

(11)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil Action Nos. 66C 1459
	)	66C 1460
CHICAGO HOUSING AUTHORITY and	)	
GEORGE W. ROMNEY, et al.,	)	
	)	
Defendants	)	

MEMORANDUM OF CHICAGO HOUSING AUTHORITY IN ANSWER TO
PLAINTIFFS' MOTION FOR FURTHER RELIEF AS TO CHA

Facts

As a framework for the discussion which follows, we begin by setting out a number of facts which are relevant to the motion here under consideration:

CHA, HUD and the City of Chicago

CHA is a municipal corporation, organized under the Illinois Housing Authorities Act (Ill. Rev. Stat. ch. 67 1/2, § 1 et seq.), whose function is the construction, maintenance, and management of public housing. CHA's area of operation is the City of Chicago. CHA can extend its operations beyond the city limits only by making agreements with authorities in other jurisdictions (e.g., Cook County Housing Authority).

CHA obtains funds for the construction of public housing only from the federal government. CHA has no taxing power, and without federal money CHA is powerless to increase the supply of public housing.

CHA receives federal funds under the United States Housing Act of 1937 (42 U.S.C. § 1401 et seq.), which funds are administered by HUD. A number of conditions must be met before HUD will actually pay over any money to CHA, one of which is that "the governing body of the locality [here, the City of Chicago]. . . has entered into an agreement with the public housing agency [CHA] providing for the local cooperation required by [HUD] pursuant to this Act. . . ." (42 U.S.C. § 1415(7)). The Act requires such agreement "[i]n recognition that there should be local determination of the need for low-rent housing. . . ." (Ibid.). (Also see Humphrey Affidavit.)^{*/} The usual way in which local determination is manifested is by the execution of a "Cooperation Agreement" between a housing authority and a municipality for each site (see Humphrey Affidavit). By virtue of a 1949 amendment to the Illinois Housing Authorities Act (Ill. Rev. Stat.,

^{*/} In support of this memorandum, there is attached hereto the Affidavit of C. E. Humphrey, referred to as the "Humphrey Affidavit".

ch. 67 1/2, § 9),^{*/} CHA cannot acquire property in Chicago without approval of the Chicago City Council. After passage of that legislation, CHA and the City of Chicago entered into a general "Cooperation Agreement", providing for many thousands of units of federally assisted housing, the location of which was left unspecified. As federal funds are available, approval of the City Council is sought for specific sites. The situation in Chicago is, therefore, in substance, no different than the situation anywhere else in the United States. In the case of Chicago and any other city or village in the United States, there must be a "local determination" of the need for low-rent housing at specified locations, expressed by specific approval of the municipality in question (see Humphrey Affidavit). Nevertheless, CHA on December 10, 1971, inquired by letter of HUD whether it would finance new low-income family public housing in the City

^{*/}"If the area of operation of a housing authority includes a city, village or incorporated town having a population in excess of 500,000 as determined by the last preceding Federal census, no real property or interest in real property shall be acquired in such municipality by the housing authority until such time as the housing authority has advised the governing body of such municipality of the description of the real property, or interest therein, proposed to be acquired, and the governing body of the municipality has approved the acquisition thereof by the housing authority."

of Chicago absent approval of the sites by the City Council, as required by law. As of the filing of this memorandum, HUD has not answered CHA's letter (see Humphrey Affidavit).

The Litigation

In 1966, plaintiffs, black residents of public housing units or black applicants for such housing, filed a four-count complaint against CHA. After dismissing Counts III and IV, and after placing Count II in abeyance for an indefinite time, this court entered summary judgment in favor of plaintiffs and against CHA on Count I only.

The sole wrong complained of in Count I of the complaint was that CHA selected public housing sites in a manner which caused black public housing residents and black applicants for such housing to reside in all-black neighborhoods. This result was caused by the fact that CHA would submit prospective sites to individual aldermen prior to submitting formally the same sites to the Chicago City Council for approval. In entering summary judgment for plaintiffs on Count I, this court said:

"[P]laintiffs, as present and future users of the system, have the right under the Fourteenth Amendment to have sites selected for public housing projects without regard to the racial composition of either the surrounding neighborhood or of the projects themselves." (296 F. Supp. at 913, quoting 265 F. Supp. at 582-83).

Plaintiffs, by Count I of their complaint, did not allege that they had a constitutional right to public housing, did not allege that existing housing facilities should be closed and the tenants moved to new facilities in white neighborhoods, did not allege that CHA was obligated to evict black tenants from existing units and seek to move in whites so as to achieve desegregation of those units, did not sue on behalf of whites who are residents of or applicants for public housing, and did not allege that CHA was duty-bound to expand the supply of public housing while at the same time placing such expanded facilities in white neighborhoods. Of course, since they did not allege any such matters, plaintiffs sought no equivalent relief. Count I only involved CHA's site selection procedures as those procedures affected the plaintiff class, the members of which are "Negro citizens of the United States who presently reside in the City of Chicago." In July 1969, following summary judgment, this court entered an order eliminating the site selection procedures which were the subject of Count I of the complaint. The judgment order contained such provisions as were necessary to insure the elimination of the objectionable procedures, and required that future public housing sites be selected and units built in accordance with an established formula.

The judgment order did not command CHA to build any new housing sites (although throughout the recent history of this litigation plaintiffs have consistently behaved as though the order did contain such a mandate), and this Court has made it clear that such was not the order's intent. As recently as November 24, 1971, this Court made the following observations:

"... I said at that time [July 1969] that all I am doing is saying that if anymore housing is built in Chicago, it is going to be built in this fashion. And there was no request in that complaint for me to order the Secretary to disregard the statute of the State of Illinois, or CHA to disregard the statute of Illinois and to go in and start building houses, or the secretary to come up with the money." (November 24 tr. p. 14).

"You [plaintiffs' counsel] think that I at that time [July 1969] contemplated and CHA at that time contemplated that if there was this recalcitrance which we have run into, that their [CHA's] best efforts required that they go out and do what you are seeking to have them do now, buy housing and build units regardless of whether they get approval? Do you think that was embraced in our thinking at that time? It wasn't in mine." (November 24 tr., p. 51).

Events Subsequent to the July 1969 Judgment Order

CHA did not appeal the July 1969 judgment order but set about complying with the required site selection procedures. The judgment order, designed to eliminate the previous site selection procedures, required CHA to go directly to the Chicago

City Council with sites in white neighborhoods "as rapidly as possible." Thereafter, a dispute arose between CHA and plaintiffs as to how "rapidly" CHA should act, and this dispute resulted in a flurry of proceedings over the period July 1970 through March 1971. The subject of this dispute was not whether CHA should select sites in white neighborhoods; the dispute was limited strictly to the question of timing, with CHA taking the position (rejected by this court by its order of July 20, 1970) that the best chance for City Council approval of the sites selected by CHA required that the program in Chicago be part of a metropolitan program. Thus a June 25, 1970 resolution of CHA provided for a Chicago metropolitan area program:

"[I]t 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;"

Moreover, the court was advised of the opinion of the Program Director, National Opinion Research Center, University of Chicago, as follows:

"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."

On March 5, 1971, pursuant to this court's order, CHA submitted to the Chicago City Council, in conformity with the provisions of the July 1, 1969 judgment order, 275 sites suitable for 1,746 dwelling units. On July 11, 1971, and June 24, 1971, the City Council approved a total of 44 sites in the General Public Housing Area (white) suitable for about 302 units and 17 sites suitable for about 137 units in the one mile buffer zone but in census tracts having a white population in excess of 70% (see Humphrey Affidavit). For various technical reasons, involving CHA and HUD staffs, and as previously reported to this Court, a specific Development Program for 36 of the City Council approved sites involving 267 units has been prepared by CHA and forwarded to HUD for final approval on November 16, 1971. CHA cannot proceed with construction until HUD has approved the specific development plans submitted to it.

Plaintiffs now seek to force construction of not only the balance of the previously HUD-approved 1500 units, but also of 7000 additional units of public housing in Chicago without Chicago City Council approval.

The Instant Motion

In essence, plaintiffs request an order which would re-

quire CHA to commence to acquire land and build public housing thereon without obtaining approval for such sites, as required by statute, from the Chicago City Council.* / There are two answers to this request: First, plaintiffs have no legal right to such an order; second, such an order, if entered, could not possibly be carried out by CHA.

Plaintiffs have No Right to the Order which They Now Seek

Count I of the complaint sought the elimination of improper site selection procedures by CHA, and relief was provided by this court's judgment order of July 1, 1969. The complaint did not allege that plaintiffs' constitutional rights had been violated because no public housing was available to them in white neighborhoods. CHA has now eliminated the site selection procedures that were objected to, as is amply clear from the voluminous records, reports and other memoranda which CHA has submitted pursuant to the terms of the July 1969 judgment order, as well as from the hearings before this court in March, 1971.

Plaintiffs now seek to take a further step: purportedly pursuant to this court's July 1, 1969 order, they demand that the construction of public housing commence "now" in the white

* / This memorandum deals only with paragraphs 2 and 3 of plaintiffs motion since, as noted above, paragraph 1 has been rendered moot by the November 16, 1971 submission to HUD of a Development Program for 36 of the 44 City Council approved sites in the General Public Housing Area.

neighborhoods of the City of Chicago. Whether they are entitled to such relief is surely not before the court under either the pleadings or orders thus far entered. If plaintiffs seriously believe they are entitled to such relief, they should be required to file an amended complaint, setting up their new cause of action, and giving CHA and any other named defendants the opportunity to defend. United States v. 47 Bottles, 320 F.2d 564, 573-74 (3d Cir. 1963); Carter v. Baltimore & O. RR. Co., 152 F.2d 129 (D.C. Cir. 1945); Connolly v. United States, 149 F.2d 666 (9th Cir. 1945).

All Count I of the complaint put before this court was the site selection procedures of CHA. Those procedures are now governed by the judgment order of July 1, 1969, as amended. Additional relief such as plaintiffs now seek should be the subject of a new lawsuit.

Moreover, plaintiffs have no right to insist that this court should ignore concededly valid statutes and direct CHA to proceed on its own. Plaintiffs site a line of cases which generally hold that a state cannot interpose a statute to frustrate a federal court's fashioning of a remedy to correct a violation of constitutional rights. Those cases are inapplicable here for a number of reasons:

First. HUD, by statute (42 U.S.C. § 1415), cannot finance any CHA project until there has been a local determination by the City of Chicago approving that project; thus, plaintiffs would have to obtain an order requiring HUD to ignore that federal statute and finance the projects without local approval; none of plaintiffs' cases support the proposition that a federal equity judge has the power to ignore a valid federal statute in formulating relief.

Second. Before a federal court overturns federal or state statutes in seeking to fashion relief in a constitutional case, there should be a strong showing that the taking of such steps bears a rational relationship with the relief to be achieved; in this case, the relief sought and achieved was the elimination of CHA's past site selection procedures, which relief has nothing to do with ordering the applicable statutes to be ignored and ordering CHA to strike out on its own in constructing new public housing.

Third. There is no evidence to support a finding that the Illinois statute in question (Ill. Rev. Stat. ch. 67 1/2, § 9) was created for the purpose of frustrating plaintiffs' relief; to the contrary, that statute became effective in 1949, many years before the complaint in this case was filed. Moreover,

the record contains no basis for a finding that the Illinois statute is being employed by the City Council to frustrate plaintiffs in their efforts to obtain relief from CHA's site selection procedures. The plaintiffs' goal in that regard has been achieved. The new goals of plaintiffs present a new case.

Fourth. Action taken or not taken by the City Council of the City of Chicago with respect to sites selected by CHA for low income public housing in accord with the July 1, 1969 order could obviously rest on reasons other than invidious racial distinctions.

Aldermen, for instance, might well view that while it is perfectly proper to insist that Avalon Park, Beverly Ridge, Norwood Park, Gage Park, Chicago Lawn and Belmont-Cragin should have public housing units, it is difficult to see why Barrington Hills, River Forest, Park Ridge, Olympia Fields, Palos Park, Kenilworth, Glencoe, Highland Park and Lake Forest should be excused from having public housing. Why should Norwood Park be forced to accept public housing and Park Ridge be exempted from such housing? Why should Sauganash have public housing, but not Lincolnwood, Edgewood but not Skokie, Beverly but not Evergreen Park, or Austin but not Oak Park and River Forest?

Why should Chicago have eight thousand five hundred more units and surrounding cities and towns have none? What magic is there in the central city boundaries, or Higgins Road, Western Avenue, Austin Boulevard, 103rd Street, and others that they exempt some communities but not Chicago?

Aldermen might rationally question whether wealth and mobility should be permitted to exempt certain persons from urban problems, from racial integration, and from accepting public housing. They might with accuracy object to the fact that thus far wealth has enabled some people to purchase exemption from facing the costs of urban life and paying the price for the nation's stated policy of eliminating racial injustice.

If it be assumed that Chicago has 60 per cent of the population of the metropolitan area and if there are to be eight thousand five hundred additional units of public housing, Chicago aldermen, in all fairness, might ask: why should not the suburbs absorb at least three thousand four hundred (40%) of these units? Indeed, could not Chicago aldermen reasonably believe, because Chicago alone has borne almost the entire burden of public housing, that the suburbs ought to have even more than 40% of any additional units? If no neighborhood in Chicago ought to be able to claim exemption from public housing and if this exemption

is to be denied to the working and middle class in Chicago, it should also be denied to the upper middle class and the wealthy in the suburbs.

Chicago aldermen might well share the goals of plaintiffs, but, if they also shared certain of the plaintiffs' views as set forth in the complaint, such aldermen might view the introduction into their neighborhoods of public housing with alarm that was not racist in origin. Plaintiffs, for example, assert in paragraph 10 of the complaint that:

"Physical isolation from and lack of social contact with the larger predominantly white community within which the Negro Ghetto is located generate, among Negro residents thereof, feelings of inferiority as to their status in the community that affect their hearts and minds in a way unlikely ever to be undone. The separation of the races is usually interpreted as denoting the inferiority of the Negro group, and the sense of inferiority thus imparted to residents of the Negro Ghetto detrimentally affects their motivation and their ability to become useful members of the society at large, and has a tendency to retard their educational, social and political development. . . .

"Physical isolation from and lack of social contact with the larger predominantly white community within which the Negro Ghetto is located results, and has resulted in Chicago, in a pervasive life pattern of pathology marked by ignorance, fear, racial misunderstanding, broken homes, illegitimacy, delinquency, drug

addiction, hatred and violence, all of which cripples and destroys great numbers of persons living within the Negro Ghetto." (Complaint, ¶ 10(a) and (b)).

Aldermen might strongly support open occupancy, racially integrated housing and schools (including busing programs), but view (rightfully or wrongfully) the introduction of public housing for low income families into their wards--whatever the color or race of the low income families--as destructive of cherished neighborhood values; such aldermen might properly resent being branded as racists by plaintiffs whose proposals can be said to present a "serious danger--that of economic and class-cultural problems being mistaken for racial ones". Banfield,^{*/} The Unheavenly City, p. 69.

As a Matter of Fact, CHA cannot Go about Constructing New Housing Sites under Circumstances Urged by Plaintiffs

Even if plaintiffs were legally entitled to an order directing CHA to ignore the City Council and to commence attempting to construct public housing on its own, CHA could not build one unit unless this court compelled other action by numerous persons or entities who are not parties to the litigation.

We have already demonstrated that local approval of CHA's proposed housing sites is a federal statutory prerequisite to

^{*/} Edward C. Banfield is Henry Lee Shattuck Professor of Urban Government at Harvard University.

HUD's granting of federal funds for such sites under 42 U.S.C. § 1415, and that HUD is the only source of funds for acquiring and developing such sites. Thus, without local approval, HUD would have no statutory authority to make appropriate grants. Do plaintiffs want this court to order HUD to ignore the statute and grant money to CHA? If so, they should say so in plain English in a proper motion.

Even if this court were to order HUD to make appropriate grants to CHA, absent local approval, how would CHA obtain sites? CHA could, of course, undertake negotiations with a view toward voluntary sale, but, in view of the intricate nature of the issues involved, it must be anticipated that few, if any, voluntary sales would be made. Plaintiffs have off-handedly alluded to CHA's power of eminent domain (November 24 tr., p. 45), suggesting that CHA has only to institute eminent domain suits to obtain the property of any recalcitrant land owner. The obvious defense to any such suit is that CHA is seeking to condemn property contrary to law (City Council approval not having been previously obtained). Such a defense would likely carry the case through the entire Illinois court system and go on for years. Moreover, every eminent domain suit would have to stand on separate footing, so that the rules of res judicata and collateral estoppel

would not preclude each successive eminent domain defendant from at least raising the same defense. Who will provide the funds for such extensive litigation? Do plaintiffs want this court to enjoin eminent domain defendants from resisting suits by CHA?

The two problems raised immediately above--i.e., forcing HUD approval and coping with eminent domain suits--are not the only problems which would stand in the way of CHA proceeding as plaintiffs seek to compel it to proceed. What of title insurance? What title insurance company would insure CHA's title to property acquired as plaintiffs suggest? A good and merchantable title is a prerequisite for HUD's granting financing for any given site (see Humphrey Affidavit). Do plaintiffs want this court to compel some title insurance company to issue a policy, notwithstanding their objections? (See Humphrey Affidavit.) Is HUD to be ordered to finance sites without title insurance? Is CHA to be compelled to take title to property under which it is not adequately insured?

The same considerations apply to the problem of obtaining proper zoning approval. Eleven of the 36 sites included in the Development Plan submitted to HUD on November 16, 1971 require zoning changes or variations before construction can commence; 80 (614 units) of the 188 sites submitted to the City Council

but not yet acted upon require zoning changes or variations (see Humphrey Affidavit). Plaintiffs' supplemental memorandum cites several cases under which the courts have disregarded efforts by a city or municipality to maintain racial segregation by refusing to make zoning changes. The difference between this case and the cases cited by plaintiffs is that in this case the defendant CHA has no power to make zoning changes; thus, the party against whom relief is sought here has no power to do things which the municipality defendants in plaintiffs' "zoning" cases could have done.

What has been said above makes it clear that CHA, on its own, has no power to do what plaintiffs now want done. Plaintiffs themselves concede this point at page 6 of their "Memorandum in Support of Motion for Further Relief", filed on November 24 in Gautreaux No. 2; referring to this case, plaintiffs there state:

"All of the parties to both cases have agreed and stated many times that full relief to remedy the effects of the past discrimination cannot be provided solely within the [CHA] case. Over 30,000 segregated living units constitute the legacy of the past. Neither such a number, nor any significant part of such a number, can be provided within a reasonable time, if at all, within the territorial boundary of the City of Chicago. Thus, it is a certainty that a plan of metropolitan scope will

be needed. Such a plan should obviously be provided in this case, where the jurisdiction of the defendant is metropolitan-wide, rather than in the [CHA] case where it is not."

It scarcely requires the citation of authority to demonstrate that a court of equity, in framing relief, cannot properly order a party to do an impossible act, or an act which is bound to result in failure, Clark v. Washington, 366 F.2d 678, 682 (9th Cir. 1966). This proposition is particularly correct in complicated desegregation cases, where any plan is bound to have far-reaching implications. "The measure of any desegregation plan is its effectiveness", Davis v. School Comm'rs of Mobile County, 402 U.S. 33, 38 (1971).

The School Cases Relied Upon by Plaintiffs do
not Support the Relief which They Now Claim

Throughout the history of this litigation, plaintiffs consistently have cited a great number of school desegregation cases. CHA and this court are told that the school desegregation cases authorize the court to ignore statutes, to "declare invalid" others, to bring in new parties as need be, and to do a multitude of other acts which, taken together, would constitute administration by this court of the Chicago Housing Authority.

In their most recent memorandum, plaintiffs observe that

CHA and HUD "have never explained why constitutional principles applicable to school cases . . . should not be applicable to racial discrimination in housing" (Plaintiffs' December 1, 1971 Memorandum, p. 12). Plaintiffs' observation begs the question: of course "constitutional principles" apply regardless of whether the case involves schools, pools, housing or whatever. The question here is whether the particular remedies which have evolved since 1954 for desegregating the schools are to be employed willy-nilly in any case in which a constitutional violation has been found. Recent Supreme Court opinions answer this question, "No."

In Swann v. Charlotte-Meklenburg Board of Education, 402 U.S. 1 (1971), the Supreme Court reviewed a desegregation plan, and then, for guidance to the lower courts, detailed the various remedial mechanisms available to effect full desegregation. The court explicitly stated that its narrow purpose was to accomplish school desegregation; it did not purport to set out remedies to deal with other problems, and it rejected in advance any suggestion that the result in that case was necessarily applicable to other cases:

"We are concerned in these [school] cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from Brown I to the present was the dual school system. The elimination of

racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of Brown I to seek to use school desegregation cases for purposes beyond their scope, although desegregation of schools ultimately will have impact on other forms of discrimination." (402 U.S. at 22-23).

Clearly, therefore, the Constitution does not require that remedies fashioned out of the school desegregation cases carry over into other constitutional cases.

The school cases are also unique because many hundreds of such cases have been filed, so that the federal courts have had ample opportunity, often through trial and error, to formulate proper plans of relief. By contrast, many other types of cases have given the courts relatively little opportunity to experiment with methods of relief. For example, in Palmer v. Thompson, 403 U.S. 217 (1971), the Supreme Court upheld the right of a city to close all municipal pools because the city believed that the pools could not be economically operated on a segregated basis, even though at the time the pools were closed an outstanding federal court desegregation decree was in effect; there is little doubt that if a school district tried to close schools under the same circumstances the federal court would have ordered the schools reopened, as in Griffin v. County School

Board of Prince Edward County, 377 U.S. 218 (1964).

There can be only one answer to the question of whether the instant case is to be approached as if it were a school case, in which the realistic opportunities for remedy are extremely broad. For three major reasons, this case does not come within the "school case" category:

First, it is clear from a number of Supreme Court cases, beginning with Brown v. Board of Education, 347 U.S. 483 (1954), and extending through to Swann v. Board of Education (p. 20, supra), that the right to an education is possibly the most important right not specifically set forth in the Federal Constitution. "[E]ducation is perhaps the most important function of state and local governments It is the very foundation of good citizenship" (347 U.S. at 493). This view is reflected by national federal policy and expressed by the Congress in numerous forms.

Public housing stands on a completely different footing. The national policy, as reflected by Congress, is that to have or not have public housing is a matter for local determination (see 42 U.S.C. § 1415 (p. 2, supra)). Consistent with this national policy, the Housing Act of 1959 declared:

"It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program. . . ." (42 U.S.C. § 1401).

In addition, the Supreme Court has recently held that there is no constitutional right to public housing per se. In James v. Valtierra, 402 U.S. 137 (1971), plaintiffs challenged a California constitutional provision which required that no low-rent housing project be built by any state public body without prior approval expressed at a community election. The Court, expressly rejecting the argument that the California provision violated the Equal Protection Clause of the Fourteenth Amendment, stated as follows:

"The people of California have also decided by their own vote to require referendum approval of low-rent public housing projects. This procedure ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services and to lower tax revenues. It gives them a voice in decisions that will affect the future development of their own community. This procedure for democratic decisionmaking does not violate the constitutional command that no State shall deny to any person 'the equal protection of the laws.'" (402 U.S. at 142-143).

It therefore follows that housing and education stand on different footings under the Constitution, in the courts, and in Congress. It is true, of course, that persons have the right to

be offered public housing facilities without regard to race and that race should not be a factor in site selection - in the same way, it is true that persons have the right to enjoy public swimming facilities without regard to their race. But in neither case does constitutional doctrine require that such facilities be offered, and in this case no such issue is before the court.

The second reason that the various remedies in the school desegregation cases are not necessarily applicable to the remedies now sought in this case is that in the school desegregation cases the defendants before the court had the power to accomplish the relief sought: defendant school boards could levy taxes, order racial mixes, revise boundaries, and reassign teachers. As demonstrated above, CHA, the only party before the court for purposes of this motion, has no power to accomplish the relief sought: CHA has no taxing power; and without the cooperation of HUD, the City of Chicago, title insurance companies, zoning boards, and others, CHA has no power to accomplish the relief sought.

The third reason that the school desegregation cases are not necessarily applicable is that they did not deal with a problem which lies at the heart of public housing in the major cities: the elimination of urban middle and upper-middle class neighborhoods through the "flight to the suburbs". This court recognized the seriousness of this migratory crisis when, in

entering summary judgment for plaintiffs, it said:

". . . [E]xisting patterns of racial separation must be reversed if there is to be a chance of averting the desparately intensifying division of Whites and Negroes in Chicago. On the basis of present trends of Negro residential concentration and of Negro migration into and White migration out of the central city, the President's Commission on Civil Disorders estimates that Chicago will become 50% Negro by 1984. By 1984 it may be too late to heal racial divisions." 296 F. Supp. at 915.

It has been pointed out, as a part of the record in this case, that the problem of halting this flight to the suburbs is inextricably entwined with the question of public housing:

"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. . . . 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. . . .

* * *

". . . [I]f 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 counter-motive 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."

The quoted paragraphs are from a letter of Dr. Andrew Greeley, submitted to this court as Exhibit A to CHA's Motion to Vacate Order of July 20, 1971, filed August 11, 1970. That letter also states:

"... 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."

None of the dangers discussed above has been considered or analyzed by the courts in the school cases. It is obvious, however, that all relief measures considered in a public housing case must be so framed as to minimize, if not eliminate, such dangers. It seems obvious to CHA that plaintiffs' current motion can only work to exacerbate the danger clearly perceived both by this court and by all other persons who hold fast to common sense.

Conclusion

The theory of plaintiffs' complaint against CHA is that CHA violated their rights by the manner in which it selected public housing sites. CHA has ceased engaging in the practice of which plaintiffs complain. Accordingly, as concerns their dispute with CHA, plaintiffs have their relief.

It is obvious, however, that the ultimate goal which plaintiffs' counsel seek goes far beyond eliminating CHA's past site selection procedures. Plaintiffs' counsel made that goal clear during the November 24 hearing, when he said:

"[Y]ou [the court] certainly heard me tell you not once but many times that although the discrimination which your Honor initially had to deal with was limited to CHA and HUD running a program within the City of Chicago, that it is highly unlikely that full relief for that discrimination can be provided within the geographic boundary of the City of Chicago." (November 24 tr. pp. 63-64).

CHA fully agrees that public housing must be metropolitan in nature, and not confined to the City of Chicago. It has so stated on numerous occasions before this court. It has offered testimony to prove that a dispersal program for public housing will not work unless it is operated on a metropolitan basis.

Only recently, while speaking before a subcommittee of the House Judiciary Committee, Albert A. Walsh, president of the National Association of Housing and Redevelopment Offices, gave the following testimony:

"It is a vicious circle. Our cities have become the home for the poor, minorities, the aged, handicapped, sick, underemployed and unemployed. To solve the housing needs of these families, we build low and moderate income housing, which then attracts even more of these families and individuals - causing a greater need for more housing. In the meantime the suburbs become more affluent, white, young, healthy and income producing. . . .

" . . . [E]xisting housing assistance programs are simply not commensurate to the task of providing low and moderate income housing on a fair and equitable basis in all our communities and thereby making real the achievement of equal opportunity in housing."*

Plaintiffs and CHA share these views. The problem with plaintiffs' approach, however, is that they seek to accomplish their goals by new orders against CHA while simultaneously admitting that their effort against CHA, even if successful in obtaining a new order against CHA, probably won't work. Their approach is neither rational nor legally sound.

If plaintiffs' goal is metropolitan-wide public housing they should amend the pleadings and join as defendants all of the municipalities within the Northern District of Illinois, and, after hearings on, among other things, the capacity of each for the location of public housing, seek to have quotas assigned to each of them. In addition, the defendants in the new suit should include those state and local officials who have the power to levy taxes, to make appropriate changes in local ordinances and regulations, and who in general have the

*/ The quoted paragraphs are excerpts from a statement given before Subcommittee Number 4 of the House Judiciary Committee on November 10, 1971.

ability to see that metropolitan housing programs can be accomplished.

Respectfully submitted,

CHICAGO HOUSING AUTHORITY

By Patrick W. O'Brien
Patrick W. O'Brien

Watson B. Tucker
Watson B. Tucker

231 South LaSalle Street
Chicago, Illinois 60604
ST 2-0600

Its Attorneys

Of Counsel:

Kathryn M. Kula
Mayer, Brown & Platt

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,

Plaintiffs

v.

CHICAGO HOUSING AUTHORITY and
GEORGE W. ROMNEY, et al.,

Defendants.

Civil Action Nos. 66C 1459
66C 1460

AFFIDAVIT OF C. E. HUMPHREY IN SUPPORT OF
MEMORANDUM OF CHICAGO HOUSING AUTHORITY
IN ANSWER TO PLAINTIFFS' MOTION FOR FURTHER
RELIEF AS TO CHA

STATE OF ILLINOIS)
COUNTY OF C O O K)

SS

C. E. HUMPHREY, being first duly sworn, deposes and says:

1. He is the Executive Director and Secretary of the defendant Chicago Housing Authority ("CHA"), which position he has held since November, 1967; prior to that date, he was the Deputy Executive Director, which position he held since May, 1957; prior to that date, he was the Director of the Development Department of CHA, now known as the Engineering Department, which position he held since March, 1953.

2. Having been employed by CHA for almost 19 years, as Director of Development, Deputy Executive Director and now as Executive Director and Secretary, respectively, he has knowledge of the facts hereinafter set forth.

3. The current public housing program in Chicago is federally funded pursuant to the United States Housing Act of 1937, as amended, (47 USC §1401, et seq.); section 15(7) (b) of said Act requires as a condition precedent to obtaining federal funding that a local housing authority enter into an agreement with the governing body of the locality involved, providing for the local cooperation required by the Act; said Agreement is commonly referred to as a "Cooperation Agreement."

4. Pursuant to the above provision, the usual procedure for most housing authorities is to enter into Cooperation Agreements with their local governing bodies only after a project site has been identified. In this way local governing bodies throughout the country exercise the power to approve or disapprove site locations for public housing even absent such a state statutory requirement.

5. Prior to the 1949 Amendment to the Illinois Housing Authorities Act, giving the City Council of the City of Chicago the power of site approval for public housing, all

Cooperation Agreements between CHA and the City related to specific and identified projects.

6. After the 1949 Amendment referred to above, CHA, on March 1, 1950, entered into a Cooperation Agreement with the City of Chicago covering the development of not to exceed 40,000 units of federally assisted public housing; this Agreement was entered into without identification of project locations.

7. Subsequently, all Cooperation Agreements covering federally funded, family public housing were consolidated, and on February 10, 1969, CHA and the City of Chicago entered into an Amendment to the Consolidated Annual Contributions Contract increasing the maximum number of public housing units from 40,000 to 60,000, without identification of project site locations.

8. On March 5, 1971, CHA submitted to the Clerk of the City Council of the City of Chicago 275 sites estimated to accommodate 1,746 units; of this number, 95 sites required zoning changes.

9. On June 11, 1971 and June 24, 1971, the City Council approved for acquisition and development by CHA a total of 100 sites estimated to accommodate 732 units of family public housing; of this number, 44 sites estimated to accommodate

302 units are located in the General Public Housing Area (GPHA) and 56 sites estimated to accommodate 430 units are located in the Limited Public Housing Area (LPHA); of the 56 sites in the LPHA, 17 sites estimated to accommodate 137 units are located in the one mile buffer zone and are in census tracts having a white population in excess of 70%.

10. Of the 188 sites which have not yet been considered by the City Council, 80 (614 units) require zoning changes or variations.

11. Of the 36 sites included in the Development Plan for Project Illinois 2-85 (sites approved by the City Council and HUD) and submitted to HUD on November 16, 1971, 11 sites require zoning changes or variations prior to start of construction.

12. Upon receipt by CHA of HUD approval of the Development Plan for Project Ill. 2-85, CHA will immediately proceed with land acquisition procedures and architectural assignments; land acquisition procedures include obtaining appraisals, securing title searches, hiring negotiators to acquire title to the properties through voluntary conveyances, and instituting eminent domain proceedings, if necessary.

13. Acquisition of sites which have not been approved by the City Council would be seriously complicated because of the

following:

- (a) A prerequisite to federal financing is evidence that the local authority has good and merchantable title to the property; CHA has sought to obtain, but to date has been unable to secure, assurance from the Chicago Title & Trust Company that it will guarantee title to property acquired without City Council approval, pursuant to an order of court.
- (b) A prerequisite to HUD approval of a construction contract award is adoption of a Resolution by the Board of Commissioners of CHA approving the award, containing a statement that there has been no disapproval of the project by the local governing body (RHA 7415.1, Sec. 12 f).
- (c) If it is necessary for CHA to institute eminent domain proceedings to acquire the property, CHA's failure to obtain City Council approval in accordance with statutory requirements can be raised as a defense to the proceedings and would involve protracted litigation of a legal issue of first impression in the state courts.

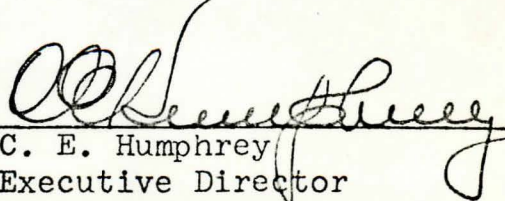
(d) There is a serious question whether HUD, in view of federal statutory requirements, will fund a public housing program in Chicago in the absence of City Council approval of site acquisition by CHA. A letter of inquiry on this specific question was addressed and mailed on December 10, 1971 to Mr. John L. Waner, Area Director of HUD (Exhibit A attached hereto). To date no written reply has been received from HUD. However, the general counsel for the HUD area office advised by telephone on December 16, 1971 of the reluctance of their office to respond until after this Court ruled on the pending motion.

14. The Agreement between CHA and the Housing Authority of Cook County for a cooperative effort to develop housing for low-income families in Cook County outside the corporate limits of the City of Chicago was submitted to HUD for approval on September 30, 1971; since that time numerous inquiries have been made of HUD personnel inquiring as to when HUD approval would be forthcoming and to date CHA has been unable to obtain such information.

Further affiant sayeth not.

Subscribed and sworn to
before me this 31st day
of December, 1971.

Arthur M. Taylor
Notary Public


C. E. Humphrey
Executive Director
Chicago Housing Authority

BOARD OF COMMISSIONERS
CHARLES R. SWIBEL, CHAIRMAN
THEOPHILUS M. MANN
JOHN J. MASSE
LETITIA NEVILL
NICHOLAS J. BOSEN



EXECUTIVE OFFICE
55 W. CERMAK RD.
CHICAGO, ILLINOIS 60616
TEL. 791-8500

Chicago Housing Authority

C. E. HUMPHREY
EXECUTIVE DIRECTOR

December 10, 1971

Mr. John L. Waner
Area Director
Department of Housing and
Urban Development
17 North Dearborn Street
Chicago, Illinois

Re: Gautreaux v. CHA
Case No. 66 C 1459
Gautreaux v. HUD
Case No. 66 C 1560 (Consolidated)

Dear Mr. Waner:

The Plaintiffs in the subject litigation are attempting to obtain an order from the court directing CHA to acquire sites for public housing construction without regard to City Council action. A copy of the Motion filed by Plaintiffs' attorneys is enclosed for your reference.

CHA attorneys are now preparing a response to this Motion. In connection therewith, it is essential that the Authority ascertain whether HUD will agree to finance development plans for sites in the absence of City Council approval if CHA is so ordered by the court. Specifically, will HUD execute an Amendment to the Consolidated Annual Contributions Contract (No. C-246) for construction of public housing on sites where a development plan has been approved by HUD but where the City Council has not consented to acquisition of the sites by CHA as required by State law. Perhaps the question should be put a different way, i.e., will HUD approve a development plan for public housing sites which are acceptable to HUD but which have not been approved by the City Council? Under such circumstances it should be understood that financing costs necessarily must include all attorneys' fees and costs of litigation in connection with the acquisition of the sites in question.

Mr. John L. Waner
Chicago, Illinois
12/10/71
Page 2

CHA's response must be on file with the court no later than December 21, 1971. In view of this fact, it is critical that we have your response prior to that date.

Very truly yours,

C. E. Humphrey by K.K.

C. E. Humphrey
Executive Director

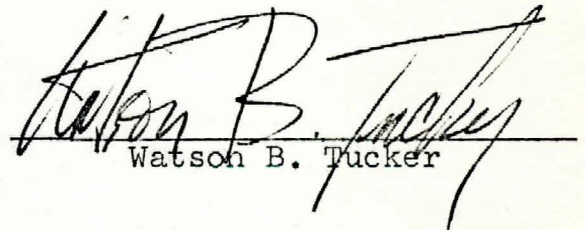
Via Messenger

Enclosure

cc: O'Brien

CERTIFICATE OF MAILING

The undersigned hereby certifies that on December 21, 1971, he served copies of the foregoing Memorandum of Chicago Housing Authority in Answer to Plaintiffs' Motion for Further Relief Filed on November 24, 1971, and Supporting Memoranda by mailing same, with postage fully prepaid, to the other attorneys of record herein.


Watson B. Tucker