

JBS:ew

June 30, 1969

BY MESSENGER

Honorable Richard B. Austin
United States District Judge
United States Court House
219 South Dearborn Street
Chicago, Illinois 60604

Dear Judge Austin:

Re: Gautreaux v. CHA
66 C 1459

Enclosed is a copy of a memorandum for the United States setting forth the position of the Government. It represents the joint views of both the Department of Justice and the Department of Housing and Urban Development. I do regret that it was not possible to supply this to you before today.

Respectfully,

THOMAS A. FORAN
United States Attorney

cc: Miss Kathryn M. Kula
General Counsel
Chicago Housing Authority

Mr. Alexander Polikoff
c/o Schiff, Hardin, Waite
Dorschel & Britton

aJP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DOROTHY GAUTREAUX, ODEL JONES,
DORETHA R. CRENCAS, EVA RODGERS,
JAMES RODGERS, ROBERT M. FAIRFAX
and JIMMIE JONES,

Plaintiffs,

v.

THE CHICAGO HOUSING AUTHORITY, a
corporation, and C. E. HUMPHREY,
Executive Director,

Defendants.

Civil Action
No. 66 C 1459

"availability" decided
on costs, and this
w/ HUD control.

MEMORANDUM FOR THE UNITED STATES

Introduction

In response to the request of the Court and in light of its interest and concern in this case, the Government, and particularly the Department of Housing and Urban Development (HUD), offered on May 16th to advise the Court of its views in regard to the proposed judgment orders in this case and the practical impact of the proposed orders on the model cities, urban renewal, leased housing programs in Chicago. In addition, we were requested by the Court to provide information as to how the various HUD programs

Leasing: 6-7, 14-15.

and activities could be utilized to further the objectives of the Court.

This memorandum is presented in response to the Court's request for our views.

The United States strongly supports the objectives of the Court in this case. We are concerned that the Court Order be realistic, so as to permit the provision for badly needed housing for poor families and that it be effective, in order to accomplish the objectives previously indicated by the Court.

We have considered the alternative Judgment Orders proposed by both parties (copies of which are attached), that transmitted to the Court by Mr. Polikoff by his letter dated June 2, 1969, and that presented to the Court by Miss Kula with her letter of June 4, 1969. Our comments are addressed to the provisions of Plaintiffs' proposed Order, for two reasons: First, Plaintiffs' Order is more comprehensive in scope and raises the full range of issues which the Court and the parties have considered, and in addition has received more extended consideration by the Court; second, we accept the Court's view that a generalized Order such as that proposed by CHA, substituting for specific criteria

a requirement for judicial review and approval of all project proposals, will not serve the Court's purpose of removing constraints which have heretofore inhibited both housing production and production of housing so located and administered as to serve the objectives of the Order. See, e.g., Louisiana v. United States, 380 U.S. 145, 154 (1965); Local 53, Asbestos Workers v. Vogler, 407 F. 2d 1047, 1052-53 (5th Cir., 1969). Accord: Green v. County School Board of New Kent County, 391 U.S. 430, 437-8 (1968); Brown v. Board of Education, 349 U.S. 295, 299, 301 (1955).

We accept the Court's intention to lay down specific requirements for dispersed and desegregated housing and base our comments on the provisions proposed by Plaintiffs. These comments deal first with factual material that we have been able to gather relating to the probable impact of the Order on provisions of new or rehabilitated public housing units; on leasing; on urban renewal; and on the model cities program. The second section of the material which follows sets forth certain comments and observations based upon the preceding information. The third

section which follows deals with affirmative actions that can be taken by HUD in furtherance of the objectives of the Court.

I. IMPACT OF PROPOSED ORDER

1. Impact on Provision of New or Rehabilitated Public Housing Units

From September 1958 through December 1967 CHA completed construction of 11,817 family dwelling units. However, of this number only 1,284 units were completed during the last 5 years of this period -- an average of 257 units per year. Since December 1967, only six units have been completed, but 1,259 are now in various stages of construction.

On the basis of an application filed by the CHA in January 1967, the HUD regional office is currently considering the reservation of 4,000 family units and 1,000 elderly units.

The proposed Order would hereafter require placement of at least three quarters of all family public housing units (and all of the next 1,330 units built) in a "General Public Housing Area."

Out of a total city area of about 200 square miles, a rough calculation indicates that an area of approximately 75 miles is available for the location of such units. The Order further requires the scattering of such units by means of limitations on the amount of

9

218

(w/1000)

100

public housing which may be placed in any given census tract and by project size limitations. Within this area there will, of course, be further limitations of site costs, availability and suitability.

125 The "Limited Public Housing Area" includes approximately 85 square miles classified non-white, to which have been added one mile buffer areas which aggregate approximately 40 square miles. Under the terms of the Order, no more than one quarter of the family public housing would be built in this area.

A measure of the change contemplated by the proposed Order may be gained from an analysis of the 8,050 units (or 10,903 units counting repeat requests) in "white" areas submitted to the city council by CHA over the past 15 years and disapproved by it. Sixty percent of those units were on sites along the boundary areas between the non-white and buffer zones. Twenty-five percent were in areas now classified non-white; and only 775 appear to have been proposed for the "General" areas as it is now delineated.

400-
220

While we would support the objective of constructing housing outside the City of Chicago, in light of the probable difficulty of obtaining the required cooperation of local governments, that appears unlikely to be a major factor in the immediate future.

2. Impact on Leasing Program (ch. pg 14-15)

The proposed Order also places the leasing program under a 3 to 1 requirement, requiring that 75 percent of units leased be in the "General" area.

There is a city-wide vacancy rate of less than 1 percent, and virtually no availability of three or more bedroom units. CHA reports that since 1965 it has leased only 180 family units, of which 44 are stated to be in white areas. Few, if any, are large units.

Currently, CHA has commenced using the leasing program for a number of purposes in the "Limited" area. It is being used to support nonprofit moderate-income housing projects where up to 20 percent of the units in such projects can be leased in order to assist sponsors in achieving financial feasibility, to reach poorer families, or to accommodate larger families. The T.W.O. - Maremont Project in Woodlawn is an example of such an undertaking.

support
them in
"General"
areas
have in fact
been limited
here for (man)
mayas 2010

(1) ignore Houghton
(2) ignore credit
(3) present
commitment
point
See 4/5
little
P. 4

The leasing program is also an element of certain rehabilitation programs, such as programs under the "Chicago Plan Agreement" and in the Department of Urban Renewal's rehabilitation programs on West Douglas Boulevard and Independence Avenue. Some leasing has already commenced and it is planned that several hundred units be leased under these three programs in the "Limited" areas.

Committee
point?

small #

3. Impact on Urban Renewal

The so-called "Proxmire Amendment" requires that 20 percent of the housing units provided in urban renewal projects subject to the Amendment shall be for low-income families or individuals. As stated in the Senate Report on the Housing and Urban Development Act of 1968 (Report Number 1123), this amendment "reflects the committee's concern that the present emphasis in urban renewal on the provision of housing for persons of low or moderate income be continued and reinforced, in view of the urgent need for housing at these levels." Low-rent public housing is a major source for the provision of such units. The location of the urban renewal projects is such that probably at least four-fifths of the necessary public housing would have to be built in the "Limited Public Housing Area."

2

The maximum number of dwelling units permitted on land to be disposed of in projects subject to the Proxmire Amendment is 59,002 units, assuming actual construction at maximum permitted densities. Should this total be reached,

11,800 low-rent units would be needed in the project areas involved in order to meet the statutory requirement.

not permitted

The statistics above must be considered in light of several other factors which reduce the impact of the order on this program. The projects involved are recent projects, in early stages of planning or development. Therefore, only a small fraction of the indicated housing will be needed in the years immediately ahead. In addition, the City proposes to rely on Section 236 of the National Housing Act for much of the low-income housing required by the statute. Projects developed under this FHA moderate-income housing program will be able to house families in the public housing income range if they are operated to utilize the maximum Federal subsidy available. Moreover, a substantial portion of the public housing programmed for these projects will undoubtedly be housing for the elderly, which is not affected by the Order.

Other federal programs available to satisfy requirement of the amendment
1.5; and supplement.

The urban renewal program is directed at slum and blighted areas, most of which in Chicago are in the "Limited" area, and Congressional mandates increasingly require provision of housing for low-and moderate-income families in such project areas. In addition, the national goals to which the program's priorities are directed by the Department make provision for housing of these income groups the primary factor for priority of approval of projects. The Order can be reconciled with urban renewal efforts, but its effects on the present renewal program must be carefully evaluated.

Urban renewal is important not only in terms of housing production but in terms of the objectives of desegregation. Urban renewal affords one of the few possibilities for making inner city neighborhoods sufficiently attractive to partially reverse the out-migration by bringing some white families back into the center city.

The neighborhood preference aspect of the proposed Order may have an adverse impact on relocation efforts connected with urban renewal and other public programs causing displacement of families and individuals. The latest workable

program submitted by the City of Chicago to HUD estimates displacement from January 1969 to December 1970 by urban renewal and other public programs as including 5,165 families, of whom 3,484 are non-white. In addition, we estimate urban renewal displacement over the life of projects now covered by contracts to involve 21,381 families and 14,435 individuals. Of these, 11,514 families and 8,556 individuals are non-white. A few thousand families and individuals have already been displaced; on the other hand, estimates do not include three large rehabilitation areas.

*cross town?
lots white?*

While neither set of figures is broken down by incomes, a sizable percentage of displacees are persons of low income. Public housing is the essential resource to provide relocation housing for such persons, and is counted on in planning and scheduling urban renewal undertakings. A 50 percent "neighborhood preference" in "white" areas where most of the dwelling units must be placed under the Order could reduce by half the number of units available for rehousing of displaced non-white families and individuals.

*only whites is
larger unit*

4. Impact on Model Cities

Three of the four model neighborhoods in the Chicago model cities program are in the "Limited Public Housing Area." Current proposals for these four areas contemplated provision of 4,400 units of public housing over a 5-year period, but under the City's program, 2,450 are for the elderly, and would not be affected by the Order. Of the 1,950 units slated for family occupancy, 1,450 are in the "Limited" area. Some or all of these units may duplicate units required to meet the statutory urban renewal requirement.

*no credit for
1969, little
for 1970 - most
in 1971-73*

Federal law does not require such units to be placed within model neighborhoods. Nevertheless, in view of the statutory objective of improving living conditions in such areas, an Order will certainly have substantial impact on rebuilding or restoration of the model neighborhoods.

In the three areas involved, 12,716 families out of 113,355 -- or slightly more than 11 percent -- earn less than \$3,000 per year. Many additional families are within the initial occupancy income limits for public housing in Chicago which range

*irrelevant
w/o neighborhood
preference*

from \$4,200 for a single person to \$10,000 for a family of twelve. Public housing is the only program in Chicago which has been able to reach families in the lower segment of this income range.

II. COMMENTS

We have carefully reviewed the provisions of the plaintiffs' proposed order, and have come to the conclusion that the basic structure and direction of that order are appropriate to accomplish the Court's objectives. In light of the absence of information concerning the availability of sites in the "General" area, we are not in a position to assure the Court that these provisions are the best ones, or that the order is workable as stated. After the order has been in effect, and the results of the site survey discussed below are available, it may be necessary to make changes in the order. Accordingly, we suggest that any order of the Court expressly recognize that the specific features (e.g., 75-25 percent requirement) are subject to revision based upon experience and further information.

(1)

unhealthy - 1.5% city limit
covered by retention of 25% -
Court has already
apparently said this

1. The 75 Percent-25 Percent Requirement

It is presently impossible to evaluate the workability of the basic 75 percent-25 percent requirement of the proposed Order. It will require the location of many sites in an area where site availability is still an unknown factor. To the extent that there may be difficulties in obtaining sites and getting production in the "General" area, the formula would impose another restriction on a program which is already failing to make available sufficient public housing to the families in non-white areas, or indeed to any of the poor families in Chicago. The necessity for dispersion and a balanced distribution of public housing in the City must somehow be reconciled with the need for accelerated response to the housing needs of persons in the "non-white" and buffer areas.

(IV) The 100 percent requirement for 1,330 units in the "General Public Housing Area" to balance 1,330 units now being provided will intensify the problems above. It would appear preferable and more logical to regard the latter as part of the past record on which the Court's opinion was based, and to confine the Order to one formula uniformly applicable to all future housing production.

opposed

see
with 7
5/9
PP 1-2

We recognize and accept the Court's belief that specific criteria are essential to an Order. Any ratio calling for provision of housing units in "white" areas equal to or greater in number than those in "non-white" areas would require a striking change in CHA's program. It is, therefore, particularly unfortunate that there is little or no information as to the prospective availability of usable sites in the "General Public Housing Area" as delineated in the proposed order. We regret that we are unable at this point to advise the Court whether the particular 3 to 1 ratio proposed by the plaintiffs, or any other ratio, is in fact appropriate.

2. The Leasing Program

Application of the proposed Order to leasing may present some special problems. The primary present utility of the leasing program in Chicago is in connection with new moderate-income housing projects and rehabilitation programs in non-white areas. If units for leasing are as scarce in other areas as we understand them to be, the proposed Order would make it virtually impossible to use the leasing program for this purpose. In order

see p. 4

not to deprive neighborhood and other nonprofit projects in the "Limited" area of the support which this program can furnish them, the effect of this provision of the Order must be carefully evaluated.

3. "Neighborhood Preferences"

There is basis for concern in regard to the proposal to give a preference to "neighborhood residents" for 50 percent of the dwelling units in a project. Such preferences can have the effect of denying admission to public housing to some non-whites who have been waiting for public housing for long periods. The proposal may be subject to misunderstanding and attack by non-whites denied admission, and it may be subject to abuse.

To the extent that the Court requires that projects be small, the location of such projects in white neighborhoods may well achieve the desegregated living pattern which is sought without regard to the precise composition of the residents of the projects. Though this is less true of larger projects, we question whether such preferences or quotas are sufficiently useful to overcome the disadvantages as well as the complications they would add to already cumbersome tenant assignment procedures.

only large ones

*ignore fact
trimming
waiting list
see letter
7-11-69
to J. J.
to J. J.*

*initially
segregated
see
memo 7
H. J.*

(V)

4. Other Comments

We agree that the Court's proposal to limit project size to occupy by 150-200 persons is preferable to a 24-dwelling unit limitation. This still does not permit judgments on size to be made in relation to neighborhood development, services and facilities, except to a very limited extent, but it ought to be possible to make provision for exceptions in cases where somewhat larger projects would not be disadvantageous in light of the location and facilities available.

It appears that some exceptions to the limitation to 15 percent of the family living units in a census tract will be necessary if statutory and other requirements are to be met, particularly in the urban renewal program. It should not be difficult to provide for such exceptions where needed.

In our view the following clarifying revisions might improve the proposed order:

(1) To more clearly state the objectives of the Court, we would suggest deleting the second paragraph in the proposed judgment order, and substituting therefor the paragraph contained in Attachment A to this memorandum.

Attachment A.
doesn't state
objective - our
#2 does.
/ See Rule
15(d)

(II)

III

(2. In Paragraph V)B, the relationship between persons presently on the "waiting list" and new registrants is not clear. Consistent with the first-come, first-served policy of the HUD Title VI Regulations, 24 C.F.R. 1.4(b)(2)(ii) we believe that those people who have been on the "waiting list" prior to this time should receive credit for that period of time in determining the order in which eligibles are to be offered new units in accordance with existing priorities. Similarly, persons who are already tenants should be allowed to transfer only in accord with their place on the new "waiting list."

can be made clear in TA plan

?

III. AFFIRMATIVE ACTIONS

HUD has considered possible means of utilizing its various programs in support of a CHA program under a Judgment Order. There are several supporting actions which we are prepared to take.

- (1) We can promptly make funds available for a survey to located (available) and suitable sites. We can also fund activities
- (2) to modernize existing public housing so as to make that housing

(3) located in the "Limited" area as desirable and as well serviced as possible. Another action this Department can take, as occasions may arise, is to encourage and approve utilization of other HUD programs for improvement of neighborhoods into which housing projects are introduced pursuant to a Court Order.

(4) In one specific respect, HUD is ready and willing to assist the Court directly. We will be happy to participate in any arrangement whereby CHA proposals are screened or reviewed by HUD in order that we may furnish technical advice as to their conformity to the dictates of the Court. We believe that some such procedure could substantially relieve the Court of a technical burden which it would otherwise be forced to assume.

In conclusion, we assure the Court that we fully support the objectives of overcoming segregated and over-concentrated patterns of low-rent public housing in Chicago. We

hope that they can be achieved together with the production of a substantial volume of sorely needed housing. We will do all that we can to contribute to the achievement of these objectives.

Sherman Unger

SHERMAN UNGER,
General Counsel,
Department of Housing
and Urban Development
Washington, D. C., 20410

Respectfully submitted,

JERRIS LEONARD,
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Washington, D. C. 20530

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ATTACHMENT A

The Court having determined that the defendants, Chicago Housing Authority and its Executive Director have violated their obligations under the Fourteenth Amendment of the Constitution of the United States by following racially discriminatory tenant assignment practices and racially discriminatory site selection procedures and practices, with the purpose and effect of maintaining patterns of residential segregation in Chicago; and the Court having conferred on several occasions with counsel for the parties and having received their written and oral statements as to the provisions of this judgment order.

United States Department of Justice



UNITED STATES ATTORNEY

NORTHERN DISTRICT OF ILLINOIS
UNITED STATES COURTHOUSE
CHICAGO, ILLINOIS 60604

JBS:ew

June 30, 1969

BY MESSENGER

Miss Kathryn M. Kula
General Counsel
Chicago Housing Authority
55 West Cermak Road
Chicago, Illinois 60616

✓ Mr. Alexander Polikoff
c/o Schiff, Hardin, Waite
Dorschel & Britton
231 South LaSalle Street
Chicago, Illinois 60604

Dear Miss Kula and Mr. Polikoff:

Re: Gautreaux v. CHA, No. 66 C 1459

Enclosed to each of you is a copy of a Statement to be presented by the Government to Judge Austin in the above-noted case. We had hoped to supply you with this Statement before today so that you would each have an opportunity to present your comments before the document is delivered to Court. However, that did not prove to be possible. We will hold off delivering the Statement to Judge Austin until 4:30 this afternoon.

In advance of that time, should you find what you believe to be some factual inaccuracy in the Statement, I invite each of you to telephone my First Assistant, Jack B. Schmetterer (telephone: 353-5315) or to meet with him to point that out. He is prepared to represent any such views you may express to him by telephone to appropriate authorities in Washington in the event that last minute changes appear to be appropriate.

Yours very truly,

THOMAS A. FORAN
United States Attorney

Enclosure

I - p. 12 (revision)
II - p. 16 (4.2)
III - p. 17 (waiting list)
IV - p. 13 (14.8 units)
V - p. 15 (neighborhood preference)

Mr. Polikoff

STATEMENT WITH RESPECT TO THE PROPOSED JUDGEMENT ORDER, AS SUBMITTED ON MAY 9, 1969 BY SCHIFF HARDIN WAITE DORSCHIELL & BRITTON IN GAUTREAUX v. CHICAGO HOUSING AUTHORITY

Our best recollection is that this document reflects preliminary Dept. of Justice reactions to and comments upon the May 9 submission. We do not recall, and nothing in the Court file indicates, whether this document was formally delivered to any of the parties or to the judge.

*-ELL, [redacted]
11/11/83*

General Comment

The Department is undertaking an analysis to assess the impact of the Plaintiff's proposed Order on the model cities and urban renewal programs in Chicago.

Model cities programs normally provide for the development of public housing in the model neighborhood, which is frequently in a black area; and in residential renewal areas there is a statutory requirement that 20% of the residences be provided for families of low income, a requirement which is likely to be met by the development of public housing.

The Department is also undertaking an analysis of the leased housing program in Chicago to determine the impact on that program of the provisions of the Order which pertain to it.

Comments on Specific Paragraphs of the Order

✓ Paragraph III.C.

- It is suggested that construction starts be used as the measure, rather than units made available for occupancy. To delay the commencement of construction, if necessary to achieve compliance with this provision, would not create as serious a financial and social problem as would delaying moving a family into a dwelling unit which was in fact completed and available for occupancy.

-- It is suggested that the check on compliance with this provision be annual or semi-annual, rather than quarterly, in order to minimize the braking of actions which will clearly be compensated for in the near future but not before the expiration of a period as short as three months.

Paragraph III.E.

-- Since the Chicago Housing Authority lacks extraterritorial jurisdiction except as such jurisdiction may result from agreements entered into with outlying local housing authorities or local governing bodies, the language of this provision should be clarified to make it clear that it does not pertain exclusively to construction by CHA but also contemplates agreements, if they can be reached, under which outlying housing authorities will admit Chicago residents.

Paragraph IV.A.

-- The 24-unit limitation is not only very restrictive, but may not itself accomplish its intended objective. It is suggested that this limitation be expressed in terms which take that objective explicitly into account, possibly by limiting the population density of a project, and particularly the number of children, to a number which will not impose an unreasonable burden on neighborhood facilities, including schools.

Paragraph IV.C.

- It is suggested that dwelling units for families without children be excluded from this provision.

Paragraph V.B.

- In respect to the redetermination of eligibility of persons now on the waiting list, it is assumed that a detailed investigation of income and other eligibility criteria would not be required by the order at this stage and that this feature of the order would be satisfied by a pro forma inquiry of the applicant.
- In respect to the transfer of present tenants to dwelling units in the White Area, the order is not clear as to how such present tenants would compete with new applicants for dwelling units that became available.. Would they be given a preference? Would new applicants, whose need might be expected to be greater, be given preference? Would consideration be given to present tenants who are interested solely in moving from an older unit into a new one? It is suggested that the Chicago Housing Authority submit to the court its present or proposed policy relating to the transfer of present tenants, and that a determination be made as to whether or not this policy will accomplish the objective of this provision; if it will, the provision could be removed.

Paragraph V.C.

-- This provision should be clarified as to its continuing applicability, if any, as well as its applicability to initial occupancy, and as to the intended meaning of the word "neighborhood."

Paragraph V.D.

-- This provision should be clarified. We believe that we understand its objective. The permissive feature of the exception clause at the end of the provision ("may contain") does not ensure that the projects in question will not again become racially segregated. Possibly, after the achievement of racial desegregation, a neighborhood preference policy, as set forth in Paragraph V.C. (as clarified), should be prescribed.

Paragraph VI

-- In respect to required submissions to the court, and to the counsel for the plaintiffs, it is believed that the requirements are stated too broadly and should be the subject of further discussions.