagree, we ask that your Honor, in the
13 alternative, dismiss it with leave to the government to
14 file a complaint with some factual allegations in it
15 so that the defendants are on notice with some reason-
16 able detail as to exactly what proscribed conduct they
17 are specifically charged with having committed.

18 This complaint which gave rise to all these
19 front pages is a very short document. The only facts
20 stated in the complaint are the names of the defendant,
21 Trump Management and Fred and Donald Trump, and from
22 therein, there is a verbatim recitation of the statutory
23 language of Title 42, 3602(b) and 3601, which says
24 that it is a violation of the Fair Housing Act, and
25 enjoined violation to discriminate because of race,

1 color or creed, and that if discriminatory policies
2 are pursued by a landlord, this is proscribed by the
3 Fair Housing Act and the government may apply for
4 injunctive relief of the Court.

5 There is not one specific allegation in this
6 very short complaint. They don't even give a year.
7 They don't even say between 1968 and 1972 at such-and-
8 such projects operated by the Trump Organization,
9 blacks have been denied such-and-such, or on January 17,
10 1973, John Jones, being otherwise fully qualified and
11 able to pay the rent, applied and was denied an
12 apartment because of his race, whereas the same apartment
13 was given to a subsequent applicant, or something like
14 that; not one line in this whole complaint.

15 When Mr. Trump brought it in to me and I read
16 it, I said, "I don't know what to tell you. It has your
17 name and it sets forth verbatim statutory language
18 saying you should not discriminate. And there isn't
19 one specific act." I said, "It's akin to a defendant
20 being indicted with the statutory section being charged
21 and not one specific in the indictment."

22 Now, I realize a defendant in a criminal case
23 could then come forward and ask the government for a
24 bill of particulars, which is a relief the Court would
25 grant if a situation existed as I described. In this
case, something crazy happened, Judge Neaher. After this

1 complaint was filed and we made the motion to dismiss--
2 and I don't remember whether it was before we made the
3 motion or after we made the motion, and it really
4 isn't too material -- but, in any event, after this
5 complaint is filed and we set up a rumpus about it
6 and said, "We don't know what this is all about. We
7 didn't discriminate and we don't know how to tell you
8 we didn't because you haven't given us one thing we
9 can sink our teeth into; you haven't given us one
10 location, one name, one fact which we can answer here."

11 They said, "Don't worry; that's going to be
12 taken care of." And then I find out how it will be
13 taken care of, they serve us with 16 pages of interrog-
14 atories and tell us to go out and make an investigation
15 to find out whether or not we discriminated, to furnish
16 them with the answers and when we furnish them with
17 the answers, then they will be in a position to
18 amplify the complaint and tell us whether or not in
19 fact the charge which they made on every front page
20 in this area might have some substance to it or not.

21 Now, the third motion before your Honor this
22 morning is to compel us to answer these interrogatories.
23 I'm going to say just a word about them because it
24 would seem to me, and I don't think there will be much
25 disagreement on that, that the first thing we do is

1 impose upon your Honor for a ruling, after your Honor
2 has had a chance to go into this mess we are throwing
3 at you, on the sufficiency of the complaint, and if
4 your Honor rules it sufficient and does not dismiss it,
5 or rules that they should furnish some facts and then
6 give them time to furnish facts, once that is cleared
7 up; then we get down, I suppose, to the stage of inter-
8 rogatories and further particulars and all of that.

9 Now, this 16 pages of interrogatories they
10 served on us to find out whether there is any basis
11 for their action has to be the wildest thing I ever
12 read in my life. Maybe it is my ignorance of this type
13 of proceeding. On page 15, they say, "Please state
14 the name, address, race and occupation of each person
15 interviewed by you or on your behalf in relation to
16 this case. Please state separately the name, address,
17 race and occupation of any person not interviewed by
18 you or on your behalf, but whom you intend to interview
19 in the future about this case."

20 Well, I have been around a little while and I
21 can just picture myself calling up some witness and
22 saying, "I'd like to talk to you about this." By the
23 way, are you black or white or Catholic, Protestant
24 or Jew?" And then making a note of it and then turning
25 that over to the government or something like that.

1 That's what this whole darn thing reads like.

2 They say, for example, "Please state the name
3 and address of each black and Puerto Rican individual
4 who has applied for a position of any kind with Trump
5 Management in the past three years." Well, this doesn't
6 charge employment discrimination on the part of Trump
7 in hiring its management personnel -- it is a fair
8 housing proceeding. When I called Mr. Trump and read it
9 to him, he said, "How can I do that? I couldn't tell you
10 if the Court ordered me to answer it, because I would
11 have thought it highly improper when we employ some-
12 body to say, 'what is your race?'"

13 He said, "I don't know what their race or
14 religion is. All I know is, if they have good refer-
15 ences and they meet the qualifications, they get the
16 job, and whoever our personnel people are, do that. We
17 don't ask race." He said, "And I haven't even seen most
18 of these people and I wouldn't know if they are black
19 or Puerto Rican or white or Catholic, Protestant or
20 Jew," and he said, "I would think the most improper thing
21 in the world for me to do would be to have questions
22 concerning a person's race or religion or something
23 like that on employment applications when we give out
24 jobs in our organization."

25 Now, when it comes to the units, oh, they want

1 to know things like, decreases and increases in rental
2 rates and since January 1, 1968. You are talking about
3 14,000 units here. When you get down to the question
4 of the actual 14,000 units, they ask us to tell them
5 the number of persons per month by race making inquiry
6 concerning the availability of an apartment between
7 January 1, 1969 and present. We deny any discriminatory
8 practices, and obviously the Trumps have never permiss-
9 ed, would never dream of permitting an application
10 which is given out for a broker renting an apartment
11 to say to a person, "What's your race or religion?" We
12 would have no way in the world of knowing.

13 The next thing they ask us to do is to canvass
14 our 14,000 units and findout -- there are definitely
15 a number of blacks who live in there, that we know
16 visibly. I have taken a ride and looked at some of
17 them and blacks walk in and out and I assume they are
18 not there for any improper purpose and they live in
19 the place. But they want us to go, apparently, and
20 canvass all 14,000 of these units and find out how
21 many blacks live there and how many non-blacks live
22 there, and I suppose how many Puerto Ricans live there
23 or non-Puerto Ricans.

24 The whole tenor of the thing seems to be
25 offensive. If they have some proof that the Trumps
have been discriminating and have applied discriminatory

1 policies -- and I know there are a considerable number of
2 blacks, we represent that to the Court, who live in
3 these units -- but if they have some specific proof
4 to support a complaint that discriminatory practices
5 have been followed, all we ask them to do is not to
6 tell us to go out and make an investigation and in so
7 doing, note the race of every witness we interview, or
8 every person I talk to about it, but ask them to put
9 in a proper complaint, which advises us at least of
10 the minimum facts, not statutory language, which they
11 claim shows some discriminatory action by us so that
12 we can meet that charge and say in that building in
13 those units or on this application or in this situa-
14 tion it is not a fact we discriminated, and here's
15 what happened. That's all we ask.

16 I would respectfully submit to your Honor the
17 concept that a barebones complaint, without one fact
18 in it, followed on its heels by 16 pages of interroga-
19 tories telling us to go out and find and conduct our
20 own investigation, which would be long, expensive and,
21 in many instances, impossible, is not the way in this
22 country you do something like this.

23 So we therefore ask your Honor to hold the inter-
24 rogatories in abeyance, and if we ever get to this
25 point, we are going to ask leave to make a motion to

1 strike some of these, and ask your Honor to dismiss
2 this complaint -- and if your Honor feels that total
3 dismissal is not warranted, at least ask them to re-
4 plead and give us some facts.

5 The government cites some cases which they say
6 could actually justify a complaint like this. I don't
7 think one of them that they cite is of significance
8 insofar as this complaint is concerned, a reported case.
9 They have been kind enough to supply us with a pile,
10 knowing, I'm sure, the expertise of their Civil Rights
11 Division, they have them at their fingertips and they
12 were nice enough to mimeograph off for us a list with a
13 table of contents of the unreported cases. I have
14 gone through these and I don't think -- don't find
15 one of them that supports a complaint like this. I
16 am not going to cite the general lack.

17 There are, of course, somethings which say in
18 a complaint you don't have to set forth every eviden-
19 tiary detail. Your Honor has heard to the point of
20 boredom that argument every time there is a motion for
21 a bill of particulars before you in a criminal case.
22 The defendant says, "I don't know anything." The
23 government says, "They want all our evidence." And
24 your Honor strikes a happy balance and says, "Well,
25 tell them enough so they know of the specifics here

1 they are supposed to meet. But you don't have to tell
2 them all your evidence and all of that." Okay. They
3 cite this Connelly case with which I have some famil-
4 iarity, which cuts both ways, of course. It says you
5 don't have to tell everything but you have to tell
6 something; you have to tell them what they are charged
7 with and what they feel someone is supposed to have
8 done, and I think that case cuts most heavily in our
9 favor.

10 Then they go to these unreported cases. Just to
11 talk about a few of them and not to be discriminatory
12 myself here, I will just take them in the order in
13 which they set them forth in their memorandum. They
14 start with a case called the Raymond case. It is
15 obvious from that case, your Honor, there was a wealth
16 of detail. They don't set forth the actual complaint
17 so I just have to piece together what the complaint
18 might have been and the preliminary pleadings from the
19 papers they have here.

20 In the Raymond case, your Honor, first of all,
21 this was a small situation. They would say, I think,
22 less than 40 apartments involved, not 14,000, such as
23 we have in this case. What they say there is the land-
24 lord publicly announced and admitted, "I will never
25 rent a place to a black. Forget about it." And,

1 furthermore, when a white family entertained some black
2 friends of theirs, they promptly told the white family
3 their lease was terminated and to get out of the
4 place. I can understand a charge like that in its
5 impropriety and fact that that should have been met.

6 They go then to this Palmer case, which was
7 against the City or Township of Palmer, I think, in
8 Ohio, and there there was a specific charge that the
9 Township refused to go forward with a housing project,
10 a specifically enumerated housing project to be done
11 with Federal funds, on the grounds that this might
12 bring about an influx of blacks into a community or
13 area. The issue there was whether this housing project
14 should be blocked or not then and the defendant town-
15 ship was specifically so charged and had the opportun-
16 ity to meet the charge.

17 In the Smythe case, the issue was whether a
18 single family exemption to this law applied or didn't
19 apply.

20 In the Goldberg case, your Honor, they did just--
21 the government did just what it had not done in this
22 case: they set forth a schedule, a list of properties
23 in which claimed discriminatory practices have been
24 followed and enumerated lots. The issue there was
25 whether lots were being denied to people because of

1 race, and they set forth a list of lots which were so
2 involved.

3 As you go through this whole thing, I don't find
4 any case or anything which says that the only facts
5 that have to be in a complaint are the names of the
6 defendants, and beyond that you just photostat the
7 statute and then file a list of interrogatories and
8 put the defendant to its proof and shift the burden--
9 really, your Honor, what this is, is a shifting of the
10 burden on the defendant to establish in preliminary
11 proceedings, its innocence of a charge which has never
12 been made specifically against it.

13 (Continued on next page).
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I don't see what reason, in the name of fairness, candor and type of fair play, the Government should stand for, that can occasion the Government not to be willing in this case to give us some factual specifics as to when, where and how they claim there has been discriminatory practice in this case.

Having failed to do so, at this point, we ask your Honor most respectfully to dismiss this complaint or make them replead in conformity with the practice in this District, and, as far as I know, in every Court and District in the United States.

The only other motion -- I have covered the interrogatories, your Honor, and I would say we certainly do want to be heard on that, as your Honor might gather, but I would think we would all agree that is probably appropriately dealt with after we all get your Honor's disposition about how this complaint should be handled.

I had a little conversation with the very nice representative of the Government, and I don't think we will have any problem on that. They have made a motion to dismiss our counter-claim. We have sued for a hundred million dollars, which is a possibly --

THE COURT: A tidy sum.

MR. COHEN: A tidy sum, your Honor, right. They say it is 90 percent logic, or something, than

1 anything that's been sued for in previous cases like
2 this, and I am not prepared to dispute them factually
3 on that.

4 The basis of the suit is that the action in
5 bringing the action was unauthorized; that it is
6 something that goes beyond an abusive process.

7 The Government contends that what we are really
8 saying is -- here's what they say, they say three
9 things, your Honor -- they say four things, they say,
10 first of all, that our pleading is defective in that
11 an attorney of record did not personally sign it.
12 And they might have me on that.

13 If they do, I would be willing to sign a pleading,
14 and they might be right about that, and I would be
15 willing to sign it.

16 The second objection they make, is that it is
17 not timely, that the time to file something like this
18 after an answer has been -- after the motion before
19 your Honor on the complaint is disposed of, and after
20 an answer, if that becomes necessary, is filed by us.

21 But it seems to me they then go on to say we
22 have something here which is a compulsory counter-claim,
23 meaning that it must be asserted at an early stage of
24 the proceedings, and I don't know how point two fits
25 in with point three. If the fact is there should be

1 made at a later time, we would be agreeable to a
2 severance without prejudice on their part to -- when
3 we renew it, to raise whatever objections they want.

4 Now, they come to number four, which is a basic
5 objection, and they say that the Government without
6 its consent, which it has not as yet given, -- I am
7 hopeful, of course, in the interest of fair play, they
8 probably are going to advise your Honor this morning
9 that they intend, as a matter of fairness, to give it,
10 because they have nothing to fear insofar as any damage
11 verdict from your Honor or a jury in this case, because
12 their actions have been entirely proper. So I know in
13 the spirit of fairness that now prevails, I am looking
14 forward hopefully for such a gesture from the Government.

15 Absent that, they say that we would be entitled
16 to come in here under the Federal Tort Claims Act, if
17 there was an action by the Government officials even
18 within the scope of their duties, which results in
19 injury and damage to the defendants.

20 But they say that there are exclusions from the
21 Federal Tort Claim Act, namely, libel, slander and
22 abusive process, and they construe our counter-claim
23 in this case, to amount to a contention of libel,
24 slander and abusive process and therefore, not proscribed
25 but not within the permissive features of the Federal

1 Tort Claims Act without first consent by the Government.

2 We don't view it that way. We say in a pleading
3 stage, what is sauce for the goose is sauce for the
4 gander, and in a pleading stage, where we are now,
5 that our counter-claim is sufficient under the lack of
6 the Federal Tort Claims Act to spell out damage and
7 injury, and it cannot be determined that the only damage
8 and injury, would be libel, slander or abusive process.

9 It might be damage to property and damage to
10 reputation, other than by libel and slander, and things
11 which are not proscribed by the Act, and which do not
12 require the consent of the Government in order to be
13 sued.

14 However, if they are right on the lack of timeli-
15 ness in the raising of this issue, we are perfectly
16 agreeable to a severance as to that, and as to a renewal
17 when, as and if an answer has to be filed in this case,
18 with the reservation of their rights, and with an
19 opportunity on their part to consult with what I guess
20 all of us hope will be an Attorney General with some
21 degree of permanence, unlike the one who signed this
22 complaint, as to whether the Government would be willing
23 to be sued in this action.

24 Your Honor has been very patient with me and I
25 think that's all I would like to say on these motions.

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THE COURT: All right. Now, let me hear on the matter of the complaint. I take it you are going to proceed with Miss Goldweber on that?

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MS. GOLDWEBER: Good morning, your Honor. Firstly, I would like to remark that this action is a civil action and not a criminal action. The United States filed its complaint in this action on October 15, 1973, and alleged that the defendants have engaged in racially discriminatory conduct with respect to the rental of their apartments, in violation of the Fair Housing Act.

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The defendants, and if I understand their argument correctly, have moved this Court to dismiss the Government's complaint because it fails to state a claim upon which relief can be granted.

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The United States contends to the contrary, that its allegations contained in paragraph five of the complaints specifically state a claim upon which relief can be granted by alleging, firstly, that the defendants have refused to rent apartments to persons on account of their race and color; that they have required different terms and conditions with respect to the rental of those dwellings on account of a person's race and color.

25

They have made discriminatory statements with

1 respect to the rental of these dwellings, and that
2 they have represented their dwellings were unavailable
3 for rental, when, in fact, such dwellings were available.

4 We claim in paragraph six of the complaint,
5 that this conduct constitutes both a pattern or practice
6 of racial discrimination in violation of the Fair
7 Housing Act, and a denial to groups of persons of
8 rights secured to them by the Fair Housing Act.

9 For the purposes of a motion to dismiss,
10 plaintiff's allegations in the complaint are deemed
11 admitted and the only thing that is contested, is
12 plaintiff's right to recover under the law.

13 Obviously, if the United States can prove
14 at trial, among other things, that the defendants
15 have refused to rent apartments to persons on account
16 of race and color, then the United States will be
17 entitled to both affirmative and injunctive relief,
18 pursuant to 42 USC 3613.

19 Now, Mr. Cohn has said that the other cases
20 that we have cited in our brief, specifically pages
21 five and six, have all pleaded evidentiary matter.
22 I respectfully disagree with him since each and every
23 complaint that has been filed under the Fair Housing
24 Act by the Attorney General, has been written in the
25 same Section of the Government, signed by the same

1 people, and all have been substantially similar, and
2 none of them have pleaded any kind of evidentiary
3 allegations.

4 Also, for the cases where this has been
5 discussed, which are referred to on page five of the
6 brief, they go on to say that a complaint such as
7 this, couched as this one is in the very language of
8 the Fair Housing Act, is sufficient because it meets
9 the requirements of Rule 8 of the Federal Rules,
10 because it clearly apprises the defendants of the
11 nature of plaintiff's claim and the grounds upon which
12 it rests.

13 Accordingly, the United States respectfully
14 urges that defendant's motion to dismiss, would be
15 denied.

16 THE COURT: I certainly get the purport of your
17 motion. I have a few questions that do arise with
18 this complaint, and even though, as you point out, this
19 is a civil action and not a criminal action, the fact
20 is, it is an action brought by the United States
21 Government, which does charge a somewhat serious course
22 of conduct, which, if true, would be clearly in
23 violation of fundamental national policy, which
24 certainly imply perjorative inferences, so far as the
25 defendants were concerned, and the like.

1 I have looked at your paragraph five and I
2 realize that under our very liberal notice form of
3 pleading permitted in civil actions that in essence
4 what you seem to say in five, is to the defendant,
5 "You have violated the law." And you say, in effect,
6 "You have violated the law by refusing to rent rentals,
7 making statements and so forth, and so to some extent"
8 -- how does a plaintiff faced with such a complaint,
9 deal with it? There is no allegation, as I see it,
10 of time or place, and I notice, under Rule 9, which
11 follows Rule 8, that for the purpose of testing the
12 sufficiency of a pleading, of averment of time and
13 place or material, and shall be considered like all
14 other averments, in a material matter.

15 The reason that I bring that up is because
16 of other motions now pending before the Court, with
17 respect to interrogatories served on the defendants
18 by the plaintiff, asking for information, dating back
19 to 1968, which I take it, was even the year of the
20 enactment of this Act.

21 MS GOLDWEBER: Right.

22 THE COURT: And yet there is no statement of
23 time or place in this pleading, which would enable
24 a defendant perhaps to challenge interrogatories that
25 go back to 1968, as not being consistent with the
causes of action pleaded.

1 For example, while I assume that the Government
2 does not make this charge in a capricious way and
3 undoubtedly believes it has the proof or will certainly
4 be able to prove these allegations, I do have some
5 doubt, despite the array of authority which you have
6 cited to me, and which I have examined, that I find
7 it difficult to assimilate this case to Connolly-Gibson
8 type situations which involved a small band of negro
9 workers, who felt themselves discriminated against
10 by their union.

11 While the Court does not set forth the exact
12 allegations, the case is reminiscent of others that
13 Mr. Cohn pointed out in your supplemental appendix of
14 opinions, such as preventing the construction of one
15 apartment house or dealing with a situation of not
16 permitting colored people to visit white people in a
17 particular building, have a certain definition about
18 them that make it possible for a defendant so charged,
19 let us say, to deal with them in a reasonable manner.

20 I am raising this question not capriciously
21 either, because we have many administrative agencies
22 coming before this Court, and a very recent case brought
23 by the Securities and Exchange Commission, seeking the
24 same kind of relief that you seek, that is to say,
25 affirmative injunctive relief, in which, when you look
at the complaint, no defendant could complain about it

1 because it tells him very definitively what he is
2 being charged with, in effect, having violate the
3 Securities Exchange Act, specifically, definitely,
4 and this, as I say, may be doing more than is required.

5 But all I am pointing out is that I think
6 Mr. Cohn's complaint about the complaint is not altogether
7 without basis. I am not certain that it is an answer
8 to say that he can get all these particulars by interr-
9 rogatories when part of his job is to resist your
10 interrogatories on the basis of the complaint that
11 sets no time limit, does not give any particulat
12 location of building, or what nature of statements were
13 made or what particular practice.

14 So I do think a problem is presented here, and
15 I am wondering whether the Government in fairness to
16 a defendant, doesn't have more of an obligation than
17 does the private litigant versus the private litigant,
18 to inform someone it sues in this manner -- and as I
19 say, sues in this particular area, which, although not
20 criminal, might well be because we know there are
21 criminal statutes, that persons who conspire to deprive
22 others of civil rights, may well be charged criminally,
23 under 18 US 241, for example.

24 That includes invading a psychiatrist's office
25 and looking in his file -- you just saw that in the

1 paper yesterday. So I must say that many of these
2 cases you cite, I feel do not perceive the problems
3 in an area such as New York City, where you are
4 dealing with a landlord of not one hundred apartments,
5 but fourteen thousand apartments, a far flung, wide-
6 spread organization; that something in the way of a
7 definition should be conveyed in the Government's
8 initial pleading, so that proper interrogatories might
9 even be served on that basis, and issues more readily
10 brought into sharper focus.

11 Ar the moment, as I see it, this is a very
12 broad, undefined picture, of a pattern, and the
13 defendant is saying "I can't even see the pattern."

14 MS. GOLDWEBER: I would like to respond to that.

15 THE COURT: I understand and I am perfectly happy
16 to have you do so.

17 Do you feel or don't you feel there is some
18 justice to the complaint that in this type of situation
19 there ought to be a more definitive depiction -- and
20 I am not saying evidentiary facts -- but something
21 that says beginning at such and such a time, in buildings
22 located at so-and-so -- they might even be separate
23 causes of action, I don't know whether that would be
24 required -- so that the proof could be dealt with in
25 terms of more definitively stated claims that appear in

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this document.

As I say, I would be perfectly willing to supply you with the latest SEC production, to illustrate what I mean when I say that this would not bring about the sort of controversy we have here, since it so clearly lays out for the defendant in that case, what they have done wrong.

MS. GOLDWEBER: Well, your Honor, in this case, I respectfully have a bit of a different interpretation. I think, first of all, one of the defendants, Donald Trump, and defendant's counsel, they have both filed affidavits with this Court, denying that there was any discriminatory conduct on the part of any of the defendants, to their knowledge, and the Government's charges are totally unfounded.

THE COURT: Of course, that is all conclusory, isn't it? It is conclusions opposed to conclusions; I deny what you say, but I frame my denial in an affirmative way, rather than in a negative way.

MS. GOLDWEBER: I understand that, but I seem to believe that if they had done that, then they would have been able to answer the complaint and that's all they would have to do.

THE COURT: From the standpoint of dealing, let's say, with your interrogatories, how can they successfully

1 object to interrogatories going back to 1968, if they
2 don't know whether or not you may be seeking a broader
3 scope of information, time-wise, chronologically, than
4 would be demanded by the allegations of your complaint?

5 I don't say that those are necessarily limiting
6 of discovery, but very often, Courts will, when
7 confronted with objections, to interrogatories, look
8 at the complaint in terms of time, and, for example,
9 one of the things that occurs to me, doesn't a statute
10 of limitations ever run against a claim such as this?

11 MS. GOLDWEBER: We are not allowed to prove
12 racial discrimination, based on things that happened
13 prior to the effective date of the Act, but we can
14 bring in evidence to --

15 THE COURT: I can understand the probative value
16 of prior conduct, on issues of intent and design, and
17 so forth; I understand that.

18 That is a different question.

19 We are getting into the area of evidence, and,
20 of course, I understand that discovery is designed to
21 enable parties to call upon the parties -- call upon
22 the other parties to produce information, even leading
23 to the discovery of evidence, as well as evidence, in
24 order to support a claim or defense against a claim.

25 These are commonplace. I am sure you understand

1 that.

2 When you are talking about a large, complex,
3 fourteen thousand apartments -- and again, where it
4 does occur to the Court that there are certain laws
5 which prohibit inquiries directed to race, for
6 example, I don't believe in its employment policy--
7 I am not passing on it -- I was suprised to see that
8 interrogatory in this case, I will be frank to say
9 that, but I believe it would be against the law to
10 require in an employment situation as to the race
11 of any particular person. I believe so. That is my
12 understanding.

13 MR. SCHWELD: Could I say one thing about that,
14 your Honor. We have done a lot of employment work.

15 THE COURT: Yes.

16 MR. SCHWELD: The Equal Employment Opportunity
17 Commission requires each employer of over 15 or 20
18 employees, I believe, to keep a racial census because
19 it has helped the EPOC in enforcing Title 7.

20 THE COURT: That is now a new policy since the
21 enactment of that Act, as I recall it. But, for
22 example, here in New York, it was against the law for
23 any employment agency to inquire as to the race of any
24 person trying for a job. I understand that supremacy
25 demands that the Federal law take precedence, but there

1 may be, and I don't know when the Equal Employment
2 Opportunity Act -- is this under regulations of the
3 Commission?

4 MR. SCHWELD: Yes, your Honor, pursuant to
5 Title 7, which we have had since '64.

6 THE COURT: I don't know when these regulations
7 were adopted. They may be comparatively recent.

8 MR. SCHWELD: I don't mean to interrupt my
9 colleague, your Honor, but it has been about seven
10 or eight years ago, at least.

11 THE COURT: It is that long ago?

12 MR. SCHWELD: Yes, sir.

13 THE COURT: I see. There are problems such as
14 that that may crop up in terms of the way this case
15 appears in the light of what I have seen in the papers
16 before me. I am simply mentioning these things to
17 point out again the interests that can be served by
18 some attempt at definition rather than simply a charge
19 that you have violated the law, which is the way I have
20 to read this complaint.

21 MS. GOLDWEBER: I think there are two separate
22 issues that are involved here. In response to the
23 interrogatories, in which we ask for fairly detailed
24 information, if your Honor will still entertain defendant's
25 objection that they could file with their answers to

1 these interrogatories, then we will be prepared to
2 defend each and every interrogatory, and if your
3 Honor felt at that time that we did not defend it
4 well enough, then the defendants would not be ordered
5 to answer that interrogatory.

6 The fact is we have sued people, filed complaints
7 across the country against a lot of defendants who
8 are in control of many units, ten, twelve thousand
9 units, and in all of those complaints, as I said before,
10 they were very similar to this, and in the Raymond
11 complaint, which Mr. Cohen referred to, it did not
12 allege specific facts in the complaint, and none of
13 the complaints have.

14 The fact which is not really at issue here today
15 is that we ask for -- we allege employment relief in
16 the complaint, and we inquire about it in the
17 interrogatories. Well, there have been three cases that
18 have held that employment relief, once the Government
19 has proven a Fair Housing case, and the Court has
20 ordered relief, they have been entitled to also get
21 employment relief as an incident to the housing
22 affirmative relief they have been able to obtain.

23 We are certainly ready and willing, if we are
24 served with interrogatories, or depositions are taken
25 of our witnesses, to give any kind of proper evidence

1 that we don't object to to the defendants, to apprise
2 them more clearly of what is happening.

3 I believe that because they have filed these
4 affidavits denying it, that they can just deny the
5 complaint, and their motion for more definite statement,
6 which requests specific facts, as to the names, dates
7 and persons involved in the alleged violations of the
8 Fair Housing Act, is just the kind of thing that a
9 motion for more definite statements should not be
10 utilized for.

11 (Continued on next page.)
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1 THE COURT: Well, I understand that interrogatories
2 are demanding in terms of specificity, and that might
3 have been better remedy for defendants to seek.

4 I think, however, what concerns me is that you
5 get a complaint like this followed by a fairly
6 exhaustive demand for interrogatory answers by the
7 Government, that is on the part of the Government,
8 there is no time period, no time frame possible to
9 determine from the face of the complaint as to whether
10 such an enormous request going back six years would
11 be justified, at least in the first instance, without
12 some more of a showing that what was asked for was
13 truly relevant to the issues that were going to be
14 litigated.

15 MS. GOLDWEBER: Could I suggest that one thing --
16 the Court's purpose is served as well if the defendants
17 knew he filed a denial, general denial to the complaint,
18 and then filed with this Court, either a motion for
19 protective order to give them further time to object
20 or an answer to the interrogatories, and then filed
21 their answers or objections, and then each specific
22 thing that is contained in that interrogatory, so we
23 would understand exactly what everyone was objecting
24 to, and it wouldn't be just sort of a vast array of
25 things, but we would know specifically what interroga-

1 tories the defendants don't feel was relevant and the
2 United States would be able to try to defend that
3 specific interrogatory or however many there are.

4 THE COURT: As I say, I recognize that the
5 purpose of the rule was to try to do away with the
6 unnecessary focussing on pleadings and papers and
7 get down to the merits of the claim. I heartily believe
8 in and will endorse that principle. I would be inclined
9 here to give the defendants an opportunity to serve
10 upon the Government a set of interrogatories seeking
11 definition, without depriving the Government of any
12 opportunity to object to anything about those that they
13 might think should be objected to, and I would, in
14 effect, deny the motion to dismiss the complaint with
15 that understanding, that you will have an opportunity
16 within --

17 What would be a reasonable time in which you
18 could put together something like that?

19 MR. SCHWELD: You mean to answer them or to
20 file them?

21 THE COURT: To file them. How much time would
22 it take to file them?

23 MR. SCHWELD: Mr. Cohn says 45 days to file
24 them. I would think we could file them informally
25 if we write down what he wants to know and then answer

1 them in twenty days.

2 THE COURT: Could you get up a set in two weeks?

3 MR. COHN: Sure.

4 THE COURT: Two weeks. I am pointing out to
5 you, this is not intended to be an exhaustive draft
6 upon the Government, but rather a preliminary attempt
7 to obtain some more definition of matters, let us say,
8 covered in five. I think that seems to be the sensitive
9 paragraph of the complaint, as a starter. That would
10 be, of course, without prejudice to further interrogatory
11 work or discovery work of one kind or another as time
12 goes on.

13 I would deny the motion to dismiss the complaint
14 on that basis.

15 MR. COHN: That would be a very fair disposition,
16 your Honor. Within two weeks, we will file in effect,
17 interrogatories cast in the form of a Bill of Particulars
18 to try to define some of these things.

19 MR. SCHWELD: Does that include the more
20 definite statement motion, your Honor, also?

21 THE COURT: Yes. It would dispose of that as
22 well. Obviously, yes.

23 With respect to the Government's demand for
24 interrogatories, I would, assuming that Government is
25 willing, extend a reasonable period of time to the

1 defendants to object, because, apparently, they have
2 been operating on a misunderstanding here as to
3 how the Federal procedure operates.

4 I would expect that, to the extent possible,
5 any interrogatory not objected to, would be answered
6 within a reasonable time, so that there wouldn't be
7 a complete delay in progress.

8 In other words, I assume you will make a
9 selection of those interrogatories that you feel you
10 have a good objection to, and you urge that, and that
11 as to others, an attempt will be made to answer them.

12 Now, let me point out to you, I believe it to
13 be the rule, that you don't have to answer something
14 you can't answer. You are at liberty to state that.

15 There is also a problem of burden which you
16 may consider raising, that is to say the making of
17 revelations, but it may be that you will then be faced
18 with the Government's demand for productions, the right
19 to inspect and copy your records.

20 That may be an alternative, since the Government
21 has its resources, and I take it you would contend that
22 your client's resources are somewhat limited.

23 MS. GOLDWEBER: We have made that offer in the
24 interrogatories, that if defendants didn't want to
25 compile all this information, we would, at their

1 convenience come in, and inspect their documents.

2 MR. COHN: Your Honor, I think we all get your
3 reasoning, and I think it is a very fair disposition
4 on the matter. Should we try to agree on an order
5 fixing time limits?

6 THE COURT: Could you work that out?

7 MR. COHN: Sure. I don't see why we can't.
8 We will take the two weeks suggested by your Honor,
9 and consider that a firm date by which we serve
10 interrogatories on the Government. They will want how
11 long to answer?

12 THE COURT: Why don't you work those things out?

13 MR. COHN: We will work those out and submit
14 an order to you that will provide for that.

15 A certain period of time after they answer the
16 interrogatories, so we have a little better idea what
17 this complaint -- what periods of time this complaint
18 covers, and all of that, then shortly thereafter we
19 will answer those interrogatories we can, and move
20 against those, we don't think we ought to answer.

21 What does this do to a formal answer to the
22 complaint, may that be deferred?

23 THE COURT: No. I would suggest that you answer
24 the complaint as best you can. However, I would suggest
25 that you don't include your counter-claim, because I am

1 going to dismiss it.

2 MR. COHN: We won't include the counter-claim.

3 THE COURT: I have to say that there are simply
4 too many hurdles in that counter-claim, not the least
5 of which is, no matter how you slice it, Mr. Cohn, it
6 still comes out as a claim of tortuous conduct.

7 It certainly fits squarely, in my judgment, within
8 the framework of the Federal Tort Claims Act --

9 MR. COHN: Which would require consent --

10 THE COURT: Yes, it would, under 2680. It is,
11 in my judgment, an accepted type of claim, and if the
12 party consented to be sued within the framework of
13 that Act, as I say, I think you would be wasting time
14 and paper, and diverting yourself from what I consider
15 to be the real issues you have to meet if you do so.

16 The Court is very mindful of the importance of
17 the interests involved here to both sides, the Government
18 -- the Attorney General has a job to do, and it is not
19 discretionary, it is imposed by law.

20 If your clients are violating the law, it is,
21 -- it is his duty to take action. On the other hand,
22 if you believe they are not, it is your duty to do
23 something about it.

24 I am giving you that opportunity.

25 MR. COHN: I appreciate it very much. I think
we all understand the purport of your Honor's views, and

1 we will try to draft an order covering all these things
2 and submit it to your Honor.

3 THE COURT: Fine. Is there anything that has
4 not been covered here?

5 MR. BRACHTL: Just one question with respect
6 to the dismissal of the counter-claim. Do you wish
7 an order?

8 THE COURT: That could be included. Whatever
9 order you submit could include that. If you wish it
10 separately, I see it as sort of an anomalous document,
11 it sort of walked into court, it wasn't an answer, it
12 was a counter-claim.

13 MR. COHN: What we will do probably is just omit
14 it from an answer, and they don't have to do anything.

15 MR. BRACHTL: We would suggest, your Honor, that
16 would be appropriately amended, and because the counter-
17 claim cannot be asserted except in a pleading, and, hence,
18 the pleading which has been asserted, contains no --

19 THE COURT: I think Mr. Cohn gets the point.
20 It drops out of the picture entirely, and he will
21 serve a proper answer to the existing complaint the
22 best he can. But he will have the opportunity to frame
23 the questions in preliminary interrogatories, if you
24 want to call them that, to give you an opportunity so
25 that you may amend your answer if you think that is
called for. Do you understand?

1 MR. COHN: Perfectly, your Honor.

2 MR. BRACHTL: We will submit a short form order
3 with respect to the dismissal.

4 MR. COHN: Why don't we agree on a total order
5 and just submit it?

6 MR. SCHWELD: We have an order which you might
7 conwider signing on the motion --

8 MR. COHN: Why don't we submit ~~one~~ order?

9 I think we are looking for another press release
10 or something --

11 MS. GOLDWEBER: No, we are not.

12 THE COURT: I have your proposed order here.
13 I would believe that ~~the~~ order ought to encompass what
14 we have discussed here this morning. If you wish a
15 separate order on the counter-claim, that is immaterial.

16 So far as you are all here together, the counter-
17 claim stands dismissed.

18 MR. COHN: May we do this, could we have an
19 understanding from here on in -- and I think we will
20 probably get agreement to this -- that they stop putting
21 out press releases and try this case in court?

22 THE COURT: Mr. Cohn, having served as a
23 United States Attorney -- and I think you were an
24 Assistant -- you know that the Government, unlike a
25 private litigant, does have to keep the public informed.

1
2 I must say that I have to agree that I think
3 the document they issued was most chaste, and under
4 the circumstances, it is just one of the things that
5 you have to grin and bear when you are a litigant.

6 On the other hand, there is such a thing as
7 fair trial as well as free press, and consequently,
8 I would hope that the Government will not be putting
9 out anything which will ~~impair~~ or prejudice the rights
10 of these defendants to a fair trial of the issues
11 involved in this case.

12 MR. COHN: They have indicated to me by a
13 nod there will be no press release.

14 MR. SCHWELD: Wait a minute. He said the motion
15 about a definite statement. I think your Honor is
16 acquainted with what you do when a judgment comes out
17 in a case, your Honor; it is usually released to the
18 press when a complaint is drawn, but I think, as your
19 Honor said, this was extremely chaste.

20 THE COURT: You don't have to apologize.

21 MR. SCHWELD: I am not.

22 MR. COHN: I indicate we are going to try this
23 in court and not in the press. Is that fair?

24 MR. SCHWELD:.. It is fair.

25 MR. BRACHTL: But it is not a limitation upon
informing the public.

1 MR. COHN: Prior to a determination.

2 Are you planning any press releases on any
3 of these proceedings?

4 (Discussion off the record.)

5 MR. COHN: You are not planning further press
6 releases, is that right?

7 MR. SCHWELD: If there is a judgment in the
8 case at some time, it will be given to the press.
9 As to the judgment whether the counter-claim has been
10 released, I don't know whether the public information
11 will press release that or not. I am not going to
12 give any assurance they won't. When they brought
13 this hundred million dollar counter-claim, they
14 definitely wanted mentioned that it was dismissed.

15 MR. COHN: I want it mentioned that the Judge
16 stated that we have the opportunity, if you are going
17 to start this again -- these people have to rent, your
18 Honor, and do business in this community. If they are
19 going to start parading around, stating that the
20 counter-claim is dismissed or something, I am going
21 to have to start with the fact that your Honor has
22 given us leave to file interrogatories against the
23 complaint, which was not --

24 THE COURT: Let me put it this way, Mr. Cohn.
25 Unfortunately for your clients, because they are so

1 large and well known, they become objects of newsworthy
2 interest. For all I know, the press is here right now.
3 But I do think that so far as the Government is
4 concerned, it understands at this point, now that the
5 matter is in litigation, it has announced what has
6 occurred and I assume it will await that blessed day,
7 one way or the other, when they win the lawsuit, as
8 they confidently think they are going to do, you see,
9 and that we won't have any intervening communiques
10 between opposing capitols.

11 MR. COHN: That's fine, your Honor.

12 MR. BRACHTL: All of this must be in context,
13 of course, of the continuing interest of the press,
14 and inquiries which are made, which require, I think,
15 as a public obligation, a response.

16 THE COURT: Mr. Brachtl, if your fellows upstairs
17 would apply your time and attention to the prosecution
18 of the business of the office and let the press ferret
19 it out, that would perhaps resolve the problem.

20 MR. COHN: One further thing, I would appreciate
21 it, if your Honor would hold the orders and sign
22 everything at the same time.

23 THE COURT: When I see new orders come in, I will
24 take care of them.

25 One thing I would remind you of, and in this

District and in the Southern District, too, we have a local rule, where objections to interrogatories are made, it is the responsibility of the lawyers to first try and iron out their differences, and only plague the Court, which has enough to do in this District, so much larger than the Southern District, and with so many fewer Judges --

MR. COHN: But by their competence, they make up in quality for what is lacked in quantity.

THE COURT: Thank you, Mr. Cohn. But that won't get you anywhere.

You are under obligation to try and discuss the matter --

MR. COHN: As long as they promise not to talk about a consent decree, we will have a meeting.

MR. SCHWELD: We love to litigate the case, your Honor.

MR. COHN: Thank you for your time.

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I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF MY STENOGRAPHIC SOURCE MESSAGES BY SUCH PROCEEDING.
[Signature]
OFFICIAL COURT REPORTER

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