

In the

Supreme Court of the United States

HAVENS REALTY CORPORATION ET AL.,)
)
 Petitioners,)
)
 v.)
)
 SYLVIA COLEMAN ET AL.)

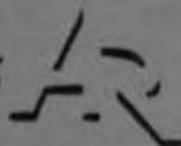
NO. 80-988

Washington, D. C.

December 1, 1981

Pages 1 thru 43

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REPORTING

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1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -;
3 HAVENS REALTY CORPORATION ET AL., :
4 Petitioners, :
5 v. : No. 80-988
6 SYLVIA COLEMAN ET AL. :
7 - - - - -;
8 Washington, D. C.
9 Tuesday, December 1, 1981
10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:40 o'clock a.m.
13 APPEARANCES:
14 EVERETTE G. ALLEN, JR., ESQ., Richmond,
15 Virginia; on behalf of the Petitioners.
16 VANESSA RUIZ, ESQ., Washington, D. C.;
17 on behalf of the Respondents.
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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Havens Realty Corporation against Coleman.

Mr. Allen, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF EVERETTE G. ALLEN, JR., ESQ.,
ON BEHALF OF THE PETITIONERS

MR. ALLEN: Mr. Chief Justice, and may it please the Court, this action arose pursuant to a complaint filed in the Eastern District of Virginia alleging that Petitioners, Havens Realty and its employee, Rose Jones, violated the Fair Housing Act and Section 1982. As to these Respondents, the complaint was dismissed on grounds of lack of standing and the statute of limitations. The Fourth Circuit reversed, and this Court granted certiorari.

The complaint here provided the sole facts before the Fourth Circuit and provide the sole facts before this Court. Havens Realty operates two adjacent apartment complexes in Henrico County, Virginia, and is alleged to have engaged in racial steering at just these two apartment complexes. Respondent HOME is a Richmond-based fair housing organization with the avowed purpose of making fair housing in Richmond a reality. Its activities include counseling, investigating complaints, and testing to ensure compliance with the fair housing laws.

1 Its only contact with Petitioner Havens was
2 through its employee testers to determine if Havens was
3 complying with the fair housing laws. Its injury is alleged
4 as a frustration to its counseling.

5 QUESTION: Before you get too far along, counsel,
6 I hope at some point that you will discuss the amicus
7 representation to the Court that there were certain
8 developments after the granting of cert in this case.

9 MR. ALLEN: Yes, Your Honor. I will speak to that.

10 QUESTION: Because that might have something to do
11 with the ultimate disposition.

12 MR. ALLEN: Yes, sir. Let me speak to that. One
13 of the plaintiffs in this case, Paul Allen Coles, was a bona
14 fide renter. He was a party to this complaint. His
15 complaint withstood the motion to dismiss. He went to
16 trial, and a consent order was entered in his favor, in
17 which Havens was found to have been engaged in racial
18 steering.

19 That consent order, Your Honor, was addressed to
20 Coles and his class, which was a class consisting of all
21 black persons deemed to have been monetarily injured by
22 those practices. It can in no way, shape, or form affect
23 the relief being requested by these Respondents, which is
24 damages, other injunctive relief in the form of affirmative
25 action, attorneys' fees, which will be substantial.

1 We submit that under this Court's stringent test
2 of mootness, this case can't be moot.

3 As to the contention that the writ was improperly
4 granted, Your Honor, we submit that for the same reasons
5 evidenced in the cert petition, which are things not dealt
6 with by this Court before, the tester qua tester issue, the
7 dispute -- the conflict between the Fourth Circuit and the
8 Seventh Circuit as to organizational standing, that those
9 are questions of important federal and constitutional law
10 that are still in this case and are in no manner affected by
11 the relief granted below.

12 HOME's membership -- as to HOME's membership, we
13 are told only that it is multi-racial and numbers 600. We
14 are told nothing else about them, or where they live, only
15 that Havens' conduct denied them the benefit of interracial
16 associations.

17 The two individual Respondents, Sylvia Coleman, a
18 black woman, and Kent Willis, a white man, are HOME
19 employees. They were not in any way bona fide apartment
20 seekers, and their sole reason for contacting Havens was
21 testing. While we are not told precisely where they live,
22 the complaint says that they lived somewhere in the city of
23 Richmond or Henrico County, and that Havens's steering of
24 these two apartment complexes deprives them of the benefit
25 of interracial associations. All acts as between Havens and

1 these testers took place more than 180 days before the
2 complaint was filed.

3 Respondents complain that the district court's
4 dismissal was precipitous, and that they should have been
5 allowed to go forward and demonstrate their standing. We
6 submit that this is without merit. They knew the facts
7 before they filed the complaint, and if those facts aren't
8 in that complaint, that is no one's fault but theirs.
9 Further, in --

10 QUESTION: But, Mr. Allen, they did allege that --
11 you say we don't know where in Richmond they live, but they
12 did allege that wherever they lived, they were denied the
13 benefit of interracial community live because of your
14 client's practices.

15 MR. ALLEN: Yes, Your Honor.

16 QUESTION: Don't we have to assume that was true?

17 MR. ALLEN: Yes, Your Honor. They -- Well, Your
18 Honor, we can assume -- we can assume that Havens steers,
19 and we can assume that they have properly alleged the
20 injury, but let me speak to that particular aspect of the
21 standing, and why we think their standing fails on that
22 count.

23 All that these Respondents allege is, Havens
24 steers at two apartment complexes in Henrico County. We
25 live in either Richmond or in Henrico County. Consequently,

1 we have been denied the benefit of interracial association.
2 Your Honor, we --

3 QUESTION: And don't we have to assume that is
4 true, because we take the allegations of the complaint as
5 true?

6 MR. ALLEN: Your Honor, we would disagree that you
7 have to assume any essential element of standing. We submit
8 that there has to be, as required by Article 3, a plausible
9 connection between the defendant's acts, between the
10 defendant's acts and the plaintiff's harm. It is
11 implausible to assume that racial steering directed to two
12 apartment complexes can affect two individuals that live
13 somewhere in a metropolitan area of 400,000 people or in
14 fact that they can affect the entire metropolitan area.

15 QUESTION: Maybe it is, but why don't we have to
16 assume it is true when they allege it, and then you prove it
17 isn't true?

18 MR. ALLEN: Your Honor, in Bellwood, essentially
19 the same allegations that these Respondents made were in the
20 complaint, as noted in the footnotes in Bellwood, the city
21 of Bellwood, in pleading the harm, had said that the actions
22 of the defendants affect all the citizens of this
23 community. This Court looked at that complaint and said,
24 well, you have alleged a harm to one society, and that is
25 really not right, that is a generalized grievance, and it

1 can't possibly be the defendant's fault.

2 The way we are going to interpret that is, you
3 have alleged harm to the residents of a very carefully
4 described 12 by 13 block target area, and for those -- for
5 those plaintiffs that live in that target area, we are going
6 to assume that you have pled a proper cause --

7 QUESTION: You assume they can prove what they
8 have pleaded.

9 MR. ALLEN: That's right.

10 QUESTION: Well, why don't we do that here?

11 MR. ALLEN: Well, Your Honor, but in Bellwood, for
12 those --

13 QUESTION: You think it is much more unlikely here?

14 MR. ALLEN: It is implausible. It is
15 implausible --

16 QUESTION: Well, is there a rule of pleading that
17 we do not take as true implausible allegations?

18 MR. ALLEN: Your Honor, I believe that the
19 language of this Court in Warth and in Bellwood, that the
20 standard to apply to a complaint is that the plaintiff is to
21 be given the benefit of all material allegations, and the
22 complaint is to be construed in his favor. We think the
23 Connelly v. Gibson standard is wrong, and that to allow that
24 standard is for a federal judge to assume that he has got
25 the power to act, and it is not unreasonable, not only not

1 unreasonable, it just makes sense to say, if you have got
2 standing and you are going to invoke the power of the
3 federal fiduciary, plead it. Plead the causal connection.

4 And it is for that reason that we don't think that
5 this Court has to accept the conclusory allegation of
6 pleading that two apartment complexes -- we live in a big
7 metropolitan area. We have been denied the benefit of
8 interracial association.

9 QUESTION: Mr. Allen, the complaint in this case
10 was filed before the Bellwood case.

11 MR. ALLEN: Yes, it was, Your Honor.

12 QUESTION: So possibly the Respondents in this
13 case should have an opportunity to conform their complaint
14 to Bellwood, would you not think?

15 MR. ALLEN: I would agree with that. I think the
16 standard --

17 QUESTION: I mean, what you are saying makes some
18 sense, but under the circumstances here, maybe they are
19 entitled to conform to Bellwood.

20 MR. ALLEN: Your Honor, I think it is very clear
21 that the district judge employed the reasoning of TOPIC,
22 which is wrong, and that under what the Court did in
23 Bellwood, with the district court, had employed an erroneous
24 standard -- standing, that I can't stand here and say in a
25 final judgment for the Petitioner so they could --

1 QUESTION: What about the United States' position
2 that the statute really is aimed at protecting anybody who
3 is given misinformation?

4 MR. ALLEN: Your Honor, let me comment on the --

5 QUESTION: And that you could be from Chicago, and
6 make these same inquiries in this county, and you would be a
7 person aggrieved, entitled to an adjudication.

8 MR. ALLEN: Let me respond to the latter part of
9 the question first. I don't think a person from Chicago can
10 get on the phone just for the heck of it and decide that he
11 is going to call and some apartment complex --

12 QUESTION: Well, he can do it. He can call them,
13 and he can be given --

14 MR. ALLEN: Let's say he does it.

15 QUESTION: -- and he can be given misinformation.

16 MR. ALLEN: Yes, and it is because of race. Let's
17 assume because of race.

18 QUESTION: Yes.

19 MR. ALLEN: Your Honor, I believe that the
20 government is correct that one has the right not to be given
21 false information because of his race pursuant to 804(d).
22 But for --

23 QUESTION: Wherever he lives.

24 MR. ALLEN: Wherever he lives. Yes, Your Honor.
25 But for him to have standing, he has got to satisfy Article

1 3, and addressing that particular point within the
2 framework --

3 QUESTION: I know, but if the statute is aimed at
4 saying, look, it is illegal to give people false
5 information --

6 MR. ALLEN: Yes, Your Honor.

7 QUESTION: -- now, if somebody is giving false
8 information, then the only question is, is the statute
9 constitutional.

10 MR. ALLEN: Well, Your Honor, it is not criminal.
11 It is not a criminal statute. It makes it unlawful to give
12 false information. One can have the right to receive --

13 QUESTION: Well, is it true that these people were
14 given false information?

15 MR. ALLEN: I think that is a fair assumption.

16 QUESTION: And does the statute forbid that?

17 MR. ALLEN: It does.

18 QUESTION: Is the statute constitutional?

19 MR. ALLEN: Your Honor, I think the statute is
20 constitutional. Notwithstanding that, I don't believe that
21 a tester qua tester can demonstrate any injury under Article
22 3.

23 QUESTION: Well, he suffered the very injury the
24 statute forbids.

25 MR. ALLEN: Your Honor, the statute --

1 QUESTION: He got false information.

2 MR. ALLEN: Your Honor, he wasn't looking for
3 accurate information. The only thing he was looking --

4 QUESTION: He was given false information. The
5 statute forbids it.

6 MR. ALLEN: Well, he was. I can't deny that. Let
7 me speak to another aspect of the 804(d) claim, Your Honor.
8 This right under Section 804(d) was not plead, and in fact,
9 in the brief that Respondent submitted before the district
10 court at Page 43 of the appendix, they said, we are not
11 suing as testers. We are only suing as persons denied the
12 benefit of interracial associations. That is a disavowal of
13 a right under Section 804(d).

14 QUESTION: Well, you are really making a
15 jurisdictional argument, an Article 3 argument.

16 MR. ALLEN: Yes, Your Honor, we are.

17 QUESTION: And if despite what -- if that is the
18 issue here, are we really bound by the jurisdictional claims
19 that your opponents made below?

20 MR. ALLEN: Your Honor, I don't think that there
21 is anything that you can plead to satisfy Article 3 except
22 facts.

23 QUESTION: Well, they plead a fact. We asked and
24 we were given false information. That is apparently
25 admitted.

1 MR. ALLEN: That wasn't raised in the pleadings.
2 It was disclaimed before the district court. Before the
3 Fourth Circuit it was never argued, and Your Honor, what
4 will confirm that the Fourth Circuit never relied on Section
5 804(d) is, they found standing in Kent Willis, the white
6 man, as a tester qua tester, notwithstanding the fact that
7 he hadn't received any false information.

8 QUESTION: You think the Respondent here is
9 entitled to support the judgment on that ground, on an
10 accurate ground, or --

11 MR. ALLEN: I do not think he is entitled to
12 enlarge upon his rights from the Fourth Circuit. I do not
13 think he is entitled to not plead a Section 804(d)
14 violation --

15 QUESTION: That is not going to enlarge his
16 rights. He is just going to say, there is jurisdiction.

17 MR. ALLEN: Well, Your Honor, let me tell you what
18 it would have been like. In the Perry -- in Bellwood, two
19 of the individuals, Perry and Sharp, lived outside of the
20 target area. They were black testers. They had been given
21 false information, and they -- and they claimed denial of
22 the benefits of interracial association. I don't think they
23 should have been allowed to come into this Court for the
24 first time and say, we want to claim a Section 804(d)
25 violation, because that is essentially what the testers here

1 did.

2 I would like to comment on the issue of HOME's
3 representational standing. In order for HOME to sustain
4 representational standing, it must plead specific facts to
5 enable a determination to be made that the three-part test
6 specified in Warth and Hunt v. Washington Apple Advertising
7 Commission has been satisfied.

8 This complaint is completely devoid of any fact
9 necessary to even try to make that determination, much less
10 to make it. Consider only the first part of the test, which
11 is that at least one HOME member must have standing in his
12 own right to maintain this cause of action, whereas the
13 injuries plead, they -- that, that is, denial of the benefit
14 of interracial associations. How can you determine that
15 that one HOME member has standing to sue when we don't know
16 where he lives, we don't know how Havens' acts affect him,
17 and we don't know whether the -- individual was -- will
18 assist?

19 We submit that the district court's -- that the
20 Fourth Circuit's finding in this regard is plainly wrong and
21 must be reversed.

22 QUESTION: Mr. Allen, was there discovery in this
23 case at all?

24 MR. ALLEN: No, Your Honor, there was not.
25 Insofar as HOME's standing to sue in its own right, it

1 alleges, as Mr. Justice White has been discussing, a Section
2 804(d) claim also. Again, not plead, not briefed, not
3 argued in the Fourth Circuit, up before this Court for the
4 first time. HOME actually -- now its primary standing
5 argument has become Section 804(d). 804(d) is the right to
6 receive accurate information, and if you receive false
7 information, your rights have been violated.

8 It ought to be very clear that Havens has not
9 violated HOME's Section 804(d) rights. He didn't even know
10 HOME was involved. And he cannot be held to have violated
11 those rights because he didn't give HOME any false
12 information based on rights. This point is noted in the
13 government's brief, where it says if HOME had contacted
14 Havens and said, I am HOME, or a HOME employee had contacted
15 Havens and said, I am a HOME employee, and it got false
16 information, it would have been a different --

17 QUESTION: Mr. Allen, was Coleman an employee of
18 HOME?

19 MR. ALLEN: Absolutely, Your Honor.

20 QUESTION: You said yes?

21 MR. ALLEN: Absolutely, yes.

22 QUESTION: Does that affect the interest of HOME
23 in this case, an employee was given false information?

24 MR. ALLEN: Your Honor, if that false -- if the
25 information had been sought --

1 QUESTION: Had been what?

2 MR. ALLEN: Sought for a bona fide purpose, in
3 other words, if Sylvia Coleman and Kent Willis, who were
4 HOME's -- I didn't get a chance to introduce them. Coleman
5 and Willis were HOME employees. They were not bona fide
6 apartment seekers. They were just testing agents. That was
7 their sole --

8 QUESTION: Both of them were HOME employees?

9 MR. ALLEN: Yes, sir. That was their sole
10 involvement.

11 QUESTION: And HOME had a contract with the city
12 of Richmond?

13 MR. ALLEN: Yes, Your Honor, it did.

14 QUESTION: And what were the terms of that
15 contract?

16 MR. ALLEN: Well, Your Honor, the terms of that
17 contract was that HOME was to counsel so many people with
18 respect to the city, provide services to the city --

19 QUESTION: As to where housing could be obtained?

20 MR. ALLEN: Generally, Your Honor, that is correct.

21 QUESTION: And wouldn't that give HOME an interest
22 in the question that was put by Coleman, its employees?

23 MR. ALLEN: Your Honor, it could have if it had
24 been plead.

25 QUESTION: If it had been plead?

1 MR. ALLEN: If it had been plead. The facts that
2 are plead are that Coleman and Willis never sought, nor did
3 HOME, to obtain any bona fide information from Havens. They
4 never at any time called Havens --

5 QUESTION: Mr. Allen --

6 MR. ALLEN: -- and said, tell me what you have got
7 available. All they did was test.

8 QUESTION: Mr. Allen, Paragraph 16 of the
9 complaint alleges plaintiff HOME had been frustrated by
10 defendant's racial steering practices in its efforts to
11 assist equal access to housing through counseling and other
12 referral services. Isn't that pleading exactly what Justice
13 Powell asked you about?

14 MR. ALLEN: Your Honor, yes. Let me comment upon
15 that. Here is what HOME pleads. HOME says, we thought
16 Havens was -- this is the complaint. This is no
17 extrapolation. We tested Havens. We found he was steering
18 therefore, we are damaged. Now, what is the causal
19 connection? Because again it is a conclusory pleading.
20 Does it follow that just because Havens is steering, there
21 is damage to HOME's counseling service? And the answer is,
22 of course not.

23 Consider that you have a --

24 QUESTION: I would have thought the answer was, of
25 course.

1 (General laughter.)

2 MR. ALLEN: Let me explain, and maybe I can change
3 your mind. Consider a bona fide black apartment seeker,
4 never heard of HOME, and he goes to Havens, and he is
5 steered. Has HOME been damaged? Of course not. What has
6 happened? What has happened is that its abstract concern
7 with fair housing has been thwarted. No question about
8 that. Is that the type of damage that will sustain an
9 Article 3 standing? The answer is, of course not.

10 Suppose that black bona fide apartment seeker is
11 referred to Havens --

12 QUESTION: No, but Mr. Allen, I think the point is
13 that if there is a practice of steering, no matter who comes
14 to the real estate agent, that practice would impair HOME's
15 ability -- they say to someone who comes into the office,
16 well, there is a vacancy over at the Havens Realty office,
17 go over there and apply for it. If the person will not get
18 the apartment by doing so, doesn't that impair HOME's
19 ability to refer people to vacant apartments?

20 MR. ALLEN: Your Honor, if that were so, that
21 would give every apartment locator service in Richmond a
22 cause of action in every case where racial steering or
23 violation ever brought without alleging that they were hurt
24 by it.

25 QUESTION: Would that be so terrible? I mean,

1 maybe that is what the law could be, that if you refer
2 someone on the basis of a vacancy, you have an interest in
3 filling vacancies, that you have a right to expect that you
4 will get an honest answer.

5 MR. ALLEN: Your Honor, in looking at violations
6 in the Fair Housing Act, the usual starting place is what
7 was the Congressional intent. The legislative history is of
8 zero help here because it is obvious that Congress was only
9 considering the direct -- the people who were directly
10 discriminated against. You can't get any help from the
11 legislative intent as to whether they intended to benefit
12 the indirect victims, much less fair housing organizations
13 and testers. We just can't tell.

14 So I can't stand here and talk about legislative
15 intent because I don't know. What I can talk about is
16 Article 3, and unless HOME can demonstrate that this
17 steering harms its counseling service, it shouldn't be able
18 to avoid the reasoning of the -- which is what he seeks to
19 do.

20 The Seventh Circuit in Bellwood, speaking to
21 similar allegations, said that the alleged injury, because
22 they plead similar injury, is a natural concomitant of and
23 so inextricably intertwined --

24 CHIEF JUSTICE BURGER: We will resume there at
25 1:00 o'clock, Mr. Allen.

1 (Whereupon, at 12:00 o'clock p.m., the Court was
2 recessed, to reconvene at 1:00 o'clock p.m. of the same day.)

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1 AFTERNOON SESSION

2 CHIEF JUSTICE BURGER: You may resume, Mr. Allen.
3 You have eleven minutes remaining.

4 MR. ALLEN: Thank you.

5 CHIEF JUSTICE BURGER: There is no requiremnt that
6 you use all of it.

7 ORAL ARGUMENT OF EVERETTE G. ALLEN, JR., ESQ.,

8 ON BEHALF OF THE PETITIONERS - CONTINUED

9 MR. ALLEN: Thank you.

10 The Seventh Circuit in Bellwood addressed similar
11 standing questions with respect to a fair housing
12 organization there known as Leadership Council, that made
13 pleadings similar to those made here, and concluded that its
14 alleged injury was just the natural concomitant of and so
15 intertwined with its abstract concern as to be inseparable
16 for Article 3 purposes, and we submit that that rationale is
17 applicable here.

18 Unless the standing requirement is satisfied,
19 simply because Havens is steering, there is no, absolutely
20 no facts plead to support a causal connection between that
21 steering and its counseling service. Admittedly, as Mr.
22 Justice Stevens pointed out, there is a conclusory
23 allegation that they were harmed. There are no facts plead
24 that any HOME client was ever sent to this apartment
25 complex, that HOME ever sought any information for this

1 complex. As Justice Powell noted, they had the duty to get
2 information but they never called, they never called Havens
3 and said --

4 QUESTION: Well, what about the notice pleading
5 concept of the federal rule? If this had been a summary
6 judgment, wouldn't you be in a much stronger position where
7 there had been discovery and so forth, than rather just to
8 go off on the pleadings without any affidavits or discovery?

9 MR. ALLEN: No, Mr. Justice Rehnquist, because I
10 don't believe the concept of noticed pleading ought to be
11 applicable to standing. Standing is a jurisdictional
12 matter, and in order to invoke the power of the federal
13 court, there ought to be facts that distinctively and
14 affirmatively show that the federal court has got power, and
15 I don't think that the idea of noticed pleading, where the
16 plaintiff is just supposed to put the defendant generally on
17 notice of what the claim is about, ought to be the same
18 standard when you are talking about standing.

19 QUESTION: Well, there are individuals involved
20 here, aren't there?

21 MR. ALLEN: Yes, there are, Your Honor.

22 QUESTION: Would you say that jurisdiction of the
23 federal court is defeated if you plead the wrong statute?
24 If you said 1331 instead of 1343.3, do you think it would be
25 thrown out of court?

1 MR. ALLEN: Well, Your Honor, I think in a
2 motion --

3 QUESTION: If the facts that are alleged would
4 satisfy one or the other.

5 MR. ALLEN: As a practical matter, I don't think
6 it would happen, because as a practical matter --

7 QUESTION: Well, it happens all the time.

8 MR. ALLEN: Well, as a practical matter, I think
9 it would be called on a motion to dismiss to the plaintiff's
10 attention and would be corrected, but that is not the case
11 here. We are talking about pleading facts. You are
12 referring to a technical area.

13 QUESTION: I am referring to 804, where the only
14 thing you have to plead is that you are a person, and that
15 you have been given false information.

16 MR. ALLEN: Your Honor, if that standard -- if
17 that is the standard that governs this Court, then with
18 respect to two testers in Bellwood who lived outside the
19 area, they would not have been denied standing. In that
20 particular case, they were testers. They were given false
21 information. They did not plead 804(d). When they got to
22 this --

23 QUESTION: Do you think Bellwood holds that they
24 wouldn't have standing?

25 MR. ALLEN: It holds --

1 QUESTION: Under 804?

2 MR. ALLEN: It didn't address the question,
3 because --

4 QUESTION: All right. It doesn't hold it, then,
5 does it?

6 MR. ALLEN: No, it doesn't. It was never
7 addressed, and Your Honor, my point is here, it was never
8 raised in this case until it came to this Court.

9 QUESTION: It is raised now.

10 MR. ALLEN: Yes, it is, Your Honor. Let me turn
11 to the testers. The Fourth Circuit found standing for the
12 testers on two grounds, first, as surrogates raising the
13 rights of third parties, and secondly as individuals denied
14 the benefit of interracial associations. We submit that the
15 Fourth Circuit reliance on Pierson and Evers is wrong, that
16 the emphasis is misplaced. The plaintiffs in those cases
17 had standing because they had injuries, not because they
18 were tested, and the testing motive is absolutely irrelevant
19 for standing purposes.

20 The Fourth Circuit's decision granted standing as
21 a tester qua tester without regard to any allegation of
22 injury, its reasoning being the broad public policy of the
23 Fair Housing Act. That flies in the face of Article 3, and
24 cannot be sustained.

25 Now, before this Court, Respondents have abandoned

1 the tester qua tester issue. They no longer argue, as the
2 Fourth Circuit held, that Kent Willis has standing. They
3 only argue for Sylvia Coleman's standing on the basis of, as
4 Mr. Justice White has said, her 804(d) claim. Still, the
5 Fourth Circuit's opinion with respect to tester qua tester
6 standing is still there and has to be corrected --

7 QUESTION: What if Congress had funded a series of
8 state and local agencies to do testing, and rather expressly
9 provided that those testers were to be able to bring an
10 action under the section that you assail here? Would you
11 say that that violated Article 3?

12 MR. ALLEN: I would. I would say -- I would say
13 that -- it is difficult to say that Congress can't create an
14 agency and give that agency enforcement power. But to allow
15 that agency to -- and I think this is perhaps the way to
16 answer it -- to enforce the same rights that private
17 individuals could enforce -- for example, Section 813, I
18 believe, gives the Attorney General certain rights with
19 respect to practices and patterns, et cetera. That is
20 okay. But I think it would violate Article 3 for Congress
21 to set up an independent agency and to say, you know, go get
22 them on civil grounds. Yes.

23 I would like to reserve the rest of my time for
24 rebuttal.

25 CHIEF JUSTICE BURGER: Ms. Ruiz?

1 ORAL ARGUMENT OF VANESSA RUIZ, ESQ.,

2 ON BEHALF OF THE RESPONDENTS

3 MS. RUIZ: Mr. Chief Justice, and may it please
4 the Court, this case presents the issue whether a local fair
5 housing group and two individuals, one black and one white,
6 who have engaged in testing of the defendant's housing
7 practices have standing under the Fair Housing Act to obtain
8 relief from the defendant's racially discriminatory housing
9 practices when the local fair housing organization and the
10 individuals both reside in the community that they claim has
11 been affected by these racially discriminatory housing
12 practices, and have been the recipients of racially biased
13 housing information from this defendant.

14 QUESTION: Ms. Ruiz, could I ask you about your
15 definition of the word "community"? Would you think
16 community as you have just used it could be extended to mean
17 the whole northeast corridor of the United States, from
18 Boston to Richmond?

19 MS. RUIZ: No, sir. I don't think that a person
20 who lives in Boston could claim that his community, his day
21 to day life, his day to day activities, are affected in the
22 way that we claim that they have been affected in this case
23 by the activities, let's say, of a realtor in New York. No,
24 I would not extend it that far, and this case does not
25 extend that far. This case only deals with the Richmond

1 area.

2 The case is before this Court in a somewhat
3 unusual posture, and it presents a narrower issue. The case
4 is here on review from a grant of a motion to dismiss for
5 lack of standing. Therefore, the complaint must be presumed
6 true and construed in favor of the plaintiffs. The
7 complaint was filed on January 19th, '79. By February 16th,
8 the plaintiffs were out of court. They appealed to the
9 Fourth Circuit, which held in their favor. The defendants
10 then petitioned this Court for review.

11 While this whole appeals process was taking place,
12 however, the companion case of Paul Coles, a black man
13 denied housing by Havens, continued on to discovery and for
14 trial on the merits. After presentation of the evidence to
15 the District Court, the judge found, and I quote from the
16 findings of fact, that "Havens Realty established a policy
17 of discrimination against black people in the rental of its
18 apartments, and that this was a conscious and deliberate
19 policy on the part of Havens Realty."

20 Because of the procedural posture of this case
21 before this Court, review of the grant of the motion to
22 dismiss and the finding that the defendant has violated the
23 Fair Housing Act in Section 1982, we believe that this case
24 presents only the issue of whether these plaintiffs,
25 Respondents before the Court here today, should be allowed

1 to go back to the District Court, pick up where they left
2 off, and continue to prove their case, that they are
3 entitled to relief from these defendants.

4 QUESTION: Ms. Ruiz, isn't there a provision in
5 the federal rules that upon the filing of a motion to
6 dismiss, you can ask that ruling on it be deferred pending
7 taking of depositions or affidavits?

8 MS. RUIZ: Indeed, sir, we requested that. We
9 requested that the District Court on a motion for
10 reconsideration that the -- that any decision on the motion
11 to dismiss be deferred until the taking of an already
12 scheduled deposition. In fact, we also noted the fact that
13 this Court was considering and would shortly be deciding the
14 Bellwood case, which would probably be instructive to the
15 District Court. That motion was -- that request was denied.

16 QUESTION: What do you have to say about the
17 suggestion that this might be an appropriate case for
18 exercising discretion to dismiss as improvidently granted
19 because of the intervening events, that is, the consent
20 decree?

21 MS. RUIZ: Well, we think that the consent decree
22 does not render the case moot, so that the court has power,
23 has jurisdiction to hear the case if it so wishes. The
24 court might decide, however, that it does not wish to hear
25 this case at this time because precisely of the procedural

1 posture, the somewhat skimpy record that is available for
2 review, and we would not be at all adverse to a decision
3 that the writ was improvidently granted.

4 QUESTION: That would leave your win intact below.

5 MS. RUIZ: That's right.

6 (General laughter.)

7 QUESTION: And you would go into the District
8 Court and proceed.

9 MS. RUIZ: We would then go to the District Court
10 and proceed, sir.

11 The clear statutory language of the Fair Housing
12 Act, the broad remedial purposes of the Fair Housing Act,
13 the Congressional intent expressed in the statutory scheme
14 of the Fair Housing Act for strong private enforcement of
15 the Fair Housing Act, and this is a private action, private
16 plaintiffs against a private defendant, and this Court's
17 decisions in *Trafficante* and in *Bellwood* that standing under
18 the Act is to be as broad as permissible under Article 3,
19 require that these plaintiffs be granted standing to proceed
20 with their action.

21 QUESTION: Ms. Ruiz, do you concede that Willis
22 lacked standing?

23 MS. RUIZ: No. Justice O'Connor, we believe that
24 Mr. Willis has standing based on his claim that as a
25 resident of the community affected by the racial steering

1 practices, he has been affected and injured by these
2 practices. Because of the particular facts in this case,
3 where Mr. Willis was not given misinformation, racially
4 biased misinformation by Havens, we believe that he would
5 not have a claim under Section 804(d), but he would have
6 standing as a resident of the community affected by these
7 practices.

8 Ms. Coleman, however, was given such
9 misinformation, and the statute makes it unlawful to
10 misrepresent on the basis of race to any person, and that
11 would include Ms. Coleman.

12 QUESTION: Would her claim be time barred, however?

13 MS. RUIZ: Her claim? No, we don't believe it
14 would be time barred, because the violation which has been
15 alleged here and which in fact was found by the district
16 judge, is the policy, on an ongoing and continuing basis, a
17 policy of discrimination, a policy of racial steering. Now,
18 that policy extended back for a period of time, during the
19 time when Ms. Coleman contacted Havens up to the limitations
20 period, the 180-day period, which was Mr. Cole's incident,
21 and indeed, continued past that, to 1978 through 1980, as we
22 have been able to see now, pursuant to the claims filed
23 under the consent order was the claimants came forward and
24 were granted relief by the court pursuant to the
25 magistrate's recommendation that they had been discriminated

1 by Havens Realty during those times.

2 QUESTION: Could someone, do you think, come
3 forward now and say that they were a victim of a steering
4 practice in 1969 because it was a continuing violation and
5 Havens had always steered, even after the 1968 Act made it
6 unlawful?

7 MS. RUIZ: In 1969, the action would have been
8 unlawful. The claim, if they could prove that their claim
9 was based on the same policy and practice, and I think that
10 that would be a difficult claim to make, but assuming that
11 they could, I think their claim should be -- should be heard
12 by the court. In a situation such as that, of course, the
13 court has certain kinds of discretionary and prudential
14 authority, where it would be unfair to the defendant to
15 exclude certain claims, but that again is not this case.

16 In this case, we are talking about incidents that
17 occurred not a number of years back but a mere two, three
18 months before the Coles incident.

19 QUESTION: The reason I ask the question is, you
20 have used in your argument the term "continuing violation",
21 and the term "community", both of which recur in cases such
22 as these, and both of which are somewhat amorphous, I think.

23 MS. RUIZ: Well, they were put in this way, and
24 without specific reference to any particular community or
25 any particular defendant; they may seem amorphous, but isn't

1 that, after all, what the purpose of a factual inquiry, of a
2 trial on the merits, of a judicial determination is, to see
3 what is the scope of this violation, what is its nature, how
4 far has it extended?

5 Again, in this case, we have not had that
6 opportunity, sir.

7 I would like to address the --

8 QUESTION: May I ask you one other question --

9 MS. RUIZ: Yes, Justice Stevens.

10 QUESTION: -- on the limitations point, Ms. Ruiz?
11 Which section of Section 3604, which subsection do you
12 contend that the steering practice violates?

13 MS. RUIZ: The steering practice, where it
14 referred to Mr. Coles, would have violated Section 804(a).

15 QUESTION: Take the white tester. His claim.

16 MS. RUIZ: Well, his claim, had he in fact not
17 received accurate information --

18 QUESTION: Well, he did receive accurate
19 information.

20 MS. RUIZ: He did receive accurate information,
21 right, so we are not pressing his claim under 804(d).

22 QUESTION: No, I am asking --

23 MS. RUIZ: But had he received inaccurate
24 information it would have been Subsection (d) of 804.

25 QUESTION: No, but he didn't. I am asking you

1 what section would you contend he can invoke in order to be
2 covered in this case?

3 MS. RUIZ: Oh, I am sorry.

4 QUESTION: Say he was the only plaintiff in the
5 case.

6 MS. RUIZ: He could under -- actually under both
7 Sections 804(a) and (d). Mr. Willis's claim in that case
8 would be no different from the claims of the plaintiffs in
9 Bellwood. There what they claimed was that the rights of
10 third parties had been violated. Now, the rights of those
11 third parties might have been under Sections 804(a) or (d),
12 but that the injury was to the plaintiffs before the court.
13 That would be in essence Mr. Willis's claim, that he had
14 been injured, but that his injury resulted from the
15 violation of the right that a third person had under the
16 statute.

17 This, in essence, is this Court's holding in
18 Trafficante and in Bellwood.

19 QUESTION: His right to neutral racial living
20 conditions?

21 MS. RUIZ: That's right, his right --

22 QUESTION: In his community.

23 MS. RUIZ: His right to live in a community that
24 is normal, that is stable, that is not subject --

25 QUESTION: So that is his own right.

1 MS. RUIZ: That is his own right. That's right.

2 QUESTION: His own right that he is alleging.

3 MS. RUIZ: Well, no, that is his own injury.

4 QUESTION: Yes.

5 MS. RUIZ: He has an injury in that the community
6 has been manipulated from outside.

7 QUESTION: He has a right under the statute not to
8 have that happen.

9 MS. RUIZ: That's right, because the statute
10 says --

11 QUESTION: That is his claim, anyway.

12 MS. RUIZ: That is right. That is his claim.

13 I would like to address the argument by opposing
14 counsel that testers do not have standing qua testers. In
15 fact, we do not make that argument, and we do not posit that
16 that the standing of Willis and Coleman is based on their
17 status as testers. What we say is that the fact that they
18 engaged in testing does not undermine their standing, given
19 the fact they have a good claim on their own.

20 This Court's prior decisions concerning standing
21 have addressed usually two factors. One, whether the case
22 is justiciable, and two, whether there is adverseness
23 between the parties. In this case, the fact that the Fair
24 Housing Act has provided a broad remedy for any person is a
25 clear indicator that the case indeed is justiciable. The

1 Congress has said that the courts should be hearing this
2 type of case. This is, indeed, where these grievances are
3 to be brought.

4 The sole question then is whether there is
5 adverseness between the parties, is there a case or
6 controversy between these two parties? Is there injury in
7 fact?

8 QUESTION: If the statute had provided any person
9 seeking a place of residence in good faith, and then went on
10 as it does, then you wouldn't be here, I take it.

11 MS. RUIZ: That's right, sir. In fact, the
12 statute requires that under the first phrase of Section
13 804(a), but not as to any other. It does not require it as
14 to this. So the only requirement is that there be an injury
15 in fact to these plaintiffs that is fairly traceable, that
16 is plausibly connected.

17 QUESTION: May I ask one other question? Does
18 that injury have to occur within 180 days of the filing of
19 the complaint? Supposing the white tester moved to Boston
20 181 days before the lawsuit was filed. Would he still have
21 standing?

22 MS. RUIZ: The white tester had moved to Boston.

23 QUESTION: Moved to Boston. Yes. But he had
24 suffered all these injuries during the months previous to
25 his move. Would he have a claim?

1 MS. RUIZ: Well, he clearly would have had it
2 before. I am not sure that the move would totally mitigate
3 -- in fact, he may be --

4 QUESTION: Well, either his claim is barred or it
5 isn't. What I am asking you is, does the injury to the
6 plaintiff -- must the injury to the plaintiff occur within
7 the 180-day period?

8 MS. RUIZ: No, sir. What the statute says is that
9 the housing practice must have occurred within the 180 days.

10 QUESTION: So you would say if he moved to Boston
11 five years ago, but prior to the five years he had suffered
12 from the same practice that continued into the 180-day
13 period, he could still sue?

14 MS. RUIZ: I think that case would present other
15 problems.

16 QUESTION: What is the problem?

17 MS. RUIZ: Well, the problem might be that
18 actions, events subsequent to the happening --

19 QUESTION: It is a continuous practice. You prove
20 that they did it ever week for five years.

21 MS. RUIZ: Yes, but the question would remain
22 whether there is an injury to this plaintiff, and if he has
23 moved to --

24 QUESTION: Well, it did, but it occurred five
25 years ago. Can he recover? If he can't recover then, why

1 can he recover when it is only 181 days ago?

2 MS. RUIZ: Well, I would say that there is indeed
3 a difference between its being five years and only 181 days.

4 QUESTION: Well, the statute draws the line at 180
5 days.

6 MS. RUIZ: As far as when the housing practice,
7 the violation must have occurred --

8 QUESTION: Well, I am asking you, though, if there
9 is also any time limit on when the injury must occur.

10 MS. RUIZ: The statute does not provide any kind
11 of limitation on when the injury must have occurred. Now,
12 assume that going back you could -- you couldn't go back
13 further than 1968, which is when this policy was made to be
14 unlawful.

15 QUESTION: Well, of course you can't go back
16 further than 1968, but if you would go back 181 days, I
17 don't know why you can't go back five years.

18 MS. RUIZ: Well, again, you get into an area where
19 you look at other factors. How fresh is the evidence? I
20 mean, we are really talking now --

21 QUESTION: It is very fresh. We've got tape
22 recordings of everything.

23 MS. RUIZ: Well, if we have tape recordings, and
24 there is absolutely no question that the plaintiff can come
25 forward and prove his claim, if there is no unfairness to

1 this defendant because it is one and the same practice, and
2 there has been a policy, I would say yes, he can bring his
3 claim. It is not this case, but I would say that there is
4 no logical inconsistency with saying that claimant could
5 bring the claim.

6 QUESTION: Ms. Ruiz, the Solicitor General takes
7 the position that the continuing violation theory does not
8 apply to a party who merely asserts a right to receive
9 correct information, instead of the neighborhood resident
10 theory. What is your comment about the Solicitor General's
11 position?

12 MS. RUIZ: Well, I think that when we talk about a
13 continuing violation, we are focusing not on the plaintiff
14 and the right asserted, but on the violation and the conduct
15 of the defendant, and if the receipt of misinformation has
16 been pursuant to an ongoing, continuing practice that
17 violate the Act, we contend that even the person who brings
18 an action under 804(d) for receipt of misinformation is
19 entitled to have that claim survive on a subsequent incident
20 which is within the 180-day limitations period, because it
21 is part of one same continuing practice. It is the
22 defendant's conduct that we look to then, not the nature of
23 the claim.

24 This case, as far as the injury claimed, as far as
25 the pleadings filed, is really no different from the cases

1 of Trafficante and Bellwood and Village of Arlington
2 Heights. We think those cases are consistent with the Fair
3 Housing Act and the purpose of the Congress in enacting the
4 Fair Housing Act, and we urge this Court to affirm the Court
5 of Appeals.

6 CHIEF JUSTICE BURGER: Do you have anything
7 further, Mr. Allen?

8 ORAL ARGUMENT OF EVERETTE G. ALLEN, JR., ESQ.,
9 ON BEHALF OF THE PETITIONERS - REBUTTAL

10 MR. ALLEN: Yes, Your Honor.

11 To start with counsel's last point, it was that
12 this case is like Trafficante and Bellwood, and I have to
13 say that I think that's absurd. Trafficante allowed persons
14 injured by discrimination against others to assert the
15 rights, and we were talking about an apartment complex,
16 where the act of discrimination, the racial manipulation was
17 at that apartment complex. Bellwood changed it a bit,
18 because in Bellwood you had a village of 20,000 people, and
19 you had a fairly sizeable area within that village of 12 to
20 13 blocks, and notwithstanding that, the Court had some
21 difficulty and in fact refrained from allowing standing for
22 two plaintiffs that lived outside of that target area.

23 Now what we have done is, we have contracted the
24 target area down to two apartments, and we have expanded the
25 size of the area that the people can live in to a whole

1 metropolitan area. This is a quantum leap from Bellwood.

2 And if it goes that far, where does it stop next?

3 In reading the Bellwood oral arguments, one
4 question from the bench was, where does this end? And if we
5 lived in northern Illinois, and we don't like what is going
6 on in Bellwood, can we complain about it? And the answer
7 was, oh, no. Oh, no. We are going to be reasonable about
8 this, and we are only going to deal with an area that is
9 affected.

10 Another question asked from the bench in Bellwood
11 is, how many private attorney generals are we talking
12 about? Well, in Richmond, Virginia, if this complaint is
13 upheld, you are talking about 400,000. There is no question
14 about that.

15 The question was raised, well, should we dismiss
16 the writ as improvidently granted and opposing counsel says,
17 well, we just want to go back and amend. It has been
18 admitted that the Fourth Circuit's decision in tester qua
19 tester is wrong. That needs to be changed. That can't be
20 left standing by dismissing the writ as improvidently
21 granted.

22 The representational standing. The facts are not
23 in that case to support representational standing, and no
24 one can say that they are.

25 Thirdly, this decision by the Fourth Circuit is

1 such a far step from Bellwood that it shouldn't be allowed
2 to stand.

3 Mr. Justice Rehnquist raised, well, you know, why
4 didn't you move to -- why didn't you move to be given the
5 right to furnish information later? The point was, Mr.
6 Justice Rehnquist, they had this opportunity. When the
7 defendant moved to dismiss this case, they had an
8 opportunity then to supply whatever facts they wanted to
9 supply. They have had no difficulty supplying them in this
10 brief before this Court for the first time.

11 The important thing to note here is that these
12 Respondents wanted to stand on this complaint. They wanted
13 this District Court to accept the broad allegations in this
14 complaint and that is why they plead it. That is why they
15 had final judgment entered under Rule 54, and that is why
16 they have appealed.

17 This isn't a matter of inadvertently doing
18 anything wrong. This was a deliberate effort to have these
19 broad allegations accepted by the District Court.

20 QUESTION: If we found that Coleman -- Coleman was
21 the black lady?

22 MR. ALLEN: Yes, sir.

23 QUESTION: If we found that Coleman had standing,
24 would we need to reach the standing of anybody else?

25 MR. ALLEN: Your Honor, yes, you would, because

1 Coleman's claim under Section 804(d) is, as Justice O'Connor
2 pointed out, absolutely barred by the statute of
3 limitations. That receipt of false information is a claim
4 personal to the recipient. And I don't see how the statute
5 can be interpreted any other way than that she has got 180
6 days from the day she gets that wrong information to bring
7 that claim, and to allow that to slip in under a continuing
8 violation theory just doesn't make any sense. So you do
9 have to reach --

10 QUESTION: What was her claim, though?

11 MR. ALLEN: Her claim was --

12 QUESTION: What would be her remedy? Suppose it
13 was --

14 MR. ALLEN: Your Honor, that is my point.

15 QUESTION: What if it was timely?

16 MR. ALLEN: That is my point.

17 QUESTION: Well, you haven't made it yet, then.
18 What is your point? What would be her remedy if her claim
19 were timely?

20 MR. ALLEN: The point is, she hasn't been injured,
21 and she doesn't care about any relief. She received this
22 information solely to test. She got false information, but
23 the point is, what does she care? She is just doing her
24 job. That is not an entry under Article 3, and that is why
25 she doesn't have standing pursuant to Article 3. She hasn't

1 been injured.

2 CHIEF JUSTICE BURGER: Very well. Thank you,
3 counsel. The case is submitted.

4 (Whereupon, at 1:30 o'clock p.m., the case in the
5 above-entitled matter was submitted.)

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CERTIFICATION

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HAVENS REALTY CORPORATION, et al vs. SYLVIA COLEMAN, ET AL

NO. 80-988

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Sharon Agnes Connelley

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