

A2P.

9/23

IN THE
United States Court of Appeals
FOR THE SEVENTH CIRCUIT

No. 18681

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

v.

THE CHICAGO HOUSING AUTHORITY, et al.,

Defendants-Appellants.

**On Appeal from the Judgment of the United States
District Court for the Northern District of Illinois**

BRIEF FOR THE APPELLANT

PATRICK W. O'BRIEN

WATSON B. TUCKER

Attorneys for Defendants-Appellants

Of Counsel:

KATHRYN M. KULA

General Counsel

The Chicago Housing Authority

MAYER, BROWN & PLATT

231 South LaSalle Street

Chicago, Illinois 60604

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE ISSUE PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	10
SUMMARY OF ARGUMENT	10
I. The Order Of July 20, 1970, Is An Appealable Order	11
A. The Order Of July 20 Is Appealable Because It Is A Final Decision	11
B. The Order Of July 20 Is Appealable Because It Is An Interlocutory Order Granting Or Modifying An Injunction	14
II. The July 20, 1970 Order Was A Summary Adjudication Entered Without Proper Notice Or Hearing And It Should Be Vacated And Set Aside	15
A. The <u>Controversial</u> Order of July 20, 1970, Was <u>Entered Without Notice</u> To CHA ...	15
B. There Was <u>No Hearing</u> Prior To The Order of July 20, 1970	18
C. The Order Of July 20, 1970, Must Be Vacated	19
III. The Order of July 1970 Constituted An Abuse Of Discretion	22
CONCLUSION	31

TABLE OF CITATIONS

	PAGE
CASES:	
<i>Alabama Public Service Commission v. Southern Railroad Co.</i> , 341 U.S. 341 (1951)	25
<i>Bivins v. Board of Education</i> , 284 F. Supp. 888 (M.D. Ga. 1967)	22
<i>Board of Public Instruction of Duval County, Fla. v. Braxton</i> , 326 F.2d 616 (5th Cir. 1964)	15
<i>Brown Shoe Co., Inc. v. United States</i> , 370 U.S. 294 (1962)	12, 13
<i>Burford v. Sun Oil Co.</i> , 319 U.S. 315 (1943)	25
<i>Bush v. Martin</i> , 224 F. Supp. 499 (S.D. Tex. 1963) ..	27
<i>Capital City Gas Co. v. Phillips Petroleum Co.</i> , 373 F.2d 128 (2d Cir. 1967)	21
<i>Carter v. Jury Commission</i> , 396 U.S. 320 (1970)	31
<i>Cohen v. Beneficial Loan Corp.</i> , 337 U.S. 541 (1949) ..	11
<i>DiBella v. United States</i> 369 U.S. 121 (1962)	12
<i>Gautreaux v. Chicago Housing Authority</i> , 265 F. Supp. 582 (N.D. Ill. 1967)	2
<i>Gautreaux v. Chicago Housing Authority</i> , 296 F. Supp. 907 (N.D. Ill. 1969)	2, 26
<i>Gautreaux v. Romney</i> , No. 66 C 1460 (N.D. Ill. Sept. 1, 1970)	29
<i>Gillespie v. U.S. Steel Corp.</i> , 379 U.S. 148 (1964) ...	12
<i>Greene v. McElroy</i> , 360 U.S. 474 (1959)	19
<i>Holmes v. New York City Housing Authority</i> , 398 F.2d 262 (2d Cir. 1968)	28
<i>McDonnell v. Birrell</i> , 321 F.2d 946 (2d Cir. 1963) ...	13
<i>McNeese v. Board of Education</i> , 373 U.S. 668 (1963) ..	26

	PAGE
<i>Natta v. Zletz</i> , 379 F.2d 615 (7th Cir. 1967)	13
<i>Progress Development Corp. v. Mitchell</i> , 286 F.2d 222 (7th Cir. 1961)	19
<i>Railroad Commission of Texas v. Pullman Co.</i> , 312 U.S. 496 (1941)	24
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	26
<i>Sims v. Greene</i> , 161 F.2d 87 (3d Cir. 1947)	19
<i>System Federation No. 91 v. Wright</i> , 364 U.S. 642 (1961)	22
<i>United States v. Kovich</i> , 201 F.2d 470 (7th Cir. 1953) ..	14
<i>United States v. McWhirter</i> , 376 F.2d 102 (5th Cir. 1967)	12
<i>In re Wingreen Company</i> , 412 F.2d 1048 (5th Cir. 1969)	15
STATUTES AND AUTHORITIES:	
28 USC § 1291 (1965)	11
28 USC § 1292 (1965)	14
28 USC § 1292(a)(1)	14
<i>Wigmore, Evidence</i> § 1367 (3d ed. 1940)	19
<i>McQuillan, Municipal Corporations</i> § 10.34 (1966) ..	23

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

No. 18681

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

v.

THE CHICAGO HOUSING AUTHORITY, et al.,

Defendants-Appellants.

On Appeal from the Judgment of the United States
District Court for the Northern District of Illinois

BRIEF FOR THE APPELLANT

STATEMENT OF THE ISSUE PRESENTED

Whether the district court erred in ordering, without notice or hearing, The Chicago Housing Authority (CHA) to present proposed public housing sites to the Chicago Plan Commission and to the City Council of Chicago on specific dates, thereby modifying the "best efforts" provision of a Judgment Order entered one year previously.

STATEMENT OF THE CASE

This action was commenced in 1966. The plaintiffs, all Negroes and either tenants in or applicants for public housing, challenged on behalf of themselves and the members of their class the constitutional validity of the site selection policy of CHA. The other defendant is the Executive Director of the Chicago Housing Authority. Of the four counts in the complaint, two were dismissed on motion of the defendants (see *Gautreaux v. Chicago Housing Authority*, 265 F. Supp. 582, 584 (1967)). Later, plaintiffs' motion for summary judgment on Count I was granted, and a similar motion on Count II denied (See *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (1969)). The memorandum opinion in which plaintiffs obtained summary judgment as to Count I of the complaint was followed by a Judgment Order dated July 1, 1969. There was no appeal by defendants from that Judgment Order.

The District Judge in his Memorandum Opinion on the Summary Judgment said:

"In choosing sites for public housing, the CHA is directed by statute to follow these criteria:

"[E]limination of unsafe and unsanitary dwellings, the clearing and redevelopment of blighted and slum areas, the assembly of improved and unimproved land for development or redevelopment purposes, the conservation and rehabilitation of existing housing, and the provision of decent, safe, and sanitary housing accommodations [sic]. . . .

"The City Council must approve all sites before they are acquired. . . . However, CHA is not compelled to acquire or build upon all sites thus approved. . . .

"Plaintiffs charge that the procedure mainly used by defendants to maintain existing patterns of racial resi-

dential separation involved a pre-clearance arrangement under which CHA informally submitted sites for family housing to the City Council Alderman in whose ward the site was located. CHA admits the existence of this procedure. . . . The Alderman to whom White sites were submitted allegedly vetoed these sites because the 90% Negro waiting list and occupancy rate would create a Negro population in the White Area. Plaintiffs allege that the few White sites which escaped an Alderman's informal veto were rejected on racial grounds by the City Council when they were formally submitted by CHA for approval.

* * *

"*Defendants urge that CHA officials never entertained racist attitudes and that 'the racial character of the neighborhood has never been a factor in CHA's selection of a suitable site.' . . . In view of CHA's persistent selection of White sites at the initial stage before the pre-clearance procedure and the candor of its officials on deposition, these statements are undoubtedly true.* It is also undenied that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and urban renewal. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued. . . . It is also true that there is no evidence that the Aldermen who vetoed White sites were necessarily motivated by racial animus when they followed a policy of keeping Negroes out of White neighborhoods. Most Aldermen apparently talked to their constituents and received unfavorable reactions before exercising their informal vetoes. . . . But even if the Aldermen's informal surveys were correct in their uniform assessment of public opinion, they cannot acquiesce in the sentiment of their constituents to keep their neighborhoods White and to deny admission to Negroes via the placement of public housing. . . ." 296 F. Supp. at 909-14 (Emphasis added).

This appeal involves so much of the July 1, 1969 Judgment Order which provided that CHA must:

"... administer its public housing system in every respect ... to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures. ...

* * *

"... [and] use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order ... shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development..." (A-6).*

The district court expressly retained jurisdiction for the "issuance, upon proper notice and motion, of orders modifying or supplementing" its Judgment Order (A-7).

The order under review is that of July 20, 1970, providing as follows:

"It having been represented to the Court by the defendant Chicago Housing Authority ("CHA") that CHA presently has a 'reservation' from the United States Department of Housing and Urban Development ("HUD") for the provision of 1,500 Dwelling Units (as defined in this Court's judgment order of July 1, 1969); that approximately 260 sites in the General Public Housing Area (as defined in said order of July 1, 1969) have been identified by CHA as appropriate for the construction of an estimated 1,580 Dwelling Units; that said sites have been submitted by CHA to HUD and that the same have been approved by HUD; and that the next steps to be taken by CHA to the end that

* The letter "A" in appellants' brief shall refer to Appellants' Appendix; and the numbers following such letter shall refer to pages in Appellants' Appendix.

Dwelling Units may be provided as rapidly as possible in conformity with said order of July 1, 1969, are the referral by CHA of proposed sites to the Chicago Plan Commission pursuant to Chapter 24, § 11-12-4.1, Ill. Rev. Stats. 1969, and advice of the same to the Chicago City Council pursuant to Chapter 67½, § 9, Ill. Rev. Stats. 1969; and

"It appearing to the Court that it is desirable that CHA use its best efforts to increase the supply of Dwelling Units as rapidly as possible as provided in said judgment order;

"It is hereby ordered, pursuant to Subsection A of Article VIII of the Judgment Order entered herein on July 1, 1969, as modified:

* * *

"II. On or prior to August 20, 1970, CHA shall refer to the Chicago Plan Commission pursuant to ch. 24, § 11-12-4.1, Ill. Rev. Stat. 1969, and on or prior to September 20, 1970 CHA shall advise the Chicago City Council pursuant to ch. 67½, § 9, Ill. Rev. Stat. 1969 of, sites appropriate for the construction, in conformity with the provisions of said Judgment Order of July 1, 1969, of not fewer than 1,500 Dwelling Units" (A-7, 8, 9).

The order of July 20, 1970 was entered without notice and without a hearing. There is nothing in the record of the district court prior to the filing of defendants' motion to vacate that order which indicates what was going on. It is agreed that there were five informal conferences,* but the fact of these conferences was never reflected in any orders of the court. There are no docket entries pertaining to them. The only record of what was happening prior to the filing of the motion to vacate and the plaintiffs' response thereto

* June 2, June 16, June 26, July 13, and July 20, 1970 (A-18).

is a statement of the Trial Judge on the afternoon of July 13, 1970, when in connection with a hearing on another issue, he stated:

*
 "... we had a pretrial conference on this morning, and prior pretrials prior to this time, that, as you know, the order provides that a third of the housing in the general [White] area may be placed outside the City of Chicago. The CHA had indicated on prior occasions that they would, since they had no sites at this time available outside the City of Chicago but have been trying to get some, that it might be wise not to submit any sites to anybody until the whole ball of wax was wrapped up, suburban sites and City of Chicago sites."

* * *

✓ "... I have indicated how I am going to resolve it" (Transcript, July 13, pp. 31-32).

a.p., de usin
 There is no dispute between the parties that it was on July 13, 1970, that the Trial Judge first announced his intention to impose deadlines and refused the request of CHA to introduce testimony on the issue of the timing of its presentation to the City Council of Chicago (A-20, 21).

It was only upon the filing of the motion to vacate the July 20, 1970, order that the parties placed in the record various reports and letters submitted informally to the Judge during the course of the "pretrial conferences" prior to and including July 13, 1970.

Prior to July 13, CHA reported the chronology of its site selection procedures for family units in the General Public Housing [White] area. It reported that its staff had examined maps of Chicago to locate vacant land, that approximately 1,500 scattered pieces of property first had been examined and then analyzed with respect to zoning problems, calculations had been made with respect to the number of units possible per location, and estimates prepared

*a.p., they complain
 he didn't decide
 earlier?*

of land costs. CHA made its submittals to the United States Department of Housing and Urban Development (HUD) starting in December, 1969. By May 1, 1970, CHA had received approval from HUD for 263 sites involving approximately 1,580 units. CHA reported that commencing as early as April and May, 1969 through May of 1970 it had held meetings with representatives of Winnetka, Evanston, Northeastern Illinois Planning Commission, Cook County Housing Authority, LaGrange, Hinsdale, Burr Ridge, Western Springs, Pleasant Dale, Northern Illinois Planning Commission and the Illinois Housing Development Authority in connection with locating suitable general housing area sites outside of the City of Chicago (A-28, A-37).

*
 At the "pretrial conference" of June 26, 1970, one of plaintiffs' attorneys made a statement "as to the impracticability... of further deferral of advice to the City Council of sites appropriate for Dwelling Units" (A-20). The CHA, in addition to reporting what it had done since July, 1969, suggested various reasons why the suggestion of plaintiffs' counsel was impractical and tended to defeat the objectives of the July 1969 Judgment Order. } *argument*

Thus, a June 25, 1970 resolution of CHA stated that:

a
 "... the Commissioners of the Chicago Housing Authority having considered the many and complex sociological and economic factors involved in the siting of low-rent public housing have concluded as a matter of policy that the interests of the community and the public housing program will best be served by developing sites simultaneously in the city and suburban areas; that the difficulties involved in housing the underprivileged are the problems of the Metropolitan Area and must be solved on a metropolitan area basis. ... *a*

* * *

"... it is hereby declared to be the policy of this Board that the current federal allocation of low-rent

family public housing units be utilized for the simultaneous location of such units in suburban communities of the Chicago metropolitan areas as well as in the City proper, all in accordance with the limitations provided in Judge Austin's order of July 1, 1969;

"... the Commissioners do hereby authorize the expenditure of preliminary planning funds to continue the search for suburban sites and staff is instructed to proceed not only with negotiations with other housing authorities but with the identification of specific sites in the metropolitan area beyond Chicago's City limits." (A-41, 42, 43).

This metropolitan approach of the CHA is in accord with the July 1969 Judgment Order which, as plaintiffs have pointed out to this Court, "[i]n recognition of the metropolitan nature of the housing problem" included a provision "under which CHA would get a credit (amounting to not more than one-third of the required General Public Housing Area units) for public housing units built in white-occupied areas of Cook County outside of the City of Chicago" (Motion To Reconsider and Vacate Granting of Stay, p. 6).

The Chairman of defendant CHA, Charles R. Swibel, in a paper dated June 26, 1970, informed the court that the CHA was funding "an immediate search for feasible locations in surrounding communities" and that as soon as sufficient sites outside the city had been located, both Chicago and suburban sites would be submitted to the respective governing bodies for their approval. He also volunteered to submit to the district court reports of progress in negotiations with suburban city and housing authorities on "any time-basis deemed desirable," and stated that the objective of the order of July 1, 1969 was "one with which the Chicago Housing Authority is in complete accord." (A-38, 39, 40, 41).

The CHA offered as a prospective witness Dr. Andrew M. Greeley who, according to a statement from him attached to the Motion to Vacate, would, if permitted to testify, state his opinion as follows: "I heartily endorse and am in complete agreement with the policy and program conceived by the CHA Board of Commissioners that the most effective way to carry out the federal order requiring it to build integrated housing is to develop sites simultaneously in the city and the suburbs" (A-14). In the same document (A-12, 13), Dr. Greeley expressed his "conviction that the choice is not between metropolitan public housing or public housing in Chicago only, but rather one between metropolitan public housing or no public housing." Dr. Greeley was not permitted to testify, and his proffered testimony was later described by the Trial Judge as having the value of the "twenty-third character witness in a criminal trial" (Transcript, August 13, p. 4).

The opinion of Dr. Greeley as to the dangers if the public housing issue is not treated as a metropolitan problem was shared by the Chairman of the CHA. His June 26 memorandum to the court also stated that to proceed now only in Chicago, as the court ordered on July 20, threatened:

- "(1) complete stoppage of the urgently-needed public housing program;
- "(2) racial tension in the city to the point of strife;
- "(3) acceleration of an already alarming flight to the suburbs by middle-class white families;
- "(4) vigorous protests from the Black community for failure to make housing available to them outside the city." (A-38).

A letter to Judge Austin from one of the CHA Commissioners, Professor Wade of the University of Chicago His-

tory Department, supplemented the position of the CHA, as reflected in its resolution and in the statement of its Chairman. He said it was his "judgment that submission of the sites at the present time would make public housing the central issue of upcoming campaigns and it was my fear that the ultimate result would be that less housing would be built." He stated that his position was not dictated by any reservations about the July 1, 1969 Judgment Order or the ultimate submission of sites to the City Council (A-43, 44).

Although it is agreed that on June 26, 1970, counsel for plaintiffs had suggested the impracticality of deferring any longer the submission of sites to the City Council (A-20), at the July 13, 1970 conference, plaintiffs suggested a form of order that said nothing about a deadline for submission to the Plan Commission and City Council of Chicago. It was at this session that the Trial Judge announced his intention to impose deadlines. The discussions thereafter were as to the form of the order which was entered on July 20 over the objection of defendants. On August 11, 1970, defendants filed their motion to vacate the order of July 20. That motion was denied on August 13 and Notice of Appeal was filed on August 14.

SUMMARY OF ARGUMENT

The order appealed from is appealable either because it is a "final" order or because it is an interlocutory order granting or modifying an injunction.

The original judgment order in this case required CHA to use its "best efforts" to carry out the terms of that order; the original judgment order provided, further, that it could be modified on notice and motion. Following a series of informal, in-chambers conferences, the express purpose of which was to provide information to plaintiffs

and to the court, the court entered an order requiring CHA to do certain specific acts within certain specific times. This new order was not entered upon notice, motion or after a hearing. It, therefore, was improper and should be reversed because it modified the original judgment order without notice or hearing.

Moreover, the district court's order of July 20, 1970, constituted an abuse of discretion. Contrary to long and well established precedent, the lower court substituted its discretion for that of the CHA in a matter committed by law and the Judgment Order of July 1969 to the discretion of the CHA.

I. THE ORDER OF JULY 20, 1970, IS AN APPEALABLE ORDER.

A. The Order Of July 20 Is Appealable Because It Is A Final Decision.

This court has jurisdiction of appeals from all "final decisions" of the court below (28 USC § 1291). The relevant decisions leave no doubt that the order of July 20, 1970 was such a "final decision" and hence appealable.

The applicable statute, as the Supreme Court said in *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 546 (1949), has long been given a "practical rather than a technical construction"; for example:

"The effect of the statute is to disallow appeal from any decision which is tentative, informal or incomplete [T]he upper court [has] a power of review, not one of intervention. So long as the matter remains open, unfinished or inconclusive, there may be no intervention by appeal"

The order of July 20 was neither tentative, informal or incomplete—it was positive, formal and complete. By that

order, the subject matter of the proceeding below was not left open, unfinished or inconclusive—it was closed, finished and concluded. There was a summary adjudication resulting in a formal order which unequivocally directed CHA to take certain action. The only matter left open insofar as trial court was concerned was a contempt proceeding for failing to act as ordered. The order was, accordingly, a “final decision” under § 1291.

The Supreme Court in *Cohen* also said (p. 546) that if decisions “are but steps towards final judgment,” they are not “final decisions” under the statute. The order of July 20, 1970 obviously was not such a step: the final judgment in this case was dated July 1, 1969.

The relevant portion of the Supreme Court’s conclusion in *Cohen* also is applicable here. The order of July 20, 1970 is appealable because it falls in that small class of orders which finally determine issues—

“... separable from, and collateral to, rights asserted in the action, too important to be denied review and ... independent of the cause itself ...” 337 US at p. 546.

See also *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148, 152 (1964); *Brown Shoe Co., Inc. v. United States*, 370 U.S. 294, 306 (1962); *DiBella v. United States*, 369 U.S. 121, 125-6 (1962).

In the recent case of *United States v. McWhirter*, 376 F.2d 102 (5th Cir. 1967), the government appealed from an order denying the motion of the United States to compel debtors of the Small Business Administration to disclose information pertaining to their financial assets. The summary of the applicable principles by the Fifth Circuit is relevant, accurate, and, on the facts before this Court, seemingly dispositive of the “appealability issue”:

“... Recent decisions of the Supreme Court have expanded the scope of final judgments beyond the limited class encompassed by the traditional rule, and have stressed that the definition of a final judgment is a pragmatic one. ... Thus, the Court has held final and appealable ancillary orders which determine substantial rights of the parties which, if not promptly reviewed, will subject the party to irreparable harm. ... In such a situation, review postponed amounts to review denied. *Cohen v. Beneficial Indus. Loan Corp.*, supra ...” 376 F.2d at 105.

Similarly, this Court, in *Natta v. Zletz*, 379 F.2d 615, 618 (7th Cir. 1967), held that an order entered in a district court discovery proceeding ancillary to a Patent Office case was appealable as a final order under 28 USC § 1291 because otherwise it would not be reviewable.

The Supreme Court has said that a “pragmatic approach to the question of finality has been considered essential to the achievement of the ‘just, speedy, and inexpensive determination of every action’: the touchstones of federal procedure.” *Brown Shoe Co., Inc. v. United States*, 370 U.S. 294, 306 (1962). The pragmatic approach was applied in *McDonnell v. Birrell*, 321 F.2d 946, 947 (2d Cir. 1963). The question was whether an order in supplementary proceedings directing a Mr. Simon “to make monthly installment payments of \$500” to satisfy an earlier judgment was appealable. The Court made short work of this question when it said: “To require that this matter progress to the point where the District Court has held Simon in contempt seems pointless. We therefore see no good reason why we should not review Judge Palmieri’s order at the present time.” It would have been just as pointless for CHA to have let matters below progress to the point where it had been held in contempt.

For the above reasons we submit that the order of July 20 is appealable as a "final decision" under 28 USC § 1291. However, if not deemed appealable as such, we will now show that it is appealable as an interlocutory order pursuant to 28 USC § 1292.

B. The Order Of July 20 Is Appealable Because It Is An Interlocutory Order Granting Or Modifying An Injunction.

This court has jurisdiction of appeals from "interlocutory orders . . . granting [or] modifying . . . injunctions" of the court below (28 USC 1292(a)(1)). The order of July 20, 1970 clearly was such an order. Albeit summarily, it unmistakably modified the "best efforts" provision of the July 1, 1969 Judgment Order by a precise direction that certain acts be performed on a certain date. With equal force it could be described as the granting of an injunction. In either event, it is an order appealable under § 1292 (a)(1).

Decisions of this Court leave no doubt that such unequivocal commands as the order of July 20 are appealable under § 1292. Thus, in *United States v. Kovich*, 201 F.2d 470, 472 (7th Cir. 1953), Judge Lindley said:

"The order of June 5 was, we think, in its very essence, a mandatory injunction by virtue of which the court commanded the defendant to surrender certain property within five days. In its essence, this was a mandatory injunction and whether it is appealable, depends upon the rules controlling appeals from orders granting injunctions. . . . It is, in its essence, an interlocutory order of final effect upon defendant. . . . In the words of this court, in *Red Star Laboratories Co. v. Pabst*, 100 F.2d 1 at page 4, the order 'was a command unequivocal in its terms, and there is no escape from the conclusion that it was a mandatory injunc-

tion.' In that case we held such an order appealable under Section 227, Title 28 USC, the predecessor of the present provision Section 1292, Title 28 USC (1951 App.). The latter section provides that appeals from orders of the district courts 'granting, continuing, modifying, refusing or dissolving injunctions' may be taken to the court of appeals."

See also *In re Wingreen Company*, 412 F.2d 1048, 1051 (5th Cir. 1969); *Board of Public Instruction of Duval County, Fla. v. Braxton*, 326 F.2d 616, 619 (5th Cir. 1964), *cert. denied*, 377 U.S. 924 (1964).

The order below is appealable under § 1292(a)(1) because it falls squarely within the plain language of the statute as long interpreted in a common sense manner by this and other courts.

II. THE JULY 20, 1970 ORDER WAS A SUMMARY ADJUDICATION ENTERED WITHOUT PROPER NOTICE OR HEARING AND IT SHOULD BE VACATED AND SET ASIDE.

A. The Controversial* Order Of July 20, 1970 Was Entered Without Notice To CHA.

There were, of course, five conferences with Judge Austin preceding the entry of the order appealed from, and CHA concedes that it had "notice" that those conferences were to take place. But there is nothing before this court to suggest that CHA had notice, as required by the terms of the July 1969 Judgment Order, that the court's original judgment order might be modified in any material way, much less that the court would consider modifying the "best efforts"

* CHA takes no issue with so much of said order as directed it to file with the court, under seal, a report of its activities.

requirement (Article VIII A) of the original judgment order with a specific timetable.

✓ The papers that are before this court show unequivocally that the subject of the conferences was what CHA was doing to carry out the provisions of the original judgment order. Thus, plaintiffs, on May 18, 1970, wrote to CHA, requesting, among other things:

"Any other documents which may evidence the action so far taken by CHA to comply with the subsection A of Section VIII of the judgment order entered July 1, 1969 (the 'best efforts' provisions), including particularly any contractual or other written arrangements which have been entered into by CHA with respect to the siting of public housing in areas outside the City of Chicago" (A-23).

In reply, on May 25, 1970, counsel for CHA set out what she expected to be the subject of the first conference:

✓ "Your inquiry as to what action CHA has taken to comply with the 'best efforts' provision of the order to respond fully on June 2nd in Judge Austin's chambers." (A-26).

As we have set forth above, the "pretrial conference" of June 26 did involve a discussion of the timing of presenting sites to the City Council of Chicago for approval. But on July 13, 1970—the very day Judge Austin announced his intention to impose a timetable—plaintiffs informed the Judge and CHA by letter that they were only seeking information:

"Unless the best efforts provision of the decree is to be rendered meaningless, we need specific information concerning what CHA has done and plans to do. Perhaps everything is being done that can be done, but we cannot know this if we do not have the information. If more should be done than is being done, we cannot

make intelligent recommendations to the Court without knowledge.

"Therefore, pursuant to the 'best efforts' provision of the decree, we ask that CHA be directed to cooperate with us in preparing a factual report for the Court. Attached is a form of such an order. We do not necessarily ask, however, that such an order be entered; we believe that an informal request from you to CHA should suffice.

"... [this letter] really does nothing more than reduce to writing the oral request we made at our last meeting in your chambers. *Moreover, it should be non-controversial.*" (A-46, 47) (emphasis added).

The draft order (A-47, 48, 49) referred to in the plaintiffs' letter-notice of July 13, 1970 required CHA only to prepare a factual report and file it with the court. CHA made no objection to the reporting requirement of this proposed order, most of which later became the non-controversial part of the order appealed from. And, in fact, by agreement, such a report was filed with the court, under seal, on August 14. However, nowhere in plaintiffs' July 13, 1970 letter, or in the draft order attached to it, or in the record of this case, is there any indication that plaintiffs were seeking modification of, or that the trial court might materially modify, the July 1969 Judgment Order. The intent of the court to impose deadlines was, it is agreed (A-21), first articulated at the conference of July 13, 1970. All that followed at the July 20, 1970 conference was discussion as to the form of the order.

Thus, the letters and agreed facts which are part of the record on this appeal show more than a mere lack of notice. CHA engaged in "pretrial conferences" with notice that the subject of discussion would be its activities since the July 1969 Judgment Order; but suddenly, on July 13,

1970, the trial court transformed an essentially non-controversial subject into a controversial one by directing a material change in the order of July 1, 1969.

B. There Was No Hearing Prior To The Order Of July 20, 1970.

During the first four conferences with Judge Austin, several representatives of CHA made informal, off-the-record statements describing CHA's efforts to comply with the July 1, 1969 order. At the crucial July 13 conference, CHA offered to bring in an outside expert to discuss the rationale of CHA's efforts, but the court declined to hear this expert, believing that his views would be a reiteration of the views previously expressed by CHA representatives (Transcript August 13, p. 4). These informal statements could hardly be characterized as a hearing on the question of whether the original judgment order should have been modified, particularly in view of the fact that when such statements were made plaintiffs' counsel was asking only for information from CHA.

There is a document on file, entitled "Affidavit" and prepared and signed by plaintiffs' attorney, which purports to serve as a "record" of the five conferences before Judge Austin. To the extent that this gratuitous affidavit consists of conclusions or arguments of counsel,* it, of course, is entitled to absolutely no weight in this or any other court.

* Such as that the four conferences following the initial June 2 conference were set "to hear further argument and evidence" (A-19); that the June 26 conference was continued until July 13 for the "specific purpose of enabling CHA to present whatever additional evidence it wished" (A-20); that Judge Austin purported to pass on the weight of certain proposed "testimony" (A-20); and that in each of the five conferences no restriction was imposed upon the "form or content of the evidence to be presented" (A-21).

C. The Order Of July 20, 1970, Must Be Vacated.

Fundamental to our system of jurisprudence is the concept that litigants are entitled to notice and a hearing prior to adjudication, and there can be no doubt that the basic ingredients in a fair hearing are confrontation and cross-examination. Professor Wigmore's summary of the applicable principles was set forth by the United States Supreme Court in Greene v. McElroy, 360 U.S. 474, 497 (1959):

"For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience."

In Sims v. Greene, 161 F.2d 87, 88, (3d Cir. 1947), the court pointed out: "If witnesses are not heard the trial court will be left in the position of preferring one piece of paper to another".

A close analogy to the present case can be found in Progress Development Corp. v. Mitchell, 286 F.2d 222 (7th Cir. 1961). Plaintiffs, complaining that defendants were frustrating their efforts to erect a housing development, sued for injunctive relief and damages. A full and complete hearing was initially held on a motion by plaintiffs for a temporary injunction, which motion the district court denied. The district court went further, however, and granted summary judgment as to the damage allegations of the complaint. In holding that the district court committed error in granting summary judgment after a hearing for a temporary injunction, this Court said:

"Finally, we consider the action of the trial court in granting summary judgment in favor of defendants on Count III. This raises the question whether plaintiffs were afforded a full hearing on the merits of Count III. We think not.

* * *

"After reviewing the entire record, we are satisfied that the hearing below was essentially and materially for the purpose of determining plaintiffs' motions for a preliminary injunction until the case could be tried on its merits. . . .

* * *

"The question of summary judgment arose during final arguments at which time the court was considering the various motions to dismiss. . . .

"Plaintiffs point out that there are many witnesses remaining to be called on the issue of conspiracy in a trial under Count III. Plaintiffs were given ample opportunity to make such showing of conspiracy as they deemed necessary to justify the granting of equitable relief under Counts I and II. In this they failed. However, this is not to say that they should thereby be denied their right to offer such full proof as they may be able to marshal in proceeding to trial in the damage action.

* * *

"While the district court heard considerable evidence, a final hearing on the merits did not take place. It was in the main limited to the issues of equitable relief. . . .

"We hold that the district court erred in granting summary judgment on the complaint. It was error thus to pass on the merits of the case on the basis of a preliminary hearing on a motion for temporary injunction. . . ." 286 F.2d at 232-34 (Emphasis by the court).

The parallels between the *Progress Development* case and the instant case are obvious: In *Progress Development*, appellants were led to believe that they were participating

only in a temporary injunction hearing; in the present case, CHA was led to believe that it was participating in conferences dealing with the providing of information to plaintiffs and the court. In *Progress Development*, the question of summary judgment did not arise until final argument; in the present case, the matter of modifying the judgment order did not arise until the end of the informal conferences. In *Progress Development*, the Court of Appeals held that even though the district court heard considerable evidence and gave appellants ample opportunity to make such showing as they deemed necessary, the district court was required to give them full opportunity to be heard on the issue of summary judgment; in the present case, although Judge Austin believed that what he heard during the course of the conferences was sufficient to justify his modifying the July 1, 1969 order, he nonetheless should have given CHA the right to offer such full proof as it deemed necessary on the issue of modifying the injunction.

In *Capital City Gas Co. v. Phillips Petroleum Co.*, 373 F.2d 128 (2d Cir. 1967), plaintiff sued for temporary and permanent injunctive relief in connection with the sale of propane gas. At the hearing for a preliminary injunction, the district court granted what was in effect permanent relief; reversing, the Court of Appeals stated:

"This order is not designated as either a temporary or permanent injunction order, but is only designated 'Judgment Order.' Whatever it might have been labeled, it is a permanent injunction because it grants Capital City all the relief it might ultimately be entitled to and makes no provision for further hearings.

"Of course the judgment order cannot be permitted to remain in force as a permanent injunction; Phillips has a clear right to have a full hearing on the merits of the complaint, for the order was granted upon a hearing noticed for a temporary injunction only, and no

warning was given to the parties that a permanent disposition of the case was likely. . . ." 373 F.2d at 131.

There is no doubt, of course, that a federal court having issued an injunction has the power to modify it (*System Federation No. 91 v. Wright*, 364 U.S. 642 (1961)). It is clear, however, that such modification must be made upon an appropriate finding of facts, which necessarily requires a hearing. Thus, in *Bivins v. Board of Education*, 284 F. Supp. 888, 890 (M.D. Ga. (1967)), an injunction against a school board was modified only after three full days of evidentiary hearings and arguments of counsel. No hearing can be a fair or adequate one unless the litigants know of the hearing's purpose and unless a record exists which is sufficiently complete to preserve the litigant's right to appeal.

From the foregoing, it is clear that the district court's July 1, 1969 Judgment Order was modified without either notice or hearing, contrary to the order's own terms and contrary to the cases and authorities discussed above. Accordingly, the order appealed from should be vacated.

III. THE ORDER OF JULY 20, 1970 CONSTITUTED AN ABUSE OF DISCRETION.

This court can and should take judicial notice of the fact that this litigation is of enormous importance to the City of Chicago. Its course will substantially affect the success or failure of low income housing not only throughout Chicago (whose future will be greatly influenced by the litigation) but throughout the entire metropolitan area. Indeed, the results of the public housing efforts in the Chicago metropolitan area will undoubtedly be given serious consideration by housing authorities throughout the nation, and decisions made here will either be followed or rejected

depending upon their success or failure. In this context, we submit that the district court patently violated the applicable general guidelines and standards which define the extent to which a federal court should displace the discretion of a state municipality or similar entity with its own discretion.

Under the July 1, 1969 Judgment Order, CHA was left with discretion—subject to judicial review—to employ its “best efforts” in carrying out the terms of that order. Although CHA is operating under a court order, the operative portion of that order—the “best efforts” clause—is so general that the standard of judicial review should be the same as for any other municipal corporation. The factors which lead courts to limit their review to questions of bad faith, arbitrariness or clear abuse are all present here: the district court lacks the experience, information and expertise to make the best judgment on the details of the sensitive matters involved in the establishment of public housing.

The applicable principles are stated in 2 *McQuillin, Municipal Corporations* § 10.34 (1966):

“Where the method of exercising a power is within the discretion of a municipal corporation, the courts will not interfere concerning the employed method, in the absence of fraud, collusion, bad faith, or palpable abuse of discretion. . . . [F]requently powers are conferred upon municipal corporations in general terms, without specification as to the time when, or manner in which, they are to be exercised and the execution of such powers involves the exercise of judgment and discretion, and any method which is fit and proper, having regard to the nature of the power, may be employed. Where the performance of an act or the accomplishment of a specific purpose constitutes a ‘public purpose,’ and the method by which such action is to be performed or purpose accomplished rests in

the judgment of the municipality, a court will not assume to substitute its judgment for that of the governing body unless the latter's judgment or discretion is shown to have been unquestionably abused. . . ."

It has long been recognized that federal equity courts should abstain from exercising their jurisdiction—though properly invoked—in certain classes of cases where the exercise of original federal jurisdiction might result in a federal-state conflict thought to be particularly undesirable. The general principle has been expressed in varying contexts. For example, in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), the Supreme Court stated:

"An appeal to the chancellor . . . is an appeal to the 'exercise of the sound discretion, which guides the determination of courts of equity.' . . . The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction. There have been as many and as variegated applications of this supple principle as the situations that have brought it into play. . . . Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law . . . or the administration of a specialized scheme for liquidating embarrassed business enterprises . . . or the final authority of a state court to interpret doubtful regulatory laws of the state. . . . These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion,' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary. . . . This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers. . . ." 312 U.S. at 500-501.

Therefore, courts should consider whether a proposed exercise of federal equity jurisdiction might needlessly clash with a valid state policy, or, as in the instant case, the policy of a municipal corporation concerning the most effective tactics in structuring a low income housing system in accordance with the general directives found in the 1969 Judgment Order. It seems clear that in entering the order of July 20 the Trial Judge ignored the requirement that there be "scrupulous regard" for the independent exercise of the discretion of CHA.

Contrary
to detail
7/1/69
order

In *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), where the matter under consideration was described by the court as "as thorny a problem as has challenged the ingenuity and wisdom of legislatures" (p. 318), the court, in abstaining, stated:

"Although a federal equity court does have jurisdiction of a particular proceeding, it may, in its sound discretion, whether its jurisdiction is invoked on the ground of diversity or citizenship or otherwise, 'refuse to enforce or protect legal rights, the exercise of which may be prejudicial to the public interest'; for it 'is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy.' While many other questions are argued, we find it necessary to decide only one: Assuming that the federal district court had jurisdiction, should it, as a matter of sound equitable discretion, have declined to exercise that jurisdiction here?" 319 U.S. at 317-318.

And in *Alabama Public Service Commission v. Southern Railroad Co.*, 341 U.S. 341 (1951), the court said:

"... Equitable relief may be granted only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence

of state governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.' Considering that '[f]ew public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,' the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. . . ." 341 U.S. at 349-350.

In the instant case, the district court has made a determination that prior to July 1, 1969 CHA's manner of operation violated plaintiffs' constitutional rights. Although, concededly, cases involving constitutional rights are frequently inappropriate for the exercise of the abstention doctrine (see, e.g., *McNeese v. Board of Education*, 373 U.S. 668 (1963)), the courts have nonetheless invoked the doctrine in order to allow states to correct certain constitutional errors in an orderly and nondisruptive manner; this should be particularly true where, as here, there has been an express finding that the racial character of a neighborhood was never a factor in the selection of housing sites by CHA (*Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907, 914 (N.D. Ill. 1969)). Thus, in *Reynolds v. Sims*, 377 U.S. 533 (1964), the court found the Alabama apportionment system unconstitutional and ordered reapportionment. Nonetheless, the court recognized the practical necessity of deferring action until an appropriate time:

"... [U]nder certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should con-

sider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree. As stated by MR. JUSTICE DOUGLAS, concurring in *Baker v. Carr*, 'any relief accorded can be fashioned in the light of well-known principles of equity.' 377 U.S. at 585.

The problems faced by CHA are no less difficult than those faced by the State of Alabama in the *Reynolds* case: CHA is not contesting either the need to disestablish segregation in public housing nor its obligation to use its best efforts to increase the supply of public housing units as rapidly as possible in conformity with the 1969 Judgment Order. CHA does contest, however, the validity of the district court overriding its judgment in such an obviously discretionary matter as the most opportune time to present building sites to the Chicago City Council for approval.

In *Bush v. Martin*, 224 F. Supp. 499 (S.D. Tex. 1963), another apportionment case, the court, although refusing to stay its action because it found that no timely relief was forthcoming, made the following observations:

"... Having known since April that this attack was being made and being aware of the failure of the Legislature to take any effective action toward its correction, the State-official-Defendants are not in a position to advance as a basis for postponing judicial relief the appealing defense: Let Us Work This Out. Had there been at any time since the adjournment on May 24, 1963, down through the pretrial stages of this case and its trial, any indication that the Governor would exercise his constitutional and statutory power to convene

a special session of the Legislature for the consideration of this pressing public problem, this Court without a doubt would unanimously withhold any action to afford full exploitation of these procedures. . . ." 224 F. Supp. at 516.

And in *Holmes v. New York City Housing Authority*, 398 F.2d 262 (2d Cir. 1968), where the court found on the facts that only constitutional issues were present (and thus refused to abstain from exercising jurisdiction), the court made it clear that had the facts been different there would have been no basis for entangling the federal judiciary in complex administrative matters:

"We fail to see how federal intervention in the present case will result in any substantial way in the disruption of a complex regulatory scheme of the State of New York, or in interference from the outside with problems of uniquely local concern. The Authority clearly does direct and control a complex administrative process, much of which is concerned with the establishment of standards and policies for the admission of tenants, a function which Congress has recognized that localities are 'in a much better position than the Federal Government' to perform. S.Rep. No. 281, 87th Cong., 1st Sess. (1961) in 2 U.S. Code Cong. & Ad. News, pp. 1943-1944. But the complaint in this action wages only a very limited attack on that process, and in no sense does it seek to interpose the federal judiciary as the arbiter of purely local matters. Rather the plaintiffs assert a narrow group of constitutional rights based upon overriding federal policies, and ask federal involvement only to the limited extent necessary to assure that state administrative procedures comply with federal standards of due process. This fundamental concept hardly can be said to be 'entangled in a skein of state law that must be untangled before the federal case can proceed.' *McNeese v. Board of Education*, supra 373 U.S. at 674, 83 S. Ct. at 1437. Nor do we see here any 'danger that a federal decision would work

a disruption of an entire legislative scheme of regulation.' *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 329, 84 S. Ct. 1293, 1296, 12 L.Ed.2d 350 (1964). In fact the issue in the present case arises out of a total lack of any system for the orderly processing of applications and notification to applicants outside of the few categories mentioned." 398 F.2d at 266.

By contrast, in the instant case, a definition of plaintiff's constitutional rights is not at issue; that most important phase of the case is closed, and the standard to be followed is clear. The only question is the timing of the procedure to be followed by CHA in order best to give plaintiffs—and the thousands of persons who will follow plaintiffs—the benefits to be obtained from those rights. We submit that such procedures are the same kind of procedures the court was discussing in the *Holmes* case, and that it is wholly inappropriate for a federal court to impose a specific time table on CHA. There is no basis for displacing CHA's discretion on a question of administrative judgment such as the best time to seek site approvals from the City Council of Chicago.

Indeed, in a companion case in the lower court, *Gautreaux v. George Romney, Secretary of the Department of Housing and Urban Development of the United States*, No. 66C1460, Judge Austin, on September 1, 1970, in a memorandum opinion dismissing the complaint clearly recognized the limits of judicial power in administrative matters committed to non-judicial branches of government. He said:

"The allegations of this complaint concern the same discriminatory pattern of public housing site selection considered by this court in the companion case and which was found to violate the Fourteenth Amendment to the Constitution. *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (1969) and 304 F. Supp. 736 (1969). Proceedings in the instant suit against the

Secretary of the Department of Housing and Urban Development were stayed pending resolution of that earlier suit" (Op. p. 1).

* * *

"Plaintiffs and amici contend that if HUD can feasibly contribute to a prompter remedy than that contained in the decree heretofore entered against CHA which would accelerate desegregation of public housing in Chicago and create more new low income housing not only in the central city but in the General Public Housing area encompassing the remainder of Cook County [304 F. Supp. 736, 737], then they are entitled to an order calling for such efforts. Thus, the remedy should be framed with respect to that portion of HUD's resources which the Secretary in his discretion determines to allocate to the Chicago Housing Market area; that the order 'will fashion the means of dealing with a major societal problem' which problem is that of increasing segregation of the races in the Chicago Metropolitan housing area and the serious lack of low income housing. Reference is made to major governmental study commissions which have reported on evidence that the problem is not confined to the central city but that much of that problem is engendered through existence of a circle of surrounding white suburbs" (Op. pp. 17, 18).

* * *

"This court does not have jurisdiction to direct and control the policies of the United States and the government must be permitted to carry out its functions unhampered by judicial intervention.

"Although the preceding consideration is not required in the light of the disposition made of the pending motions, the egregious problem involved and adjudged in the companion case, and the earnest and dedicated efforts of counsel for plaintiffs and amici to seek implementation of corrective efforts already in effect, impels this court to explore the putative limits

of its powers and in so doing finds them effectively circumscribed" (Op. pp. 18, 19, emphasis added).

What Judge Austin said about interfering with the governmental functions of HUD applies, we submit, with even more force to CHA in dealing with such an "egregious problem" as the most opportune time to present sites to the City Council of Chicago for approval.

Instead of avoiding the problems that arise when federal courts order state or local—or even federal—officials to exercise their "discretion in a particular way" (*Carter v. Jury Commission*, 396 U.S. 320, 328 (1970)), the court below plunged headlong into matters committed by law and the Judgment Order of July 1969 to the good faith discretion of CHA. However viewed, the order of July 20, 1970, was an abuse of judicial discretion.

CONCLUSION

For all of the foregoing reasons, Appellants respectfully request that this Court vacate the district court's order of July 20, 1970.

Respectfully submitted,

PATRICK W. O'BRIEN

WATSON B. TUCKER

Attorneys for Defendants-Appellants

Of Counsel:

KATHRYN M. KULA

General Counsel

The Chicago Housing Authority

MAYER, BROWN & PLATT

231 South LaSalle Street

Chicago, Illinois 60604

27P

IN THE
United States Court of Appeals
FOR THE SEVENTH CIRCUIT

NO. 18681

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

v.

THE CHICAGO HOUSING AUTHORITY, et. al.,

Defendants-Appellants.

On Appeal from the Judgment of the United States
District Court for the Northern District of Illinois

APPELLANTS' APPENDIX

PATRICK W. O'BRIEN

WATSON B. TUCKER

*Attorneys for Defendants-
Appellants*

Of Counsel:

KATHRYN M. KULA

General Counsel

The Chicago Housing Authority

MAYER, BROWN & PLATT

Chicago, Illinois 60604

231 South LaSalle Street

INDEX TO APPELLANTS' APPENDIX

	PAGE
Judgment Order of July 1, 1960	1
Order of July 20, 1970	7
Motion to Vacate Order of July 20, 1970	10
Attachment to Motion—Letter of Andrew M. Greeley	12
Answer of Plaintiffs to Motion to Vacate and Other Motions of Defendants	15
Attachments:	
Affidavit of Alexander Polikoff	18
May 18, 1970 letter, Polikoff to Kula	22
May 20, 1970 letter, Polikoff to Kula	24
May 25, 1970 letter, Kula to Polikoff	26
CHA Chronology of Site Selection Procedures ..	28
May 25, 1970 CHA Inter-office Memo re Site Selection Procedures	32
January 16, 1970 CHA Inter-office Memo re Site Selection Procedures	33
June 22, 1970 letter, Kula to Judge Austin	35
Chart Showing Site Selection Status As Of June 2, 1970	37
June 26, 1970 Statement by Charles R. Swibel, Chairman, CHA	38
CHA Resolution No. 70-CHA-105	41
July 9, 1970 letter, Wade to Judge Austin	43
July 13, 1970 letter, Polikoff to Judge Austin ..	45
Draft Order	47

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES,
DOREATHA R. CRENCRAW, 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

JUDGMENT ORDER

(Entered July 1, 1969)

This matter coming on to be heard pursuant to this Court's Memorandum Opinion of February 10, 1969, and Orders entered on such date denying defendants' motions for summary judgment, denying plaintiffs' motion for summary judgment as to Count II of the Complaint, and granting plaintiffs' motion for summary judgment as to Count I of the Complaint, and

The Court having conferred with counsel for the parties and having determined that the several provisions of this judgment order are necessary to prohibit the future use and to remedy the past effects of the defendant Chicago Housing Authority's unconstitutional site selection and tenant assignment procedures, to the end that plaintiffs and the class of persons represented by them, Negro tenants of and applicants for public housing in Chicago, shall have the full equitable relief to which they are entitled,

It is hereby ordered:

I. For purposes of this judgment order,

A. "CHA" shall mean the defendant, Chicago Housing Authority.

B. "Dwelling Unit" shall mean an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA, whether in a structure owned in whole or in part by CHA (whether or not newly constructed) or to be otherwise made available for occupancy by or through CHA to such a family. "Dwelling Units" include "Leased Dwelling Units" as hereinafter defined.

C. "Leased Dwelling Unit" shall mean a Dwelling Unit in a structure leased or partially leased by CHA from any person, firm or corporation.

D. "Limited Public Housing Area" shall mean that part of the County of Cook in the State of Illinois which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining of the County of Cook in the State of Illinois. The terms "non-white" and "white" shall have the meaning given to such terms by the United States Bureau of the Census.

* * *

III. Following the date of this judgment order CHA shall provide Dwelling Units as follows, and not otherwise:

A. The following Dwelling Units may be made available for occupancy without restriction imposed by this order:

(1) The 1458 Dwelling Units provided for by pending CHA projects Ill. 2-27, 2-28 (exclusive of

Dwelling Units proposed to be located at 70th and Harper streets in the City of Chicago), 2-32, 2-33, 2-51, 2-64, 2-69 and 2-74.

(2) Leased Dwelling Units (but not more than two per structure) which have been occupied for at least six months prior to CHA's leasing the same by tenants who continue in occupancy following CHA's leasing thereof.

B. CHA shall not commence or cause to be commenced the construction of any Dwelling Units, other than said 1458 Dwelling Units referred to in Subsection A of this Article III, until CHA shall have commenced or caused to be commenced, and shall be continuing or shall have completed, the construction of not less than 700 Dwelling Units located in the General Public Housing Area of the City of Chicago.

C. Subject to the provisions of Subsection E of this Article III, CHA shall not commence or cause to be commenced the construction of any Dwelling Units in any Limited Public Housing Area, other than said 1458 Dwelling Units referred to in Subsection A of this Article III, unless within three months following such commencement of construction at least 75% of the Dwelling Units on which CHA shall have commenced or caused to have commenced construction, and shall have continued or completed construction, since the commencement of construction of the last of the 700 Dwelling Units referred to in subsection B of this Article III shall have been located (at the time of commencement of construction thereof) in the General Public Housing Area of the City of Chicago.

* * *

E. Not more than 33 $\frac{1}{3}$ % of the Dwelling Units required by subsection C of this Article III to be located in the General Public Housing Area of the City of Chicago, and not more than 33 $\frac{1}{3}$ % of the Leased Dwelling Units required by subsection D of this Article III to be located in the General Public Housing Area

of the City of Chicago, may, at the option of CHA, be planned for and located in the General Public Housing Area of the County of Cook in the State of Illinois, outside of the City of Chicago, provided that (whether or not constructed by CHA) the same are made available for occupancy by CHA to, and are occupied by, residents of the City of Chicago who have applied for housing to CHA, and provided further that all such Dwelling Units comply with the provisions of Article IV of this order.

* * *

VII. Following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs, the Civil Rights Division of the United States Department of Justice, and the Regional Administrator of the Department of Housing and Urban Development, the following:

A. A statement of the following information respecting each location for one or more Dwelling Units, such statement to be filed and served not more than 10 days after any such location is approved by the Board of Commissioners of CHA (or by the appropriate CHA officer or employee with respect to any location not required to be approved by the Board of Commissioners) and prior to the formal submission thereof to any other government agency or official for consideration or action:

(1) a map showing boundaries, placement in relation to adjacent streets and, where available, street address;

(2) the area location (whether within the Limited or General Public Housing Area);

(3) the census tract number;

(4) the white and non-white population of such census tract;

(5) the aggregate number of apartments and single family residences theretofore made avail-

able to low-income, non-elderly families, directly or indirectly by or through CHA in such census tract;

(6) the aggregate number of apartments and single family residences in such census tract as reflected by the most recent census taken by the United States Bureau of the Census, supplemented by such information with respect thereto as is available to CHA from any other government agency or official (but the statement need not include such number if the number supplied with respect to the preceding paragraph (5) is zero);

(7) the total number of Dwelling Units proposed to be provided at such location;

(8) the number of structures, and the number of Dwelling Units in each, in which such Dwelling Units are proposed to be provided; and

(9) such additional data as will show that such proposed Dwelling Units will be made available for occupancy in conformity with the provisions of Article III and IV hereof, including without limitation, in the event such proposed Dwelling Units would result in a Public Housing Project designed for occupancy by more than 120 persons, information showing that the provisions of subsection A of Article IV hereof have been met with respect to such Public Housing Project.

B. Statements setting forth any change in the information included under paragraphs (1), (2), (3), (5), (7), (8) or (9) in a statement filed and served pursuant to subsection A of this Article VII, and covering the period up to initial occupancy of all Dwelling Units at any location, such statements to be filed and served not more than 10 days after any such change occurs.

C. Statements covering the periods from the date hereof until December 31, 1969, and from the date hereof until the end of each calendar semiannual

period thereafter, containing such data as will show that (1) all plans for Dwelling Units during the period covered by such statements have been in conformity with the provisions of Article II hereof, and (2) all Dwelling Units provided during the period covered by such statements have been in conformity with the provisions of Articles III and IV hereof, such statements to be filed and served not more than twenty days after the end of each calendar semi-annual period beginning with such period ended December 31, 1969.

VIII. CHA shall affirmatively administer its public housing system in every respect (whether or not covered by specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures. Without limiting the foregoing,

A. CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development; and

B. CHA is hereby permanently enjoined from invidious discrimination on the basis of race in the conduct or operation of its public housing system, including without limitation the "pre-clearance procedure" described in the Court's Memorandum Opinion of February 10, 1969.

IV. This order shall be binding upon CHA, its officers, agents, servants, employees, attorneys, and their successors, and upon those persons, including the members of the City Council of the City of Chicago, in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

X. This Court retains jurisdiction of this matter for all purposes, including enforcement [and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms] of this order upon the presentation of relevant information with respect to proposed developments designed by CHA alone or in combination with other private or public agencies to achieve results consistent with this order, material changes in conditions existing at the time of this order, or any other matter.

XI. The costs of this action shall be taxed against CHA, subject to the further order of this Court.

Enter:

.....
Judge, United States District Court

DATED: July 1, 1969

[Caption Omitted]

ORDER

(Entered July 20, 1970)

This matter coming on to be heard on the presentations of the parties, and

It having been represented to the Court by the defendant Chicago Housing Authority ("CHA") that CHA presently has a "reservation" from the United States Department of Housing and Urban Development ("HUD") for the provision of 1,500 Dwelling Units (as defined in this Court's judgment order of July 1, 1969); that approximately 260 sites in the General Public Housing Area (as defined in said order of July 1, 1969) have been identified by CHA as appropriate for the construction of an estimated 1,580 Dwelling Units; that said sites have been submitted by CHA to HUD and that the same have been approved by

HUD; and that the next steps to be taken by CHA to the end that Dwelling Units may be provided as rapidly as possible in conformity with said order of July 1, 1969, are the referral by CHA of proposed sites to the Chicago Plan Commission pursuant to Chapter 24, § 11-12-4.1, Ill. Rev. Stats. 1969, and advice of the same to the Chicago City Council pursuant to Chapter 67½, § 9, Ill. Rev. Stats. 1969; and

It appearing to the Court that it is desirable that CHA use its best efforts to increase the supply of Dwelling Units as rapidly as possible as provided in said judgment order;

It is hereby ordered, pursuant to Subsection A of Article VIII of the Judgment Order entered herein on July 1, 1969, as modified:

I. On or prior to August 14, 1970, CHA shall submit to the Court a written Report setting forth the action taken and to be taken by it to comply with said Subsection, which Report shall include detailed information concerning, but need not be limited to, the following:

A. *Action taken prior to the date of Report respecting,*

1. Identification (in any appropriate manner) of sites for Dwelling Units which do not require zoning changes.

2. Identification (in any appropriate manner) of sites for Dwelling Units which require zoning changes, and action taken, if any, to secure such changes.

3. Employment, if any, of the "turnkey" method or any variation thereof of supplying Dwelling Units.

4. Agreements with other official bodies, including other housing authorities, to increase the supply of Dwelling Units.

5. Proposals, requests, etc., if any, submitted by CHA to the Department of Housing and Urban

Development for additional "reservations" for Dwelling Units, or relating to other action designed to increase the supply of Dwelling Units.

B. *Future Plans*

A detailed statement, including information in the categories listed under "A" above, of the number of Dwelling Units to be provided, and the anticipated locations thereof, over the 12, 24 and 36 month periods following the date of the Report, including a statement as to how such provision of Dwelling Units is to be achieved.

To the extent the future plans referred to under "B" above have not been prepared, CHA shall promptly prepare the same.

CHA shall confer with counsel for the plaintiffs during the preparation of such Report and make full disclosure to them of all matters necessary or appropriate to the preparation of the same to the end that such Report shall be as comprehensive and detailed as possible and shall constitute a statement respecting the matters to be covered thereby which has been agreed to by the parties. Any issues of privilege or confidentiality shall be promptly submitted to the Court for resolution to the extent the parties are unable to settle the same among themselves.

II. On or prior to August 20, 1970, CHA shall refer to the Chicago Plan Commission pursuant to ch. 24, § 11-12-4.1, Ill. Rev. Stat. 1969, and on or prior to September 20, 1970 CHA shall advise the Chicago City Council pursuant to ch. 67½, § 9, Ill. Rev. Stat. 1969 of, sites appropriate for the construction, in conformity with the provisions of said Judgment Order of July 1, 1969, of not fewer than 1,500 Dwelling Units.

ENTER:

.....
Judge, United States District Court

July 20, 1970.

[Caption Omitted]

**MOTION TO VACATE ORDER OF JULY 20, 1970
AND TO SET THE MATTERS REFERRED TO IN SAID
ORDER FOR HEARING**

(Filed August 11, 1970)

Defendants move that the Order of July 20, 1970, in this cause be vacated and that the matters involved and referred to in said Order be set for a hearing after "proper notice and motion."

In support of the motion defendants state:

1. This Court's Judgment Order of July 1, 1969, provides that orders in this cause after that date would be entered "upon proper notice and motion." The order of July 20, 1970, was not entered pursuant to such notice and motion. That order was entered after five informal conferences in chambers of which no record was made and defendants were never advised in writing and on the record, as provided for in the Judgment Order of July 1, 1969, of the grounds upon which plaintiffs moved for the relief they sought.

2. The Judgment Order of July 1, 1969, provides that orders in this cause after that date would be entered after the "presentation of relevant information." However, defendants were not provided with an adequate opportunity to present such information prior to the July 20, 1970 order. Moreover, the limited opportunity that was afforded defendants to present relevant information was off the record. Defendants, by the terms of the July 1, 1969 Judgment Order necessarily must be afforded an adequate opportunity to make a presentation prior to the entry of further orders. To be adequate, such an opportunity—both for the benefit of the Court and the litigants—must include, among other things, the right to present to the court a reasonable number of witnesses under circumstances which provide a record of the proceedings, witnesses, for instance, such as Rev. Dr. Andrew M. Greeley, Program Director, National Opinion Research Center, University

of Chicago, whose relevant views are summarized in the letter attached hereto as Exhibit A. The proceedings prior to the entry of the order of July 20, 1970, did not provide such an adequate opportunity.

3. The order of July 20, 1970 denied defendants due process of law in that it was entered without affording the defendants an opportunity to be heard.

4. The order of July 20 is specifically based upon Subsection A of Article VIII of the Judgment Order of July 1, 1969, the "best efforts" provision. In legal effect, the CHA has been found to have not complied with the "best efforts" provision and this finding has been entered without affording the CHA a reasonable opportunity to present evidence supporting its contention that it has complied with the letter and spirit of the Judgment Order of July 1, 1969.

5. The order of July 20 is an appealable order but the right of defendants to appeal has been seriously prejudiced by the failure of the court to provide the CHA with an opportunity to make a proper record upon which to base an effective appeal.

6. For the reasons stated in the above five paragraphs, the order of July 20, 1970, constitutes an abuse of discretion. It is an abuse of discretion for the further reason that it represents an unwarranted interference with the necessary discretionary decision making powers of defendants about the details of how best to increase the supply of housing for low income families "as rapidly as possible," and to do so in conformity with the July 1, 1969 Judgment Order.

KATHRYN M. KULA
General Counsel
Chicago Housing Authority

PATRICK W. O'BRIEN
One of the Attorneys
for Defendants

Of Counsel:
MAYER, BROWN & PLATT
231 South LaSalle Street
Chicago, Illinois 60604
ST 2-0600

EXHIBIT A

July 25, 1970

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

Dear Miss Kula:

I regret that I was unable to attend the conference in Judge Austin's chambers on the morning of July 13 in connection with the Gautreaux case, as you and Prof. Richard Wade requested. You will recall that in our telephone conversation on July 8, I indicated that I would be available on any day of the following week. However, had I appeared, I would have made this statement on behalf of the Chicago Housing Authority:

This statement is made within a context created by four assertions:

(1) It is socially and morally desirable to provide humane, integrated public housing for the less affluent of all races as quickly as possible.

(2) Some methods of providing such housing are likely to be more successful than others. Some methods may in fact be so counter-productive as to defeat partially or totally the goal.

(3) There is good reason to think that the failure by CHA to build integrated public housing beyond the city limits of Chicago will frustrate the goal stated in proposition 1.

(4) I will not discuss here the political feasibility of public housing in white neighborhoods in the city only. However, in passing I note my conviction that the choice is not between metropolitan public housing or

public housing in Chicago only, but rather one between metropolitan public housing or no public housing.

In support of assertion #3 I adduce the following assumptions:

There is a strong trend in American cities for the white population to desert the central city for the suburbs so that the city may well become a black ghetto and the suburbs a white ghetto. While recent census material shows that the picture may not be quite as serious as was previously thought, there still can be no doubt about the flight of the white population from the central cities. Under such circumstances neighborhoods which are integrated by public housing projects may remain integrated for relatively brief periods of time since many of the white residents of such neighborhoods may avail themselves of the opportunity to move to all white suburbs. Quite apart from the indirect effect on public housing and services of an eroding tax base, such an exodus would be directly unfavorable to the prospect of maintaining integrated neighborhoods. I do not argue that public housing in all white neighborhoods will by itself cause such an exodus, but I do argue that there is considerable reason to think that, unless countermeasures are taken, such housing would accelerate the pace of the exodus.

There is no way to prevent American citizens from moving from a neighborhood they deem unsatisfactory if they decide to move. Movement from an integrated neighborhood may be stupid, ignorant, immoral and bigoted, but telling people that will not stop them from moving once they have made up their minds to do so. Neither will suits or injunctions.

There is in white neighborhoods massive fear of integrated housing. Some of this fear is based on bigotry, some on reality factors, and some on a very complex mixture of both. The fear can be reduced by intelligent and appropriate action by public authorities.

I presume that the CHA will engage in vigorous educational activity to reduce the fear and to control in so far as is possible exodus from newly integrated neighborhoods. But there should be no mistake about the difficulty of this task.

Most "fear reduction" activity will be wasted if those who live in site neighborhoods think that a move to the suburbs will free them from the possibility of having to live in integrated neighborhoods.

On the other hand if it is clear that the border of the city of Chicago is no barrier to the spread of integrated housing, one important motivation for moving is eliminated and a powerful countermotive is introduced for attempting to "live with" integrated housing and make it work. Indeed the location of integrated sites throughout the metropolitan region would, I think, turn out to be an extremely important means of reducing racial fears in the city. If the "threat" is perceived as being equally shared by all and not disproportionately born by a few, it seems both "fairer" and also somehow less serious.

Therefore I heartily endorse and am in complete agreement with the policy and program conceived by the CHA Board of Commissioners that the most effective way to carry out the federal order requiring it to build integrated housing is to develop sites simultaneously in the city and the suburbs. Public announcement of such a program should make for "fear reduction" and serve more readily to win community acceptance of integrated housing.

Very truly yours,

Andrew M. Greeley
Program Director, National
Opinion Research Center,
University of Chicago

[Caption Omitted]

**ANSWER OF PLAINTIFFS TO THREE
MOTIONS OF DEFENDANTS**

(Filed August 12, 1970)

Without supporting affidavits the defendant Chicago Housing Authority ("CHA") has served three motions as follows:

- (1) To vacate the order entered herein on July 21, 1970 (the "Order") and to set another hearing concerning its subject matter;
- (2) To modify the terms of the Order (by extending its time periods) until disposition of the motion to vacate; and
- (3) To extend the time for appealing the Order (to give time to consider the motion to vacate).

The three motions will be discussed in Parts I, II and III hereof, respectively.

I. The Motion to Vacate is Baseless and an Affront to Judge Austin

The grounds for the motion to vacate are that, (A) the Order was not entered "upon proper notice and motion," (B) CHA was not "provided with an adequate opportunity to present [relevant] information," or with an "opportunity to be heard," or with a "reasonable opportunity to present evidence," or with an "opportunity to make a proper record," and (C) the Order constitutes an abuse of the Court's discretion.

Although the motion makes many assertions of fact, it is not verified, or supported by an affidavit, or even manually signed by the CHA counsel who participated in the conferences before Judge Richard B. Austin which are referred to in the motions.

Attached hereto and made a part hereof is an affidavit

of one of plaintiffs' counsel who did participate in such conferences. The affidavit discloses that grounds (A) and (B) for the motion to vacate are baseless and that ground (C) is plainly without merit. The affidavit discloses, indeed, that it is an affront to Judge Austin (who clearly went out of his way to give CHA the fullest opportunity to be heard and to present whatever evidence it desired) to assert that he somehow denied CHA its rights. It appears from the affidavit that the Order was entered upon proper notice and motion pursuant to a procedure agreed to by the parties, that CHA was given a full hearing with full opportunity to be heard, to present evidence and to make a record, and that in view of the nature of the judgment order entered herein on July 1, 1969, the lapse of time since that date and the evidence submitted during the conferences, some of which is recited in the Order, the entry of the Order was well within the discretionary powers of the Court.

II. The Motion to Modify is Without Merit.

The motion to modify the terms of the Order rests on the validity of the motion to vacate. If the latter is summarily denied, as it should be, the motion to modify must plainly be denied as well.

III. The Motion to Extend the Time to Appeal is Without Merit, and the Court Lacks Power to Grant It.

The motion to extend the time to appeal should be denied for the same reason as the motion to modify. In addition, such a motion may only be granted "upon a showing of excusable neglect." Rule 4(a), Federal Rules of Appellate Procedure. Here there is not even an effort to make such a showing.

CONCLUSION

These motions are but the latest chapter in a sorry story. For three years CHA fought an adjudication that it had

violated the plaintiffs' constitutional rights. After the final judgment order was entered hereon on July 1, 1969, CHA's public relations staff trumpeted CHA's willingness to comply and its decision not to appeal. That order included the following provision:

"CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development."

After fourteen months of dilatoriness by CHA (and of patience by Judge Austin), CHA was finally ordered to take affirmative action to comply with that provision. Its reasons for not doing so were fully presented and considered by Judge Austin. They amounted to reliance on discredited political considerations (see *Gauteraux v. CHA*, 296 F.Supp. 907, 914-15), and, now, upon an alleged interference with CHA's "discretion." One is reminded of the wearisome story of school desegregation decisions. For example,

"In this instance, this Court is being asked to weigh the constitutional rights of the plaintiffs against the administrative convenience of the Board of Education and to rule in favor of the latter. Merely to state the proposition is to reject it." *Taylor v. Board of Education of New Rochelle*, 195 F.Supp. 231, 238 (S.D.N.Y. 1961, aff'd 294 F.2d 366 (CA2, 1961)).

It would be a travesty if CHA were not now, at long last, obligated to proceed affirmatively as Judge Austin has ordered it to do.

Respectfully submitted,

Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602

[Caption Omitted]

AFFIDAVIT

(Filed August 12, 1970)

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

ALEXANDER POLIKOFF, being first sworn, says that he is one of the counsel for plaintiffs in the above cause, that he has personal knowledge of the matters and things set forth herein, and that if sworn as a witness would testify to them as so set forth.

1. Preceding the entry of the order of July 20, 1970 by the trial judge herein, the Honorable Richard B. Austin, five conferences concerning the subject matter of said order were held in Judge Austin's chambers on June 2, 1970, June 16, 1970, June 26, 1970, July 13, 1970 and July 20, 1970, respectively.

2. At each of such conferences counsel for the defendant Chicago Housing Authority ("CHA") was present, participated fully, and made no objection to the form or manner thereof or to the notice therefor.

3. The first of such conferences was held following advice to counsel for plaintiffs from the Chairman of CHA to the effect that CHA did not intend to advise the Chicago City Council of sites appropriate for Dwelling Units (as the same are defined in the judgment order entered herein on July 1, 1969) prior to the Chicago mayoralty election scheduled to be held in April, 1971. Following such advice the first such conference was set by agreement of counsel for both parties and Judge Austin. Counsel for CHA was notified by letter dated May 20 that the first conference was set for the morning of June 2, 1970, and she confirmed that

June 2 was satisfactory by a letter dated May 25, 1970 in which she said,

"We also are eager to discuss the broader issues you allude to in your letter of May 20. However, I can see no reason why this matter cannot await discussion with Judge Austin on June 2 . . ."

Such letter also said:

"Your inquiry as to what action CHA has taken to comply with the 'best efforts' provision of the order requires an extensive response. We will be prepared to respond fully on June 2nd in Judge Austin's chambers."

True copies of such letter of May 25, 1970, and related letters are attached hereto.

4. Each of the four subsequent conference dates was set by agreement of counsel and Judge Austin, without objection by any party, to hear further argument and evidence respecting CHA's proposed deferral of advice to the Chicago City Council of proposed sites for Dwelling Units.

5. At the conference of June 2, 1970, CHA submitted to Judge Austin a document entitled "Chronology of Site Selection Procedures" dated June 2, 1970, a true copy of which is attached hereto.

6. At the conference of June 16, 1970, Judge Austin requested CHA to furnish certain information concerning the procedural steps followed in acquiring sites. Such information was supplied to Judge Austin by letter dated June 22, 1970, a true copy of which is attached hereto. The conference was then continued at the specific request of counsel for CHA to June 26, 1970 because, she said, the Chairman of CHA wished to make a presentation to Judge Austin.

7. At the conference of June 26, 1970, the five Commis-

sioners of CHA, Charles R. Swibel, Theophilus Mann, John J. Masse, Letitia Nevill and Professor Richard C. Wade, were present in addition to counsel. Mr. Swibel made a statement, a true copy of which is attached hereto. Counsel for CHA read and submitted to Judge Austin a resolution adopted by the Commissioners on June 25, 1970 identified as Resolution No. 70-CHA-105, a true copy of which is attached hereto. Commissioner Wade made a statement as to the political implications of advising the City Council of sites for Dwelling Units, and thereafter wrote a letter to Judge Austin, dated July 9, 1970, a true copy of which is attached hereto. Counsel for plaintiffs made a statement as to the impracticability and undesirability of further deferral of advice to the City Council of sites appropriate for Dwelling Units. At the conclusion of the June 26 conference the matter was again continued until July 13 for the specific purpose of enabling CHA to present whatever additional evidence it wished.

8. At the commencement of the conference of July 13, 1970, a letter from counsel for plaintiffs to Judge Austin, dated July 13, 1970, was delivered to Judge Austin and to counsel for CHA, a true copy of which letter is attached hereto. Counsel for CHA requested a further continuance for the purpose of introducing testimony of one Dr. Greeley, who was not then present in court. Prior to July 13 no request had been made to Judge Austin for a continuance for such or any other purpose. Judge Austin heard the statements of counsel for CHA as to the subject matter of Dr. Greeley's proposed testimony, stated that such testimony would be repetitive of arguments previously made by Professor Wade and other CHA representatives, and declined to further continue the proceedings. Counsel for plaintiffs referred Judge Austin to a letter from the Department of Housing and Urban Development to CHA

respecting the timing of CHA's advice to the Chicago City Council of sites for Dwelling Units. A true copy of such letter from Francis D. Fisher, Regional Administrator, to Mr. C. E. Humphrey, Executive Director of the CHA, dated July 9, 1970, is attached hereto.

9. At the conclusion of the conference of July 13, 1970 Judge Austin stated that in his view an order in form similar to that proposed by counsel for plaintiffs and attached to his letter dated July 13, 1970 was appropriate, that CHA should not defer any longer the necessary steps to acquire appropriate sites for Dwelling Units, and that advice to the Chicago City Council with respect thereto should be given by September 1, 1970. Counsel for CHA stated that CHA might prefer that a direction to such effect be embodied in a written order and that she would advise counsel for plaintiffs within 24 hours as to whether such a written order was desired. The parties and Judge Austin agreed to continue the matter to July 20, 1970, for the purpose of signing an order providing for a written report by CHA and, if desired by CHA, an order providing for advice to the Chicago City Council.

10. Counsel for CHA advised counsel for plaintiffs on or about July 14 or 15, 1970 that a written order respecting advice by CHA to the Chicago City Council was desired and on July 20, 1970, over the objections of CHA as to substance but not form, Judge Austin signed the order which was entered herein on July 20, 1970.

11. The conferences held on the five dates listed in paragraph 1 above lasted many hours in the aggregate. No restriction of any kind was imposed upon the form or content of the evidence to be presented. The two sessions of June 26, 1970 and July 13, 1970 were specifically scheduled for the purpose of permitting CHA to present what-

ever evidence it desired. At no time during any of the conference sessions was any objections to the procedure, or to the presence or absence of any notice or motion, raised by counsel for CHA.

Further affiant sayeth not.

ALEXANDER POLIKOFF
Alexander Polikoff

Subscribed and sworn
to before me this
12th day of August,
1970.

KAREN F. WINER
Notary Public

BUSINESSMEN FOR THE PUBLIC INTEREST

109 North Dearborn Street
Suite 1001
Chicago, Illinois 60602
(312) 641-5570

May 18, 1970

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

Dear Kay:

This will confirm our conversation of yesterday in which I requested copies of the following:

1. The materials submitted by CHA to HUD showing CHA's proposed site plans for the current 1,500 unit

family housing reservation. If the submissions to HUD (I understand there are two of them) do not include related information such as the precise location of the sites, zoning status of the sites, the number of units proposed at each site, etc., I would like to have that information as well.

2. Any related planning information respecting the proposed sites which was not included in the submissions to HUD, for example, CHA staff recommendations or other memoranda relating to the proposed sites.
3. CHA's plans for the "community acceptance" effort which we have previously discussed, including the full plan of which you have previously provided me a summary and any written material so far prepared pursuant to this plan by CHA or its hired consultants in this regard.
4. Any other documents which may evidence the action so far taken by CHA to comply with the subsection A of Section VIII of the judgment order entered July 1, 1969 (the "best efforts" provision), including particularly any contractual or other written arrangements which have been entered into by CHA with respect to the siting of public housing in areas outside the City of Chicago.
5. Site location information concerning the recently approved new program for approximately 1,500 elderly family units (locations of projects and number of units), and the current status of this program.

As we discussed, I wish this information for the purpose, among others, of enabling us to prepare a mutually agreed upon statement of the current factual situation for joint submission by us to Judge Austin in the context of raising with the Judge the question of the procedure to be followed in light of our two recent meetings. Since we are anxious to proceed promptly, and you have advised me that you

will be out of town on Wednesday and Thursday of this week, I have asked you to indicate to me by the end of the day today whether you will supply me with the requested information. If you are unable to respond affirmatively, I have asked you to join me in appearing before Judge Austin before the end of the day tomorrow, so that we may present to him (before you leave town) the question of whether we are entitled to the requested information under the circumstances.

Sincerely yours,

Alexander Polikoff,
Executive Director

ALP:eo

May 20, 1970

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

Dear Kay:

This will confirm our conversation on Monday as follows:

1. You advised me that you were not in a position to respond to the request for information in my May 18th letter to you because Mr. Swibel felt that the matter required discussion with the Commissioners and he was leaving town for the rest of the week.
2. You were unable to comply with my request that you join me in appearing before Judge Austin on Tuesday because you were otherwise engaged (and would yourself be out of town until Friday).
3. You did agree to join me before Judge Austin next Monday afternoon, but we both agreed that it would perhaps be preferable to see the Judge in chambers rather than appear before him in open court on

his motion call. You also said it was possible that by Monday afternoon you might have received permission to supply me with the requested information.

Following our conversation I spoke with Judge Austin's clerk and learned that the Judge is on trial and would be unable to see us in chambers for any appreciable length of time other than at 9:00 A.M. on May 20 (a scheduled pre-trial conference had been cancelled) or at 9:00 A.M. Tuesday morning, June 2. I was of course forced to reject the May 20 date because of your being out of town.

I have accepted the June 2 date and you may mark your calendar accordingly. That may be an appropriate occasion to discuss with the Judge the broader questions which have been presented by our recent conversations, but I am unwilling to wait until then for a decision on the question of our being entitled to information. Indeed, I wish the information far enough in advance of June 2 so that we may have an agreed-upon statement of facts to hand to the Judge at that time. Accordingly, I apparently have no alternative but to seek an order in open court requiring that CHA supply the requested information. However, since I have agreed with you that I will not do anything before the afternoon of Monday, May 25, I will not formally move for such an order until the motion call at 10:00 A.M. on Tuesday, May 26. I hope that the matter can be resolved satisfactorily and informally before then but I wish by this letter to formally notify you that unless there is such a resolution I will appear before Judge Austin at 10:00 A.M. on Tuesday, May 26 and move for the production of the information requested in my letter to you of May 18.

Sincerely yours,

ALEXANDER POLIKOFF,
Executive Director

ALP:eo

(May 25, 1970)

Mr. Alexander Polikoff
Businessmen for the Public Interest
109 North Dearborn Street, Suite 1001
Chicago, Illinois

Re: Gautreaux v. CHA
66 C 1459

Dear Mr. Polikoff:

This is to acknowledge receipt of your letter of May 20th received at CHA on May 21st and given my attention Friday, May 22nd.

With regard to your request for information and documents as outlined in your letter of May 18th, CHA will make available to you the items called for in paragraph 3, 4 and 5 as follows:

(3) Two documents from Community Programs, Inc. The one dated February 9, 1970 contains their recommendations for a public housing information program. I previously supplied you with a summary of this document. The second memorandum dated May 19, 1970, is a summary report of the status of their activities.

(4) Your inquiry as to what action CHA has taken to comply with the "best efforts" provision of the order requires an extensive response. We will be prepared to respond fully on June 2nd in Judge Austin's chambers. CHA has not entered into "any contractual or other written arrangements" with respect to the siting of public housing in areas outside the City of Chicago. However, we are in communication with seven suburban housing authorities with respect to locating sites beyond the city limits.

(5) Site selection information concerning the recently approved new program for 1,500 elderly units as contained in Commissioners' Resolution No. 70-CHA-59, copy enclosed. An ordinance calling for City Council

approval was introduced in the Council on May 20, 1970. Plan Commission Hearings are scheduled for May 28, 1970.

With regard to the materials and information called for in paragraph 1 and 2 pertaining to "CHA's site plans for the current 1,500 unit family housing reservation" and related detailed information in connection therewith, it is the Authority's position that the release of such information is premature and not consistent with Judge Austin's order of July 1, 1969. Section VII A of that order provides that such information is to be filed with the court and copies served on you within ten (10) days after such locations are approved by the Board of Commissioners of CHA. As of this date the Commissioners have not acted on any sites. Indeed, staff has not yet submitted any sites to the Commissioners for their consideration, since staff is still in the process of site selection.

Concerning your statements that (1) Judge Austin will be unable to see us in chambers until June 2, 1970 at 9:00 A.M.; and (2) that you "apparently have no alternative but to seek an order in open court (on Tuesday, May 26) requiring that CHA supply the requested information," this is to advise that I am unable to appear on that date.

We are also eager to discuss the broader issues you allude to in your letter of May 20th. However, I can see no reason why this matter cannot await discussion with Judge Austin on June 2nd and am at a loss to understand why one week should make that much difference to you particularly now that the Authority is willing, on a voluntary basis, to supply you with the data indicated above.

Very truly yours,

KATHRYN M. KULA
General Counsel

KMK:hn

Enclosure

cc: Judge Richard B. Austin

EXHIBIT 1
June 2, 1970

THE CHICAGO HOUSING AUTHORITY

Chronology of Site Selection Procedures

- 1/21/69 CHA requested from HUD program reservation of 10,000 units—5,000 elderly, 5,000 family.
- 3/6/69 CHA wrote HUD requesting immediate approval of application for 10,000 units.
- 4/1/69 CHA Chairman and Executive Director met with Winnetka Human Relations Committee and other interested citizens regarding site of public housing in suburban areas surrounding Chicago.
- 4/7/69 CHA Chairman and Executive Director met with the Executive head of the City of Evanston (Robert C. Wheeler, Community Development Group Manager) regarding public housing site in Evanston.
- 4/16/69 CHA Executive Director and Director of Engineering met with Executive Director of Northeastern Illinois Planning Commission (NIPC) regarding available information on sites for public housing in suburban areas. CHA was advised that NIPC's application to HUD for funding a six-county land survey was in process.
- 6/30/69 Memorandum for the United States filed with the court makes following statement on p. 17: "We can promptly make funds available for a survey to locate available and suitable sites . . ."
- 7/1/69 Order entered in Gautreaux case.
- 7/2/69 Telegram to Secretary Romney—CHA requested

- \$50,000 to make site survey and approval of previously requested unit allocation.
- 7/14/69 } Two meetings with HUD, Cook County Housing
7/18/69 } Authority, State of Illinois, Real Estate Research—R.E.R. retained by HUD to develop criteria for a site survey covering Cook County (including Chicago) and portions of Lake, Kane, McHenry, DuPage and Will Counties.
- 7/29/69 Letter from Secretary Romney responding to CHA's telegram of 7/2/69—No decision re request for unit allocation or funds for site survey.
- 10/8/69 CHA received approval from HUD of program reservation: 1,500 family units and 1,500 elderly units.
- 10/69 CHA started search for sites in General Housing areas (See memo attached which details extensive work involved.)
- 12/69 CHA requested a loan of \$50,000 of State Grant Funds from State Housing Board to cover costs of site selection and preparation of development programs for federal unit allocation. State Housing Board approval received.
- 12/17/69 Another meeting with HUD on criteria for survey.
- 12/17/69 CHA made first submission of family sites to HUD. (See line 1 of attached chart.)
- 12/29/69 CHA made second submission of family sites to HUD (See line 2 of attached chart); also submitted elderly sites.

- 12/69 Chairman of CHA together with some of the directors of Number Two Chicago Dwellings Association met with representatives of La Grange, Hinsdale, Burr Ridge, Western Springs, Pleasant Dale, and local school districts at a meeting in the West Suburban YMCA in La Grange to open discussions regarding development plans for the Bridewell prison farm property and the provision of some low-rent public housing at that location.
- 1/20/70 CHA received final copy of criteria for survey prepared by Real Estate Research.
- 2/4/70 Further discussions with HUD on site survey—how to proceed now that criteria were complete.
- 2/11/70 Meeting on site survey cancelled by HUD and not rescheduled.
- 2/19/70 HUD approval of elderly sites received.
- 3/3/70 CHA received HUD response re family sites—those approved, not approved and reasons, with recommendations for additional sites. (See line 3 of attached chart.)
- 3/70 CHA inspected and analyzed sites suggested by HUD and continued search for additional sites.
- 4/23/70 CHA board approved 7 sites for the elderly (high rise buildings—1,595 units)
- 4/70 HUD finalized plans for funding Housing Analysis to be undertaken by NIPC—low and middle income housing in 6 counties in Metropolitan area. [Apparently this is in lieu of funding Cook County Housing Authority or CHA for site survey outside of Chicago.]

- 4/27/70 CHA decided to communicate with other Housing Authorities to enlist their cooperation in the placement of public housing units in the suburbs; communicated with the Office of Housing and Buildings for necessary information.
- 4/29/70 CHA ordinance for approval of elderly sites introduced into City Council and referred to Committee on Planning and Housing.
- 5/1/70 CHA submitted additional family sites to HUD. (See line 4 of attached chart.)
- 5/70 HUD gives NIPC “go ahead” to start housing survey in Metropolitan area. NIPC recommendations for target areas due 2/28/71, to provide basis “for more detailed and longer range housing site proposals to be made in 1971 and thereafter.”
- 5/22/70 CHA sent letters to 7 suburban housing authorities requesting meeting to discuss available sites for public housing.
- 5/26/70 CHA wrote the Department of Local Affairs (Successor to the State Housing Board) and the Illinois Housing Development Authority enlisting their cooperation in finding suitable sites in areas outside Chicago not represented by local housing authorities.
- 6/1/70 CHA received HUD response re family sites submitted on 5/1/70—those approved and not approved. (See line 3 of attached chart.)
- Attachments: (1) Chart indicating site submissions.
- (2) Memorandum detailing site selection procedures.

CHICAGO HOUSING AUTHORITY

Inter-Office Memo

To Kathryn M. Kula
General Counsel

Date 5/25/70

Subject: Site Selection Procedures

Responding to your request for information relating to the procedures utilized by this Department in connection with selection of sites for family units in the General Public Housing area, the following outlines the activities of my staff to identify suitable sites and prepare necessary data for submission to HUD:

1. Examined 21 volumes of Sanborn maps covering those areas of the City located in the General Public Housing area. Sanborn maps, showing location of existing structures, is a prime source for identifying vacant land in the City of Chicago. These maps contain the most current information available to our knowledge.
2. Compiled a list of all apparently vacant properties having a frontage of 50 feet or more.
3. Went into the field and personally viewed each listed property, which involved locating by street address approximately 1,500 scattered pieces of property. Sites were eliminated from the original list if no longer vacant, were being utilized for side yards or parking lots, or because the prevailing usage of adjacent property was not compatible with family type housing.
4. The remaining sites were then analyzed for zoning compliance and whether zoning changes, if required, were feasible.
5. Calculations then were made to estimate number of units per location both from point of view of zoning limitations and good planning. Example: a parcel 50' x 142' located in an R5 district would permit a

17 unit structure. However, good planning would permit only 6 units.

6. All census tracts in which properties were located were analyzed to determine compliance with the 15% limitation on public housing in a given census tract.
7. Estimates were made of total land costs, per parcel, and resulting estimates of land costs on a per dwelling unit basis (Reference—Olcott's Land Values).
8. As sites are located and identified by street addresses, legal descriptions for each site have to be prepared.
9. No site was eliminated because of land costs.
10. Tract book records currently are being studied to determine ownership of the sites involved.

G. W. LEBSOCK

G. W. Lebsock

Director of Engineering

GWL:hn

CHICAGO HOUSING AUTHORITY

Inter-Office Memo

To K. Kula
General Counsel

Date 1/16/70

Subject: Report of Site Selection Activities

On October 8, 1969, we received in the Engineering Department a copy of the HUD Program Reservation authorizing CHA to initiate action to develop 1,500 family housing units.

Members of this staff were instructed to scour all volumes of Sanborn maps for the entire area of Chicago which was located in the General Public Housing Area. The Uptown Urban Renewal Area was not included since DUR will provide site locations and criteria for that community.

From the Sanborns, staff prepared a list of all vacant properties having a frontage of 50 feet or more. Staff then visited each listed property and deleted all those that were not available for development by virtue of the fact that they had been developed subsequent to the latest Sanborn sheet, were parking lots, gas station property, etc. No potential site was deleted because of location or estimated cost.

Staff then prepared a final listing of possible sites, made a preliminary estimate of acquisition cost and calculated the number of units that could be developed under present or proposed zoning.

As of this date, we feel we have a listing of all vacant land (50 foot frontage or more) in the General Public Housing Area that is suitable for housing development. This has been transmitted to the Department of Development and Planning to ascertain compliance with the Comprehensive Plan of Chicago and to identify sites, if any, that are being considered for development by other agencies, i.e., Board of Education, Park District, etc. The list has also been given to HAA for preliminary site review relative to per unit acquisition costs. As soon as we receive responses from these two organizations, a final list will be prepared for submission to the CHA Board of Commissioners, Federal Court and City Council.

The listing as it now stands will accommodate some 2,017 units. We have not yet determined how many will be stricken due to non-compliance with Judge Austin's order relative to proximity to each other and/or resulting in an excess of 15% of available units in a Census Tract.

This briefly outlines our activities to date. If you need specific information, it can be provided.

G. W. LEBSOCK
G. W. Lebsack
Director of Engineering

EXHIBIT 2

June 22, 1970

Judge Richard B. Austin
U. S. District Court
219 South Dearborn Street
Chicago, Illinois

Dear Judge Austin:

This report is being submitted pursuant to your request in our brief conference the morning of June 16th.

1. The status of site selection by CHA and HUD approvals is set forth on the attached chart, a copy of which I left with you on June 2nd.

2. Before proceeding with land acquisition of said sites, the following actions must be taken:

(a) Thirty days prior to action by the Commissioners authorizing acquisition, the sites must be submitted to the Chicago Plan Commission. Chapter 24, Section 11-12-4.1, Ill. Rev. Stats. 1969.

(b) CHA staff must submit to the Board of Commissioners the sites in question with sufficient information to enable it to determine suitability of the sites for acquisition and development for family public housing. Note: As of this date specific location or identification of sites has not been submitted to the Commissioners, either formally or informally.

(c) Upon consideration of the sites proposed by staff the Commissioners must adopt a Resolution authorizing and directing staff to obtain City Council approval and proceed with acquisition of the properties either by negotiated purchase or eminent domain proceedings.

(d) A site ordinance must be prepared which includes legal descriptions and maps for each of the

sites for which City Council approval is being requested.

(e) The ordinance must then be forwarded to the Clerk of the City Council for introduction to the Council.

(f) Upon introduction of the ordinance, it will probably be referred to the Committee on Planning and Housing. The Committee usually holds public hearings and then makes its recommendations to the full Council.

(g) The City Council must adopt an ordinance approving the sites for acquisition by CHA.

The specific question posed to CHA at this time, as I understand it, is how long does CHA estimate it will take to complete items (a) through (e) above. The Executive Director advises that his estimate is from sixty to ninety days after the action in step (a) is taken.

Very truly yours,

Kathryn M. Kula
General Counsel

KMK:hn

Attachment

cc: Mr. Alexander Polikoff
CO Files
Legal

CHA Submittals to HUD	Submittal Date	No. of Sites	No. of Units (CHA Estimate)	No. Sites Approved by HUD	No. of Units (CHA Estimate)	No. Sites Requiring Zoning Change	No. Sites with Correct Zoning	No. Units Requiring Zoning Change	No. Units with Correct Zoning
1	12/17/69	169	1,197	105	867	72	33	548	319
2	12/29/69	123	615	81	348	20	61	98	250
(HUD submittal to CHA)									
3	3/3/70	54	Not estimated	26*	156	10	16	98	58
	5/1/70	61	235	51	209	5	46	37	172
		407		263	1,580	107	156	781	799

*On HUD List. 26 of 54 sites were only ones approvable or eligible.

COMMENTS BY CHARLES R. SWIBEL, CHAIRMAN
The CHICAGO HOUSING AUTHORITY
June 26, 1970

The objective of the order entered by this Court on last July 1st is clear, and one with which the Chicago Housing Authority is in complete accord.

If that objective is to be achieved, however, I believe it is imperative that the TIMING factor be carefully considered in the implementation of the order. Disregard of that factor could result not only in a nullification of that objective but in

- (1) complete stoppage of the urgently-needed public housing program;
- (2) racial tension in the city to the point of strife;
- (3) acceleration of an already alarming flight to the suburbs by middle-class white families;
- (4) vigorous protests from the Black community for failure to make housing available to them outside the city.

The Authority's efforts to locate feasible sites have already been documented by our General Counsel and our "good faith" efforts to date have been conceded by the Counsel for the plaintiffs. The Court has also been made aware that it is the Authority's recommendation that the public announcement of new public housing locations should cover the total package of sites—both city and suburban. I would appreciate consideration of my reasons for this request.

First, however, the Board of Commissioners of the Authority has authorized me to tender this Court an unequivocal commitment that as soon as sufficient feasible sites have been located outside the city for the one-third of the dwell-

ings scheduled for the general public housing area, as provided for in the order, the city sites will be delivered to the City Council for action, and the suburban sites will be submitted to the respective governing bodies for their approval.

This course of action is dictated by what the Board believes are valid reasons.

The Board is convinced that it is in the best interests of the community and the public housing program to handle this entire issue as a METROPOLITAN AREA problem which should be solved on a metropolitan area basis.

If the new allocation of public housing—coupled with its racially mixed tenancy—is placed entirely within the city, it is almost inevitable that there will follow a decampment to the suburbs by the families whose properties are adjacent to the newly-announced sites.

In our search for city sites, extreme care was taken to make certain that SOME public housing would be built in every ward in the general public housing area. The Authority was counting on assistance from HUD and its funding of site surveys to identify feasible locations outside the city limits. To submit a partial list of sites at this time would almost inevitably lead to the Authority's being responsible for wholesale block-busting. A combined list of city and suburban sites will make it obvious that flight is futile—that there will be no place to which people can run to escape either public housing or integration. To make a meaningful impact, the program must be submitted as a total package.

CHA, while looking for city sites, had been relying on HUD's promises to fund a suburban site survey. The "Chronology of Site Selection Procedures" submitted to you by Miss Kula on June 2nd details the intolerable delays

occasioned by HUD on that score. It wasn't until last month that we learned HUD was funding the Northeastern Illinois Planning Commission to undertake the job. It wasn't until a few weeks ago that we learned the NIPC time table for identifying specific sites was 1971 and thereafter.

In these circumstances, the CHA Board has decided to fund an immediate search for feasible locations in surrounding communities. In the interest of saving time, this identification process will take place even before we have formalized agreements with other local housing authorities or other local governing bodies.

The Authority has already met with community people in Winnetka, Evanston, and areas surrounding the Bridewell Farm property; with the Northeastern Illinois Planning Commission; and with the Cook County Housing Authority, the Illinois Housing Development Authority, the Department of Local Government Affairs of the State of Illinois, and the Elgin Housing Authority, for the purpose of discussing this subject. A meeting with the DuPage County Housing Authority is scheduled for July 16th.

If the Court wishes, I shall be glad to have reports of our progress in these negotiations submitted on any time-basis deemed desirable: bi-monthly, monthly or quarterly.

I would like to add that I have discussed these problems with numerous members of both the white and black community, and I can corroborate that the consensus indicates deep concern for these problems.

This stated policy of the Board to place public housing simultaneously in the city and suburbs is concurred in and endorsed by the Integration Committee consisting of Theophilus M. Mann, Judge George N. Leighton, Bishop Louis

H. Ford, Very Rev. Comerford J. O'Malley and Carlos C. Ruiz.

The announcement of a positive program, encompassing both the city and suburbs, will make it clear that public housing and integration must be accepted in all communities throughout the metropolitan area. The Board is of the opinion that by so doing, the CHA will have made the intent of the order demonstrable fact.

THE CHICAGO HOUSING AUTHORITY

RESOLUTION NO. 70-CHA-105

WHEREAS, the Commissioners of the Chicago Housing Authority having considered the many and complex sociological and economic factors involved in the siting of low-rent public housing have concluded as a matter of policy that the interests of the community and the public housing program will best be served by developing sites simultaneously in the city and suburban areas; that the difficulties involved in housing the underprivileged are the problems of the Metropolitan Area and must be solved on a metropolitan area basis; and

WHEREAS, the Integration Committee, consisting of Judge George N. Leighton, Carlos Ruiz, Executive Director of the Puerto Rican Congress of Chicago, the Rev. Comerford J. O'Malley, Chancellor of De Paul University, Bishop Louis H. Ford, St. Paul Church of God in Christ, and Theophilus M. Mann, Attorney and Vice-Chairman of the Chicago Housing Authority, voted to concur, endorse and approve the position of the Commissioners of the Chicago Housing Authority that public housing sites for families

of low income be placed simultaneously in the City and the suburbs; and

WHEREAS, Judge Austin's order of July 1, 1969 provided that of the aggregate number of dwelling units to be constructed and/or leased by Chicago Housing Authority, one-third of the units may at the option of the Authority, be planned for and located in the General Public Housing Area of Cook County, outside the city limits; and

WHEREAS, staff has diligently pursued its search for suitable sites in the General Public Housing Area within the City of Chicago while at the same time has been conferring with HUD, the Cook County Housing Authority and the Illinois Housing Development Authority with the objective of securing the funding of a survey for sites in the Metropolitan area; and

WHEREAS, the Commissioners have only recently learned that HUD has decided to fund the Northeastern Illinois Planning Commission (NIPC) to make this survey, apparently in lieu of funding the Chicago Housing Authority or the Cook County Housing Authority; and

WHEREAS, upon being informed that the said survey by the Northeastern Illinois Planning Commission will not be completed until late in 1971, the Commissioners have instructed staff to undertake CHA's own search for suitable sites in the metropolitan area outside the city and to undertake any and all negotiations with local communities and housing authorities as required by law; and

WHEREAS, to date CHA representatives have met with community people in Winnetka, Evanston, and areas surrounding the Bridewell Farm property and with the Northeastern Illinois Planning Commission, the Cook County Housing Authority, the Illinois Housing Development Au-

thority, the Department of Local Government Affairs of the State of Illinois and the Elgin Housing Authority;

THEREFORE, BE IT RESOLVED BY THE CHICAGO HOUSING AUTHORITY THAT it is hereby declared to be the policy of this Board that the current federal allocation of low-rent family public housing units be utilized for the simultaneous location of such units in suburban communities of the Chicago metropolitan areas as well as in the City proper, all in accordance with the limitations provided in Judge Austin's order of July 1, 1969;

THAT the Commissioners do hereby authorize the expenditure of preliminary planning funds to continue the search for suburban sites and staff is instructed to proceed not only with negotiations with other housing authorities but with the identification of specific sites in the metropolitan area beyond Chicago's City limits.

CHICAGO HOUSING AUTHORITY

July 9, 1970

Judge Richard B. Austin
U. S. District Court
219 South Dearborn Street
Chicago, Illinois

Dear Judge Austin:

At our hearing before you with the ACLU on June 26, I raised the question of the political implications of introducing sites in the City Council for public housing in white areas. I suggested that my responsibility as a Commissioner of the Authority was to get as much low-income

housing built as possible within our jurisdiction. I also indicated that it was my judgment that submission of the sites at the present time would make public housing the central issue of upcoming campaigns and it was my fear that the ultimate result would be that less housing would be built. There is abundant historical evidence that resistance to public housing in white areas has been used by political candidates for partisan political purposes. It would be unfortunate if your historic decision got embroiled in a political contest where there was not adequate defense of either public housing or your decision.

I do not want you to think that my position was dictated by any reservations about your decision or the ultimate submission of sites by CHA to the City Council. I am enclosing an article which I wrote almost three years ago which contains my fears about housing in political campaigns. This was written about the election of 1966 and, as you know, the climate is now worse than it was then. I hope you will have an opportunity to read this article before our next meeting. I realize political judgments are also difficult to make and I indeed may be wrong. But historically there have been few issues as politically explosive as this question. I would not like to see this great opportunity for integrated housing jeopardized by temporary political considerations.

Respectfully,

Richard C. Wade
Commissioner

Enclosure

cc: Mr. Alexander Polikoff

* * *

BUSINESSMEN FOR THE PUBLIC INTEREST

109 North Dearborn Street

Suite 1001

Chicago, Illinois 60602

(312) 641-5570

July 13, 1970

The Honorable Richard B. Austin
United States District Judge
United States Courthouse
219 S. Dearborn Street
Chicago, Illinois

Re: *Gautreaux v. CHA*, 66 C 1459

Dear Judge Austin:

It is now one year since the decree was entered on July 1, 1969. It is clear that housing for low-income families is desperately needed in the metropolitan area, and that the objectives of the decree cannot be achieved without a substantial increase in the supply of such housing. It was for this reason that the decree required CHA to "use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and [to] take all steps necessary to that end, including making applications for allocations of federal funds in carrying out all necessary planning and development."

Against this background, let me set out the following facts:

1. Since the entry of the decree CHA has not submitted one site for new low-income family housing to the City Council for approval—and of course, therefore, has not begun the construction of one new dwelling unit for low-income families.

2. Neither plaintiffs nor (I believe) the Court have been informed in any meaningful way as to plans CHA may have for supplying low-income family housing beyond the 1,500 unit reservation presently available from HUD. Obviously, the 1,500 units—even if they were available for occupancy tomorrow—would not begin to meet the need or satisfy CHA's "best efforts" obligation.

3. Neither we nor the Court have been given any information as to CHA's efforts, if any, to use the "Turnkey" method of supplying housing. (See the full page ad of the New York City Housing Authority printed in the New York Times on June 30, 1970, a copy of which is enclosed.)

4. We have no information concerning CHA's efforts, if any, to have made available to it for low-income housing obsolete commercial and industrial areas of the City which are appropriate for such use. (See the quotations from the Comprehensive Plan of the City of Chicago which are enclosed herewith.)

5. We have no solid information respecting CHA's arrangements, if any, for supplying low-income housing in suburban areas. (At our request we were furnished with some general information from Miss Kula which, for example, refers to a meeting with persons from Winnetka over a year ago and contains no further information as to developments or opportunities in Winnetka, if any.)

Unless the best efforts provision of the decree is to be rendered meaningless, we need specific information concerning what CHA has done and plans to do. Perhaps everything is being done that can be done, but we cannot know this if we do not have the information. If more should be done than is being done, we cannot make intelligent recommendations to the Court without knowledge.

Therefore, pursuant to the "best efforts" provision of the

decree, we ask that CHA be directed to cooperate with us in preparing a factual report for the Court. Attached is a form of such an order. We do not necessarily ask, however, that such an order be entered; we believe that an informal request from you to CHA should suffice.

I am sorry I have not been able to prepare and deliver this letter earlier. However, it really does nothing more than reduce to writing the oral request we made at our last meeting in your chambers. Moreover, it should be non-controversial. Accordingly, I hope it will be possible to act upon our request promptly, if not this morning then shortly thereafter.

Very truly yours,

ALEXANDER POLIKOFF

Alexander Polikoff

ALP:eo

Encs.

cc: Miss Kathryn Kula

* * *

[Caption Omitted]

ORDER

This matter coming on to be heard on the presentations of the parties, and the Court being fully advised, IT IS HEREBY ORDERED THAT,

Pursuant to Subsection A of Article VIII of the Judgment Order entered herein on July 1, 1969, as modified, the defendant Chicago Housing Authority ("CHA") shall prepare a written Report to be submitted to the Court by August 15, 1970, as to the action taken and to be taken by it to comply with said Subsection. Such Report shall include

detailed information concerning, but need not be limited to, the following:

A. Action taken prior to the date of Report respecting—

1. Identification of sites for Dwelling Units which do not require zoning changes.
2. Identification of sites for Dwelling Units which require zoning changes, and action taken to secure such changes.
3. Employment of the “turnkey” method of production of Dwelling Units.
4. Agreements with other official bodies, including other housing authorities, to increase the supply of Dwelling Units.
5. Proposals, requests, etc., submitted by CHA to the Department of Housing and Urban Development for additional “reservations” for Dwelling Units, or relating to other action designed to increase the supply of Dwelling Units.

B. Future Plans

A detailed statement, including information in the categories listed under “A” above, of the number of Dwelling Units to be built, and the anticipated locations thereof, over the 12, 24 and 36 month periods following the date of the Report, including a statement as to how such production and location of Dwelling Units is to be achieved.

To the extent the future plans referred to under “B” above have not been prepared, CHA is hereby directed, pursuant to said Subsection A of Article VIII, to promptly prepare the same.

CHA is hereby further directed to confer with counsel for the plaintiffs during the preparation of such Report and to make full disclosure to them of all matters necessary

or appropriate to the preparation of the same to the end that such Report shall be as comprehensive and detailed as possible and shall constitute a statement respecting the matters to be covered thereby which has been agreed to by the parties. Any issues of privilege or confidentiality shall be promptly submitted to the Court for resolution to the extent the parties are unable to settle the same among themselves.

ENTER:

.....
United States Judge

July .., 1970