

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3079 SSA HB 1 (FILE 3) 8672

course, in addition to the establishment of a just cause for eviction, the landlord must also rebut any claim of impermissible retaliatory motive.<sup>227</sup>

Fair treatment may be advanced by procedural as well as substantive reforms. The New Jersey statute provides that no judgment may be entered for the landlord unless advance written notice has been given to the tenant. The notice period required varies according to the stated cause for eviction.<sup>228</sup> In accommodating the urgency of the landlord interest and the pervasive tenant interest in fair and adequate advance notice, the variable notice schedule accords the highest priorities to specific and immediate tenancy-related interests and lesser priorities to general business and personal interests. Thus, where "the [tenant] has willfully or by reason of gross negligence caused or allowed destruction, damage, or injury to the premises,"<sup>229</sup> the landlord is accorded speedy court access.<sup>230</sup> At the other extreme, where the landlord only asserts general business or personal reasons for dispossession, such as removal of the unit from the market, a longer advance notice is required.<sup>231</sup>

Although security of tenure and rent control buttress each other's effectiveness and may be enacted together,<sup>232</sup> security of tenure can exist as a progressive reform independent of rent control. Any security of tenure scheme which does not control vindictive rent increases is easily subverted.<sup>233</sup> However, vindictive rent increases can be controlled without the general regulation of rent levels associated with rent control by conditioning availability of the "just cause" of tenant nonpayment in the context of a recent rent increase upon the nondiscriminatory nature of the increase and upon the

<sup>227</sup> *Silberg v. Lipscomb*, 117 N.J. Super. 491, 285 A.2d 86 (Union County Ct. 1971). See also Note, *New Rights for New Jersey Tenants—"Just Cause" Eviction and "Reasonable" Rents*, 6 Rutgers—Camden L.J. 565, 584 (1975).

<sup>228</sup> N.J. STAT. ANN. § 2A:18-61.2 (1974).

<sup>229</sup> *Id.* § 2A:18-61.1(c).

<sup>230</sup> Only three days' notice need precede the institution of the action for possession. *Id.* § 2A:18-61.2.

<sup>231</sup> Where permanent removal of the unit is the alleged basis of the eviction action, minimum notice is six months. *Id.* § 2A:18-61.2(d).

<sup>232</sup> See notes 12-13 *supra*.

<sup>233</sup> To the extent that vindictive rent increases are tolerated, and that nonpayment of rent is allowed as a "just cause," landlords can readily circumvent the security of tenure provisions. All the landlord need do is initiate the eviction effort with a notice of drastically increased rent. The ensuing nonpayment by the victimized tenant will provide a "just cause" for eviction. Without protective controls, the landlord could, after eviction, lower the rental in order to market the unit. Rent controls effectively control this circumvention of security of tenure by regulating the rental. The aspect of rent control regulation which is an essential buttress to the effectiveness of just cause eviction is not regulation of rent levels but rather the requirement of uniformity of rental increases.

landlord's ability-in-fact to re-rent the unit at the higher level. The combination of these two conditions greatly increases the effectiveness of market controls, in that the landlord must be able to secure a general increase in rents for all units rather than for only that of the evicted tenant.

Since discrimination is highly probative of retaliatory motive, the first condition, nondiscrimination, is effectively established as a corollary of existing retaliatory eviction protections.<sup>234</sup> Two means might be utilized to enforce the second condition, the requirement of ability-in-fact to re-rent the premises at the increased rent. The presentation of a completed lease contract at the increased rent conditioned on the availability of the unit could be made a prerequisite of that particular "just cause." Alternatively, the evicted tenant could be allowed a generous damage action against a landlord securing eviction on false representation of ability-in-fact to re-rent the unit at the increased rent.

Security of tenure systems have several beneficial aspects. First, they eliminate capricious eviction, while retaliatory eviction protections generally reach only vindictive actions.<sup>235</sup> Second, they legislate an equitable resolution of landlord and tenant interests in duration of the tenancy where tenant bargaining power is so minimal as to preclude meaningful negotiation between the parties.<sup>236</sup> Third, securing the tenant's tenure enhances the tenant's bargaining power in regard to other issues. Where tenant demand for residential units exceeds their supply, landlords have an advantage which they have traditionally used to the detriment of both tenants and housing conditions in general.<sup>237</sup> The guarantee of tenure to the tenant compels landlords to deal directly with the needs and grievances of a tenant, fulfilling all obligations of the tenancy. Fourth, the prospect of long term tenure greatly increases the tenant's interest in maintenance of the unit.<sup>238</sup> This enhanced interest, a result of fair treatment of the tenant, promotes the public policy of decent housing and may well inure to the benefit of the landlord in the form of reduced maintenance costs. Widespread adoption of security of tenure systems would materially advance fair treatment reform.

<sup>234</sup> See pp. 13-17 *supra*.

<sup>235</sup> See *id.*

<sup>236</sup> See p. 4 *supra*.

<sup>237</sup> See *Edwards v. Habib*, 397 F.2d 687, 701 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016 (1969); *Green v. Superior Court*, 10 Cal.3d 616, 621-22, 517 P.2d 1168, 1173-74, 111 Cal. Rptr. 707, 709-10 (1974).

<sup>238</sup> L. STEVENS, SECURITY OF TENURE (1973) (report for the Law Reform Comm'n of British Columbia).

## EPILOGUE—TENANT ORGANIZING

The ultimate value and effect of tenant reforms can only be measured in terms of whether or not they are widely applied and utilized in the community. No legal reform can improve the quality of urban life if landlords and tenants are ignorant or misinformed. Landlords' lack of knowledge can result in costly and unnecessary delays in simple eviction actions. Tenants' ignorance leaves many of them prey to substandard living conditions and abusive treatment.

One of the most effective means of keeping tenants informed of their rights is the maintenance of an active tenant union.<sup>239</sup> As an advocate of tenants' rights the union is naturally a more thorough and helpful conduit of information than code enforcement agencies, courts, landlords, or news services. Also, collective tenant action may enhance the effectiveness of the remedies herein discussed.<sup>240</sup> Whereas one tenant withholding rent is vulnerable, an entire building participating in a rent strike makes retaliatory evictions obvious, unwieldy, and economically unfeasible. Collective withholding is multiplied tenant action and may substantially improve the actual living conditions in the building by stirring the landlord to reconsideration of maintenance policies and recognition of a meaningful tenant role in decisionmaking. Individual withholding, on the other hand, may well be treated as a mere inconvenience.

Furthermore, the legislative enactment of tenant reforms depends upon the concerted lobbying of tenant groups.<sup>241</sup> Achievement of tenant reforms through litigation requires tenant activity at many levels. Tenants must make their needs a priority with local legal services and portions of the private bar in order to generate sufficient interest and commitment of time and personnel to tenant problems. Additionally, active tenant organizations can help to instill a greater

<sup>239</sup> For a broad overview of tenant organizing and tenant unions with an emphasis on the role of attorneys, see NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, HANDBOOK OF HOUSING LAW, ch. 1 (2d ed. 1973) (distributed by the National Clearinghouse for Legal Services, Chicago, Ill.); Flaum & Salzman, The Tenants Rights Movement, The Urban Research Corp., Chicago, Ill., Sept. 1969; Bazarko, *Tenant Unions: Legal Rights of Members*, 18 CLEV.-MAR. L. REV. 358 (1969); Note, *Tenant Unions: Growth of a Vehicle for Change in Low Income Housing*, 3 U.C. DAVIS L. REV. 1 (1971); Note, *Tenant Unions: Their Law and Operation in the State and Nation*, 23 U. FLA. L. REV. 79 (1970); Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968).

<sup>240</sup> See Moskowitz & Honigsberg, *Tenant Union-Landlord Relations Act: A Proposal*, 58 GEO. L.J. 1013, 1031-43 (1970).

<sup>241</sup> Tenant organizations have, for example, played a significant role in the adoption of URLTA. See *Arizona and Washington*, supra note 6; *The National Experience*, supra note 5.

awareness of tenant needs in the local judiciary. In the courtroom itself, tenants can be supportive of other tenants by providing testimony and joining in litigation.<sup>242</sup>

Once reforms are established, tenant organizations have the vital function of disseminating information and assisting in enforcement of tenant protections.<sup>243</sup> Several groups have published handbooks<sup>244</sup> and newsletters<sup>245</sup> useful to tenants and tenant organizers.

The size of a tenant organization is not critical. They range from organizations based in single buildings to state-wide unions with half a million members.<sup>246</sup> They are effective to the extent that their common purpose of better housing and better treatment remains of paramount importance.

## CONCLUSION

The URLTA and its component basic reforms as outlined in this Article represent a system of rights and obligations which will, for the first time, give tenants adequate legal protection in the housing marketplace. While the URLTA reforms constitute progressive steps

<sup>242</sup> For example, in New Jersey, the New Jersey Tenants Organization gave broad support and participated as *amicus curiae* in every major lawsuit involving tenant reforms. These included *Berzito v. Gambino*, 63 N.J. 460, 308 A.2d 17 (1973) (retroactive rent abatement); and *Apartment House Council v. Mayor and Council of Ridgewood*, 123 N.J. Super. 87, 301 A.2d 484 (Law Div. 1973), *aff'd per curiam*, 128 N.J. Super. 192, 319 A.2d 507 (App. Div. 1974) (landlord security deposit act).

<sup>243</sup> The role of tenant unions in the enforcement of tenant protections can be strengthened by the adoption of collective bargaining agreements between tenants' unions and landlords. See Moskowitz & Honigsberg, *Tenant Union-Landlord Relations Act: A Proposal*, 58 GEO. L.J. 1013, 1031-43 (1970).

<sup>244</sup> Numerous excellent tenants rights handbooks have been produced by tenant organizations, many of which can be used as a model for similar publication in other jurisdictions. See, e.g., CAMBRIDGE TENANTS ORGANIZING COMMITTEE, LEGAL TACTICS FOR TENANTS (2d ed. 1973) (obtainable at 595 Massachusetts Avenue, Cambridge, Ma. 02139); METROPOLITAN COUNCIL ON HOUSING, ORGANIZING HANDBOOK—FOR IMMEDIATE REPAIRS AND SERVICES (Nov. 1966) (obtainable at 2 West 31st Street, Room 508, N.Y.C., N.Y. 10001); MINNESOTA TENANTS UNION, IF YOU PAY RENT, YOU'VE GOT RIGHTS TOO! (Sept. 1973) (obtainable at Box #461 Lake Street Station, Minneapolis, Mn. 55408); THE RESIDENT ADVISORY BOARD OF PHILADELPHIA, THE PUBLIC HOUSING TENANTS RIGHTS HANDBOOK (1969) (obtainable at 121 North Broad Street, Philadelphia, Pa.).

<sup>245</sup> Among the leading tenant newsletters are: *Tenant Outlook*, published by NTO; *N.J.T.O. Newsletter*, published by the New Jersey Tenants Organization; *Tenant*, published by New York's Metropolitan Council on Housing; and *Vox Populi*, published by the Washington State Low-Income Housing Coalition (LoHoCo).

<sup>246</sup> NTO has published and distributes a 1973 listing of local tenant groups and their activities entitled *Report on State Tenant Organizations*.

towards the dual goals of decent housing and fair treatment, they are insufficient fully to achieve those goals. Advanced reforms are herein suggested, reaching beyond the Uniform Act in an attempt to attain those goals. Specifically, in the field of decent housing reform, receivership, retroactive rent abatement, specific performance of the warranty of habitability, landlord security deposit legislation, and utilization of tenant-mortgagee negotiating are advocated. Security of tenure just cause eviction is advanced as a major new fair treatment reform. While legal reform is advocated, it is recognized that the successful translation of that reform into an improved urban life is largely dependent upon active tenants' groups.

# THE WALL STREET

## REAL ESTATE

### Learned Investment... Model Law A Bust? . . . Energy vs. Aesthetics

**U**NIVERSITIES ARE MOVING INTO REAL ESTATE as an alternative to stocks and bonds, whose ups and downs are giving endowment managers fits. "It's a major decision, but not a hard one to make," says Harry Turner, associate director of finance at Stanford University. "The attractiveness of real estate is just too persuasive."

Stanford, with about \$600 million in its endowments, had always shunned real estate, except for nearby property. But last year it began putting up to \$40 million into outside transactions. Its most recent venture: a Sun Belt hotel and office-building complex for about \$7 million.

While some other large schools, such as Columbia University and Yale University, also are investing directly in real estate, others are proceeding more cautiously. Washington University in St. Louis, for instance, has joined with an insurance company in making mortgage loans. The university puts up as much as 50% of the cash, and gets a small equity participation, while the insurance outfit handles the paperwork for a fee. Meanwhile, many smaller schools are hoping to join forces as a way to buy large properties and spread the risk.

*Still, some universities want no part of it. "Real estate is too much of a fad right now," says an investment director at a Boston school. "It's overpriced and very illiquid. I'm afraid someone may get burned. And I don't want it to be me."*



**ATTEMPTS BY 16 STATES** to help urban poor tenants by passing housing laws patterned after a model statute have been largely ineffective. That's the conclusion of a study by two attorneys with the American Bar Foundation.

The state laws are variations of the Uniform Residential Landlord and Tenant Act of 1972, a model law that basically requires landlords to comply with housing codes. "It has been touted as a way to maintain, if not upgrade, the quality of housing," says Samuel Jan Brakel, who studied the Oregon version of the law in Portland. His colleague, Donald McIntyre, looked at Cleveland.

The two men found that while middle-class renters took advantage of the legislation, the poor didn't. "Putting the burden on poor tenants to assert their rights doesn't change much," Mr. Brakel says. Judges don't help either, he adds. "It's a question of time and the impossibility of making a major case out of each one of these," Mr. Brakel says.

Mr. McIntyre believes that government agencies with authority to respond to complaints and to levy fines are better remedies. He says building inspectors also could be impartial experts in court. "As it is now," he says, "it's the landlord's word against the tenant's."

*Another expert thinks the Brakel-McIntyre study omits an important point. John McCabe, legislative director for the National Conference of Commissioners on Uniform State Laws, a private, state-supported group that drafts model laws, says: "The law, just by being there, has curbed some bad practices of landlords."*

OKLAHOMA  
LEGISLATIVE COUNCIL

Division Of  
LEGAL SERVICES

MEMORANDUM OF LAW

Re: Limitation on raising of rent,  
contrary to provisions of written  
lease.

Prepared by  
Robert E. Goldfield  
Staff Attorney  
October 12, 1978

STATE LEGISLATIVE COUNCIL  
Legal Services Division

Memorandum of Law

RE: Limitation on raising of rent, contrary to provisions of written lease.

The question of whether a landlord can raise the rent of a tenant contrary to the provisions of a written lease revolves around whether a lease between a landlord and tenant is of such a binding nature between the parties that the raising of the rent during the term of the lease would violate its terms.

In Phillips v. Maxey, 195 Okl. 418, 158 P.2d 344 (1945), the Oklahoma Supreme Court considered a case in which the tenant unilaterally attempted to cancel a written lease agreement by notifying the landlord that the premises were being surrendered as of a certain date. The court stated that:

"A lease in writing constitutes a written contract and the lessee cannot surrender or be released from the terms without the consent of the lessor and it is absolutely essential to the termination of the term that both lessor and lessee agree to the surrender."

Since the court has accepted a rental lease as a written contract, such lease would then fall under the rule of law relating to contracts.

Section 1 of Title 15 of the Oklahoma Statutes defines the term contract as follows: "A contract is an agreement to do or not to do a certain thing".

As a lease is of a binding contractual nature, it then becomes imperative to see if such contractual obligations continue to exist as to a new owner of property upon the sale of such property by the previous owner.

Section 12 of Title 41 of the Oklahoma Statutes which follows provides some insight in this regard:

"A conveyance of real estate, or of any interest therein, by landlord, shall be valid without the attornment of the tenant; but the payment of rent by the tenant to the grantor, at any time before notice of sale, given to said tenant, shall be good against the grantee."

The Oklahoma Supreme Court has reached the following decisions in interpreting this statute. In Whitham v. Lehmer, 22 Okl. 627, 98 P. 351 (1908), in a decision that involved circumstances wherein a landlord had given three different leases on the same parcel of land and the land had subsequently been sold, the court in quoting from a similar Nebraska case stated:

"When a tenant is in the actual possession of real estate at the time it is sold by the landlord, the purchaser is chargeable with notice of the rights of the tenant."

And, in Sevy v. Stewart, 31 Okl. 589, 122 P. 544 (1912), which involves a case wherein a tenant had leased a certain building and first, prior to the sale of the building by the landlord to another person, the tenant vacated the premises and another person entered as a subtenant and thereby became a tenant at will and refused to pay the rents owed to the new landlord, the court decided that:

"The tenants of a certain grantor, as a matter of law, by implication, as a general rule become the tenants of his grantee."

Thus, the court has ruled that even in such a situation whereby there is not a written lease, the court has decided that the tenant becomes the tenant of the grantee and owes the grantee the proper rents.

In conclusion, it would seem under present Oklahoma statutory and case law that a lease is a binding contract between a landlord and his tenant and the contractual obligation of the landlord to the tenant continues to flow to a new landlord upon the purchase of the land by another person.



## STATE LEGISLATIVE COUNCIL

305 STATE CAPITOL  
OKLAHOMA CITY 73105  
405/521-3201

04401

July 14, 1980

MEMORANDUM\*

TO:

FROM: George Humphreys

SUBJECT: Rent Control

This memorandum is pursuant to your request for information regarding rent control legislation. Following is a brief history of rent control legislation in the United States, a summary of some of the major issues that might be considered in preparing rent control legislation and a survey of the current status of rent control.

History of Rent Control in the United States

Rent control legislation was first used in the United States during "emergency" periods in order to solve severe housing problems during the two world wars. According to Kathryn Lori Patrick, in "Rent Control: A Practical Guide for Tenant Organizations" which was published in the San Diego Law Review in August 1978 (a valuable source for the memorandum which is enclosed), "the states and cities adopting rent controls considered them temporary emergency measures that would be unconstitutional in other circumstances." In fact, the United States Supreme Court's 1921 decision in favor of rent control in Block v. Hirsh (256 U.S. 135, 1921) reasoned that " 'the regulation is put and justified only as a temporary measure.... A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change (Patrick, p. 1189).' " According to Patrick, most early rent control ordinances and legislation were drafted in light of the Block standard so that emergency or "boilerplate" provisions were attached.

The courts' view regarding rent control legislation has changed, according to Patrick, since the U. S. Supreme Court's 1934 ruling in Nebbia v. New York (291 U.S. 502, 1934) which "generally... upheld price control legislation regardless of whether an emergency

existed or whether the business was one affected with a public interest (Patrick, p. 1190). Courts generally view rent control legislation as within the scope of legislative jurisdiction, but some courts still appear to require some legislative statement of emergency (see Patrick's article for a full discussion of this issue).

During the past decade, the support from rent control has come from middle class citizens faced with rising housing costs and inflation who have been forced into tenant status. In many areas of the country, the housing industry has been unable to accommodate the increased demands for tenant dwellings allowing some landlords the opportunity to drive rents upward.

#### Issues in Rent Control Provisions

The Patrick article cited above provides an excellent framework in abstracting the key elements that might be included in a rent control bill. Included are the following concepts:

1. The "boilerplate" or emergency statement might be included in order to ensure that the courts will uphold the legislation and to relate the legislation to a legitimate legislative policy or finding.
2. The fair return on investment principle should be adhered to in preparing rent control legislation. According to Patrick, the courts will invalidate rent control provisions which are confiscatory or which do not allow adjustments within a reasonable period of time. Moreover, as a matter of policy it seems prudent to draft legislation that would not prevent landlords from providing improvements. Therefore, Patrick recommends that rent controls should include mechanisms by which landlords can raise rents as they improve the property.
3. Mandatory rent adjustment mechanisms, fixed to the consumer price index or according to a predetermined annual percentage increase, is suggested by Patrick. This is consistent with the just-and-reasonable-return doctrine.
4. Legislation should consider whether control should be exercised by the state or municipalities. In fact, several states have many municipalities which have enacted rent control ordinances. According to the National Rental Housing Council, there is a voluntary landlord-tenant committee in Norman which is considering a city rent control ordinance.
5. Exclusions of some tenant dwellings might be provided in legislation. Patrick suggests that new tenant dwelling units might be excluded from rent control.

6. Commissions could be included in rent control legislation with authority to hear protests from landlords and tenants on a case-by-case basis. Some provision for funding of such commissions might also be included in rent control legislation.

7. Enforcement provisions, including penalties for violators, could be included in rent control legislation. If commissions to hear protests are included, the commission could be empowered with the authority to pursue enforcement remedies provided that procedures are included to insure that due process and fair hearings are provided.

#### Current Status of Rent Control Legislation

Rent control legislation, at both the state and municipal levels, has been actively pursued in recent years. However, according to a survey published by the National Rental Housing Council on the spread of rent control, the number of states which have passed rent control laws is few. The enclosed survey is current as of May 15, 1980 so that some states which have rent control legislation pending might pass rent controls.

Alaska, the District of Columbia, Florida and Maine currently have state rent control laws. Alaska passed an emergency rent control law in 1974 to allow municipalities to control rents during the construction of the Alaskan pipeline. The District of Columbia has had rent controls establishing a maximum percentage increase on tenant dwellings since 1973. Moreover, the District of Columbia has established a nine-member Housing Rent Commission appointed by the Commissioner of the District of Columbia with four members representing the interests of landlords and four members representing the interests of tenants. The Florida statutes prohibit rent control unless a housing emergency exists and then excludes "luxury apartments" above \$250 per month. Maine has vague language which prohibits profiteering in rents and establishes a \$1,000 fine for landlords who demand "an unreasonable or unjust rent or charge" based upon a fair return on the market value. Other states in which rent control legislation is either pending or has been defeated are: Arizona, Colorado, Connecticut (legislation restricting increases in rent to elderly citizens to the cost of living was defeated in 1979), Hawaii, Idaho, Illinois (a bill authorizing cities with a population exceeding 500,000 to establish Fair Rent Commissions died in committee during the 1979 session), Maryland, Massachusetts, New Jersey, Pennsylvania, Vermont and Washington. California, New Jersey and New York represent states where rent controls have been widely used by passage of municipal controls.

This memorandum should indicate that there is currently considerable effort to control increases on rental property. Should you have any

Page -4-  
July 14, 1980

additional questions, please advise or contact the National Rental Housing Authority, 1800 M Street, N.W., Suite 285-N, Washington, D. C. 20036, (202) 659-3381.

GGH/p

Attachments

\*This memorandum is not to be construed as a memorandum of law.

November 9, 1979

## ILLINOIS ANTI-DISCRIMINATION LAWS

Summary

The 14th Amendment to the U.S. Constitution prohibited states from denying due process or equal protection of the law to any person. In addition to this federal constitutional guarantee and such federal legislation as the Civil Rights Act of 1964, Illinois has a number of statutes that address various aspects of discrimination. The Illinois Constitution, the Illinois Fair Employment Practices Act, the Illinois Equal Employment Opportunity Act, and others prohibit employers, employment agencies, and labor organizations from using age, sex, physical or mental handicap unrelated to ability, race, color, religion, national origin or ancestry as motives for hiring, firing, promoting, demoting, or imposing wage differences in the terms and conditions of employment. A variety of procedures, from conference and conciliation to judicial action, are provided for individuals in employment discrimination disputes.

The Illinois Constitution and a number of statutes also prohibit discrimination in other areas. The Constitution prohibits discrimination in housing and the statutes prohibit such activities as blockbusting and refusal to rent to families with children under the age of 14. The Fairness in Lending Act protects certain individuals from discriminatory practices by financial institutions, and the public accommodation laws provide that no person may be denied access to public accommodations because of race, religion, color, national ancestry, or physical or mental handicap. Discrimination in insurance and education are also prohibited.

*Anita Williams*

Anita Williams  
Staff Attorney

AW:bg

## Illinois Fair Housing Laws

### The 1970 Illinois Constitution

The Illinois Constitution provides that all persons shall be free from discrimination on the basis of race, color, creed, national ancestry, sex<sup>35</sup> or physical or mental handicap<sup>36</sup> in the sale or rental of real property.

### The Municipal Code of 1961<sup>37</sup>

The corporate authorities of any municipality may enact ordinances:

- prescribing fair housing practices;
- defining unfair housing practices;
- establishing Fair Housing or Human Relations Commissions and standards for the operation of such Commissions;
- prohibiting discrimination based on race, color, religion, sex, creed, ancestry, national origin or physical or mental handicap in the listing, sale, assignment, exchange, transfer, lease, rental or financing of real property for the purpose of residential occupancy; and
- prescribing penalties for the violation of such ordinances.

In addition, the corporate authorities of any municipality may perform such acts and promulgate such regulations as are necessary and proper for the promotion of harmonious relations between racial and ethnic groups within the municipality, including but not limited to, the promotion and development of public education and information programs emphasizing the contribution of such groups to the historical and cultural development of the community and the nation, establishing vocational guidance and employment programs to assist members of minority racial and ethnic groups, establishment of programs to aid in locating housing for such minority groups, and assisting in the adjustment of such persons to living in urban environments.

### Refusal to Lease to Families with Children<sup>38</sup>

Illinois law prohibits those who own apartments and their agents from refusing to lease housing accommodations to families with children under the age of 14. Any person who fails to comply with this Act is guilty of a petty offense and may be fined from \$50 to \$100 for each such offense.

## Blockbusting<sup>39</sup>

Illinois law states that it is a Class A misdemeanor for any person or corporation to:

- solicit for sale, lease, listing or purchase of any residential property on the grounds of loss of value due to present or prospective entry into the vicinity of the property involved of any person of any particular race, color, religion, national origin, ancestry, handicap or sex;
- distribute or cause to be distributed, written material or statements designed to induce any owner of residential real estate to sell or lease his property because of any present or prospective changes in the race, color, religion or national origin or ancestry, of residents in the vicinity of the property involved;
- intentionally create alarm among residents of any community by transmitting in any manner, including a telephone call whether or not conversation thereby ensues, with a design to induce any owner of residential real estate to sell or lease his property because of any present or prospective entry into the vicinity of the property involved of any person of a particular race, color, religion, national origin, ancestry, handicap or sex; and
- solicit any owner of residential property to sell or list such residential property at any time after the person or corporation has notice that the owner does not desire to sell such residential property or does not desire to be solicited to sell or list for sale the residential property.

## The Real Estate Brokers and Salesmen License Act<sup>40</sup>

The Department of Registration and Education may refuse to issue, suspend or revoke a real estate broker's or salesman's license for any one or any combination of the following causes:

- soliciting for sale, lease, listing or purchase of any residential real estate due to present or prospective entry into the vicinity of the property of persons of a particular race, color, religion, sex, creed, physical or mental handicap or national origin;
- distributing any written material or making any oral statement designed to induce any owner of real estate to sell or lease because of any present or prospective changes in the race, color, religion, sex, creed, physical or mental handicap or national origin of persons on any given street, block, neighborhood or community;

- intentionally creating any alarm or fear among the residents of a community by transmitting in any manner, including telephone, any warnings or threats or other communications designed to induce owners to sell or lease real estate because of any present or prospective entry into the community of persons of a particular race, color, religion, sex, creed, physical or mental handicap or national origin;
- entering into a listing agreement which prohibits the sale or rental of real estate to any person because of race, color, religion, sex, creed, physical or mental handicap or national origin;
- acting or undertaking to act as a real estate broker or real estate salesman with respect to any property the disposition of which is prohibited to any person because of race, color, religion, sex, creed, physical or mental handicap or national origin;
- making any misrepresentations concerning the race, color, religion, sex, creed, physical or mental handicap or national origin of the persons in a locality or any part thereof for the purpose of inducing or discouraging a listing for sale or rental or the sale or rental of any real estate;
- refusing to sell or rent real estate because of race, color, religion, sex, creed, physical or mental handicap or national origin;
- refusing to show listings or real estate because of race, color, religion, sex, creed, physical or mental handicap or national origin of any prospective purchaser, lessee or tenant, or because of the race, color, religion, sex, creed, physical or mental handicap or national origin of the residents in the area in which the property is located;
- volunteering information on the race, color, religion, sex, creed, physical or mental handicap or national origin of the residents of the community;
- publishing or circulating any written materials or oral statements or announcing a policy or using any form of application for the purchase, lease, rental or financing of real estate, or making any record or inquiry in connection with the prospective purchase, rental or lease of real estate which express any limitation or discrimination because of race, color, religion, sex, creed, physical or mental handicap, or national origin; or

- making differential treatment against any person to his detriment because of race, color, religion, sex, creed, physical or mental handicap or national origin.

#### Blighted Area Redevelopment Act<sup>41</sup>

No deed or lease made by the Land Clearance Commission or any subsequent owner may contain a covenant running with the land or other provisions prohibiting the occupancy of the premises by any person because of race, creed, color, religion, handicap, national origin or sex.

#### Urban Community Conservation Act<sup>42</sup>

Same as the Blighted Area Redevelopment Act. The Act prohibits restrictive covenants.

#### The Housing Authorities Act<sup>43</sup>

Same as the Blighted Area Redevelopment Act. The Act prohibits restrictive covenants.

#### Illinois Housing Development Authority Act<sup>44</sup>

The Illinois Housing Development Authority is required to make all housing financed or otherwise assisted under this Act open to all persons regardless of race, national origin, religion, creed, color, handicap or sex, and to require that contractors and subcontractors engaged in the construction or rehabilitation of such housing provide equal opportunity for employment without discrimination as to race, national origin, religion, creed, color or sex.

#### Neighborhood Redevelopment Corporation Act<sup>45</sup>

No Neighborhood Redevelopment Corporation may refuse to sell shares, either common or preferred, or securities to any person on account of race, color, creed or national origin.

#### Illinois Public Accommodation Laws

#### Violation of Civil Rights<sup>46</sup>

A person commits a violation of civil rights when:



March 7, 1983

Paul -

This ordinance  
will be in effect  
March 10, 1983.

The Palo Alto City  
Attorney is Diane O  
Lee (415) 329.2171.

I look forward  
to your legislation.

- Marcia

ORDINANCE NO. \_\_\_\_\_  
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO  
ADDING CHAPTER 9.70 TO THE PALO ALTO MUNICIPAL CODE  
PROHIBITING DISCRIMINATION AGAINST FAMILIES WITH  
MINOR CHILDREN IN THE RENTAL OR LEASING OF CERTAIN  
RESIDENTIAL PROPERTY

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Chapter 9.70 is hereby added to the Palo Alto  
Municipal Code to read as follows:

\*Chapter 9.70

Discrimination Against Families With  
Minor Children In Housing

Sections:

- 9.70.010 Findings and purpose.
- 9.70.020 Definitions.
- 9.70.030 Prohibited activities.
- 9.70.040 Exemptions.
- 9.70.050 Requirements of financial obligations  
not prohibited.
- 9.70.060 Penalties/remedies.

9.70.010 Findings and purpose. The City  
Council finds and declares that:

(a) Arbitrary discrimination against persons  
with minor children exists in the City of Palo  
Alto.

(b) The existence of such discrimination  
poses a substantial threat to the public health and  
welfare of a large segment of the community, name-  
ly, families with children.

(c) The overall effect of such discrimination  
is to encourage the flight of families from the  
City of Palo Alto, resulting in the decline of  
stable, intergenerational neighborhoods, the clo-  
sure of schools, and the reduction of social and  
recreational services for children and their  
families.

(d) Such discrimination cuts across all  
racial, ethnic, and economic lines, but falls most  
heavily on minority and single-parent families with  
children.

(e) It is consistent with the Housing Element  
of the General Plan to promote and ensure open and  
free choice of housing without discrimination on  
the basis of age or family composition.

(f) Because housing is a fundamental neces-  
sity of life, it is against the public policy of  
the City of Palo Alto to discriminate in rental  
housing against persons based upon their age,  
parenthood, pregnancy, or the potential or actual  
tenancy of a minor child.

9.70.020 Definitions. For the purposes  
of this chapter, certain terms are defined as fol-  
lows:

(a) "Senior adults" shall mean persons 62 years or age or older.

(b) "Housing accommodations" shall mean any residential rental unit consisting of one or more rooms in which cooking facilities are available.

(c) "Minor child" shall mean any natural person under the age of 18 years.

(d) "Person" shall mean any individual, firm, partnership, joint venture, association, corporation, estate, or trust.

9.70.030 Prohibited activities. It shall be unlawful for any person having a housing accommodation for rent or lease, or any authorized agent or employee of such person, to do or attempt to do any of the following:

(a) Refuse to rent or lease a housing accommodation, refuse to negotiate for the rental or lease of a housing accommodation, or otherwise deny to or withhold from any person or persons, a housing accommodation on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child.

(b) Discriminate against any person in the terms, conditions, or privileges of the rental or lease of a housing accommodation, or in the provision of services, facilities or benefits, in connection therewith, on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child. However, nothing herein shall preclude any person from imposing reasonable restrictions on the use of common areas, facilities, and services which are necessary to protect the health and safety of a tenant.

(c) Represent to any person on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child that a housing accommodation is not available for inspection, rental, or lease when such housing accommodation is, in fact, available.

(d) Make, print, or publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a housing accommodation offered by that person that indicates any preference, limitation, or discrimination with respect to age, parenthood, pregnancy, or the potential or actual tenancy of a minor child.

(e) Include in any rental agreement or lease for a housing accommodation, a clause or condition providing that as a condition of continued tenancy, the tenants shall remain childless or shall not bear children or otherwise not maintain a household with a person of a certain age.

(f) Refuse to rent after making a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make unavailable or deny, housing accommodations to any person because of the potential tenancy of a minor child or children.

(g) Limit occupancies to fewer than two persons per bedroom, unless that number exceeds the maximum allowed under the superficial floor space requirements of the Uniform Housing Code. For those housing accommodations without any bedroom, no person shall be required to rent or lease to more than one person. In no case shall such occupancy limits apply to a newborn infant during the term of any lease in effect on the date of birth of such infant unless that limit implements the superficial floor space requirements of the Uniform Housing Code. All occupancies limitations shall be uniformly imposed and either conspicuously posted on the premises or contained in a written policy, rules or notice.

(h) Evict or otherwise demand surrender of a housing accommodation from any person because of age, parenthood, pregnancy or presence of a minor child.

(i) Charge additional rent for persons living in a housing accommodation on the basis of age, parenthood, pregnancy, or presence of a minor child.

9.70.040 Exemptions. Nothing contained in this chapter shall apply to or be construed:

(a) To affect a housing project or development where the owner has publically established and implemented a policy of renting exclusively to senior adults and their spouses. Deviance from or abandonment of that policy shall automatically terminate this exemption and subject the owner to all the provisions of this ordinance.

(b) To affect any state licensed nursing home, convalescent home, or community care facility.

(c) To apply to any housing accommodation occupied by the owner.

(d) To apply to any housing accommodation occupied by a tenant who subleases any portion of that accommodation to another tenant.

(e) To affect any area or tract of land where two or more mobile home lots are rented or leased or held out for rent or lease to accommodate mobile homes used for human habitation.

9.70.050 Requirements of financial obligations not prohibited. This ordinance shall not prohibit the person having the right to rent or lease the premises from requiring the same rent, deposits, fees or charges of prospective adult tenants with minor children as he or she may require of prospective adult tenants without children. However, no discrimination in the amount or manner of payment of said rent, deposits, fees or charges shall be permitted.

9.70.060 Penalties/remedies. (a) Criminal. Violations of this chapter shall constitute an infraction.

(b) Civil. Any person who violates the provisions of this chapter shall be liable to each

party injured by such violation for damages up to \$500, costs and reasonable attorneys fees. In addition, the court may award punitive damages.

(c) Injunctive relief. Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

Any action for injunctive relief under this ordinance may be brought by the city attorney, by any aggrieved person, by other law enforcement agencies, by the district attorney or by any person or entity which will fairly and adequately represent the interests of the protected class.

SECTION 2. The Council finds that none of the provisions of this ordinance will have a significant environmental impact.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The Council hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

SECTION 4. This ordinance shall become effective upon the commencement of the thirty-first day after the date of its passage.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Social and  
Community Services

Alaska State Legislature

OFFICE OF THE MINORITY

ALASKA STATE LEGISLATURE  
GENERAL COUNSEL

House of Representatives

July 10, 1983

Suzanne,

Please find enclosed samples of legislation and list of references to resources groups working in the area of discrimination in housing.

Contents:

Articles

*where*

Frederickson, "Housing Discrimination: Laws Prohibiting Housing Discrimination on the Basis of Race, Color, or National Origin" (also parental status) (outline form).

Note, "Housing Discrimination Against Children: The Legal Status of a Growing Social Problem," 26 J. OF FAMILY L. 559 (1977-78). An excellent overview and case bibliography.

Travali, "Suffer the Little Children -- But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing," 40 OHIO STATE L.J. 295 (1979).

Administration/Legislation (intended as examples of different approaches to the problem -- not necessarily for use as a model)

- Berkeley, California
- Los Angeles, California
- Oakland, California
- San Francisco, California

[continued]

Santa Monica, California

Cal. Senate Bill No. 440 (1979), defeated in 1980.

Kansas City, Missouri

Buffalo, New York (passed by City Council, vetoed by Mayor)

Seattle, Washington

California Attorney General Opinion, No. SO 75/6 (1975) and §51 of the California Civil Rights Act (Unruh Civil Rights Act) provide a broad yet detailed interpretation of discrimination laws and enforcement in California. (See Marina Point, Ltd. v. Wolfson, infra.)

#### Litigation

Marina Point, Ltd. v. Wolfson, 180 Cal. Rptr. 496, \_\_\_ P.2d \_\_\_ (Cal. Sup. Ct., 1982). Brief and opinion. Interpretation of the Unruh Civil Rights Act to prohibit discrimination against children in rental housing.

Mountlake Terrace Family Assoc. v. N.O.I., Inc., No. 78-2-04140-6 (Super. Ct., Snohomish Co., Wash. 1979). Opinion, memo, and complaint. Local anti-child discrimination ordinance prohibiting conversion of rental units to "adults only" housing upheld.

Robinson v. Green, No. C 203059 (Super. Ct., Los Angeles Co., Cal. 1977). Complaint and memo re injunctive relief and damages for an eviction based on discrimination against children.

People v. Papa, No. 714-007 (San Francisco Super. Ct., Cal. 1977). Memo re preemption of local discrimination ordinance by state law.

Cf. Bynes v. Toli, No. 74-2433 (N.Y. 2d Cir., Feb. 6, 1975), holding that university can exclude children from married student housing.

#### See also:

"Note: Why Johnny Can't Rent -- An Examination of Laws Prohibiting Discrimination Against Families in Rental Housing," 94 HARV. L. REV. 1829 (1981).

(continued)

✓ Ashford and Eston, The Extent and Effects of Discrimination Against Children in Rental Housing: A Study of Five California Cities (1979), available from the Fair Housing for Children Coalition, P.O. Box 5877, Santa Monica, CA 90405 (52 pp.).

✓ Greene and Blake, "How Restrictive Rental Practices Affect Families with Children," HUD-PDR-592 (August 1980), available from the United States Government Printing Office, Washington, D.C. 20402.

✓ Marans and Colten, Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey, prepared for the Office of Policy Development and Research, HUD (July 1980). Available from the U.S. Printing Office, Washington, D.C. 20402 (HUD-PDR-603) (100 pp.).

O'Brien, "Apartment for Rent -- Children Not Allowed: The Illinois Children in Housing Statute--Its Viability and a Proposal for Its Comprehensive Amendment," 25 De PAUL L. REV. 64 (1975).

Resource Contacts:

Children's Defense Fund  
~~1520 New Hampshire Avenue, N.W.~~ 122 2 St NW  
~~Washington, D.C. 20036~~ 20001  
Tel: (202) 483-1470 628-9484  
Carol R. Golubock

National Committee Against Discrimination in Housing, Inc.  
1425 H Street, N.W.  
Washington, D.C. 20005  
Tel: (202) 783-8150  
Ed L. Holmgren, Executive Director  
Katherine Mailie, Staff Attorney

National Center for Youth Law  
693 Mission Street, 6th Floor  
San Francisco, CA 94105  
Tel: (415) 543-3307

National Center for Youth Law  
3701 Lindell Boulevard  
P.O. Box 14200  
St. Louis, MO 63178  
David Lambert

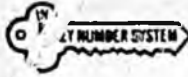
[continued]

Fair Housing Coalition  
P.O. Box 5877  
Santa Monica, CA 90405  
Tel: (213) 393-1093 .  
Perla Eston, Dora Ashford

Fair Housing Council of Orange County  
1525 East 17th Street, Suite E  
Santa Ana, CA 92701  
Tel: (714) 839-0160  
Richard Friedman, Staff Attorney  
Katherine R. Wolff, Staff Attorney

need for additional legal assistance, pursuant to the wholly new guidelines which are now judicially created by the majority.

Because I conclude that defendant is being fairly and generously treated by the trial court system, I would sustain its action and deny the peremptory writ.



**MARINA POINT, LTD., Plaintiff  
and Respondent,**

v.

**Stephen WOLFSON et al., Defendants  
and Appellants.**

L.A. 31199.

Supreme Court of California,  
In Bank.

Feb. 8, 1982.

Tenants appealed from a judgment of the Municipal Court, Los Angeles County, Harold I. Cherness, J., 158 Cal.Rptr. 669, upholding landlord's policy of excluding all families with minor children from apartment complex. The Supreme Court, Tobriner, J., assigned, held that: (1) protection against discrimination afforded by the Unruh Act applies to "all persons," and is not reserved for restricted categories of prohibited discrimination; (2) Unruh Act does not permit a business enterprise to exclude an entire class of individuals from access to the services of a business enterprise on the basis of a generalized prediction that the class, "as a whole," is more likely to commit misconduct than some other classes of public; and (3) nothing in the nature of an ordinary apartment complex is incompatible with the presence of families with children, and therefore landlord's "no children" policy could not be sustained as reasonable despite its violation of Unruh Act on the ground that the presence of children basically did

not accord with the nature of the business enterprise and other facilities provided.

Reversed.

Richardson, J., dissented and filed opinion, in which Mosk, J., concurred.

**1. Statutes ⇐ 223.5(4)**

It is a well-established principle of statutory construction that when the legislature amends a statute without altering portions of the provision that have previously been judicially construed, the legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction; accordingly, reenacted portions of the statute are given the same construction they received before the amendment.

**2. Civil Rights ⇐ 1**

Protection against discrimination afforded by the Unruh Act applies to "all persons," and is not reserved for restricted categories of prohibited discrimination. West's Ann.Civ.Code § 51 et seq.

**3. Civil Rights ⇐ 8**

Unruh Act does not permit a business enterprise to exclude an entire class of individuals from access to the services of a business enterprise on the basis of a generalized prediction that the class, "as a whole," is more likely to commit misconduct than some other classes of public. West's Ann.Civ.Code § 51 et seq.

**4. Civil Rights ⇐ 11.5**

In light of public policy reflected by legislative enactments, age qualifications as to housing facility reserved for older citizens can operate as a reasonable and permissible means under the Unruh Act of establishing and preserving specialized facilities for those particularly in need of such services or environment. West's Ann.Civ. Code § 51 et seq.

**5. Civil Rights ⇐ 11.5**

Nothing in the nature of an ordinary apartment complex is incompatible with the presence of families with children, and therefore landlord's "no children" policy could not be sustained as reasonable despite

its violation of Unruh Act that the presence of [redacted] not accord with the nature of the business enterprise and other facilities provided. West's Ann.Civ.Code § 51 et seq.

Eugene C. Gratz, Plaintiff and Respondent, Goller, Gillin & Nobel, Los Angeles, Joellen Doyle and Marmarito, for defendant.

W. Kenneth Rice, K. Gillespie, Los Angeles, Eureka, Robert Michael E. Wine, West Salmonsens, Santa Monica, Los Angeles, S. Berkeley, Carl K. O'San Francisco, R. Sh David A. Garcia, St. Francisco, Beverly Udell, Oakland, Eric Sidney M. Wolinsky, Friedman and Kathamici curiae on behalf appellants.

Richard F. Hamlin, plaintiff and respondent.

Dennis B. Kavanamicus curiae on behalf respondent.

TOBRINER, Justice

In this case we are under California law apartment complex may any of its apartments because the family In the landlord's action the municipal court "[c]hildren are rowchievous and more and upheld the lawing all families with tenants now appeal favor of the landlord exclusionary policy

\* Retired Associate Justice sitting under assignment.

its violation of Unruh Act on the ground that the presence of children basically did not accord with the nature of the business enterprise and other facilities provided. West's Ann.Civ.Code § 51 et seq.

Eugene C. Gratz, Noble, Gratz & Wolfson, Goller, Gillin & Menes, Lawrence C. Nobel, Los Angeles, Josseline Charas, Kathleen Doyle and Martha Warriner, Sacramento, for defendants and appellants.

W. Kenneth Rice, Steven Belasco, Mary K. Gillespie, Los Angeles, Stephen R. Nielson, Eureka, Robert M. Myers, Venice, Michael E. Wine, West Covina, Eugene Roy Salmonsén, Santa Monica, Harry M. Snyder, Los Angeles, Susan Bartlett Foote, Berkeley, Carl K. Oshiro, Luana Martilla, San Francisco, R. Sharon Mosley, Berkeley, David A. Garcia, Steven C. Owyang, San Francisco, Beverly S. Tucker, Ruby S. Udell, Oakland, Eric W. Wright, Palo Alto, Sidney M. Wolinsky, San Francisco, Richard Friedman and Katherine Wolff, Encino, as amici curiae on behalf of defendants and appellants.

Richard F. Hamlin, Marina Del Rey, for plaintiff and respondent.

Dennis B. Kavanagh, San Francisco, as amicus curiae on behalf of plaintiff and respondent.

TOBRINER, Justice.\*

In this case we must determine whether, under California law, an owner of an apartment complex may lawfully refuse to rent any of its apartments to a family solely because the family includes a minor child. In the landlord's action to eject the family, the municipal court, found, inter alia, that "[c]hildren are rowdier, noisier, more mischievous and more boisterous than adults," and upheld the landlord's policy of excluding all families with minor children. The tenants now appeal from the judgment in favor of the landlord, contending that the exclusionary policy violates their statutory

rights under the Unruh Civil Rights Act (Civ.Code, § 51 et seq.) and the California Fair Housing Law (Health & Saf.Code, § 35700 et seq., now Gov.Code, § 12955) and, in addition, impermissibly infringes upon their state and federal constitutional rights of familial privacy (U.S.Const., 9th & 14th Amendments, Cal.Const., art. I, § 1) and equal protection of the law. (U.S.Const., 14th Amend.; Cal.Const., art. I, § 7.)

For the reasons discussed below we have concluded that the landlord's broad, class-based exclusionary practice violates the Unruh Civil Rights Act (hereafter Unruh Act or act); in light of this conclusion, we have no occasion in this case to address any of the tenants' more sweeping and far-reaching constitutional contentions. As we shall explain, the municipal court, in finding the challenged practice compatible with the Unruh Act, proceeded from the erroneous premise that under that act "[n]ot every class . . . is protected from exclusion," but rather that "[i]t is only such class . . . that is protected as is set forth in the [s]tatutes or who come under the [s]tatutes by judicial determination." Finding that "[t]here is no decision to include children, parents with children, or families with children, as a protected class by the wording of the [s]tatutes themselves or by judicial determination," the court concluded that the challenged practice fell outside the scope of the act.

As we shall point out, the municipal court's approach conflicts with the interpretation of the Unruh Act unanimously adopted by this court a decade ago in *In re Cox* (1970) 3 Cal.3d 206, 90 Cal.Rptr. 24, 474 P.2d 992. In *Cox*, after reviewing the original, legislative evolution and prior judicial decisions construing the Unruh Act and its predecessors, our court concluded that the "identification of particular bases of discrimination—color, race, religion, ancestry and national origin—[in the current version of the act] . . . is illustrative rather than restrictive." (Italics added.) (3 Cal.3d at p. 216, 90 Cal.Rptr. 24, 474 P.2d 992.) Al-

the Judicial Council.

\* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of

the nature of the business  
er facilities provided.

dissented and filed opin-  
J., concurred.

5(4)

established principle of stat-  
that when the legisla-  
te without altering por-  
on that have previously  
strued, the legislature is  
been aware of and to  
he previous judicial con-  
ngly, reenacted portions  
iven the same construc-  
before the amendment.

inst discrimination af-  
uh Act applies to "all  
reserved for restricted  
hibited discrimination.  
§ 51 et seq.

not permit a business  
an entire class of indi-  
to the services of a  
n the basis of a gener-  
at the class, "as a  
to commit misconduct  
ees of public. West's  
seq.

5  
c policy reflected by  
age qualifications as  
erved for older citi-  
reasonable and per-  
the Unruh Act of  
erving specialized fa-  
ularly in need of such  
nt. West's Ann.Civ.

ature of an ordinary  
ncompatible with the  
with children, and  
no children" policy  
as reasonable despite

though we recognized that in recent years the act had been invoked most often "by persons alleging discrimination on racial grounds," we emphasized that the act's "language and its history compel the conclusion that the Legislature intended to prohibit all arbitrary discrimination by business establishments." (Italics added.) (*Id.*) Thus, contrary to the municipal court's conclusion, the fact that the landlord's exclusionary policy in this case discriminated against children and families with children, rather than a specific racial or religious group or some other classification specifically involved in a prior judicial decision, does not place the exclusionary practice beyond the reach of the Unruh Act.

The landlord maintains, however, that even if the municipal court did err in its analysis of the Unruh Act, we should nevertheless affirm the trial court judgment on the grounds that the exclusionary policy at issue is "reasonable," not "arbitrary," and hence not violative of the Unruh Act. Relying, *inter alia*, upon the court's finding that "[c]hildren are rowdier, noisier, more mischievous and more boisterous than adults," the landlord claims that it may seek to achieve its legitimate interest in a quiet and peaceful residential atmosphere by excluding all minors from its housing accommodations, thus providing its adult tenants with a "child free" environment.

As we shall explain, however, the landlord's argument overlooks the individual nature of the statutory right of equal access to business establishments that is afforded "all persons" by the Unruh Act. Derived from the early common law right of equal access to the services of innkeepers or common carriers, the Unruh Act prohibits business establishments from withholding their services or goods from a broad class of individuals in order to "cleanse" their operations from the alleged characteristics of the members of an excluded class.

As our prior decisions teach, the Unruh Act preserves the traditional broad authority of owners and proprietors of business establishments to adopt reasonable rules regulating the conduct of patrons or ten-

ants; it imposes no inhibitions on an owner's right to exclude any individual who violates such rules. Under the act, however, an individual who has committed no such misconduct cannot be excluded solely because he falls within a class of persons whom the owner believes is more likely to engage in misconduct than some other group. Whether the exclusionary policy rests on the alleged undesirable propensities of those of a particular race, nationality, occupation, political affiliation, or age, in this context the Unruh Act protects individuals from such arbitrary discrimination.

Accordingly, we conclude that the judgment in favor of the landlord should be reversed.

1. *The facts and proceedings below.*

Plaintiff Marina Point, Ltd. (hereafter landlord or Marina Point) is a privately owned apartment complex, which, at the time of trial, consisted of 846 separate apartment units. The apartment complex, located in Marina del Rey, an unincorporated area in the County of Los Angeles, stands on land owned, and leased by the county to Marina Point. The master lease between the county and Marina Point specifically forbids Marina Point from discriminating on the basis of race, religion or national ancestry, but contains no provision with respect to other forms of discrimination.

In January 1974, defendants Stephen and Lois Wolfson signed a one-year lease for an apartment in the Marina Point complex with occupancy to begin on February 1 of that year. Although the printed form lease that the Wolfsons then signed contained a clause which provided that no minors under the age of 18 could reside in the leased premises without the landlord's written permission, Marina Point acknowledges that at that time it followed a policy of renting its apartments to families with children as well as to families without children.

In October 1974, Marina Point altered its rental policy with the objective of ultimately excluding all children from the apartment complex. At that time, well over 60

families w  
in the con  
that while  
ready the  
any apart  
dren or w

In Febr  
their lease  
lease agai  
respect to  
initial lea  
son gave  
after resi  
apartmer  
1976, the  
another y  
tained th  
consent  
ently dic  
lord of  
made no

In the  
ger lear  
living in  
the land  
due to  
not be r  
such no  
the pre

After  
ties, M:  
extensi  
lease a  
same p  
the pr  
Wolfso  
the W  
to an  
lease t

Whi  
premi  
mence  
tion i  
the W  
policy  
with  
tution  
provi  
The l  
sion  
stati

families with children lived in apartments in the complex, and Marina Point decided that while it would allow the children already there to remain, it would not rent any apartments to new families with children or with pregnant women.

In February 1975, the Wolfsons renewed their lease for a one-year period; the form lease again contained the same clause with respect to children as had appeared in the initial lease. In September 1975, Lois Wolfson gave birth to a son, Adam, who thereafter resided with his parents in the family apartment in Marina Point. In February 1976, the Wolfsons renewed their lease for another year; although the lease again contained the identical clause as to written consent for children, the Wolfsons apparently did not specifically inform the landlord of Adam's presence, and the lease made no reference to him.

In the fall of 1976, the landlord's manager learned that the Wolfsons had a child living in the apartment; shortly thereafter, the landlord informed them that their lease, due to expire on January 31, 1977, would not be renewed, and that the sole reason for such nonrenewal was Adam's presence on the premises.

After some negotiation between the parties, Marina Point agreed to a three-month extension of the Wolfsons' lease; the new lease agreement, which again contained the same provision as to children, specified that the premises would be occupied by the Wolfsons and their son. Thereafter, upon the Wolfsons' request, the landlord agreed to an additional one-month extension of the lease to May 31, 1977.

When the Wolfsons failed to vacate the premises on May 31, the landlord commenced the present unlawful detainer action in municipal court. In their answer, the Wolfsons maintained that the landlord's policy of discriminating against families with children violated both statutory constitutional prescriptions, and, as such, did not provide a lawful basis for their eviction. The landlord acknowledges that if its exclusion of the Wolfsons does in fact contravene statutory or constitutional strictures, such

illegality would indeed provide a valid defense to the unlawful detainer action. (See, e.g., *S. P. Growers Assn. v. Rodriguez* (1976) 17 Cal.3d 719, 724, 131 Cal.Rptr. 761, 552 P.2d 721; *Schweiger v. Superior Court* (1970) 8 Cal.3d 507, 90 Cal.Rptr. 729, 476 P.2d 97; *Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 22 Cal.Rptr. 309.)

At trial, the landlord conceded that its nonrenewal of the Wolfsons' lease rested solely on its current general policy of refusing to rent any of its apartments to families with children, but the landlord denied that this policy violated any statutory or constitutional principle. In defense of its exclusionary policy, the landlord's apartment manager testified that the decision to bar families with children rested in part on a number of past instances in which young tenants had engaged in annoying or potentially dangerous activities, ranging from acts of arson to roller skating and batting practice in the hallways to the attempted solicitation of snacks from the landlord's office staff.

The manager did not indicate, however, what proportion of the tenant children engaged in such activities or what steps, short of the blanket exclusionary policy, the landlord had implemented to deal with the problem, such as promulgating general rules as to permissible and impermissible conduct or excluding from the complex those families whose children repeatedly committed disruptive or destructive acts. Moreover, the landlord introduced no evidence that the Wolfsons' child had ever engaged in any such activity and, indeed, two of the Wolfsons' immediate neighbors testified that Adam's presence was not annoying to them at all.

As an additional explanation for the exclusionary policy, the apartment manager testified that the Marina Point complex had no special facilities for children, such as playground equipment, and no suitable area for children to play. The manager conceded, however, that the facilities of the complex had remained unaltered since the landlord had implemented its "no children" poli-

hibitions on an own-  
any individual who  
Under the act, how-  
who has committed no  
not be excluded solely  
in a class of persons  
ives is more likely to  
than some other  
exclusionary policy  
desirable propensities  
ar race, nationality,  
ffiliation, or age, in  
Act protects individ-  
y discrimination.

clude that the judg-  
landlord should be

ceedings below.

nt, Ltd. (hereafter  
oint) is a privately  
plex, which, at the  
d of 846 separate  
partment complex,  
ey, an unincorporat-  
y of Los Angeles,  
and leased by the  
The master lease  
d Marina Point spe-  
Point from discrimi-  
race, religion or na-  
ntains no provision  
orms of discrimina-

ndant. Stephen and  
ne-year lease for an  
ina Point complex  
n on February 1 of  
e printed form lease  
signed contained a  
at no minors unde-  
side in the leased  
dlord's written per-  
knowledge that at  
policy of renting its  
with children as well  
children.

na Point altered its  
jective of ultimate-  
n from the apart-  
time, well over 60

cy. In addition, the evidence revealed that, even at the time of trial, seven children were still living in apartments in the Marina Point complex.

Finally, the landlord presented testimony of two expert witnesses who had been in the real estate business for many years. These witnesses testified that in their opinion children, as a class, generally cause more wear and tear on property than adults do, and that as a consequence, landlords who rent to families with children generally have higher maintenance costs than landlords who exclude children. The witnesses presented no statistical data in support of their conclusion, but simply testified on the basis of their general experience.

As already noted, two immediate neighbors of the Wolfsons, one living next door and one living overhead, testified on behalf of the Wolfsons that they had not been disturbed by Adam's presence in the apartment. In addition to these neighbors' testimony, the Wolfsons presented one expert witness, a professor of real estate finance at California State University at Fullerton, who testified that the basic profitability of operating an apartment complex does not generally vary with the type or age of its tenants. Finally, the Wolfsons introduced a

1. See, for example, Note, *Landlord Discrimination Against Children* (1978) 11 *Loyola L.A.L. Rev.* 609, 611-613; Ashford & Easton, *The Extent and Effects of Discrimination Against Children in Rental Housing: A Study of Five California Cities* (1979); City of Campbell, *Survey of Rental Policies Relating to Families with Children* (1979); City of Mountain View, *Children in the Housing Market* (1978).

Similar discrimination in rental housing against families with children apparently exists in many regions throughout the country. (See, e.g., Reid et al., *Patterns of Discrimination Against Children in Rental Housing in the Metro-Atlanta Area* (1979); Greene, *Child Discrimination in Rental Housing: A Comparative Analysis of Apartment Policies in Dallas, Texas* (1979); Travallo, *Suffer the Little Children—But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing* (1979) 40 *Ohio St.L.J.* 295, 296-297; O'Brien & Fitzgerald, *Apartment for Rent—Children Not Allowed* (1975) 25 *DePaul L.Rev.* 64, 74-86.)

2. The municipal court's memorandum opinion states in relevant part:

"The Unruh and Rumford Acts, taken collectively establish a classification of person[s]

number of recent studies by various groups documenting the extensive nature of the practice of discrimination against families with children in rental housing that currently exists throughout California. As these and more recent studies reveal, in many of the major metropolitan areas of the state, families with children are excluded from 60 to 80 percent of the available rental housing.<sup>1</sup>

At the conclusion of the trial, the municipal court ruled in favor of Marina Point, rejecting the Wolfsons' contention that the landlord's policy of excluding all families with children violated their statutory or constitutional rights. The court's formal findings of fact contain findings, *inter alia*, that the landlord's "exclusion of children . . . proceeds from a reasonable economic motive to promote a quiet and peaceful environment free from noise and damage caused by children." Yet the court's memorandum opinion reveals that the court's legal conclusion that the practice in question did not violate any prohibited discrimination rested on the erroneous belief that the statutory proscription of discrimination applied only to a limited number of specifically designated "protected classes."<sup>2</sup> Because the municipal court could find "no

protected from discrimination in housing and business establishments. This classification includes persons discriminated against on the basis of race, religion, [national] origin, ancestry, sex and marital status. By judicial construction, this protection has been extended to homosexuals, long hairs, persons of unusual dress, persons of unusual political views, and unmarried couples living together. [Citation.]

"Not every class or person is protected. It is only such class or person that is protected as is set forth in the Statutes or who come under the Statutes by judicial determination. There is no decision to include children, parents with children, or families with children, as a protected class by the wording of the Statutes themselves, or by judicial determination. [¶] . . . The Court finds that the California Statutes do not extend protection to persons in the class of defendants who are refused housing on the ground that they have a child . . . .

"[T]he Court . . . is not indifferent to the plight of the defendants and other similarly situated persons as parents or families with children. The Court is satisfied that there is a problem of major importance; that there is difficulty in obtaining housing where one has a

decision to include children, or family-protected class by themselves, or by the court conclude practice challenge the reach of the discrimination statute entered judgment awarding it pos \$1,903.50 in damages and costs.<sup>3</sup>

The Wolfsons' argument, asserting that the Fair Housing Act and the Fair Housing Act's admitted against families with children, constitutionally contend their rights to full protection of the state and federal law above, because the landlord's exclusionary act we need Wolfsons' addition

2. *Contrary to conclusion, the provisions of the law defined only "protected" "all persons discriminated against."*

In evaluating the prolonged exclusion

child. The judge to be interpreted problem.' How judicial determine under the provisions of the law or at protected class

3. After judgment, the landlord, the defendant, the trial court is months, and a Wolfsons vacated of the apartment moot, however, judgment for damages well as the going issue. (See

decision to include children, parents with children, or families with children, as a protected class by the wording of the statutes themselves, or by judicial determination," the court concluded that the exclusionary practice challenged in this case fell beyond the reach of the state's existing anti-discrimination statutes. The court accordingly entered judgment in favor of the landlord, awarding it possession of the premises, \$1,903.50 in damages, \$3,000 in attorney fees and costs.<sup>1</sup>

The Wolfsons now appeal from the judgment, asserting that both the Unruh Act and the Fair Housing Law bar the landlord's admitted policy of discriminating against families with children. They additionally contend that the exclusion violates their rights to familial privacy and equal protection of the law guaranteed by the state and federal Constitutions. As noted above, because we conclude that the landlord's exclusionary policy violates the Unruh Act we need not, and do not, reach the Wolfsons' additional contentions.

2. *Contrary to the municipal court's conclusion, the antidiscrimination provisions of the Unruh Act are not confined only to a limited category of "protected classes" but rather protect "all persons" from any arbitrary discrimination by a business establishment.*

In evaluating the legality of the challenged exclusionary policy in this case, we

child. The judgment of the Court in no way is to be interpreted as 'closing one's eyes to the problem.' However, the Court is restricted to a judicial determination as the law now exists under the provisions of the applicable statutes and case law. The Court finds that there is no case law or statute placing defendants in any protected class as parents of children."

3. After judgment was entered in favor of the landlord, the Wolfsons sought a stay of execution from the trial court pending appeal. The trial court issued a temporary stay for six months, and at the expiration of that period the Wolfsons vacated the premises. This vacation of the apartment does not render the appeal moot, however, in light of the outstanding judgment for damages, attorneys' fees and costs, as well as the general importance of the underlying issue. (See *Green v. Superior Court* (1974)

must recognize at the outset that in California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment owner's traditional discretion to accept and reject tenants on the basis of the landlord's own likes or dislikes. California has brought such landlords within the embrace of the broad statutory provisions of the Unruh Act, Civil Code section 51.<sup>4</sup> Emanating from and modeled upon traditional "public accommodations" legislation, the Unruh Act expanded the reach of such statutes from common carriers and places of public accommodation and recreation, e.g., railroads, hotels, restaurants, theaters and the like, to include "all business establishments of every kind whatsoever." (See generally Horowitz, *The 1959 California Equal Rights in "Business Establishments" Statute—A Problem in Statutory Application* (1960) 83 So. Cal. L. Rev. 260, 272-294.)

For nearly two decades the provisions of the Unruh Act, in light of its broad application to "all business establishments," have been held to apply with full force to the business of renting housing accommodations. (See, e.g., *Swann v. Burkett* (1962) 209 Cal.App.2d 635, 694-695, 26 Cal.Rptr. 286; *Abstract Investment Co. v. Hutchinson*, supra, 204 Cal.App.2d 242, 254-255, 22 Cal.Rptr. 309; 56 Ops. Cal. Atty. Gen. 546 (1973); cf. *Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 467-471, 20 Cal.Rptr. 609, 370 P.2d 813.) Indeed, in the case at

10 Cal.3d 616, 622, fn. 6, 111 Cal.Rptr. 704, 517 P.2d 1168.)

4. Section 51 presently provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever.

"This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry or national origin."

Unless otherwise noted, all statutory references are to the Civil Code.

studies by various groups  
extensive nature of the  
discrimination against families  
rental housing that cur-  
throughout California. As  
recent studies reveal, in  
major metropolitan areas of  
with children are exclud-  
percent of the available

on of the trial, the municipi-  
n favor of Marina Point,  
Wolfsons' contention that the  
of excluding all families  
olated their statutory or  
rights. The court's formal  
contain findings, inter alia,  
the "exclusion of children  
in a reasonable economic  
to a quiet and peaceful  
from noise and damage."  
Yet the court's memo-  
reveals that the court's le-  
t the practice in question  
ly prohibited discrimina-  
erroneous belief that the  
ap-  
of discrimination ap-  
ted number of specific-  
protected classes." Be-  
tected court could find "no

discrimination in housing and  
rents. This classification in-  
criminated against on the  
on, [national] origin, ances-  
stry. By judicial con-  
clusion has been extended to  
persons of unusual  
physical characteristics, and  
unusual political views, and  
living together. [Citation.]  
person is protected. It is  
person that is protected as is  
person or who come under the  
determination. There is no  
children, parents with chil-  
dren, as a protected  
of the Statutes them-  
self. (1) ...  
the California Statutes do  
to persons in the class of  
refused housing on the  
of a child ...

is not indifferent to the  
landlords and other similarly  
parents or families with  
is satisfied that there is a  
importance; that there is  
housing where one has a

bar, Marina Point apparently concedes that, like other business establishments that deal with the public, its freedom or authority to exclude "customers," i.e., prospective tenants, from the goods and services it offers, i.e., rental units, is limited by the provisions of the Unruh Act.<sup>5</sup>

The municipal court properly recognized that Marina Point, as a "business establishment," was generally subject to the Unruh Act. It concluded, however, that the act provided no protection to the Wolfsons because it found that the subjects, i.e., "victims," of the discriminatory practice in this case, described variously as "children" or "families with children" did not fall within what the court believed to be a limited set of "protected classes" shielded from discriminatory treatment by the act. As already noted, the court, in elaborating upon its understanding of the Unruh Act, stated in this regard: "Not every class is protected. It is only such class or person that is protected as is set forth in the Statutes or who come under the Statutes by judicial determination." Because discrimination against children or against families with children was not in explicit terms proscribed by the language of section 51 or by any prior judicial decision, the court determined that any such discrimination was beyond the scope of the act.

The municipal court's interpretation of the act directly conflicts with this court's interpretation of the Unruh Act a decade ago in *In re Cox*, supra, 3 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992. In *Cox*, an individual who claimed that he had been excluded from a shopping center because a friend with whom he was talking "wore long hair and dressed in an unconventional

manner" (3 Cal.3d at p. 210, 90 Cal.Rptr. 24, 474 P.2d 992), asserted that such exclusion was barred by the Unruh Act. Relying upon the fact that the act, by its terms, expressly referred only to discrimination on the basis of "race, color, religion, ancestry or national origin,"<sup>6</sup> the city argued in response that the act's proscriptions were limited to discrimination which was based on the specifically enumerated forbidden criteria, and did not encompass the alleged discrimination against "hippies" or their associates.

After reviewing the common law origin, the legislative history and the past judicial interpretations of the act and its statutory predecessors, our court, unanimously concluded in *Cox* that the "identification of particular bases of discrimination—color, race, religion, ancestry, and national origin — . . . is illustrative rather than restrictive. [Citation.] Although the legislation has been invoked primarily by persons alleging discrimination on racial grounds, its language and its history compel the conclusion that the Legislature intended to prohibit all arbitrary discrimination by business establishments." (Italics added.) (3 Cal.3d at p. 216, 90 Cal.Rptr. 24, 474 P.2d 992.)

In reaching this conclusion, we relied, inter alia, upon the fact that the Unruh Act had emanated from the venerable common law doctrine which "attached [to various 'public' or 'common' callings] 'certain obligations including—at various stages of doctrinal development—the duty to serve all customers on reasonable terms without discrimination . . .'" (italics added) (*id.*, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992), and upon the fact that prior judicial decisions con-

struing the predecessor had clearly held that tions were not limited based on race, religion but also barred, for of homosexuals from rant (*Stoumen v. Re* 716, 324 P.2d 969) o sons with the reputa ter from a public ran *Angeles Turf Club* ( P.2d 449.) Because ly no evidence to su ture intended to co statutory protection expansive Unruh A that the act must "to interdict all art a business enterpri 90 Cal.Rptr. 24, 474

Although the lan at any time questic ty of this court's c ment has been urg imous decision in ( and should at this The argument rest the second senten sistent with the i ute in *Cox*. The s that "[t]his section confer any right which is conditio which is applicabl sex, color, race, r al origin."

Although it is of this language from a literal st more obscure. F appears to provi access to busines by section 51 is every sex, color, course, would fundamental ar of the statute. that we should the sentence, it tence should be the statute's pu cess to a busin

5. The fact that the landlord in this case is also subject to the specific antidiscrimination provisions of the California Fair Housing Law in no way diminishes the applicability of the Unruh Act. Section 35743 of the Health and Safety Code (now Gov.Code, § 12993), (one of the provisions of the Fair Housing Law, explicitly provides in this regard: "Nothing contained in this part shall be construed to, in any manner or way, limit the application of Section 51 of the Civil Code." See also Health & Saf.Code, § 35740; *Burks v. Poppy Construction Co.*, su-

pra, 57 Cal.2d 463, 469-470, 20 Cal.Rptr. 609, 370 P.2d 313.)

6. Subsequent to our decision in *Cox*, the Legislature added "sex" to the bases of discrimination specifically listed in the statute. (Stats. 1974, ch. 1193, § 1, p. 2568.) The purpose and legislative history of the 1974 legislation is discussed below. (See post, p. 504 of 180 Cal. Rptr., p. — of — P.2d.) With the exception of this single addition, the current statute is identical to the provision as construed in *Cox*.

struing the predecessors of the Unruh Act had clearly held that the statutory protections were not limited to discrimination based on race, religion, or national origin but also barred, for example, the exclusion of homosexuals from a public bar or restaurant (*Stoumen v. Reilly* (1951) 37 Cal.2d 713, 716, 324 P.2d 969) or the exclusion of persons with the reputation of immoral character from a public race track. (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 227 P.2d 449.) Because we could find absolutely no evidence to suggest that the Legislature intended to contract the reach of the statutory protections when it enacted the expansive Unruh Act in 1959, we concluded that the act must properly be interpreted "to interdict all arbitrary discrimination by a business enterprise." (3 Cal.3d at p. 212; 90 Cal.Rptr. 24, 474 P.2d 992.)

Although the landlord in this case has not at any time questioned the continued vitality of this court's decision in *Cox*, an argument has been urged that this court's unanimous decision in *Cox* was wrongly decided and should at this late date be overruled. The argument rests upon the assertion that the second sentence of section 51 is inconsistent with the interpretation of the statute in *Cox*. The sentence in question states that "[t]his section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry or national origin."

Although it is asserted that the purport of this language is self-evident, its meaning from a literal standpoint could hardly be more obscure. Read literally, the sentence appears to provide that the right of equal access to business establishments conferred by section 51 is not applicable to persons of every sex, color, race, etc.; that meaning, of course, would completely contradict the fundamental anti-discrimination objective of the statute. Although it is not asserted that we should adopt this interpretation of the sentence, it is suggested that the sentence should be interpreted to exclude from the statute's purview any restriction on access to a business establishment, however

arbitrary, that is "applicable alike to persons of every sex, color, race, religion, ancestry or national origin." Thus, under this proposed reading of the statute, for example, the total exclusion of homosexuals or members of the Republican Party from a public restaurant, a shoe store or an apartment complex would be entirely compatible with section 51.

As we pointed out in *Cox*, however, from before the beginning of the twentieth century California's public accommodation statutes have uniformly proscribed the exclusion of individuals on the basis of purely arbitrary classifications. (See Stats. 1897, ch. 108, §§ 1, 2, p. 137; Stats. 1905, ch. 413, §§ 1, 2, pp. 553-554; Stats. 1919, ch. 210, §§ 1, 2, pp. 309-310, Stats. 1923, ch. 235, §§ 1, 2, (p. 485.) The argument under discussion proposes that we interpret the confusing, and virtually incoherent, language of the second sentence of section 51 as evidencing a legislative retreat from California's well-established statutory policy prohibiting all arbitrary discrimination in places of public accommodation. As we observed in *Cox*, however, "[w]ithout the most cogent and convincing evidence, a court will never attribute to the Legislature the intent to disregard or overturn a sound rule of public policy." [Citation.] (3 Cal.3d at p. 215, 90 Cal.Rptr. 24, 474 P.2d 992.)

Moreover, subsequent to our decision in *Cox* the Legislature effectively confirmed our interpretation of the act as barring all forms of arbitrary discrimination. In 1974, the Legislature amended section 51, reenacting the prior provisions of the statute and adding "sex" to the specifically enumerated bases of discrimination listed in the Unruh Act. In sending the bill to the Governor for his signature, the Chairman of the Select Committee on Housing and Urban Affairs explained: "The purpose of the bill is to bring it to the attention of the legal profession that the Unruh Act provides a remedy for arbitrary discrimination against women (or men) in public accommodations which are business enterprises. This bill does not bring such discrimination under

0, 90 Cal.Rptr. 24,  
at such exclusion  
uh Act. Relying  
act, by its terms,  
discrimination on  
religion, ancestry  
city argued in re-  
riptions were lim-  
ich was based on  
ed forbidden crite-  
as the alleged dis-  
ies" or their asso-

ommon law origin,  
d the past judicial  
and its statutory  
unanimously con-  
"identification of  
rimination—color,  
and national origin  
er than restrictive.  
e legislation has  
y persons alleging  
grounds, its lan-  
pel the conclusion  
ded to prohibit all  
by business estab-  
d.) (3 Cal.3d at p.  
P.2d 992.)

ision, we relied, in-  
at the Unruh Act  
venerable common  
ached [to various  
ings] 'certain obli-  
ious stages of doc-  
duty to serve all  
terms without dis-  
s added) (*id.*, at p.  
P.2d 992), and upon  
cial decisions con-  
70, 20 Cal.Rptr. 809,

on in *Cox*, the Legis-  
bases of discrimina-  
the statute. (Stats.  
8.) The purpose and  
974 legislation is dis-  
p. 504 of 180 Cal.  
With the exception  
the current statute is  
as construed in *Cox*.



d Sch. Dist. (1978) 21 Cal.3d Cal.Rptr. 359, 580 P.2d 1155.

1A Sutherland, Statutory (4th ed.) § 22.33, pp. 191-192.)

the legislative history noted the principle of construction particularly in the instant case for here we may presume that the Legislature's court's interpretation of *Cox* at the time of the 1974 legislative documents establish the question that the Legislature was aware of *Cox*'s construction. Had the Legislature disapproved *Cox*'s interpretation, or had it restricted the reach of section 51 to be compatible with *Cox*, it presumably would have altered the preexisting statute so to indicate. See *McDill* (1975) 14 Cal.3d Cal.Rptr. 754, 537 P.2d 874.) The Legislature reenacted the preexisting language verbatim, with implicit reference to sex discrimination to highlight the statute's application. Under the numerous precedents above, this action represents an endorsement of *Cox*'s interpretation of section 51.<sup>7</sup>

is too dim to pierce statute. As evidence of legislative intent and value. [Citations.]

legislative history of the 1974 act above, the observations of the *Newspaper Guild* court apply. As we have seen, in the instant case section 51 applies to discrimination and that the bases of discrimination are not merely illustrative. The intent of the bills in question is the determination that there is no existing prohibition. The bills in question contain provisions which would prohibit discrimination in designated housing facilities. A ban on discrimination against children; thus, nonpartisan to disagreement which exceptions, rather than prohibition on discrimination.

that although the Legislature enacted specific provisions to prohibit "restrictions in mobile housing," Code, §§ 798.76, 799.5,

[2] Indeed, in recent years, a spate of decisions by the appellate courts and the opinions of the Attorney General have explicitly concluded, in a variety of contexts, that the Unruh Act covers a wide range of discriminatory practices. Thus, for example, the decisions and opinions have established the act's application to exclusionary policies directed against (1) students (59 Ops. Cal. Atty. Gen. 70 (1976)), (2) welfare recipients (59 Ops. Cal. Atty. Gen. 223 (1976)), (3) those of a particular occupation or marital status (58 Ops. Cal. Atty. Gen. 608, 613 (1975)), or (4) those who associate with blacks. (*Winchell v. English* (1976) 62 Cal. App.3d 125, 128-130, 133 Cal.Rptr. 20.) Unlike the municipal court decision at issue here, these numerous decisions properly recognize that the protection against discrimination afforded by the Unruh Act applies to "all persons," and is not reserved for restricted categories of prohibited discrimination. Accordingly, the municipal court's decision in this case unquestionably proceeded from a fundamental misinterpretation of the Unruh Act.

3. *The landlord's blanket exclusion of all families with minor children is not permissible under the Unruh Act even if children "as a class" are "noisier, rowdier, more mischievous and more boisterous" than adults.*

The landlord maintains, however, that even if the municipal court erred in concluding that the Unruh Act did not apply because children or families with children were not a "protected class" under the act, the judgment in its favor should nonetheless be affirmed. It asserts that the trial court's findings of fact demonstrate that its policy of excluding all families with children from its apartment complex is "reasonable" and not "arbitrary" and, as such, is not barred by the Unruh Act.

In this regard, the landlord correctly points out that in *Cox* we explained that while the Unruh Act prohibits a business

enacted Stats. 1978, ch. 1031, § 1, pp. 3183, 3185 (discussed at p. 509 fn. 11, of 180 Cal. Rptr., p. — n.11 of — P.2d, post), the

establishment from engaging in any form of arbitrary discrimination, the act does not absolutely preclude such an establishment from excluding a patron in all circumstances. As we stated in *Cox*: "In holding that the Civil Rights Act forbids a business establishment generally open to the public from arbitrarily excluding a prospective customer, we do not imply that the establishment may never insist that a patron leave the premises. Clearly, an entrepreneur need not tolerate customers who damage property, injure others or otherwise disrupt his business. A business establishment may, of course, promulgate reasonable department regulations that are rationally related to the services performed and the facilities provided. [Citation.]" (3 Cal.3d at p. 217, 90 Cal.Rptr. 24, 474 P.2d 992.)

The landlord contends that the exclusionary policy at issue here falls within the category of permissible regulations to which *Cox* is inapplicable. Marina Point acknowledges that its blanket policy of excluding all families with children cannot properly be characterized as a "department regulation" since it does not focus on the conduct of the individuals or families who are actually excluded by the rule. (Cf. *Hales v. Ojai Valley Inn and Country Club* (1977) 73 Cal. App.3d 25, 28-29, 140 Cal.Rptr. 555 (restaurant rule requiring men to wear ties).) The landlord contends, however, that in light of the trial court's factual finding that "[c]hildren are rowdier, noisier, more mischievous and more boisterous than adults," its exclusion of all children bears a rational relation to its legitimate interest in preserving an appropriate environment.

In support of its contention, the landlord relies heavily upon the case of *Flowers v. John Burnham & Co.* (1971) 21 Cal.App.3d 700, 98 Cal.Rptr. 644. In *Flowers*, the plaintiff tenants, who had been evicted from their apartment, alleged that their landlord had violated the Unruh Act by adopting a policy of excluding all families

Legislature has not adopted any comparable provision sanctioning such restrictions in apartment complexes or in rental housing generally.

with male children over the age of five. The trial court sustained the landlord's demurrer to the complaint and, on appeal, the Court of Appeal, in a very brief, two-and-one-half page opinion, affirmed the trial court judgment. Although recognizing that under *Cox* the Unruh Act barred all arbitrary discrimination by such a landlord, the court upheld the landlord's policy of excluding families on the basis of their children's sex and age. Disposing of the tenant's contention in two, rather conclusory sentences, the court stated: "Because the independence, mischievousness, boisterousness and rowdyism of children vary by age and sex, Burnham, as landlord, seeks to limit the children in its apartments to girls of all ages and boys under 5. Regulating tenants' ages and sex to that extent is not unreasonable or arbitrary." (21 Cal.App.3d at p. 703, 98 Cal.Rptr. 644.)<sup>8</sup>

Although the *Flowers* court's reasoning, such as it is, does support the present landlord's position, we believe that both the landlord's contention and the *Flowers* decision rest on a fundamental misconception of the *Cox* decision and, more basically, of the individual nature of the statutory right afforded "all persons" by section 51. As already noted, in *Cox* we explained that the provisions of section 51 derive from the common law doctrine which imposed upon certain enterprises affected with a public interest "the duty to serve all customers on reasonable terms without discrimination." (Italics added.) (3 Cal.3d at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992.) Under this common law principle, each member of the public, as an individual, possessed the right to obtain the services of such enterprises. (See, e.g., *Willis v. McMahan* (1891) 89 Cal. 156, 157-158, 26 P. 649; see generally *Beale on Innkeepers and Hotels* (1906) pp. 42-50, 68-69.)

The rights afforded by the Unruh Act similarly are enjoyed by all persons, as indi-

viduals. As an early decision construing a predecessor of section 51 declared: "The purpose [of the statutes] is to compel a recognition of the equality of citizens in the right to the peculiar service offered by [the] agencies [covered by the acts]." (*Piluso v. Spencer* (1918) 36 Cal.App. 416, 419, 172 P. 412. See also *Greenberg v. Western Turf Assn.* (1903) 140 Cal. 357, 362, 73 P. 1050 ("The defendant is conducting a place of amusement. There is held out to the public under the guaranty of the statute the right to admission to this place of amusement and to the enjoyment of the pleasure which it affords. This is the right which the plaintiff had secured to him by the law, in common with all other inhabitants of the state..."); *Perrine v. Paulos* (1950) 100 Cal.App.2d 655, 657, 224 P.2d 41.)

[3] As we recognized in *Cox*, of course, an individual may forfeit his statutory right of access to the services of a business enterprise if he conducts himself improperly or disrupts the operations of the enterprise. But, contrary to the contention of Marina Point and the suggestion of the *Flowers* case, the Unruh Act does not permit a business enterprise to exclude an entire class of individuals on the basis of a generalized prediction that the class "as a whole" is more likely to commit misconduct than some other class of the public.

This proposition is clearly demonstrated by our prior decisions in *Orloff v. Los Angeles Turf Club*, *supra*, and *Stoumen v. Reilly*, *supra*. Undoubtedly the class of persons with "reputations as to immoral character" was more likely than the general population to engage in illegal activities which a public race track legitimately would seek to prevent. *Orloff* clearly held, however, that an individual could not be excluded from the race track on the basis of such classification, but rather had a right to be judged on the basis of his own conduct. Similarly, although it may have been thought true—

8. In *Ritchey v. Villa Nueva Condominium Assn.* (1978) 81 Cal. App.3d 688, 148 Cal.Rptr. 815, the Court of Appeal cited this passage from *Flowers* in rejecting a condominium owner's challenge to the validity of an association's by-law which limited the occupancy of a por-

tion of a condominium project to persons 18 years of age or older. In *Ritchey*, however, the plaintiff did not raise any claim under the Unruh Act at all, and consequently the Court of Appeal in that case did not address the question presented in the instant proceeding.

at least under the r  
homosexuals as a  
than heterosexuals  
"immoral conduct"  
pulsion from a pub  
e.g., *Vallerga v. L*  
*trol* (1959) 53 Ca  
Rptr. 494, 347 P.  
held that any such  
not afford a prop  
homosexuals; inst  
"[m]embers of th  
to patronize a pul  
long as they are a  
committing illeg  
(37 Cal.2d 713, 71

Indeed, the b  
section 51 would  
if, as the landlo  
enterprise could ex  
services entire c  
because the ow  
some reason to l  
as a whole, migl  
than other gro  
proach, for exa  
occupations or s  
motorcyclists, i  
cluded as a clas  
accommodation  
tors could show  
members of th  
were more like  
in a disturba  
*Sawyer* (1884)  
(innkeeper's ex  
militia, becau  
other militia  
Similarly, mer  
ity or ethnic g  
an apartment  
landlord had l  
members of t  
were more li  
damage the  
ants of other

As these c  
clusion of in  
accommodation  
covered by t  
class or gro  
with the inc

at least under the mores of that time—that homosexuals as a class were more likely than heterosexuals to engage in the kind of “immoral conduct” that would justify expulsion from a public restaurant or bar (see, e.g., *Vallerga v. Dept. Alcoholic Bev. Control* (1959) 53 Cal.2d 313, 319–320, 1 Cal. Rptr. 494, 347 P.2d 909), in *Stoumen* we held that any such class generalization did not afford a proper basis for exclusion of all homosexuals; instead, we emphasized that “[m]embers of the public . . . have a right to patronize a public restaurant and bar so long as they are acting properly and are not committing illegal or immoral acts. . . .” (37 Cal.2d 713, 716, 324 P.2d 969.)

Indeed, the basic rights guaranteed by section 51 would be drastically undermined if, as the landlord contends, a business enterprise could exclude from its premises or services entire classes of the public simply because the owner of the enterprise had some reason to believe that the class, taken as a whole, might present greater problems than other groups. Under such an approach, for example, members of entire occupations or avocations, e.g., actors or motorcyclists, might find themselves excluded as a class from some places of public accommodation simply because the proprietors could show that, as a statistical matter, members of their occupation or avocation were more likely than others to be involved in a disturbance. (See, e.g., *Atwater v. Sawyer* (1884) 76 Me. 539 [49 Am.Rep. 634] (innkeeper's exclusion of all members of the militia, because of disorderly conduct of other militiamen, held impermissible).) Similarly, members of a particular nationality or ethnic group might be excluded from an apartment complex simply because the landlord had found from his experience that members of that nationality or ethnic group were more likely to play loud music or to damage the landlord's property than tenants of other backgrounds.

As these examples demonstrate, the exclusion of individuals from places of public accommodation or other business enterprises covered by the Unruh Act on the basis of class or group affiliation basically conflicts with the individual nature of the right af-

forded by the act of access to such enterprises. As the United States Supreme Court observed in reaching a similar conclusion with respect to the antidiscrimination provisions of Title VII of the federal Civil Rights Act of 1964 in *Los Angeles Dept. of Water & Power v. Manhart* (1978) 435 U.S. 702, 702, 98 S.Ct. 1370, 1375, 55 L.Ed.2d 657: “The statute's focus on the individual . . . precludes treatment of individuals as simply components of a racial, religious, sexual or national class. If height is required for a job, a tall woman may not be refused employment merely because, on the average, women are too short. *Even a true generalization about the class is an insufficient reason for disqualifying an individual to whom the generalization does not apply.*” (Italics added.)

As *Cox* makes clear, of course, under the Unruh Act exclusion on the basis of a group classification is as improper when applied to “children” or “families with children” as it is when applied to occupational, racial, religious or other broad “status” classifications. Indeed, if we were to accept the landlord's contention that a blanket exclusion of children or families with children from rental housing can be justified because children as a class are noisier, rowdier and more boisterous than adults, it would logically follow that children could uniformly be excluded from virtually all business enterprises or places of public accommodation since, like apartment complexes, most businesses can claim a legitimate interest in eliminating excessively noisy, rowdy or boisterous conduct.

As our decisions in *Cox*, *Orloff* and *Stoumen* teach, although entrepreneurs unquestionably possess broad authority to protect their enterprises from improper and disruptive behavior, under the Unruh Act entrepreneurs must generally exercise this legitimate interest directly by excluding those persons who are in fact disruptive. Entrepreneurs cannot pursue a broad status-based exclusionary policy that operates to deprive innocent individuals of the services

decision construing a on 51 declared: “The [statute] is to compel a equality of citizens in the service offered by [the] acts.” (*Piluso v. App.* 416, 419, 172 P. 357, 362, 73 P. 1050) conducting a place of held out to the public the statute the right place of amusement of the pleasure which the right which the to him by the law, in r inhabitants of the v. *Paulos* (1950) 100 P.2d 41.)

ed in *Cox*, of course, it his statutory right of a business enterprise of the enterprise. intention of Marina ion of the *Flowers* not permit a busi- le an entire class of s of a generalized s “as a whole” is l misconduct than public.

early demonstrated *Orloff v. Los Ange-* *Stoumen v. Reilly*, e class of persons mmoral character” general population ties which a public ould seek to pre-, however, that an xcluded from the of such classifica- nt to be judged on nduct. Similarly, n thought true—

ject to persons 18 tchey, however, the claim under the Un- ntly the Court of t address the ques- t proceeding.

of the business enterprise to which section 51 grants "all persons" access.<sup>9</sup>

4. *Neither the nature of the business enterprise nor the nature of the facilities justifies the blanket exclusion of all families with children from the Marina Point apartment complex.*

Finally, the landlord argues that even if the potential misbehavior of children as a class does not justify its exclusionary practice under the Unruh Act, its "no children" policy may nonetheless be sustained as reasonable on the ground that the presence of children basically does not accord with the nature of its business enterprise and of the facilities provided. In this regard, the landlord attempts to analogize its contemplated "adults only" apartment complex to such businesses as bars, adult book stores and theaters, or senior citizen convalescent homes or housing facilities which routinely exclude children from their premises or services.

In our view, the suggested analogy clearly fails. Stated simply, nothing in the nature of an ordinary apartment complex is incompatible with the presence of families with children. Indeed, as the record in this

9. Although the case of *Newby v. Alto Riviera Apartments* (1976) 60 Cal.App.3d 288, 131 Cal. Rptr. 547, involved a landlord's threatened eviction of a tenant on the basis of the tenant's own conduct and thus is clearly distinguishable from the instant matter, some language in the *Newby* opinion does conflict with the above analysis of the Unruh Act and must be disapproved. In *Newby*, the court stated: "Action by a landlord which does not restrict the right of a tenant to insure habitable living premises, and does not discriminate on the basis of race, sex, color, religion, ancestry, or national origin, is not actionable under the [Unruh Act] if it proceeds from a motive of rational self-interest, i.e., if it is 'rationally related to the facilities provided.'" (*Id.*, at p. 302, 131 Cal.Rptr. 547.)

This statement is surely overbroad since an entrepreneur may pursue many discriminatory practices "from a motive of rational self-interest," e.g., economic gain, which would unquestionably violate the Unruh Act. For example, an entrepreneur may find it economically advantageous to exclude all homosexuals, or alternatively all nonhomosexuals, from his restaurant or hotel, but such a "rational" economic motive would not, of course, validate the

case indicates, prior to its decision to exclude children in 1974, the landlord freely rented its apartments to families with children and, even at the time of trial, several families with children continued to reside in the complex.

Unlike the exclusion of children from bars or adult book stores or movie theaters, the Marina Point complex's exclusionary policy cannot, of course, be defended by reference to any statutorily sanctioned restriction on the activities of children. (Cf., e.g., Bus. & Prof.Code, § 25658 (furnishing alcoholic beverages to person under 21); Pen.Code, § 313.1 (distributing "harmful matter" to a minor).)

Moreover, the exclusionary practice at issue in this case is also clearly distinguishable from the age-limited admission policies of retirement communities or housing complexes reserved for older citizens. Such facilities are designed for the elderly and in many instances have particular appurtenances and exceptional arrangements for their specified purposes. The special housing needs of the elderly in contemporary American society have been extensively chronicled,<sup>10</sup> and both the state and federal

practice. (See *Stoumen v. Reilly*, *supra*, 37 Cal.2d 713, 324 P.2d 969.)

10. See, for example, 2 White House Conference on Aging, *Toward a National Policy on Aging* (1971) 29-36; President's Task Force on Aging, *Toward a Brighter Future for the Elderly* (1970) 38-40; Hearings on Condominium Conversions and the Elderly before the California Assembly Committee on Aging (1978).

In *Taxpayers Ass'n of Weymouth Tp. v. Weymouth Tp.* (1976) 71 N.J. 249, 364 A.2d 1016, 1026-1028, the New Jersey Supreme Court, in a thoughtful and well-documented opinion, explained at some length the numerous factors underlying the special housing needs of the elderly. The Court stated: "In part the need of the elderly for specialized housing results from the fixed and limited incomes upon which many older persons are dependent. . . . [I]n part, though, the needs for specialized housing transcend economic status and results from the particular physical and social problems of the elderly. . . . To the elderly, accidents in the home are a real danger. Falls, for example, are the leading cause of accidental death for those 65 and over. . . . [Housing policies] should include more and wider

governments have conscious" legislative this problem. (See § 51230 (reserving nanced low income by elderly); 12 U.S program for housi 42 U.S.C. § 1485 (

[4] In light of by these legislative cations as to a ho older citizens can and permissible m of establishing a facilities for thos such services or *Taxpayers Ass'n. mouth Tp., supra* 1016, 1026-1030; 613 (1975).)" Su designed to meet damentally from

walkways with exterior designed provision for cor between building maintenance and halls. . . .

"Though special needs of the elderly than their physical. The elderly are younger persons and relatives of ground. As a r panionship becom them. In addition have moved aw persons to seek ment to replace an environment just to the soci retirement. . . . communities aff residents and th nal victimization facilities facilitate sc portunities for older persons n pp. 1026-1028 Teaff et al., *Im Well-Being of I ing* (1978) 33 study finding age-segregated more in organit environment, .

governments have enacted specific "age-conscious" legislative measures addressed to this problem. (See, e.g., Health & Saf. Code, § 51230 (reserving proportion of state-financed low income housing for occupancy by elderly); 12 U.S.C. § 1701q (federal loan program for housing for elderly families); 42 U.S.C. § 1485 (same).)

[4] In light of the public policy reflected by these legislative enactments, age qualifications as to a housing facility reserved for older citizens can operate as a reasonable and permissible means under the Unruh Act of establishing and preserving specialized facilities for those particularly in need of such services or environment. (See, e.g., *Taxpayers Ass'n. of Weymouth Tp. v. Weymouth Tp.*, *supra*, 71 N.J. 249, 364 A.2d 1016, 1026-1030; 58 Ops. Cal. Atty. Gen. 608, 613 (1975).) Such a specialized institution designed to meet a social need differs fundamentally from the wholesale exclusion of

walkways with few stairs, an interior and exterior designed to permit easy social contact, provision for common rooms, short distances between buildings, easy refuse collection, light maintenance and well-lighted walkways and halls....

"Though special social and psychological needs of the elderly are perhaps less obvious than their physical needs, they are no less real. The elderly are apt to be less mobile than younger persons. They may have lost friends and relatives of comparable age and background. As a result, readily accessible companionship becomes increasingly important to them. In addition, the fact that children may have moved away sometimes causes elderly persons to seek an age-homogeneous environment to replace broken family ties.... Such an environment also helps older citizens to adjust to the social and psychological effects of retirement.... In addition, age-homogeneous communities afford a sense of security to their residents and thereby reduce the fear of criminal victimization.... Finally, these communities facilitate social relations and increase opportunities for the peer contact which many older persons need and desire." (364 A.2d at pp. 1026-1028 [citations omitted].) (See also Teaff et al., *Impact of Age Integration on the Well-Being of Elderly Tenants in Public Housing* (1978) 33 J. Gerontology 126 (empirical study finding that elderly tenants "living in age-segregated environments... participate more in organized activities within the housing environment, ... have higher morale, higher

children from an apartment complex otherwise open to the general public.<sup>12</sup>

[5] Marina Point cannot plausibly claim that its exclusionary policy serves any similarly compelling societal interest. It can hardly contend, for example, that the class of persons for whom Marina Point seeks to reserve its housing accommodation, i.e., single adults or families without children, are more in need of housing than the class of persons whom the landlord has excluded from its apartment complex; indeed, precisely the opposite is true. As the Legislature stated in 1979: "The Legislature finds and declares that the state's housing problems are substantial, complex and now of crisis proportions... The Legislature finds and declares that the greatest need for housing is experienced by residents at the lower end of the economic scale. Many moderate and low income households with children cannot normally find decent, safe and suitable housing at prices they can af-

housing satisfaction, and greater mobility in their neighborhoods").

11. In light of the housing special needs of older citizens, the New Jersey Supreme Court, in the *Weymouth* case quoted at length in footnote 10, upheld the validity of a municipal zoning ordinance setting aside a portion of land for use as a mobile home park for older citizens. In reaching its conclusion, the court observed: "The role which mobile home developments can play in satisfying the special needs of the State's senior citizens is evident. First, mobile homes provide a relatively inexpensive form of housing at a time when the demand for such housing is great and its availability is limited... Second, mobile home developments afford the elderly the age-homogeneous environments which many older persons now seek and desire. Finally, the size of mobile homes is ideal for older persons with both physical and financial limitations..." (364 A.2d at p. 1029.)

These special features of mobile home parks, which correlate closely with the special needs of older citizens, may well explain the fact that mobile home parks constitute the only housing facilities in which the California Legislature has explicitly authorized "adult only" restrictions. (See *Civ. Co.* §§ 798.76, 799.5.)

12. Thus, contrary to the suggestion of the dissent (*dis. opn.*, *post*, pp. 510-511 of 180 Cal. Rptr., pp. — of — P.2d), this opinion does not bar age-limited admission policies of retirement communities or housing complexes reserved for older citizens.

or to its decision to ex-  
1974, the landlord freely  
nts to families with chil-  
the time of trial, several  
en continued to reside in

ision of children from  
tores or movie theaters,  
complex's exclusionary  
ourse, be defended by  
tutorily sanctioned re-  
nties of children. (Cf.,  
le, § 25658 (furnishing  
to person under 21);  
distributing "harmful

isionary practice at is-  
o clearly distinguisha-  
ted admission policies  
nties or housing com-  
older citizens. Such  
for the elderly and in  
articular appurtances  
ngements for their  
The special housing  
contemporary Amer-  
extensively chroni-  
state and federal

*n v. Rolly, supra*, 37  
)

White House Conference  
World Policy on Aging  
Task Force on Aging  
for the Elderly (1970)  
Forum Conversions  
California Assembly  
(78).

*Weymouth Tp. v.*  
1 N.J. 249, 364 A.2d  
New Jersey Supreme  
and well-documented  
length the numer-  
the special housing  
the Court stated: "In  
erly for specializd  
fixed and limited in-  
older persons are de-  
hough, the needs for  
nds economic status  
icular physical and  
ly... To the  
ome are a real dan-  
e the leading cause  
e 65 and over...  
ude more and wider

ford...." (Italics added.) (Stats.1979, ch. 1043, §§ 1, 2, pp. 3643-44.) Thus, unlike the case of special housing for the elderly, the exclusionary policy at issue here exacerbates, rather than alleviates, the state's specialized housing needs.

Finally, apartment house living is by no stretch of the imagination the type of dangerous or hazardous activity as to which the exclusion of children might be defended on health or safety grounds. Although certain facilities offered by an apartment complex may possibly be withheld from children pursuant to such a safety rationale, a landlord cannot seize upon the availability of such incidental facilities as a justification for closing off all of its principal services, i.e., housing accommodations, to the broad class of families with children.<sup>13</sup> If the rule were otherwise, of course, a proprietor could easily circumvent the Unruh Act's prohibitions simply by adding some incidental facility which posed a special danger to an undesired class of potential patrons. The fundamental right of equal access to public business enterprises established by the Unruh Act cannot be so readily defeated.

##### 5. Conclusion.

A society that sanctions wholesale discrimination against its children in obtaining housing engages in suspect activity. Even the most primitive society fosters the protection of its young; such a society would hardly discriminate against children in their need for shelter. Yet here the landlord

13. Although one argument urged in defense of the exclusion of families with children from Marina Point rests upon the presence of swimming pools on the premises, the landlord's own actions reveals the hollowness of the contention. The swimming pools were part of the apartment complex long before the landlord instituted its "adults only" program. If the pools were not incompatible with the presence of children during the period before the new program, the pools could hardly become prohibitively dangerous after the institution of that program.

Moreover, the landlord's ostensible concern for the safety of children has never led it to adopt the less restrictive practice of simply excluding children from the use of the pools. Instead, the evidence at trial established that the landlord has routinely permitted both the

would single out children as a class for exclusion from shelter although such discrimination against racial minorities or religious groups would be unquestionably illegal. Indeed, under the Unruh Act we have condemned any arbitrary discrimination against any class.

The argument is launched that children clearly may be excluded from certain kinds of housing, such as housing for the aged, housing for special classes or purposes, and therefore that the instant exclusion is justified. But we do not here adjudge such special purpose housing. We have before us a mammoth apartment complex consisting of 846 separate apartments which proposes to engage in wholesale discrimination against children. To permit such discrimination is to approve of widespread, and potentially universal, exclusion of children from housing. Neither statute nor interpretation of statute, however, sanctions the sacrifice of the well-being of children on the altar of a landlord's profit, or possibly some tenants' convenience.

The judgment is reversed.

BIRD, C. J., and NEWMAN, BROUSARD and WHITE,\*\* JJ., concur.

RICHARDSON, Justice, dissenting.

I respectfully dissent.

This case illustrates a truism: the answer to a legal question frequently depends upon how the question is phrased. If the issue

remaining resident children and children of guests to use its swimming facilities. Under these circumstances, the presence of the swimming pools cannot possibly justify the landlord's broad exclusionary policy.

Finally, we note that the asserted "special features" on which the dissent relies—swimming pools with no shallow ends, no playgrounds, ungated gangplanks to the ocean—are hardly the kind of amenities which would suggest that this apartment complex was intended solely for "our middle aged or older citizens" on whose behalf the dissent defends the complex's exclusionary policy. (See *dis. opn. post.* pp. 510-511 of 180 Cal.Rptr., pp. — of — P.2d.)

\*\* Assigned by the Chairperson of the Judicial Council.

before us is, as fra (ante, p. 510 of 180 — P.2d) should w discrimination again "universal exclusion ing" or sanction "the being of children on profit, or possibly nience," the answer We'll choose children it and greed every question is put a lit inquire—do our mizens, having worked raised their own ch their taxes and the a right to spend th relatively quiet, pe ronment of their o to such a question two conflicting soc case, and a just courts should try t them both.

The majority do tutional violations sweeping holding Civil Rights Act 51 provides as fol the jurisdiction c equal, and no m color, religion, ar are entitled to th dations, advanta services in all l every kind wha shall not be cons privilege on a p or limited by l alike to persons religion, ancestr

We closely ex Cox (1970) 8 Ca P.2d 992, and t prohibited forn illustrative, rath 90 Cal.Rptr. 24 incorporated t clared by this civil rights leg "public accor (see Stoumen

before us is, as framed by the majority (*ante*, p. 510 of 180 Cal.Rptr., p. — of — P.2d) should we approve "wholesale discrimination against children," or the "universal exclusion of children from housing" or sanction "the sacrifice of the well-being of children on the altar of a landlord's profit, or possibly some tenants' convenience," the answer is a thundering "no." We'll choose children over a landlord's profit and greed every time. If, however, the question is put a little differently, and we inquire—do our middle aged or older citizens, having worked long and hard, having raised their own children, having paid both their taxes and their dues to society retain a right to spend their remaining years in a relatively quiet, peaceful and tranquil environment of their own choice? The answer to such a question is, why not? There are two conflicting social policies present in this case, and a just society including its law courts should try to accommodate and serve them both.

The majority does not identify any constitutional violations here. Rather it bases its sweeping holding exclusively on the Unruh Civil Rights Act (Civ.Code, § 51). Section 51 provides as follows: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. [¶] This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry, or national origin."

We closely examined this section in *In re Cox* (1970) 8 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992, and held that its enumeration of prohibited forms of discrimination was "illustrative, rather than restrictive" (p. 212, 90 Cal.Rptr. 24, 474 P.2d 992) and not only incorporated those rights which were declared by this court to exist under former civil rights legislation dealing with places of "public accommodation and amusement" (see *Stoumen v. Reilly* (1951) 37 Cal.2d 713,

324 P.2d 969; *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 227 P.2d 449) but also extended those rights, in the words of the statute, to "all business establishments of every kind whatsoever." Thus, we concluded, the Unruh Act does more than prohibit the enumerated forms of discrimination in all business establishments. "[B]oth its history and its language disclose a clear and large design to interdict all arbitrary discrimination by a business enterprise." (3 Cal.3d, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992, italics added.) Having so held, we were very careful to explain that this ban, however comprehensive in scope, was not absolute in application. There was no violation of the Unruh Act, we noted, by the establishment and enforcement of "reasonable regulations that are rationally related to the services performed and facilities provided." (*Ibid.*, italics added.)

It seems clear to me that Marina Point (1) is a "business establishment" within the meaning of, and therefore subject to, the Unruh Act (*Flowers v. John Burnham & Co.* (1971) 21 Cal.App.3d 700, 703, 98 Cal.Rptr. 644; *Swann v. Burkett* (1962) 209 Cal.App.2d 685, 694-695, 26 Cal.Rptr. 286; cf. *Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 254-255, 22 Cal.Rptr. 809; see also 56 Ops.Cal.Atty.Gen. 546 (1973)), and (2) has not violated the Unruh Act if its rental policy was a "reasonable regulation[ ] . . . rationally related to the services performed and facilities provided." (*Cox*, supra, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992.) Under the circumstances of this case, the trial court concluded that plaintiff's policy was reasonable. I agree with its conclusion.

The trial court made express findings of fact that the facilities at Marina Point are "designed for use by adults, not children, and pose dangers to children who are not accompanied by adults." It further expressly found that plaintiff Marina Point's "exclusion of children from the premises at issue herein is rationally related to the lack of facilities provided for children . . ." These findings were amply supported by the record. The evidence before the trial

children as a class for  
elter although such dis-  
racial minorities or reli-  
be unquestionably ille-  
the Unruh Act we have  
arbitrary discrimination

launched that children  
cluded from certain kinds  
s housing for the aged,  
classes or purposes, and  
stant exclusion is justi-  
not here adjudge such  
using. We have before  
rtment complex consist-  
apartments which pro-  
wholesale discrimination  
to permit such discrimi-  
ive of widespread, and  
il, exclusion of children  
either statute nor inter-  
, however, sanctions the  
-being of children on the  
profit, or possibly some

e.  
reversed.

NEWMAN, BROUS-  
\*\* JJ., concur.

ustice, dissenting.

ent.

as a truism: the answer  
requently depends upon  
phrased. If the issue

children and children of  
imming facilities. Under  
the presence of the swim-  
possibly justify the land-  
nary policy.

hat the asserted "special  
the dissent relies—swim-  
shallow ends, no play-  
planks to the ocean—are  
senities which would sug-  
ent complex was intended  
ie aged or older citizens"  
dissent defends the com-  
plicity. (See *dia. opn.*, *ost.*  
Cal.Rptr., pp. ————

airperson of the Judicial

court established, in substance, that Marina Point was designed and constructed for the purpose of providing all-adult rental housing, and that as such its facilities were ill-adapted for use by children. There was unchallenged testimony that, among other things, neither of the two swimming pools of the facility has a shallow end; there are no playgrounds or any other facilities appropriate for recreational use by children; gr planks leading from the facility directly to the adjoining ocean are not equipped with gates; and, in general, the use of existing facilities at Marina Point by children when playing results in substantial damage both to themselves and to adult tenants.

The majority attempts to discount the force of these findings by observing that Marina Point, prior to the 1974 decision to accept no further tenants with children, freely rented to families having children. It is suggested, in short, that the adaptability of the premises to use by children is demonstrated by the fact that they have actually resided there. This proposition, its logical failings aside, must be considered in the light and context of the record which reflects that plaintiff became the owner of the complex in 1972, several years after it was built; that at that time, as a result of existing leases, there were children included among the tenants; and that in 1974, two years after acquiring the property and because of its experience during that period, plaintiff decided that no further leases to families with children would be entered into, but that families with children then in occupancy should be allowed to remain.

I do not agree with the majority's suggestion that one who purchases property which is constructed and designed for all-adult rental occupancy is thereafter for all time precluded under the Unruh Act from putting that property to its intended use because a prior owner had chosen to do otherwise. Here, plaintiff purchased property which was subject to outstanding leases and a then current rental policy which had previously permitted occupancy inconsistent with the design for the complex.

Our sole inquiry, under *Cox*, is to determine whether the landlord has acted reasonably—i.e., whether in initiating and enforcing its new policy, it has done so by regulations which are reasonable in light of the circumstances and "rationally related to the services performed and facilities provided." (*Cox*, supra, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992.) The trial court's conclusion that plaintiff's action met this standard is fully supported by the court's express findings of fact and substantial evidence in this record. (See *Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 63-64, 107 Cal.Rptr. 45, 507 P.2d 653.) It has long been our rule that our review "begins and ends with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact." (*Primm v. Primm* (1956) 46 Cal.2d 690, 693, 299 P.2d 231.)

Because the majority declines to reach defendants' constitutional arguments, I, accordingly, do not discuss them here other than to observe that the equal protection and due process principles relied upon by defendants place no restrictions upon purely private action, but affect only state action, which is not involved here. (*Garfinkle v. Superior Court* (1978) 21 Cal.3d 268, 281-282, 146 Cal.Rptr. 208, 578 P.2d 945; *Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 366-367, 113 Cal.Rptr. 449, 521 P.2d 441; *Shelley v. Kraemer* (1948) 334 U.S. 1, 13, 68 S.Ct. 836, 842, 92 L.Ed. 1161; *Civil Rights Cases* (1883) 109 U.S. 3, 11-19, 3 S.Ct. 18, 21-27, 27 L.Ed. 835; see also *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 468, 493, 166 Cal.Rptr. 14, 595 P.2d 592.)

I fully share the majority's concern with the current need in this state for moderate and low income housing for families with children. We should impose no restriction on the power of either state or local government, through the proper exercise of their police powers, to enact measures calculated to insure that all families with children are able to secure adequate and affordable housing. In the matter before us, however, the majority simply disagrees with the ex-

PLICIT fact findings of a  
listened to the witnesses,  
dence, and expressly for  
the premises in question  
built for all-adult tenant  
dren. On the basis of th  
is nothing in the Unruh .  
limitations here imposed  
asonable that the rental p  
meat complex be tailore  
match its planned design  
the trial court had found  
premises were designed  
different legal conclusio

Cite as, Sup., 180 Cal.Rptr. 496

explicit fact findings of a trial court which listened to the witnesses, examined the evidence, and expressly found as a fact that the premises in question were planned and built for all-adult tenants and not for children. On the basis of these findings, there is nothing in the Unruh Act which prohibits limitations here imposed. It is not unreasonable that the rental policies of an apartment complex be tailored and fashioned to match its planned design and character. If the trial court had found as a fact that the premises were designed for general use a different legal conclusion would follow.

I would dismiss the appeal of plaintiff Marina Point from the order after judgment taxing costs, and would affirm the judgment.

MOSK, J., concurs.



nder Cox, is to deter-  
ldlord has acted rea-  
in initiating and en-  
y, it has done so by  
reasonable in light of  
"rationally related to  
and facilities provid-  
212, 90 Cal.Rptr. 24,  
ial court's conclusion  
met this standard is  
court's express find-  
tial evidence in this  
Parke, Davis & Co.  
4, 107 Cal.Rptr. 45,  
long been our rule  
and ends with the  
ether there is any  
tradicted or uncon-  
port the finding of  
m (1956) 46 Cal.2d

declines to reach  
l arguments, I, ac-  
them here other  
equal protection  
s relied upon by  
ctions upon purely  
only state action,  
e. (*Garfinkle v.*  
Cal.3d 268, 281-  
P.2d 945; *Krug-*  
74) 11 Cal.3d 352,  
3, 521 P.2d 441;  
394 U.S. 1, 13, 68  
61; *Civil Rights*  
1-19, 3 S.Ct. 18,  
also *Gay Law*  
*Tel. & Tel. Co.*  
3, 156 Cal.Rptr.

's concern with  
e for moderate  
r families with  
no restriction  
r local govern-  
ercise of their  
ares calculated  
h children are  
nd affordable  
e us, however,  
with the ex-

CHAPTER III

RETALIATORY EVICTIONS

TABLE OF CONTENTS

I.	Introduction.....	2
II.	Retaliatory Evictions - The Law and The Facts.....	3
III.	Legislative Acceptance of the Retaliatory Eviction Doctrine...	11a
IV.	<u>Rose v. Hewes Co., et al</u> .....	12
	A. Complaint for Damages and Injunction.....	12
	B. Order to Show Cause.....	28
	C. Memorandum of Points and Authorities Supporting Application for a Temporary Restraining Order.....	30
	D. Undertaking on Temporary Restraining Order.....	32
	E. Settlement Agreement.....	34

## CHAPTER III: RETALIATORY EVICTIONS

### PART I: INTRODUCTION

This chapter deals with the situation where a landlord attempts to evict a tenant because the tenant reported housing code violations to the local Building Inspection Department.

First is an article by Moskovitz, "Retaliatory Eviction - The Law and the Facts," which first appeared in the Clearinghouse Review, May, 1969. This article discusses cases dealing with retaliatory evictions, suggests arguments to make in jurisdictions where there is presently no decision on this issue, and makes suggestions on how to go about proving the landlord's motive.

Second is an article which appeared in the July 15, 1972 issue of the Law Project Bulletin which reviews legislative developments to that date. The article also cites cases decided after the first article in this chapter was prepared. The constitutionality of the New Jersey statute was attacked and upheld in Troy Hills Village, Inc. v. Fischler, 121 N.J. Super. \_\_\_\_, \_\_\_\_, A.2d \_\_\_\_ (1973), and should be referred to to bring the first article up to date.

Third is a copy of a Complaint and Order to Show Cause and Temporary Restraining Order in the case of Rose v. Hewes Co., et al. This case was filed in response to a landlord's attempt to evict a tenant, in retaliation for the tenant's attempt to organize other tenants to complain about conditions in the building. The Complaint requests \$811,000 damages and preliminary and permanent injunctions against the landlords to compel them to bring the building up to code. Based on this Complaint, a temporary restraining order was obtained preventing the landlords from bringing any eviction action against the tenant. Faced with the potential expenses involved in damages, repairing the building, and attorney's fees (and not enjoying the newspaper publicity) the landlords soon agreed to settle the case. Not only did they agree to let the plaintiff stay in his apartment, they also agreed to make most of the repairs he demanded, enact house rules to control the manager's conduct, to charge plaintiff only \$1 a month rent until the repairs are made, and to pay him four years back rent (\$1,525). A copy of the settlement agreement appears at the end of this Chapter.

Filing such a Complaint is an alternative response to the attempted retaliatory eviction, and it may be more effective than merely trying to defend the eviction action (which may also be done if the affirmative action fails).

A tenant becomes fed up with rats which are infesting his apartment and his landlord's failure to do anything about it. As this is a violation of local health laws, the tenant reports this matter to the local Health Department. The Health Department inspects the apartment to verify the violation and orders the landlord to get rid of the rats, informing the landlord that the tenant made the complaint.

The tenant has no written lease and only a month-to-month tenancy. Therefore, the landlord can give him a thirty day notice to quit without stating any reason. The landlord does this because he does not want troublemakers in his building and perhaps as a subtle warning to other tenants who might file similar complaints.

When the tenant refuses to move at the end of thirty days, the landlord brings an eviction action. In his answer, the tenant raises an affirmative defense that the landlord's primary motive for bringing the action is to retaliate against the tenant for filing the complaint with the local Health Department. Should this defense be allowed? If it is allowed, how can the tenant prove the landlord's motive?

This is the classical case of "retaliatory eviction." Another form in which it is likely to come up is where the landlord, instead of serving a thirty day notice to quit, serves a notice that unless the tenant leaves the rent will be substantially increased at the end of thirty days. The tenant stays on, refuses to pay the increase in rent, and then the landlord brings an eviction action for the tenant's refusal to pay this extra rent.

Legal Services attorneys throughout the country face some variant of this problem or the prospect of it, daily. Their clients live in substandard housing, where landlords know of health code and housing code violations, but refuse to do anything about it. Tenants are afraid to report violations and ask for help from city agencies in enforcing these codes because if they do they may be evicted or the rent will be raised. Because of low vacancy rates, they have no place else to go. Therefore, unless such retaliatory evictions can be stopped, the violations will continue and the municipal code enforcement system, which depends largely upon complaints, is effectively stymied.

---

\*by Myron Moskowitz, Chief Attorney. Reprinted by permission from Clearinghouse Review, Vol. 3, No. 1, pages 4-6, 10-12, May 1969, published by the National Institute for Education in Law and Poverty, Copyright 1969 by Northwestern University.

This article will discuss the problem of retaliatory eviction, including recent developments in the law regarding this defense and some problems of proof.

Most states have no specific legislation prohibiting retaliatory evictions, and such evictions will have to be challenged on constitutional and common law and statutory interpretation grounds. Several of these grounds were advanced before the United States Court of Appeals for the District of Columbia Circuit in Edwards v. Habib, 397 F.2d 687 (1968), in which the Court allowed the defense of retaliatory eviction. The opinion is quite extensive, the Court thoroughly discussing three grounds, deferring judgment on two of the theories while accepting the third. In raising a retaliatory eviction defense in a jurisdiction which has not considered this question before, attorneys should raise all three of these theories, using the Edwards analysis and the authorities cited there where appropriate.

The Court first considered the argument that to permit the eviction would interfere with the tenants' right under the First Amendment to petition the government for a redress of grievances. The required "state action" would be found in the use of the courts to enforce the eviction, just as the United States Supreme Court found that it would be improper state action for a court to enforce a private covenant restricting residential property to whites only in Shelley v. Kraemer, 334 U.S. 1 (1948).

This argument for invoking the retaliatory eviction doctrine had been accepted by the United States District Court for the Southern District of New York in an unreported decision in Tarver v. G. & C.

Construction Corp., No. 64 C 2945 (S.D.N.Y., Nov. 9, 1964). The Court in Edwards, however, did not accept this theory so quickly, recognizing the implication if Shelley were carried to its logical extreme. Nevertheless, impressed by the holdings in New York Times v. Sullivan, 376 U.S. 254 (1964), and Marsh v. State of Alabama, 326 U.S. 501 (1946), that state courts could not support private action unreasonably restricting free speech, the Court indicated an inclination to accept this theory. But, as will be seen below, the Court did not finally pass on this and instead accepted another theory.

The second argument advanced in Edwards was that no state action was necessary, because the right of a citizen to inform his government of a violation of law is constitutionally protected against private action as well as government action. This theory stems from the holding in In re Quarles and Butler, 158 U.S. 532, 536 (1895), that:

The right of a citizen informing of a violation of law . . . does not depend upon any of the Amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action.

This is the theory which the law and motion judge in the trial court in Edwards had accepted, although the trial judge later rejected it and refused to allow evidence of a retaliatory motive. The District of Columbia Court of Appeals also rejected this argument, distinguishing Quarles on the ground that there Congress had enacted legislation (the Civil Rights Act) granting such rights. The Court of Appeals, however, held that the Civil Rights Act had provided remedies only, and the rights the Court in Quarles was discussing stemmed from the Constitution. Therefore, Quarles would seem to apply to the retaliatory eviction situation. Nevertheless, the Court also declined to make a holding on this theory, instead selecting the third argument.

The third argument, which the Court adopted, was that to permit retaliatory evictions would be contrary to the statutory intent behind the Housing Code and would be contrary to public policy. The Court held that:

To permit retaliatory evictions . . . would clearly frustrate the effectiveness of the housing code as a means of up-grading the quality of housing in Washington . . . . In light of the appalling condition and shortage of housing in Washington, the expense of moving, the inequality of bargaining power between tenant and landlord, and the social and economic

importance of procuring at least minimum standards in housing conditions, we do not hesitate to declare that retaliatory evictions cannot be tolerated. There can be no doubt that the slum dweller, even though his home be marred by housing code violations, will pause long before he complains of them if he fears eviction as a consequence. Hence, an eviction under the circumstance of this case would not only punish appellant for making a complaint which he had a constitutional right to make, a result which we would not impute to the will of Congress simply on the basis of an essentially procedural enactment, but also would stand as a warning to others that they dare not be so bold, a result which, from the authorization of the housing code, we think Congress affirmatively sought to avoid. 397 F.2d at 701.

This public policy argument was followed by a City Court in New York in Portnoy v. Hill, 294 N.Y.S.2d (1968), wherein the Court held that the case for allowing the defense of retaliation is much stronger in New York than in the District of Columbia, because New York statutes permit equitable defenses to be raised in eviction proceedings. Although the Court did not clearly indicate what type of equitable defense it considered retaliatory eviction to be, it apparently had in mind the "clean hands" doctrine

In Hosey v. Club Van Courtlandt; 290 F. Supp. 501 (S.D.N.Y. 1969), the United States District Court for the Southern District of New York was asked to enjoin a landlord from instituting a state court eviction proceeding, on the ground that the landlord's motives were retaliatory. Such an action would be unconstitutional and therefore in violation of the Civil Rights Act, 42 U.S.C. §1983. The Court adopted the first argument advanced in the Edwards case, following Tarver and held that for a state court to allow an eviction under such circumstances would violate the First and Fourteenth amendments. The Court next held that where state law clearly rejects the defense of retaliatory eviction, federal courts may enjoin the use of state courts for this purpose. In this case, however, the Court found that New York state courts are still unsettled on this point. Although the City Court in Portnoy v. Hill had allowed the defense, another lower court, in an unreported opinion, had rejected it. Lincoln Square Apartments v. Davis, No. L. & T. 80411-1968 (N.Y. City Civ. Ct., Dec. 3, 1968).

Thus, Hosey is very useful authority for two propositions: (1) a state court is required by the First and Fourteenth amendments to permit the defense of retaliatory eviction, and (2) if state law clearly precludes this defense, federal courts may be used to enjoin such evictions.

A Michigan Court has also followed the public policy argument adopted in Edwards, although this holding is no longer necessary in Michigan due to the new legislation described above. The case in which this doctrine was adopted was Watts v. Lyles, CCH Pov. L Rep., para. 9028 (No. 1049286, Mich. Cir. Ct. Commissioners Ct., Wayne County, Feb. 28, 1968).

Two recent cases, however, have specifically rejected Edwards, refusing to allow the defense of retaliatory eviction where there is no clear legislative authority for it. These cases arose in Maryland, Weinberg v. Scheper, CCH Pov. L Rep., para. 9185 (No. 24453-68), and in Connecticut in LaChance v. Hoyt, CCH Pov. L Rep., para. 9092 (No. CV. 14-685-35851, Conn. Cir. Ct., 14th Cir., Sep. 6, 1968).

Florida has followed Edwards, but has added an additional burden upon the tenant raising the defense of retaliatory eviction. In Wilkins v. Tebbetts, 216 So.2d 477 (Fla. Dist. Ct. App. 1968), the Court rejected a retaliatory eviction defense because the tenant had not alleged or proved any specific code violations. Here the Court required the tenant to prove not only that the landlord's reason for the eviction was the fact that the tenant reported alleged code violations, but also that such violations in fact existed. While this should not usually be difficult to prove, the imposition of this burden on the tenant seems unnecessary in view of Edwards' rationale that the purpose of allowing the defense is to facilitate city enforcement by encouraging reporting of alleged violations.

To our knowledge, these are the only cases which have passed upon the defense of retaliatory eviction at the present time. Most jurisdictions have yet to decide this question. Attorneys raising the defense of retaliatory eviction in these jurisdictions for the first time should, of course, raise the arguments which were raised in Edwards and use the authorities cited in Edwards, as well as Edwards itself (and Tarver, Portnoy and Hosey). These attorneys should also search for cases in such jurisdictions holding that a normally unrestricted right to sever or refuse to renew a contractual relationship may be restricted where the reason for such severance or refusal is contrary to public policy, usually as expressed by some statute. Such cases tend to occur in labor law, but they may occasionally be found in other fields. It has been held in many states, for example, that where state law contains a general policy that employees shall have the right to organize, an employer may not terminate an employment at will because an employee joins a union. Glenn v. Clearman's Golden Cock, Inc. 192 Cal. App. 2d 793, 13 Cal. Rptr. 769 (1961); Sand v. Queen City Packing Co. 180 N.W.2d 448 (N.D. 1961); Cooper v. Nutley Sun Printing Co. 36 N.J. 189, 175 A.2d 639 (1961); Independent D.W. Union v. Milk D. & D. Emp. 30 N.J. 173, 152 A.2d 331,

336 (1959); Krystad v. Lau, 400 P.2d 72 (Wash. 1965); Annotation, 83 A.L.R.2d 532. See also Pettway v. American Cast Iron Pipe Co., (5th Cir., 1969) 37 Law Week 2695. Nor may an employer fire an employce from an employment at will because the employee refused to commit perjury. Petermann v. International Brotherhood of Teamsters 174 Cal. App. 2d 184, 344 P.2d 25 (1959). A land owner may not evict a sharecropper tenant because the tenant registered to vote or voted, United States v. Beaty 288 F.2d 653 (6th Cir. 1961); United States v. Bruce 353 F.2d 474 (5th Cir. 1965), or because a tenant-employee went on strike. Hotel and Restaurant Employees v. Boca Raton Club 73 So.2d 867, 871 (Fla. 1954). An insurance company may not cancel a dentist's malpractice insurance because he testified against another dentist in a malpractice case. L'Orange v. Medical Protective Co. 394 F.2d 57 (6th Cir. 1968).

It should be pointed out that, while in Edwards the "public policy" the Court sought to enforce was the policy towards municipal enforcement of housing codes, other "public policies" for allowing retaliatory eviction as a defense may be conceived. For example, most states have criminal statutes prohibiting the intimidation of witnesses, including prospective witnesses. See, e.g., Cal. Penal Code §136. As the tenant who reports a housing code violation is in effect offering to testify at a later criminal proceeding against a landlord, a retaliatory eviction would seem to be an act of intimidation against the tenant as a witness, and therefore should be barred by public policy. A further public policy might be found in the First Amendment to the United States Constitution, which encourages free speech and petitioning the government for a redress of grievances. This is not a constitutional argument, but an argument that public policy may be found in the Constitution. A similar argument was accepted in James v. Marin Ship Corp., 25 Cal 2d 721, 739-740, 155 P.2d 329 (1944). There, injunctions were granted against hiring discrimination against Negroes by private employers and admission discrimination by labor unions. The Court held that the Fourteenth Amendment established a public policy of the United States against racial discrimination.

Establishing the principle that a defense of retaliatory eviction may be permitted, however, is only the first step. The next step, which might be even more difficult, is proving your case. When the landlord brings what appears to be an ordinary eviction action, how do you prove his retaliatory motive? Landlords frequently terminate month-to-month tenancys on thirty day notices, and they usually have pretty justifiable reasons for doing so. The tenant will often have a history of paying his rent a few days late, being somewhat noisy sometimes, or perhaps there is overcrowding in violation of housing codes. Also, even if none of these factors are present, if you have no statements from the mouth of the landlord as to why he is evicting, how do you prove his motive?

There is, of course, very little case law directly on point, since at this point in time there are so few cases reported regarding retaliatory eviction. Nevertheless, we have some very helpful analogies from the labor law field. Under the National Labor Relations Act and many state laws, an employer may not fire or refuse to hire an employee because of his union activity. In cases arising under these laws, courts have discussed what types of evidence are persuasive in proving the employer's unlawful motive. These issues seem to be directly parallel to the proof problems in retaliatory evictions.

The first question to face is how strong a retaliatory motive you must prove. Must retaliation be the landlord's sole motive or may it be one of several motives? In the labor law cases, the courts have held that discrimination against union activity need not be the sole motive, but must be "a substantial or motivating reason." In National Labor Relations Board v. Whittin Machine Works, 204 F.2d 883, 885 (1st Cir. 1953), the Court held:

In order to supply a basis for inferring discrimination it is necessary to show that one reason for the discharge is that the employee was engaged in protected activity. It need not be the only reason but it is sufficient if it is a substantial or motivating reason, despite the fact that other reasons may exist.

Similarly, in Sand v. Queen City Packing Company, 108 N.W.2d 448, 452 (N.D. 1961), the Court reversed a judgment for the employer, holding that a jury instruction requiring the employees to prove that the employer's "sole" motive for firing them was their union affiliation was improper. The Court held that the employees need only prove that their union affiliation was the "motivating or moving cause for the discharge."

This means, of course, that an employer may have had several very legitimate grounds for firing an employee, but if the employee's union affiliation was the "motivating" ground, the firing must be set aside. A.P. Green Fire Brick Co. v. N.L.R.B. 326 F.2d 910, 916 (8th Cir. 1964); N.L.R.B. v. Howe Scale Company 311 F.2d 502, 505 (7th Cir. 1963).

Likewise, then, evidence that the landlord has some justifiable reasons for evicting a tenant should not defeat a retaliatory eviction defense, if the evidence shows that retaliation was his "motivating" ground for bringing the action.

Second, what types of evidence should be introduced to show that the landlord's motive was retaliation?

In Hosey v. Club Van Courtlandt, 299 F.Supp. 501 (S.D.N.Y., 1969), the tenant had filed complaints with city officials and then held a meeting in his room with other tenants to consider making other complaints. The following day he was informed that his rent would be raised, and five days later he was told he would have to leave. The Court found that "the coincidence of the tenants' meeting and the landlord's threats to evict," together with the absence of threats to evict prior to the tenants' meeting, would probably furnish proof that "the overriding reason" for the threats of eviction was retaliation.

Another very instructive case is N.L.R.B. v Melrose Processing Co., 351 F.2d 693 (8th Cir. 1965). In that case, Miss Thielen had worked as a neck slitter in defendant's turkey processing plant. Even though she was "really good handling the knife" (although she had admitted engaging in some "horseplay" by throwing turkey parts at fellow employees), defendant had refused to hire her one season. The court affirmed the N.L.R.B.'s finding that defendant had refused to rehire the employee because of her union affiliation.

The Court stated that "the essential ingredients in this case are a knowledge on the part of the employer that the employee is engaged in union activity." 351 F.2d at 697. Similarly, in retaliatory eviction cases, it will have to be proved that the landlord knew that the tenant complained to the local enforcement agency before it can be proved that retaliation was the "motivating" ground for the eviction action.

In finding substantial evidence to support the N.L.R.B.'s finding, the Court relied on several items of evidence.

First, the Court held that evidence that no justifiable reason for the refusal to rehire existed was evidence of an improper motive.

If one can show that every other alternative except the fact sought to be proved is not true, you indirectly prove that fact is true . . . . By showing that there was no other reasonable explanation for Miss Thielen not being rehired, her union activity stood out as the logical explanation of her employer's action. While this method is not infallible, it succeeds in providing circumstantial evidence to illuminate the issue. 351 F.2d at 698.

Second, when Miss Thielen had sought an explanation for not being rehired, the employer refused to give her a reason. The Court held that this refusal to tell was a circumstance which might alone be enough to support an inference that the refusal to rehire was discriminatory. 351 F.2d at 699, citing N.L.R.B. v. Plant City Steel Corp. 331 F.2d 511, 515 (5th Cir. 1964).

Third, although defendant contended that Miss Thielen was guilty of rule infractions, she had never been reprimanded or issued a warning, even though it was company policy to issue such warnings and reprimands. The Court held that this also furnished an inference that the refusal to rehire was discriminatory. 351 F.2d at 699.

Fourth, the Court also relied on evidence that employees guilty of far more serious rule infractions have not been treated so severely as Miss Thielen. 351 F.2d at 699; see also A.P. Green Fire Brick Corp. v. N.L.R.B. 326 F.2d 910, 916 (8th Cir. 1964).

In proving a retaliatory eviction case, similar evidence might be used. It might be shown that (1) the tenant always paid rent on time, behaved properly, etc., and therefore the landlord could have no reason for eviction other than retaliation; (2) when the tenant asked the landlord the reason for the thirty day notice, the landlord refused to answer or was evasive; (3) if the landlord contends that the tenant was sometimes late in paying the rent, or was sometimes noisy, it might be shown that the landlord had never complained about this to the tenant; (4) other tenants were late in paying rent for longer periods and more frequently than the defendant.

Because of space limitations, the above is only a summary of the problems and authorities involved in retaliatory evictions. However, the following law review articles deal with retaliatory eviction and may be helpful: "Leases and the Illegal Contract Theory - Judicial Reinforcement of the Housing Code," 56 Geo. L. J. 920, 933 (1968); "Retaliatory Eviction - Is California Lagging Behind?," 18 Hastings L. J. 700 (1967); Schoshinski, "Remedies of the Indigent Tenant: Proposal for Change," 54 Geo. L. J. 519 (1966); Note, "Retaliatory Evictions and the Reporting of Housing Code Violations in the District of Columbia," 36 Geo. Wash. L. Rev. 190 (1967); Note, "Landlord and Tenant - Retaliatory Evictions," 3 Harv. Civ. R. Civ. Lib. L. Rev. 193 (1967); "Housing for the Poor: Rights and Remedies," N.Y.U. Welfare Law Supp., No. 1 (1967); Tenants' Rights: Legal Tools for Better Housing, Report on National Conference on Legal Rights of Tenants, U.S. Government Printing Office (1967).

If you have a case in which you would like further help, please contact me at National Housing and Development Law Project, Earl Warren Legal Institute, Berkeley, California 94720 or telephone me at (415) 642-1811.

L - T Ch. III - 11

PART III: LEGISLATIVE ACCEPTANCE OF  
RETALIATORY EVICTION DOCTRINE

The defense of retaliatory eviction has been a pivotal point in the increasing number of enacted tenant's-right oriented legislation. In its consideration of the eviction of a tenant for withholding rent because of landlord's housing code violations, the court in Robinson v. Diamond Housing Corp., 463 F.2d 853, 863 (D.C. Cir. 1972) powerfully states:

The widespread adoption of the rule by both courts and legislature, stands as convincing testimony to the pervasive feeling that retaliatory evictions are inconsistent with a sensible and humane housing policy. Indeed, some courts have thought the rule so fundamental as to reach constitutional magnitude. . . .

State and federal courts in California,<sup>1</sup> Florida [Bowles v. Blue Lake Development Corp., (S.D. Florida, 1971) C.C.H. Pov. L. Rptr. ¶2325.51], Massachusetts [McQueen v. Druker, 317 F. Supp 1122 (D. Mass. 1970)], New Jersey,<sup>2</sup> New York [Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969)], Wisconsin [Dickhut v. Norton, 45 W.2d 309, 173 N.W.2d 297 (1970)], and the District of Columbia [Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968)] have validated the defense. Legislators, as well as the courts, have responded to the crucial task of making cities more liveable by passing laws which safeguard the tenant's multi-faceted activities. While all the states with retaliatory eviction legislation prohibit reprisal against a tenant who lodges a good faith complaint about Housing Code violations to the proper authorities,<sup>3</sup> there is a growing recognition that other tenant-related rights must have similar protection. This concern has led to an inclusion in the statutes of guarantees against retaliation for such tenant conduct as requesting repairs, attempting to enforce lease or contractual provisions, using any lawful means (as in recourse to courts) given to the tenant under the U.S. or local laws and most importantly, organizing or joining

---

<sup>1</sup>Schweiger v. Bonds, 3 Cal. 3d 507, 90 Cal. Rptr. 729 (1970); Aweeka v. Bonds, 20 Cal. App. 3d 281, 97 Cal. Rptr. 650 (1971).

<sup>2</sup>Alexander Hamilton Savings and Loan Assn. v. Whalen, 107 N.J. Super. 89, 257 A.2d 7 (1969); Engler v. Capital Management Corp., 112 N.J. Super. 445, 271 A.2d 615 (1970); Ed E. Newman Inc. v. Hallock, 116 N.J. Super. 220, 281 A.2d 544 (1971). These three specifically protect tenant organizing. Silberg v. Lipscomb, 117 N.J. Super. 491, 285 A.2d 86 (1971).

<sup>3</sup>Maryland--only if complaints of substantive nature.  
Pennsylvania--merely in regard to rent withholding.

tenant unions. Fear of losing one's home is a sufficiently strong impediment to dampen tenants' desire to exercise their rights by seeking help through legal channels or from proper authorities. Without the correct play of checks and balances, the landlord can continue to exert hidden pressure to quiet the tenant from voicing his grievances.

The retaliatory eviction statutes, now in effect in fourteen states,<sup>4</sup> express the fecundity of legislators' minds in securing for the tenant a broadened sphere of legal activity. In addition to these statutes, Philadelphia, Seattle and the District of Columbia have enacted ordinances allowing the defense of retaliatory evictions.<sup>5</sup> The statutes vary with regard to the following: (1) What tenant acts are protected? (2) For what duration of time does the statute forbid a landlord's retaliation? (3) What forms of retaliation are prohibited? (4) Who has the burden of proof? (5) Does the statute provide for a rebuttable presumption? (6) In what instances is a landlord's retaliation not considered? and (7) Is an affirmative action authorized?

All the statutes prohibit retaliation for the tenant's complaints to housing code officials. [Supra, n. 3.] Only three statutes specifically protect complaints to landlords. [Connecticut, Delaware and Hawaii.] In light of the fact that complaints in the normal course of events would naturally be made to the landlord prior to housing code officials, it would not be unreasonable for courts to extend the protection to complaints to landlords by inference.

---

<sup>4</sup>Cal. C.C. §1942.5  
Conn. Gen. St. Ann., §42-540a (Supp. 1969).  
Del. Ch. 25 §5917 (Supp. 1971).  
Ha. Ch. 666 §43 (Supp. 1971).  
Ill. Rev. St. Ch. 30, §71 (Supp. 1971).  
Me. Rev. St. Tit. 14 §6001, 6002.  
Md. Laws Ch. 687 §9-10 (Supp. 1971).  
Mass. Comp. Laws Ann., Ch. 186 §18 (Supp. 1970).  
Mich. Comp. Laws Ann., Ch. 600, §5646 (Am'd P.S. 1969).  
Minn. Stat. Ch. 240 §566.03 (Supp. 1971).  
N.J. Stat. Ann. 2A §42-10.10  
N.Y. Uncont'd Laws, Tit. 23 §8590, 8609 (Supp. 1971).  
Pa. St. Ann. Ch. 35, §1700-1 (Supp. 1971).  
R.I. Gen. Laws Ann. §34-20-10 (1968).

<sup>5</sup>Philadelphia Fair Housing Ordinance; Seattle Municipal Code, 27.40.010; and D.C. Housing Regulations Code §2910.

Of particular note are the state statutes of five states and two ordinances<sup>6</sup> which secure tenant rights to organize or join a tenant organization to remedy housing conditions. Tenant organization is specifically mentioned in the acts of Maine, "tenant's membership in organization concerned with landlord-tenant relationship" and in Massachusetts, "for organizing or joining a tenant's union or similar organization." New Jersey preserves a broader privilege, "being an organizer of, member of, involved in any activities of any lawful organization." [1(d), 2(d).] Michigan and Rhode Island include tenant organization under the general phrases of "any other lawful acts arising out of a tenancy" [Michigan 4(d)] and "any other justified lawful act" [R.I.C.]. Tenant organizing also appears to be constitutionally protected absent language in a statute. [Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969) and McQueen v. Druker, 317 F. Supp. 1122 (D. Mass. 1970).]

All statutes prohibit eviction. Seven states [California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts and Minnesota] condemn decrease of services, and increase of rent in reprisal. Massachusetts and New Jersey forbid the landlord to change the conditions of the lease through "substantial alteration" of its terms. Illinois and New Jersey limit the landlord's right to refuse to renew the lease, if done in retaliation. New York prohibits the landlord from engaging in conduct which disturbs the tenant's right to quiet enjoyment. Michigan does not allow the landlord to increase the tenant's burden by adding to his prior obligations.

Seven states<sup>7</sup> set a progressive tone by not fixing a time limit during which the landlord is forbidden to retaliate. Conceivably, the landlord cannot act in a retaliatory manner the entire length of the landlord-tenant relationship. The defense thus gains in effectiveness and a more equally balanced relationship is achieved. Six states establish a six-month period. [Connecticut, Hawaii, Maine, Maryland, Massachusetts and Pennsylvania.] California has the shortest period of 60 days.

Another area of concern is that of evidence which is necessary for the tenant to successfully assert the defense. In all the statutes except California (which places the burden on the landlord by requiring him to state his reasons in the eviction notice), the initial burden of proof is on the tenant. However, of great importance are the

---

<sup>6</sup>Philadelphia Fair Housing Ordinance protects tenant organizing. D.C. Housing Regulations Code §2910 protects tenant organizing.

<sup>7</sup>Illinois, Delaware, Michigan, Minnesota, New Jersey, New York, and Rhode Island. Philadelphia Fair Housing Ordinance sets no time limit. D.C. Housing Regulations Code §2910 also sets no time limit.

six states<sup>8</sup> which create a rebuttable presumption of retaliation for a period of time after the tenant has taken some protected action. Once the tenant establishes that a protected action occurred, the rebuttable presumption places the burden on the landlord to show that he had a reason other than retaliation. If the landlord established an independent cause, the burden of proving that retaliation is the true cause returns to the tenant.<sup>9</sup> Six states [California, Connecticut, Delaware, Hawaii, Maine and Michigan] allow the landlord to evict notwithstanding the presence of retaliation, if the following are found: use by the tenant of the premises for illegal purposes or in violation of the lease [Connecticut, Delaware and Hawaii]; landlord desires property for his own use [Connecticut, Delaware, Hawaii and Maryland]; the condition complained of was due to a willful act of the tenant or a person under his control [all except for California]; notice to terminate the periodic tenancy was given before the complaint was filed [Connecticut, Delaware and Hawaii]; the landlord contracted to sell the property [Delaware, Hawaii and Maryland]. Similar reasons, and an increase in taxes or the cost of maintenance or operation at least four months prior to the complaint [Connecticut, Delaware, Maryland] may be cause for the landlord to legally increase rent.

In four states the tenant is given the right to affirmative action if he establishes retaliation. The Delaware, Hawaii and Massachusetts statutes entitle the tenant to three months rent or to treble damages, whichever is greater, and to the cost of the suit. New Jersey affords the tenant damages and other equitable remedies. The movement of the legislation should be to include damages in all the statutes, because of the coercive force behind monetary and equitable penalties.

Those statutes which create rebuttable presumptions are moving the doctrine of retaliatory eviction on its first step down the inevitable path toward an objective of just cause to evict. This doctrine has received prior notice. Recently, California has stopped the eviction of tenants from mobilehome parks without cause. [California C.C. §789.5.] New York has for some time forbidden evictions without cause in its Rent Control legislation. [Emergency Housing Rent Control Law, N.Y. Uncont'd. Tit. 23, Ch. 3, §51 (Supp. 1971).] The Supreme Court upheld similar requirements in relation to public housing. [Thorpe v. Housing Authority, 386 U.S. 670 (1966).]

---

<sup>8</sup> Delaware, Maine, Maryland, Massachusetts, Minnesota, New Jersey. Philadelphia Fair Housing Ordinance creates a rebuttable presumption which extends for one year.

<sup>9</sup> Minnesota shifts the burden to the landlord if the notice to quit is served within 90 days of tenant activity.

## Other Developments

Legislators have not been alone in realizing the importance of the defense of retaliatory eviction. The NAHB has adopted a "Fair Practices Code for Occupancy" which contains important language on the defense of retaliatory eviction.

An owner asserting the right to reject an occupant's election to renew the lease or occupancy for one or more of the above reasons, shall specify to the occupant in writing, his specific reasons therefore at least two months in advance. Retaliatory action shall not be used as a basis for denial of lease or continued occupancy.

[See also §5.101 on retaliatory eviction of the Uniform Landlord and Tenant Relationship Act (June 1972).]

A. Complaint for Damages and Injunction

Carol Ruth Silver  
Elizabeth A. Truninger  
Alan S. Koenig  
Michael D. Walker  
Berkeley Neighborhood Legal Services  
2229 4th Street  
Berkeley, California

Myron Moskovitz  
National Housing and Development Law Project  
Earl Warren Legal Center  
Berkeley, California  
Telephone: 642-1811

Lawrence L. Duga  
2437 Durant Avenue  
Berkeley, California  
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, )  
Plaintiff, )  
-vs- )  
HEWES COMPANY, an unincorporated )  
association, EUGENE L. FRIEND, )  
ELLENORE FRIEND, BENJAMIN FRIEND, )  
MOLLY FRIEND, PETER SOSNICK, )  
MARVIN SOSNICK, EUGENE SOSNICK, )  
HONOR RUSSELL, CITY OF BERKELEY, )  
WILLIAM C. HAWLEY, individually )  
and as City Manager of City of )  
Berkeley, and JOHN S. ATKINS, )  
individually and as Director of )  
Inspection Services of City of )  
Berkeley, and DOES I through X, )  
Defendants. )

No. 393347

COMPLAINT FOR DAMAGES AND  
INJUNCTIONS

Comes now Plaintiff and alleges as follows:

FIRST CAUSE OF ACTION:

I

L-T Ch. III - 12

Plaintiff is, and was at all times herein mentioned, a resident of the County of Alameda and a taxpayer of the State of California, the County of Alameda, and the City of Berkeley.

## II

Defendants EUGENE L. FRIEND, ELLENORE FRIEND; BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, EUGENE SOSNICK, doing business as HEWES COMPANY, and DOES I through V, are owners of the premises located at 2108 Shattuck Avenue in the City of Berkeley, County of Alameda, State of California. Said Defendants are herein-after referred to as "LANDLORDS." Said building is three stories high, the ground floor consisting of commercial establishments, the second floor containing eighteen apartments, and the third floor containing eight apartments.

## III

The City of Berkeley is the governmental entity responsible for enforcing housing codes in the city of Berkeley. These codes include the State Housing Code, appearing at 8 Cal. Admin. Code §1700 et. seq and the Building, Electrical, Fire Prevention, Gas, Plumbing, and Housing Codes of the City of Berkeley. WILLIAM C. HANLEY is the City Manager of the City of Berkeley, and JOHN S. ATKINS is the Director of the Department of Inspection Services of the City of Berkeley. Both of said Defendants are responsible for enforcing said codes in the city of Berkeley. DOES VI through X are agents and employees of said Defendants.

## IV

HONOR RUSSELL was at all times mentioned herein and is the agent of LANDLORDS and all acts alleged to have been committed by her were done within the scope of her authority. She is the caretaker of the premises and resides there.

## V

The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants DOE I through DOE X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to show the true names and capacities of said DOES when the same have been ascertained. Plaintiff is informed and believes on such information and belief alleges that each of the Defendants named herein as DOES I through X are responsible for the acts complained of herein, and did or caused said acts to be done willfully and with knowledge thereof.

Plaintiff is informed and believes and on that ground alleges that at all times mentioned herein Defendant LANDLORDS were partners and were agents of each other and at all times were acting within the scope of such agency and employment.

#### VII

On or about September 1, 1965, Plaintiff took possession of Apartment 1 at 2108 Shattuck Avenue under an oral month-to-month agreement with LANDLORDS providing for a monthly rental of \$35. Plaintiff was a student with a low income, and he could not afford to pay a higher rent. Plaintiff has resided there continuously to the present and has complied with all terms of such agreement and is paid up in his rent.

#### VIII

The Housing Code of the City of Berkeley, Ordinance No. 309-N.S., was enacted February 1, 1963. Section 1.2 provides as follows:

The Council of the City of Berkeley does hereby find, determine, and declare that there exists and has existed for many years an appreciable number of residential buildings within the City of Berkeley which are undesirable for habitation because of structural deficiencies, inadequate maintenance and repair, lack of adequate sanitary, heating, lighting, and ventilation facilities, improper management or any combination of such factors; that such undesirable buildings adversely affect the public health and welfare, contribute to overcrowding, unsafe, and harmful living conditions, and discourage the appropriate use and development of property and hinder civic improvement.

Section 1.3 of said Code provides as follows:

The purpose of this Code is to arrest, remedy, and prevent the decay and deterioration of residential buildings and to eliminate blighted neighborhoods and to provide minimum requirements for residential buildings for the protection of life, limb, health, property, safety, and welfare of the public and the occupants of residential buildings.

Section 1.4 provides, in part, that "The provisions of this Code are applicable to all existing or proposed residential buildings . . . ."

IX

At all times mentioned herein, Plaintiff's apartment has consisted of two small rooms. His sleeping room is 111 square feet and his study is 56 square feet. This is in violation of Section 3.4 of the Berkeley Housing Code, which requires that every dwelling unit have at least one habitable room with at least 120 square feet of superficial floor area.

X

Plaintiff's apartment is heated by a single gas heater provided by LANDLORDS. This heater is unvented, and therefore it emits poisonous fumes which are dangerous to health. Unvented gas heaters are prohibited by Section 4.8 of the Berkeley Housing Code.

XI

In violation of Section 5.1 of the Berkeley Housing Code, Plaintiff's apartment contains no kitchen.

XII

Also in violation of Section 5.1 of the Berkeley Housing Code, Plaintiff's apartment contains no toilet or washing facilities. In fact, on the entire second floor, where Plaintiff's apartment is located, there is only one usable toilet and shower for men and one for women. As there are eighteen apartments on the second floor and all are in violation of Section 5.1 because of lack of toilet or washing facilities, the one toilet available for men is not always available to Plaintiff when needed.

XIII

The building in which Plaintiff lives is a fire trap. There is no fire alarm, in violation of 8 Cal. Admin. Code §17851. The fire escape is a dangerous maze, which leads down a narrow dark staircase, partially blocked by a low ceiling, leaving one out on a first floor roof, with no direction as to how to find the fire escape ladder down from the roof. The exit from Plaintiff's apartment is too narrow, in violation of Section 7.1 of the Berkeley Housing Code. The front exit of the building must be reached by a flight of steep stairs which are very poorly lighted and create a hazard for anyone trying to get out of the building.

XIV

Plaintiff is informed and believes and thereby alleges that the Department of Inspection Services of the City of Berkeley inspected

LANDLORD'S building on March 16, 1967, and again on February 18, 1969. Plaintiff is informed and believes and thereby alleges that said Department noted many violations of the Berkeley Housing Code and of other codes in said building and has informed LANDLORDS of these violations, but LANDLORDS have failed and refused to correct such violations and Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS have taken no action to compel LANDLORDS to obey the Codes.

XV

LANDLORDS had and have a legal duty upon renting their building to human beings for occupancy to put and maintain such premises in a condition suitable for occupancy, to inspect the premises to see that said condition was maintained, and to repair promptly and correct all conditions which rendered the premises unsafe, unhealthful, or otherwise untenable.

XVI

LANDLORDS breached this duty owed to Plaintiff. LANDLORD'S conduct in renting said apartment to Plaintiff in such a dangerous and unhealthful condition as elaborated above and in failing to correct said housing code violations so as to make the apartment fit for human habitation was unreasonable, illegal, and without privilege.

XVII

Said conduct of LANDLORDS was willful, knowing, and intentional and done with full knowledge of the facts and with full knowledge that said conduct would proximately cause severe harm and emotional and psychological distress and anguish to Plaintiff, as to any person of ordinary sensitivity.

XVIII

Said conduct of LANDLORDS was the actual and proximate cause of emotional and psychological distress to Plaintiff, because of the fear and discomfort of having to live in such dangerous and unhealthful conditions, all to his damage in the sum of \$10,000.

XIX

Said conduct of LANDLORDS was malicious and oppressive. LANDLORDS have undertaken a deliberate policy of renting a building in an unhealthful and dangerous and illegal state to poor tenants without any intention of correcting said housing code violations. They have done so because in view of their wealth and power and Plaintiff's poverty and helplessness, LANDLORDS believed they might at will violate the laws of the State of California and the City of

Berkeley. Plaintiff is therefore entitled to damages from each of said LANDLORDS in the sum of \$100,000.

SECOND CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates herein Paragraphs I through XVI and XVIII through XIX of the First Cause of Action.

II

At all times mentioned herein, LANDLORDS recklessly and in wanton disregard of the possible consequences to Plaintiff failed to comply with their duties to repair said premises, knowing that said conduct would unreasonably expose Plaintiff to the damages alleged herein, in that the premises were thereby rendered dangerous, unhealthful, and unfit for human habitation.

THIRD CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates Paragraphs I through XVI and XVIII of the First Cause of Action.

II

At all times mentioned herein, LANDLORDS carelessly and negligently failed to comply with their duties to repair said premises, thereby rendering the premises dangerous, unhealthful, and unfit for human habitation.

FOURTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates Paragraphs I through XVI and XVIII through XIX of the First Cause of Action.

II

The conditions described hereinabove constitute a nuisance, within the meaning of 8 Cal. Admin. Code §§17014.1 and 17925 and §2.28 of the Berkeley Housing Code, depriving Plaintiff of reasonable, safe, healthy, and comfortable use of said premises.

III

LANDLORDS refuse to abate such nuisance.

I-T Ch. III - 17

FIFTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein Paragraphs I through XVI and XVIII of the First Cause of Action.

II

By the lease between Plaintiff and LANDLORDS, LANDLORDS impliedly covenanted that Plaintiff should have quiet enjoyment of the leased premises during the term of the lease, LANDLORDS having a legal duty to repair and maintain the premises in a safe and healthful condition. Civil Code Section 1927.

III

In breach of said covenant, LANDLORDS have continuously failed and refused to repair said premises to correct the housing code violations previously described, and such failure to repair has rendered the premises unsuitable for occupancy.

SIXTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein all Paragraphs of the First Cause of Action through Fifth Causes of Action.

II

LANDLORD's failure and refusal to correct said housing code violations is irreparably injuring Plaintiff, and he has no adequate remedy at law. Relief from the continuing failure of LANDLORDS to correct such violations would require a multiplicity of suits. The damages to be recovered in such suits would be very uncertain. For these reasons, LANDLORDS should be enjoined by this Court from failing to correct said violations.

SEVENTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates herein Paragraphs I through VII of the First Cause of Action.

II

Within the scope of her authority as LANDLORD's agent, HONOR RUSSELL has, during the past year, entered Plaintiff's apartment without his permission, such entries constituting trespass and invasion of privacy. On one occasion she removed Plaintiff's hot plate without his permission.

III

Such acts generally damaged Plaintiff in the sum of \$1,000.

IV

Said acts were committed intentionally, deliberately, and maliciously, and therefore Plaintiff is entitled to exemplary and punitive damages from HONOR RUSSELL in the amount of \$2,000.

EIGHTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein all Paragraphs of the First Cause of Action and Paragraph II of the Seventh Cause of Action.

II

LANDLORDS have treated the other tenants at 2108 Shattuck in a similar manner. Their apartments are similarly in violation of the housing codes, and they have faced similar harassment by HONOR RUSSELL. After discussing these problems with his fellow tenants in the early part of May, 1969, Plaintiff spoke with LANDLORD PETER SOSNICK and explained to him the collective grievances of the tenants. PETER SOSNICK told Plaintiff that there was a need for a code of house rules, and he advised Plaintiff to draw up a petition itemizing the tenants' complaints and to submit such petition to LANDLORDS.

III

On or about May 19, 1969, Plaintiff submitted a petition to LANDLORDS requesting that the tenants' grievances be considered by LANDLORDS. Said petition was signed and agreed to by 24 out of approximately 27 tenants. A copy of said petition is attached to this complaint, labeled Exhibit A, and incorporated herein by reference.

IV

After the petition was submitted to LANDLORDS, LANDLORDS did not respond or contact the tenants. However, harassment of tenants by

HONOR RUSSELL subsided somewhat. When such harassment resumed in the early part of August, 1969, Plaintiff again contacted PETER SOSNICK and asked him what action was to be taken upon the petition. PETER SOSNICK advised Plaintiff that LANDLORDS had met and discussed the matter and had decided to take no action upon the petition, and if Plaintiff did not like this decision, he should move.

V

On or about August 14, 1969, Plaintiff was given a notice of termination of tenancy by LANDLORDS. Said notice required Plaintiff to vacate the premises on September 20, 1969. A copy of said notice is attached to this Complaint, labeled Exhibit B, and incorporated herein by reference.

VI

At the time said notice was served, Plaintiff had lived in his apartment for approximately four years. He was (and is) paid up in his rent, and had in no way violated any provision of his lease. Plaintiff is informed and believes, and thereby alleges, that no notice of eviction had been served on any tenant during the four years he has lived there.

VII

Said notice of termination of tenancy was served upon Plaintiff solely in retaliation for his efforts to organize the other tenants to petition LANDLORDS for a redress of grievances and to see that LANDLORDS comply with the housing codes of the State of California and the City of Berkeley. Plaintiff is also informed and believes, and thereby alleges, that LANDLORDS will attempt to evict Plaintiff in retaliation for Plaintiff's bringing this lawsuit against LANDLORDS.

VIII

LANDLORDS should be enjoined from filing any eviction action against Plaintiff without first showing good cause to this Court. Unless so enjoined, LANDLORDS will attempt to evict Plaintiff in retaliation for his attempts to exercise his rights under the First Amendment of the United States Constitution of freedom of assembly with his fellow tenants and to petition his government for a redress of grievances by filing this lawsuit. Also, unless so enjoined, LANDLORDS will deprive this Court of jurisdiction over Plaintiff's causes of action for injunctive relief by evicting Plaintiff, for then such causes of action would be moot. Plaintiff has no adequate remedy at law to prevent such eviction.

NINTH CAUSE OF ACTION:

I.

Plaintiff repeats, realleges and incorporates herein all Paragraphs of the First Cause of Action.

II

Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS and DOES VI through X have abused their discretion by failing to diligently enforce the housing codes against LANDLORDS, and they will continue to do so unless enjoined by this Court from so failing. Plaintiff has no adequate remedy at law for relief from such failure.

TENTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates herein all Paragraphs of the First Cause of Action.

II

Plaintiff is informed and believes, and thereby alleges, that Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS and DOES VI through X have conspired and continue to conspire with LANDLORDS to deprive Plaintiff of the benefits of the housing codes, which were enacted to protect tenants such as himself from unsafe and unhealthful living conditions, by failing to enforce the codes diligently. Unless enjoined from continuing this conspiracy, said Defendants will continue to so conspire, all to Plaintiff's harm. Plaintiff has no adequate remedy at law for relief from such conspiracy.

ELEVENTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein all Paragraphs of the First Cause of Action and Paragraph II of the Tenth Cause of Action.

II

In furtherance of this conspiracy, Defendants CITY OF BERKELEY, WILLIAM C. HANLEY and JOHN S. ATKINS, and their agents and employees, DOES VI through X, have refused to allow Plaintiff's counsel to inspect its file on the property located at 2108 Shattuck Avenue, Berkeley, which file contains information concerning inspections of said property and numerous housing code violations. Such files are public records and

said Defendants' refusal to make them available to the general public is wholly without statutory authority. Nevertheless, through their agents, Defendants told Plaintiff's counsel that it was "office policy" not to show such files to anyone without the written consent of LANDLORDS.

### III

Plaintiff needs the information withheld by said Defendants in order to properly pursue his rights to obtain the benefits of the housing codes. Plaintiff prays leave to amend this Complaint when he secures such information and is thereby able to more specifically allege what housing code violations exist on the property. Said Defendants' refusal to disclose such information is wholly without authority and is wholly illegal, but nevertheless they will continue to refuse to divulge such information until enjoined by this Court from refusing to do so.

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. On the First, Second and Fourth Causes of Action:

General damages of \$10,000 jointly and severally against Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK, and punitive damages against each of said Defendants in the amount of \$100,000;

2. On the Third and Fifth Causes of Action:

General damages of \$10,000 jointly and severally against Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK;

3. On the Sixth Cause of Action:

For a preliminary and permanent injunction enjoining Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK, from failing to correct the housing code violations as described in the First Cause of Action;

4. On the Seventh Cause of Action:

General damages in the amount of \$1,000 against Defendant HONOR RUSSELL and jointly and severally against Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK and punitive damages in the amount of \$2,000 against Defendant HONOR RUSSELL;

5. On the Eighth Cause of Action:

A temporary restraining order, preliminary injunction and permanent injunction forbidding Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE

FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK from filing any eviction action against Plaintiff without first showing good cause to this Court;

6. On the Ninth Cause of Action:

For a preliminary and permanent injunction enjoining Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS from failing to diligently enforce the housing codes against LANDLORDS;

7. On the Tenth Cause of Action:

For a preliminary and permanent injunction enjoining Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS from conspiring with LANDLORDS to deprive Plaintiff of the benefits of the housing codes by failing to enforce them diligently;

8. On the Eleventh Cause of Action:

For a preliminary and permanent injunction enjoining Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS and their agents and employees, from refusing to allow Plaintiff or his counsel or his authorized representative to inspect their file on the property located at 2108 Shattuck Avenue, Berkeley;

9. For costs of this action; and

10. For such other relief as the Court deems just.

Myron Moskovitz  
Attorney for Plaintiff

September 12, 1969

Carol Ruth Silver  
Elizabeth A. Truninger  
Alan S. Koenig  
Michael D. Walker  
Berkeley Neighborhood Legal Services  
2229 4th Street  
Berkeley, California

Myron Moskowitz  
National Housing and Development Law Project  
Earl Warren Legal Center  
Berkeley, California  
Telephone: 642-1811

Lawrence L. Duga  
2437 Durant Avenue  
Berkeley, California  
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, )  
Plaintiff, )  
-vs- )  
HEWES COMPANY, et. al. )  
Defendants./

No. 393347  
VERIFICATION OF COMPLAINT

I, the undersigned, say:

I am a party to the above-entitled matter; the foregoing document is true of my own knowledge, except as to the matters which are therein stated on my information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/12/69 at Berkeley, California.

Stanford C. Rose

B. Order to Show Cause

Carol Ruth Silver  
Elizabeth A. Truninger  
Alan S. Koenig  
Michael D. Walker  
Berkeley Neighborhood Legal Services  
2229 4th Street  
Berkeley, California

Myron Moskovitz  
National Housing and Development Law Project  
Earl Warren Legal Center  
Berkeley, California  
Telephone: 642-1811

Lawrence L. Duga  
2437 Durant Avenue  
Berkeley, California  
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD C. ROSE, )  
Plaintiff, )  
-vs- )  
HEWES COMPANY, et. al. )  
Defendants./

No. 393347  
ORDER TO SHOW CAUSE IN RE  
PRELIMINARY INJUNCTION AND  
TEMPORARY RESTRAINING ORDER

On reading the verified complaint of Plaintiff on file in this action, and it appearing to the satisfaction of the Court that this is a proper case for granting an order to show cause and a temporary restraining order, and that unless the temporary restraining order prayed for in said complaint be granted, great and irreparable injury will result to Plaintiff before the matter can be heard on notice; and Plaintiff having filed a written undertaking in the sum of 35.00 dollars, conforming to the provisions of §529 of the Code of Civil Procedure, which undertaking is hereby approved by the Court;

Now, therefore, it is hereby ordered that the above-named Defendants, and each of them appear before this Court in Dept. 1 on 9-30-69 at the hour of 2:00 p.m. then and there to show cause, if they have any, why they, and

each of them, and their agents, servants, employees and representatives should not be enjoined and restrained during the pendency of this action from engaging in, committing or performing, directly or indirectly, any and all of the following acts:

a) As to Defendants Hewes Company, Eugene L. Friend, Ellenore Friend, Benjamin Friend, Molly Friend, Peter Sosnick, Marvin Sosnick, and Eugene Sosnick: (1) From failing to correct the housing code violations described in the First Cause of Action and (2) from filing any eviction action against Plaintiff without first showing good cause to this Court;

b) As to Defendants City of Berkeley, William C. Hanley, and John S. Atkins: (1) from failing to diligently enforce the housing codes of the State of California and the City of Berkeley against LANDLORDS, as described in the First Cause of Action, (2) from conspiring with LANDLORDS, as described in the First Cause of Action, to deprive Plaintiff of the benefits of the housing codes of the State of California and the City of Berkeley by failing to enforce them diligently, and (3) from refusing to allow Plaintiff or his counsel or his authorized representative to inspect their file on the property located at 2108 Shattuck Avenue, Berkeley, California.

It is further ordered that pending the hearing and determination of said order to show cause, Defendants Hewes Company, Eugene L. Friend, Ellenore Friend, Benjamin Friend, Molly Friend, Peter Sosnick, Marvin Sosnick, and Eugene Sosnick, and each of them and their officers, agents, employees, representatives and all persons acting in concert or participating with them, shall be and they are hereby restrained and enjoined from filing any eviction action against Plaintiff from the premises at 2108 Shattuck Avenue, Berkeley, without first showing good cause to this Court.

September 16, 1969

Robert H. Kroninger  
Judge of the Superior  
Court of Alameda County

action,  
er  
order,  
plaint  
ore  
en

ndants,  
e hour  
and

Carol Ruth Silver  
Elizabeth A. Truninger  
Alan S. Koenig  
Michael D. Walker  
Berkeley Neighborhood Legal Services  
2229 4th Street  
Berkeley, California

Myron Moskovitz  
National Housing and Development Law Project  
Earl Warren Legal Center  
Berkeley, California  
Telephone: 642-1811

Lawrence L. Duga  
2437 Durant Avenue  
Berkeley, California  
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, )  
Plaintiff, )  
-vs- )  
HEWES COMPANY, et. al. )  
Defendants./

No. 393347  
MEMORANDUM OF POINTS AND AUTHORITIES  
SUPPORTING APPLICATION FOR  
TEMPORARY RESTRAINING ORDER

I

A temporary restraining order may be granted without notice to the opposite party where it appears by verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. Code of Civil Procedure, Section 527, "Irreparable injury" means that species of damage, whether great or small, that ought not to be submitted on the one-hand, or inflicted on the other. Anderson v. Souza, 38 Cal. 2d. 825, 243 P. 2d 497.

II

It is unconstitutional state action for courts to be used to evict a tenant because of his attempts to organize other tenants to protest housing code violations. Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969). See also Edwards v. Habib, 397 F. 2d 687 (D.C. Cir. 1968),

Portnoy v. Hill, 294 NYS 2d 278 (1968), and Moskowitz, "Retaliatory Evictions--The Law and the Facts", Clearinghouse Review, May 1969 at p. 4.

Respectfully submitted,

Myron Moskowitz  
Attorney for Plaintiff

September 12, 1969

L-T Ch. III - 31

Carol Ruth Silver  
Elizabeth A. Truninger  
Alan S. Koenig  
Michael D. Walker  
Berkeley Neighborhood Legal Services  
2229 4th Street  
Berkeley, California

Myron Moskowitz  
National Housing and Development Law Project  
Earl Warren Legal Center  
Telephone: 642-1811

Lawrence L. Duga  
2437 Durant Avenue  
Berkeley, California  
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, )  
                  Plaintiff, )  
          -vs-      ) )  
                  ) )  
HEWES COMPANY, et. al. )  
                  ) )  
                  Defendants. /

No. 393347

UNDERTAKING ON TEMPORARY  
RESTRAINING ORDER

WHEREAS Plaintiff has filed his complaint in the above-entitled action, and has made application for a temporary restraining order against the above-named defendants enjoining and restraining them from the commission of certain acts as is more particularly set forth and described in said complaint and temporary restraining order;

And Whereas said Plaintiff desires to give an undertaking to the effect that he will pay to the parties enjoined such damages, not exceeding the amount specified in this undertaking, as such parties may sustain by reason of said temporary restraining order, if the Court finally decides that Plaintiff was not entitled thereto;

and promise  
Plaintiff will pay to said parties restrained such damages not exceeding  
the sum of \$35.00 as such parties or any of them may sustain by reason  
of said temporary restraining order if the Court finally decides that  
Plaintiff was not entitled to said temporary restraining order.

L-T Ch. III - 33

SETTLEMENT AGREEMENT

This settlement agreement is made this 15th day of October, 1969, for the purpose of settling action No. 393347 now pending in the Superior Court of the State of California for the County of Alameda, and all controversies between Stanford Rose, plaintiff therein, and all defendants therein, except that as to defendants City of Berkeley and employees of the City of Berkeley, individually and as such employees, the controversies to be hereby disposed of shall be limited to those in connection with the real property situated at the southwest corner of Shattuck Avenue and Addison Street in Berkeley and particularly the portion thereof commonly known as 2108 Shattuck Avenue (herein called "the property").

For the purposes of such settlement, the parties agree as follows:

1. The owners of the property agree to pay to plaintiff the sum of \$1,525.00. In consideration therefor, plaintiff agrees to release all claims, demands, damages, actions and causes of action of every kind, known or unknown, as set forth in Exhibit A attached hereto and made a part hereof, and agrees that he and his attorneys shall duly execute said release.

2. Plaintiff may continue his present occupancy at 2108 Shattuck Avenue, Berkeley, until April 1, 1970 (when his tenancy shall terminate unless terminated prior thereto under paragraphs 3 and 4 following) on the same terms as other tenants similarly situated except that his rental shall be \$1.00 per month, to be increased to \$35.00 per month upon completion of the alterations or improvements listed in Exhibit B attached hereto.

In consideration therefor, plaintiff agrees to peaceably quit the premises and building on the termination of his tenancy and to accept said premises and building in its present condition and assume all risks thereof and therein, and except for claims for compensatory damages for actual bodily injury or property damage which he may hereafter sustain by reason of an event hereafter occurring (specifically excluding any claim for discomfort or mental, emotional or psychological distress or damage by reason of the condition of the building or his premises), plaintiff hereby waives (in addition to the release referred to in paragraph 1 above) all right to make any claim or demand in connection with his continued tenancy, of the kind alleged in his complaint in said action No. 393347 and all claims, demands, damages, actions and causes of action of every kind which may arise out of or in any way be connected with his said tenancy or the condition of the building or his premises.

L-T Ch. III - 34

3. The owners agree to make the improvements or alterations set forth in Exhibit B attached hereto and incorporated herein by reference within the time periods therein specified, provided however that if the owners determine that the cost of all improvements and alterations that are required, necessary or advisable in connection with the residential portion of the property (including those in Exhibit B) make the doing of such work economically unfeasible, the owners shall have the right to not do the work and to terminate residential occupancy of the building or to temporarily vacate the residential portions of the building to make extensive improvements or alterations. In such events, or if for any other reason the owners determine to terminate residential occupancy of the building, or if it becomes necessary to vacate the residential portions of the building, plaintiff agrees that his tenancy shall terminate at the time provided in the notice of termination given to him and other tenants similarly situated (such notice being that required by law).

4. It is further agreed that should improvements or alterations to be made by the owners (said improvements not necessarily being limited to those listed in Exhibit B) require the use of the premises now occupied by plaintiff, plaintiff will vacate said premises and move to other premises of at least the same gross area offered to him in the building, or, if he so prefers, will vacate the building entirely.

5. The above action shall be dismissed with prejudice against all defendants therein, and plaintiff and his attorneys agree (subject to the exception in paragraph 2) that they will not bring or encourage any other action or proceeding against defendants in connection with the property or any tenancy therein.

6. The house rules for the residential portion of the property set forth in Exhibit C attached hereto and incorporated herein by reference shall become operable immediately.

7. This agreement is a result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any of defendants, who continue to deny such liability and disclaim such responsibility.

8. The advice of legal counsel has been obtained by plaintiff prior to signing this settlement agreement.

STANFORD ROSZ

HEWES CO.

By \_\_\_\_\_  
For the owners of the property  
referred to above.

L-T Ch. III - 35



and I hereby represent and declare that I have fully explained the foregoing release to the signing party, who in turn acknowledged to me an understanding of said release and the legal effect thereof; and the signature on the release was personally made by the person whose name it is.

Myron Moskowitz  
Attorney for Plaintiff

L - T Ch. III - 37

1. As soon as reasonably possible, but not more than ninety (90) days from the date of this agreement, the owners agree that:

A. Heating approved by the City of Berkeley shall be provided for the premises occupied by plaintiff in the building.

B. Fire exiting approved by the City of Berkeley shall be provided for the building, and at least four (4) fire alarms (which may be of the pull type) shall be installed in the residential portions of the building.

C. Adequate lighting shall be provided and maintained from the front door of the building on Shattuck Avenue to plaintiff's premises in the building.

2. As soon as reasonably possible, but not more than one hundred twenty (120) days from the date of this agreement, the owners agree that:

A. An additional toilet and shower for men will be installed on the second floor of the building. Such shower may replace the existing bathtub on the second floor. When a toilet ceases to operate, it will be returned to working order as soon as reasonably possible, after being reported to the manager.

B. The north wall of plaintiff's premises shall be made thicker in order to better resist sound.

C. An operable washtub or sink for washing clothes will be installed and maintained on the second floor if reasonably practicable in view of the overall plans for the residential portions of the building.

EXHIBIT C

HOUSE RULES

For the residential portion of the Frances Shattuck Building, 2108  
Shattuck Avenue, Berkeley, California.

---

1. No person shall enter any other person's premises without his express permission, except in case of an apparent emergency (examples: fire, gas leak, flooding) and except as necessary in connection with a program of improvements and alterations, in which case management will transmit whatever advance notice it has. When management has a justifiable reason for entering a tenant's premises, the tenant shall not unreasonably withhold such permission. (Example: routine repair work, showing the premises to a prospective new tenant.)
2. Tenants may decorate the interior of their premises in any legal manner, provided the decorations do not damage the premises and are removable without damage to the premises, and that no paint shall be applied (except to the tenant's own property) without management's approval. Tenants shall have control over the arrangement of furniture within their premises.
3. Tenants shall furnish the manager with the names and addresses of overnight guests who stay longer than two consecutive nights. Guests shall identify themselves as guests of a particular tenant if inquiry is made by management. Tenants agree to limit the frequency and number of overnight visitors so as not to overtax the facilities of the building, and in this respect consideration shall be had for the convenience of the permanent residents of the building.
4. All persons connected with the building (namely, tenants, guests, owners, and management) shall treat each other with consideration and courtesy, and respect one another's right of privacy.
5. If any tenant has a grievance concerning the building or its management and obtains no satisfaction of his grievance from the manager, he shall have the right to meet with one of the owners or a representative of the owners within five days after his request for such a meeting is communicated to one of the owners designated for such purpose. Such meeting shall be held at the building or at such other place as is mutually agreed upon.
6. No pets shall be kept in the building, except fish or birds. Pets belonging to daytime visitors shall be kept in the premises of the person being visited.
7. No children shall remain overnight in the building. Children who are daytime visitors shall remain within the premises of the person being visited.

premises nor use their premises in any hazardous or  
hazardous purpose, nor permit any nuisance on their premises.

9. Tenants shall not transfer or sublet their premises without the express permission of the owners or management, and at the termination of their tenancy shall vacate their premises and leave them in good order.

10. In the event that community kitchens are installed in the building, tenants shall observe reasonable rules in connection with the use thereof.

11. The foregoing rules will not be changed without the consent of a majority of the tenants, and the owners. Nor shall any additional rules be put into effect without the consent of a majority of the tenants, unless such rules directly affect the physical condition of the building or involve direct and immediate expense to the owners. In the latter case, a majority of the tenants shall be consulted before the rule becomes effective, except that in an emergency situation, a new rule may be put into effect before such consultation but such consultation shall then take place as soon thereafter as reasonably possible. All new rules shall require the approval of the owners.