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June 30, 1972

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

Re: Gautreaux v. CHA/HUD, et al.
66 C 1459/60 (Consolidated)

Dear Judge Austin:

This letter and enclosures constitute plaintiffs' initial response to your order of December 23, 1971, directing the parties to prepare a proposed judgment order embodying a comprehensive plan for relief. (See also our letter of April 27, 1972, a copy of which is enclosed for convenience.)

Although we are not now submitting a proposed judgment order in final form, an outline of such an order and supporting memoranda are enclosed. We are using this approach because it worked well in the development of the July 1, 1969 judgment order. There too we began with an outline of a proposed final order. Several very useful conferences were then held in chambers to discuss the outline and drafts of the judgment order which emerged from it. The conferences were attended not only by the parties but by others invited by the Court, e.g., the U.S. Civil Rights Commission. We believe that such a procedure is appropriate for the development of the final order to be entered in this case.

To that end on July 6 we will move in open court for a conference in chambers to discuss the enclosed outline. Following that and any subsequent conferences and formal hearings that may be held, we will move, again in open court, for the entry of a specific proposed final judgment order. In a related con-

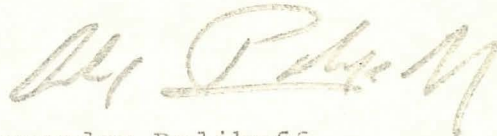
Honorable Richard B. Austin
Page 2
June 30, 1972

nection, a hearing is scheduled for July 10 on the Court's previous order (entered on January 3) directing CHA to prepare a specific plan for 7,000 additional dwelling units. We believe that it may be appropriate to delay that hearing until after at least an initial discussion of the enclosed outline (see VIII-A of the outline) and we will therefore also make that request.

Accordingly, pursuant to notice we will appear before you on July 6 to ask for a conference in chambers and a new date for the July 10 hearing.

The enclosures with this letter consist of the outline of a proposed judgment order and six supporting memoranda. Particular mention should be made of the last memorandum which is a response to HUD's proposed judgment order filed on April 26, 1972. HUD's proposal is for a general "best efforts" type of order. We take the same position as to HUD's proposal that we took with respect to CHA's similar proposal three years ago, namely, that specific affirmative relief is required and that a "best efforts" order is inadequate.

Very truly yours,



Alexander Polikoff

ALP:kw
Enc.

cc: All counsel of record

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
-vs-	)	66 C 1460
	)	
GEORGE W. ROMNEY, et al.,	)	(Consolidated)
	)	
Defendants.	)	

OUTLINE OF PROPOSED FINAL ORDER EMBODYING COM-
PREHENSIVE PLAN FOR RELIEF (SUBMITTED PURSUANT
TO ORDER OF DECEMBER 23, 1971).

I. Definitions. It will be convenient to define several terms to be used in the order.

[Comment: To the extent possible definitions should be the same as or similar to the definitions in the July 1, 1969 order - e.g., the definition of "Dwelling Unit."]

II. Number of Dwelling Units to be Provided. The order should require 30,848 dwelling units to be supplied and offered to the plaintiff class.

[Comment: The Court has previously determined that 30,848 is the number of dwelling units which comprised the discriminatory public housing program in Chicago. 296 F.Supp. at 910. This is therefore the number of nondiscriminatory dwelling units which should be offered to the plaintiff class as relief in this case.]

For reasons mentioned in VII below we believe that the new dwelling units to be provided under the order should also be made available to eligible community residents - the so-called "neighborhood priority" feature of the judgment order of July 1, 1969. Using the 50% neighborhood priority of the 1969 order, and assuming that the full neighborhood priority is actually used by community residents, the total number of dwelling units required to be provided would be twice the number of units to be provided to the plaintiff class. Memorandum #1* shows that such number of dwelling units is appropriate in relation to the need for low income housing. However, if at any point CHA and HUD could demonstrate that a lesser number of dwelling units had satisfied the housing needs of the plaintiff class, the program for providing additional dwelling units would be terminated.]

III. Metropolitan Location of Dwelling Units. The order should provide for metropolitan-wide location of Dwelling Units.

[Comment: In our letter to the Court of April 27, 1972, we said that a metropolitan location plan for the new dwelling units is necessary. The reasons for that conclusion are given in Memorandum #2. The statements attached to the April 27 letter show that all parties appear to be in agreement on this issue.

The order must of course define the metropolitan area within which dwelling units are to be provided. The so-called Chicago Illinois Housing Market Area, which is defined by HUD as the 6 Northeastern Illinois counties of Cook, Lake, Kane, McHenry, DuPage and Will, may be too large for purposes of this case, embracing as it does substantial rural areas remote from Chicago. In the Chicago area the U.S. Census Bureau's general definition of a metropolitan area (a "Standard Metropolitan Statistical Area") is the same 6 counties. However, the Census Bureau defines the

* The memoranda referred to follow this outline in numerical order.

"Chicago Urbanized Area" - a largely urban area within, but substantially smaller than, the 6 county area. This is the metropolitan area we suggest for purposes of the final judgment order. Memorandum #3 describes the Chicago Urbanized Area.

There is no doubt that the Court has the authority to require metropolitan location. Where necessary to vindicate federal constitutional rights equity courts have the power to disregard local political boundaries. Such boundaries are uniformly held to be a matter of convenience, not sovereignty. Memorandum #4 collects some of the cases so holding.]

IV. Dispersal Within the Chicago Urbanized Area. Excessive concentration of public housing should not be permitted; "mini-ghettos" and the creation of new, racially "impacted" areas must be avoided. Accordingly, the order must contain (a) appropriate provisions for the location of the new dwelling units on the now generally accepted "scattered-site" basis to assure against excessive concentrations of low income housing within a community, and (b) so-called "fair share" provisions to assure dispersal among communities.

[Comment: Low-income housing dispersal on a metropolitan basis is being implemented in various metropolitan areas across the country through so-called "fair share" plans. These plans assure that no community in the metropolitan area will receive inappropriately large amounts of low-income housing but that each community will receive its "fair share" of such housing. Memorandum #5 discusses such "fair share" plans.]

We are preparing such a plan for the Chicago Urbanized Area for the dwelling units to be provided under the order. The plan will be ready for submission to the Court no later than September 1, 1972. The Court may wish to invite other parties, or even non-parties, to submit such plans if they desire to do so.]

V. Mechanism for Providing Dwelling Units Within the Chicago Urbanized Area. The order should require CHA and HUD to provide dwelling units in accordance with the dispersal and other provisions as promptly as possible.

[Comment: Under state law (Ill.Rev.Stats. Ch. 67-1/2, §27c) CHA may operate anywhere in the State of Illinois, subject outside of Chicago to the agreement of any local housing authority already constituted in the area. The judgment order should direct CHA to provide the required housing pursuant to such agreements; but the order should also specifically permit the required housing to be provided by the local housing authority already constituted for the area, rather than directly by CHA, wherever at its option the local housing authority desires to do so. If within a reasonable time local housing authority itself declined to provide the required housing and also refused to enter into an agreement to permit CHA to do so, plaintiffs would file a supplemental complaint to set aside (so far as necessary to implement the order in this respect) the state law which requires such agreement. The order of this Court of April 10, 1972, setting aside another state law which operated to frustrate relief in this case, is precedent for this form of relief.

Public housing authorities are required by law (42 U.S.C.A. §1415(7)) to obtain the agreement of the governing body of a "locality" within which they wish to provide housing. If within a reasonable time any one or more of such agreements necessary to carry out the provisions of the judgment order is not obtained by CHA or the local housing authority, as the case may be, a supplemental complaint would be filed to set aside the requirement of such an agreement to the extent necessary to avoid frustration of the order.]

VI. Nature of the Housing to be Provided. Federal programs now afford several different means of furnishing public housing or its equivalent. The order should give CHA and HUD appropriate flexibility in utilizing these programs.

[Comment: In addition to conventional public housing, leased public housing is an available option. The Third Circuit Court of Appeals has said that a moderate income housing program (currently known as "Section 236 housing") employed in connection with another subsidy program known as "rent supplement" is the functional equivalent of public housing. 436 F.2d at 820. The Seventh Circuit Court of Appeals has said that such a program, as well as a related program known as "Section 235 housing," might be an appropriate means of providing relief in this case. 448 F.2d at 736, n.9. Any program or combinations of programs which enable CHA and HUD to provide housing to the plaintiff class in conformity with the other provisions of the judgment order should be authorized.]

VII. Tenant Assignment. Provisions similar in principle to those included in the 1969 judgment order respecting tenant assignment should be included to assure fairness in offering new dwelling units to members of the plaintiff class, and to foster community acceptance and the integration of new units by offering a portion of them (e.g., 50%) to eligible community residents.

VIII. Interim Orders. Some dwelling units can and should be provided without waiting for approval and implementation of the fair share plan for the Chicago Urbanized Area. Such units (including those to be provided under CHA's current 1500 unit reservation from HUD) will be "credited" against the total number of units required to be provided by the final order.

- A. An order should be entered respecting additional dwelling units within the City of Chicago (in addition to CHA's current 1500 unit program) to be provided by CHA in accordance with the 1969 order.

[Comment: Perhaps, after discussion, such an order may be entered by agreement. If not, the hearing previously scheduled for July 10 should be held in the near future and an appropriate order entered thereafter.]

- B. An order should be entered requiring an appropriate percentage of units in new Section 236 developments to be offered under a rent supplement program to the plaintiff class.
- C. An order should be entered requiring an appropriate percentage of units in developments receiving FHA mortgage insurance to be offered under the Section 235 program to the plaintiff class.

[Comment: Perhaps, after discussion, such orders may be entered by agreement. If not, plaintiffs will move formally for such interim relief.]

IX. Miscellaneous. Suitable provisions respecting reporting, retention of jurisdiction, and other matters, as in the 1969 order, should of course be included, as well as a specific requirement that CHA and HUD exercise their respective powers affirmatively to implement the provisions of the order as rapidly as possible.

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
-vs-	)	66 C 1460
	)	
GEORGE W. ROMNEY, et al.,	)	(Consolidated)
	)	
Defendants.	)	

MEMORANDA IN SUPPORT OF PLAINTIFFS' OUTLINE
OF PROPOSED FINAL ORDER EMBODYING COMPREHEN-
SIVE PLAN FOR RELIEF

- MEMORANDUM #1 - 30,848 Additional Dwelling Units Offered to the Plaintiff Class is an Appropriate Numerical Measure of Relief in this Case.
- MEMORANDUM #2 - The Additional Dwelling Units to be Provided Should be Located Throughout a Defined Metropolitan Area.
- MEMORANDUM #3 - Description and Discussion of the Chicago Urbanized Area.
- MEMORANDUM #4 - Local Political Boundaries are Matters of Convenience, not Sovereignty.
- MEMORANDUM #5 - Description and Discussion of "Fair Share" Plans for the Dispersal of Low Income Housing in Metropolitan Areas.
- MEMORANDUM #6 - Response of Plaintiffs to Proposed Judgment Order and Accompanying Materials filed by HUD on April 26, 1972.

MEMORANDUM #1

30,848 ADDITIONAL DWELLING UNITS OFFERED
TO THE PLAINTIFF CLASS IS AN APPROPRIATE
NUMERICAL MEASURE OF RELIEF IN THIS CASE

Since the wrong to be remedied in this case consists of building 30,848 dwelling units on a discriminatory basis, the remedy should be to offer an equivalent number of non-discriminatory units to the plaintiff class. But a court of equity will not order vain or fruitless acts. Therefore the Court must be persuaded that there is a need for such number of dwelling units.

One measure of need for low income housing is the number of families eligible for such housing. In its opinion of February 10, 1969, the Court noted that according to 1960 census figures 264,000 Chicago families were eligible for public housing. 296 F.Supp. at 915. (1970 census income figures will not be available for several weeks.) A study funded in part by HUD and conducted for the Department of Development and Planning of the City of Chicago (the "DDP Study") indicates that as of 1967-68 the number of eligible families in Chicago was 281,000.*

* The study is entitled "Housing Conditions in the City of Chicago." It is dated May 1, 1968, and was supervised by Robert Ferber, Research Professor of Economics and Marketing at the University of Illinois. The study was conducted under the auspices of the Department of Development and Planning of the City of Chicago and was assisted by a grant from HUD.

The DDP Study uses several approaches to estimate both the need and the demand for public housing. It concludes:

"Whichever approach is used, the estimates obtained in this study indicate a very large need and demand for publicly-assisted housing. In the case of public housing, this demand would seem to be somewhere between 110,000 and 165,000 dwelling units." (p. 7-22)

The figures referred to in the Court's opinion and in the DDP Study relate exclusively to the City of Chicago. Since the proposed final order in this case would encompass the substantially larger Chicago Urbanized Area (see Memorandum #3, *infra*), these figures are conservative in relation to the proposed order.

If, as we suggest (see Section VII of the Outline of Proposed Final Order), a 50% community priority provision is included in the final order, the total number of dwelling units called for by the order would be twice the number of units provided to the plaintiff class. Such number of dwelling units would be substantially below what appears to be the need and the demand for public housing in the City of Chicago, let alone the Chicago Urbanized Area.

However, it is also proposed that the final judgment order affirmatively provide that if at any point CHA and HUD could demonstrate that offering a lesser number of new dwelling units had satisfied the demands of the plaintiff class for non-dis-

crimminatory housing, the remedial program for additional dwelling units could be terminated at that point.

MEMORANDUM #2

THE ADDITIONAL DWELLING UNITS TO BE PROVIDED
SHOULD BE LOCATED THROUGHOUT A DEFINED
METROPOLITAN AREA

We have previously observed (April 27 letter to Judge Austin) that each of the major defendants - CHA, HUD and the City of Chicago - agrees in principle that additional housing provided as relief in this case should be located throughout a metropolitan area and not concentrated exclusively in Chicago. Little elaboration should therefore be necessary here.

Recently HUD's Assistant Secretary for Equal Opportunity, Samuel J. Simmons, said:

"Central cities are losing whites and gaining Blacks. In spite of a gradual increase in the number of Blacks and other minorities living in the suburbs, the fact of the white noose around the country's largest cities is a largely unchanged reality. The white trek to the suburbs has continued unabated in the last ten years and in the majority of the large metropolitan areas whites and Blacks still live largely separate lives."*

Even more recently Secretary Simmons said:

* Remarks by Assistant Secretary Simmons, issued by HUD NEWS for release on January 20, 1972, p. 3. Secretary Simmons said that Blacks make up 32.7% of Chicago's population but only 3.6% of the suburb's. Ibid.

"This [1970 census] data tells us that Black families are still increasingly crowded into central cities, ghettos and substandard rental housing, while the major economic growth representing many thousands of jobs is taking place in outlying suburban communities."

(Remarks by Assistant Secretary Simmons, issued by HUD NEWS for release on April 27, 1972, p. 1.)

Secretary Simmons concluded, "It is impossible to solve central city problems in the central city alone." (Remarks of January 20, supra, p. 4.)

Secretary Romney has himself made the same observation:

"[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding communities. The city and the suburbs together make up what I call the 'real city.' To solve problems of the 'real city,' only metropolitan-wide solutions will do."

(Statement by Secretary Romney, December 9, 1971, Appendix A, pp. 15-16, to HUD's memorandum, filed December 17, 1971.)*

* This view is articulated over and over again by HUD officials and reflects the view of the national administration. For example, here is Under Secretary of HUD Richard C. Van Dusen quoting from Vice President Agnew:

"There must be adopted in America a truly metropolitan approach to the city's problems . . .

[T]he suburban resident who thinks he has fled the city's problems, but can still enjoy its benefits, must realize that if the city dies - if the core rots - then the whole apple goes. He can't intelligently take the attitude, 'I've moved out; to hell with it'."

(Remarks prepared for delivery by Richard C. Van Dusen, issued by HUD NEWS for release on March 14, 1972, pp. 15-16.) (footnote continued)

Related considerations support the need for metropolitan location of the housing to be provided under the order. Foremost among these are the realities of employment. As Secretary Simmons noted, the major economic growth representing many thousands of jobs is taking place in outlying suburban communities. Of Chicago in particular Secretary Simmons said:

"As Whites have left the cities, jobs have left with them. After 1960, three-fifths of all new industrial plants constructed in this country were outside of central cities. In some cases as much as 85% of all new industrial plants located outside central cities were inaccessible to Blacks and other minorities who swelled ghetto populations.

In the Chicago metropolitan area, for example, there were approximately 550,000 new jobs created in the period between 1959 and 1970. Of these, only 75,000 were in the City of Chicago. In other words nearly 87% of the area's new employment opportunities were suburban, not central city, opportunities."

(Remarks of April 27, supra, pages 3-4, emphasis added.)*

(continued from page 2)

Such concerns are especially relevant to the Chicago metropolitan area:

"The extent of racial segregation in Chicago today is astonishing in its virtual completeness . . . Reinforcing the segregation of blacks within most central cities, is their virtual exclusion from suburban neighborhoods."

(Remarks of April 27, supra, p. 2.)

* Secretary Simmons also said:

"[A] study has found that during the last five years, the suburbs of the 40 largest metropolitan areas gained 85 percent of the new jobs in manufacturing, wholesale and retail trade and related services.

This means that the jobs requiring the lowest skills and paying the lowest scale are leaving the city, and they are also leaving behind the workers - black and white - who can fill those jobs."

(Remarks of January 20, supra, p. 6.) (footnote continued)

The President himself has said that equal employment opportunity goes hand in hand with equal housing opportunity:

"Another price of racial segregation is being paid each day in dollars: in wages lost because minority Americans are unable to find housing near the suburban jobs for which they could qualify. Industry and jobs are leaving central cities for the surrounding areas. Unless minority workers can move along with the jobs, the jobs that go to the suburbs will be denied to the minorities - and more persons who want to work will be added to the cities' unemployment and welfare rolls."

(Richard M. Nixon, Statement on Federal Policies Relative to Equal Housing Opportunity, June 11, 1971.)

Were this Court to order that the new housing needed to provide full relief in this case be located exclusively within the central city of Chicago (even if it were possible to do so in a desegregated manner within a reasonable time, which is not likely), the Court would be ignoring a vital factor bear-

(continued from page 3)

From 1955 through 1969 Chicago's share of jobs within the six-county metropolitan area decreased by 17%; Chicago's miniscule overall job gain, 14,443, may be contrasted with the gain in McHenry County, 14,444, whose 1970 population was thirty times smaller than that of Chicago. (Statistics derived from, Employment Covered Under the Illinois Unemployment Compensation Act, Survey by Chicago Postal Zones and Mayor Suburban Communities, 1955-65, 1957-69, Bureau of Employment Security, State of Illinois.) The impact of Chicago's lack of growth of jobs has been greatest in the areas in which low-income blacks live. Between 1955 and 1969, a net loss of 61,577 jobs was suffered by the geographic areas of Chicago which contain almost 90% of all CHA family units. (Ibid.)

ing on the location of low income housing - its relationship to job opportunities. Surely a court of equity must take such a factor into account in determining the form of relief to be provided.

Similarly the court may take into account educational and other considerations. Children of the plaintiff class attend largely segregated Chicago schools while most suburban schools remain overwhelmingly white.* Secretary Romney, describing the effect of concentrating public housing in particular areas of central cities, has mentioned still other problems:

"[O]ne of the things we are undertaking to do and have been undertaking to do is to get a broader distribution of this [public housing] and to prevent its being concentrated so that you have got all the problem families concentrated in particular areas in these central cities. Because that aggravates the whole problem of law enforcement and preventing crime and so on."

[Hearings before the Subcommittee on Housing of the House Committee on Banking and Currency, Housing and Urban Development Legislation - 1971, p. 281.)

* The Advisory Commission on Intergovernmental Relations says that "on the educational front, the central cities are falling further behind their suburban neighbors with each passing year," and that "urban children who need education the most are receiving the least." (Fiscal Balance in the American Federal System, Vol. II, Metropolitan Fiscal Disparities, Advisory Commission on Intergovernmental Relations, Washington, D.C., 1967, pp. 5 and 6.)

Finally, plaintiffs are entitled to relief as promptly as feasible. Although redevelopment of obsolete commercial and industrial areas within the City affords significant potential for new housing, the reality is that vacant land may be developed far more quickly than improved land. In the Chicago area, 95% of all vacant land is in the suburban areas.*

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For all of these reasons prompt, complete and effective relief is not possible if the new housing to be supplied as relief is confined to the City of Chicago. The final judgment order should require instead that the new housing be dispersed throughout an appropriate metropolitan area. The metropolitan area suggested for this purpose is described in Memorandum #3.

* Survey of Vacant Land, City of Chicago, U.S. Govt. Printing Office, 1968, The Report of the President's Commission on Urban Housing, Technical Studies, Vol. II, p. 338.

MEMORANDUM #3

DESCRIPTION AND DISCUSSION OF THE CHICAGO
URBANIZED AREA

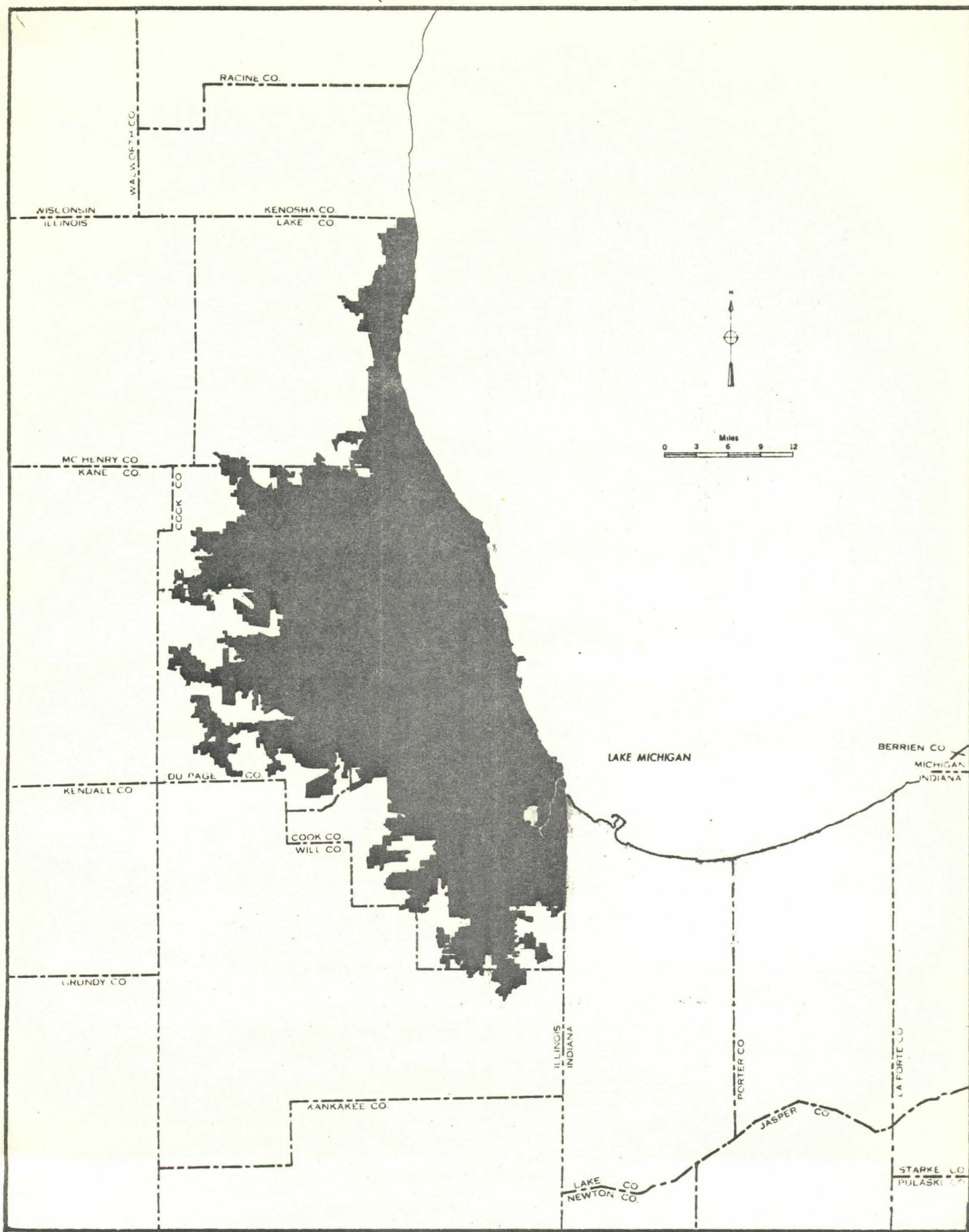
The Bureau of the Census recognizes approximately 250 so-called "Standard Metropolitan Statistical Areas" (SMSAs) in the 1970 census. The SMSA for the Chicago area consists of the 6 northeastern Illinois counties of Cook, Lake, McHenry, Kane, DuPage and Will. Although defined by HUD as the Chicago Housing Market Area, the Chicago SMSA may be an inappropriate metropolitan area for purposes of relief in this case because it includes large rural areas remote from Chicago.

The Census Bureau also defines "Urbanized Areas." The Bureau says that the major objective in delineating urbanized areas is "to provide a better separation of urban and rural housing in the vicinity of the larger cities." (1970 Census of Housing, General Housing Characteristics, Illinois, HC(1)-A15, Appendix A, p. 2.) As defined by the Bureau, an urbanized area consists of a central city or cities of 50,000 or more inhabitants and surrounding closely settled territory.

The Chicago Urbanized Area (which contains 89% of the population of the 6 county SMSA) includes much of Cook County, a substantial portion of DuPage County, an eastern portion of

Lake County, and a very small portion of northern Will County. This is the area we suggest for provision of relief in this case. 'A map of the Chicago Urbanized Area is attached to this memorandum.

CHICAGO URBANIZED AREA, ILLINOIS PORTION
(INDIANA PORTION DELETED)



MEMORANDUM #4

LOCAL POLITICAL BOUNDARIES ARE MATTERS OF
CONVENIENCE, NOT SOVEREIGNTY

Local political boundaries are a matter of convenience, not sovereignty, and they may be disregarded when necessary to vindicate federal constitutional rights. The Supreme Court, lower federal courts and state courts uniformly so hold. In Reynolds v. Sims, 377 U.S. 533, 575 (1964), the Supreme Court said:

"Political subdivisions of States - counties, cities, or whatever - never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions."

In Haney v. County Board of Education of Sevier County, Ark., 410 F.2d 920, 924-25 (8th Cir. 1969), the Eighth Circuit Court of Appeals said:

"State legislative district lines, congressional districts and other state political subdivisions have long ago lost their mastery over the more desired effect of protecting the equal rights of all citizens . . . Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights."

And in Jenkins v. Township of Morris School District, 279 A.2d 619, 628 (S.Ct. N.J. 1971), the Supreme Court of New Jersey said:

"[P]olitical subdivisions of the states whether they be 'counties, cities or whatever' are not 'sovereign entities' and may readily be bridged when necessary to vindicate federal constitutional rights and policies."

Since subdivisions within states are creations of the state to serve state functions and policies, the extent of whose powers and territories continues to rest in the discretion of the state, Reynolds v. Sims, supra, 377 U.S. at 575, the doctrine that boundaries may be bridged when necessary to vindicate federal constitutional rights is merely one facet of the broader principle that,

"[S]tate policy must give way when it operates to hinder vindication of federal constitutional guarantees." Board of Education v. Swann, 402 U.S. 43, 45 (1971).

In one context or another the cases which employ this principle are almost without number. See, e.g., in addition to the cases referred to above, Swann v. Board of Education, 402 U.S. 1, 27-29 (1971); Davis v. School Comm'rs of Mobile County, 402 U.S. 33, 37-38 (1971); Lucas v. Forty-fourth General Assembly, 377 U.S. 713, 739 (1964); Gray v. Sanders, 372 U.S. 368, 381 (1963); Gomillion v. Lightfoot, 364 U.S. 339, 344-45 (1960); Lee v. Macon County Board of Education, 448

F.2d 746, 752 (5th Cir. 1971); Stout v. United States, 448 F.2d 403 (5th Cir. 1971); United States v. State of Texas, 447 F.2d 441, 443-44 (5th Cir. 1971), affirming orders reported at 321 F.Supp. 1043 and 330 F.Supp. 235; Haney v. County Board of Education of Sevier County, 429 F.2d 364, 368-69 (8th Cir. 1970); United States v. Indianola Municipal Separate School District, 410 F.2d 626, 630-31 (5th Cir. 1969); Hall v. St. Helena Parish School Board, 197 F.Supp. 649, 658 (E.D. La. 1961).

There is, therefore, ample and uniform precedent to support a determination by a court of equity to disregard local boundaries wherever such disregard is determined to be necessary to vindicate federal constitutional rights.

On June 16 HUD filed with the Court a copy of the recent decision of the Fourth Circuit Court of Appeals in Bradley v. School Board of Richmond. The Bradley decision reversed a district court order requiring consolidation of the Richmond school system with two adjoining school systems in order to achieve racial balance in the Richmond system. Presumably HUD filed the Bradley opinion to suggest that the law may not permit metropolitan-wide relief in this case (although nothing like consolidation of school districts is here proposed).

The Bradley opinion is a very narrow decision which does not in any way modify the general principle stated above. Unlike this case, in which the Court is still striving to achieve a full remedy for the wrongs of the past, Bradley is a case in which the full relief of complete desegregation had already been provided by earlier orders of the district court. Accordingly, the court of appeals said, the purpose of the further order it reversed was to move beyond a remedy for segregation to achieve "racial balance" (first sentence of the opinion, p. 2). Such "further intervention" by the district court was the reason for reversal:

"When it became 'clear that state-imposed segregation . . . [had] been completely removed,' Green, supra at 439, within the school district of the City of Richmond, as adjudged by the district court, further intervention by the district court was neither necessary nor justifiable." (p. 29 of opinion.)*

Here, of course, state-imposed segregation has not yet been remedied; that is what this Court is now trying to accomplish. Bradley does not speak to that situation.**

* Elsewhere too the court made it clear that the remedy of a unitary school system had already been provided by previous lower court orders:

"It is thus established that in each of the three school districts the formerly dual system of schools has been disestablished and effectively replaced with a unitary school system within which no child is excluded from any school by reason of his race." (p. 15 of opinion.)

** In a post-Bradley order, in a school desegregation case

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It is clear that, if necessary to vindicate federal constitutional rights in this case, the Court may disregard local boundaries to fashion effective relief.

(continued from page 4)

in which relief had not yet been achieved, a federal district court in Detroit ordered the preparation of a metropolitan-wide plan for relief. The court said:

"The court, in its findings of fact and conclusions of law, concluded that "relief of segregation in the Detroit public schools cannot be accomplished within the corporate geographical limits of the city," and that it had the authority and the duty to look beyond such limits for a solution to the illegal segregation in the Detroit public schools. Accordingly, the court ruled, it had to consider a metropolitan remedy for segregation."

The quotation is from page 2 of an order entered on June 14, 1972 in Bradley v. Milliken, Civil Action 35257, E.D. Mich., a copy of which is attached hereto.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al.,

Plaintiffs

v.

WILLIAM G. MILLIKEN, et al.,

Defendants

and

DETROIT FEDERATION OF TEACHERS,
LOCAL 231, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO,

Defendant-
Intervenor

and

DENISE MAGDOWSKI, et al.,

Defendants-
Intervenor

et al.

A TRUE COPY

FREDERICK W. JOHNSON, Clerk

BY B. L. Barulish
DEPUTY CLERK

CIVIL ACTION NO:
35257

RULING ON DESEGREGATION AREA
AND
ORDER FOR DEVELOPMENT OF PLAN OF DESEGREGATION

On September 27, 1971 the court made its Ruling on Issue of Segregation, holding that illegal segregation exists in the public schools of the City of Detroit as a result of a course of conduct on the part of the State of Michigan and the Detroit Board of Education. Having found a constitutional violation as established, on October 4, 1971 the court directed the school board defendants, City and State, to develop and submit plans of desegregation, designed to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. The directive called for the submission of both a "Detroit-only" and a "Metropolitan" plan.

Plans for the desegregation of the Detroit schools were submitted by the Detroit Board of Education and by the plaintiffs. Following five days of hearings the court found that while plaintiffs' plan would accomplish more desegregation than now obtains in the system, or which would be achieved under either Plan A or C of the Detroit Board of Education submissions, none of the plans would result in the desegregation of the public schools of the Detroit school district. The court, in its findings of fact and conclusions of law, concluded that "relief of segregation in the Detroit public schools cannot be accomplished within the corporate geographical limits of the city," and that it had the authority and the duty to look beyond such limits for a solution to the illegal segregation in the Detroit public schools. Accordingly, the court ruled, it had to consider a metropolitan remedy for segregation.

The parties submitted a number of plans for metropolitan desegregation. The State Board of Education submitted six - without recommendation, and without indicating any preference. With the exception of one of these, none could be considered as designed to accomplish desegregation. On the other hand the proposals of intervening defendant Magdowski, et al., the Detroit Board of Education and the plaintiffs were all good faith efforts to accomplish desegregation in the Detroit metropolitan area. The three plans submitted by these parties have many similarities, and all of them propose to incorporate, geographically, most--and in one instance, all--of the three-county area of Wayne, Oakland and Macomb.

The hearing on the proposals have set the framework, and have articulated the criteria and considerations, for developing and evaluating an effective plan of metropolitan desegregation.. None of the submissions represent a complete

plan for the effective and equitable desegregation of the metropolitan area, capable of implementation in its present form. The court will therefore draw upon the resources of the parties to devise, pursuant to its direction, a constitutional plan of desegregation of the Detroit public schools.

Based on the entire record herein, the previous oral and written rulings and orders of this court, and the Findings of Fact and Conclusions of Law filed herewith, IT IS ORDERED:

I.

A. As a panel charged with the responsibility of preparing and submitting an effective desegregation plan in accordance with the provisions of this order, the court appoints the following:

1. A designee of the State Superintendent of Public Instruction;*
2. Harold Wagner, Supervisor of the Transportation Unit in the Safety and Traffic Education Program of the State Department of Education;
3. Merle Henrickson, Detroit Board of Education;
4. Aubrey McCutcheon, Detroit Board of Education;
5. Freeman Flynn, Detroit Board of Education;
6. Gordon Foster, expert for plaintiffs;
7. Richard Morshead, representing defendant Magdowski, et al.;
8. A designee of the newly intervening defendants;*
9. Rita Scott, of the Michigan Civil Rights Commission.

* The designees of the State Superintendent of Public Instruction and newly intervening defendants shall be communicated to the court within seven days of the entry of this order. In the event the newly intervening defendants cannot agree upon a designee, they may each submit a nominee within seven days from the entry of this order, and the court shall select one of the nominees as representative of said defendants.

Should any designated member of this panel be unable to serve, the other members of the panel shall elect any necessary replacements, upon notice to the court and the parties. In the absence of objections within five days of the notice, and pending a final ruling, such designated replacement shall act as a member of the panel.

B. As soon as possible, but in no event later than 45 days after the issuance of this order, the panel is to develop a plan for the assignment of pupils as set forth below in order to provide the maximum actual desegregation, and shall develop as well a plan for the transportation of pupils, for implementation for all grades, schools and clusters in the desegregation area. Insofar as required by the circumstances, which are to be detailed in particular, the panel may recommend immediate implementation of an interim desegregation plan for grades K-6, K-8 or K-9 in all or in as many clusters as practicable, with complete and final desegregation to proceed in no event later than the fall 1973 term. In its transportation plan the panel shall, to meet the needs of the proposed pupil assignment plan, make recommendations, including the shortest possible timetable, for acquiring sufficient additional transportation facilities for any interim or final plan of desegregation. Such recommendations shall be filed forthwith and in no event later than 45 days after the entry of this order. Should it develop that some additional transportation equipment is needed for an interim plan, the panel shall make recommendations for such acquisition within 20 days of this order.

C. The parties, their agents, employees, successors.

and all others having actual notice of this order shall cooperate fully with the panel in their assigned mission, including, but not limited to, the provision of data and reasonable full and part-time staff assistance as requested by the panel. The State defendants shall provide support, accreditation, funds, and otherwise take all actions necessary to insure that local officials and employees cooperate fully with the panel. All reasonable costs incurred by the panel shall be borne by the State defendants; provided, however, that staff assistance or other services provided by any school district, its employees or agents, shall be without charge, and the cost thereof shall be borne by such school district.

II.

A. Pupil reassignment to accomplish desegregation of the Detroit public schools is required within the geographical area which may be described as encompassing the following school districts (see Exhibit P.M. 12), and hereinafter referred to as the "desegregation area":

Lakeshore	Birmingham	Fairlane
Lakeview	Hazel Park	Garden City
Roseville	Highland Park	North Dearborn Heights
South Lake	Royal Oak	Cherry Hill
East Detroit	Berkley	Inkster
Grosse Pointe	Ferndale	Wayne
Centerline	Southfield	Westwood
Fitzgerald	Bloomfield Hills	Ecorse
Van Dyke	Oak Park	Romulus
Fraser	Redford Union	Taylor
Harper Woods	West Bloomfield	River Rouge
Warren	Clarenceville	Riverview
Warren Woods	Farmington	Wyandotte
Clawson	Livonia	Allen Park
Hamtramck	South Redford	Lincoln Park
Lamphere	Crestwood	Melvindale
Madison Heights	Dearborn	Southgate
Troy	Dearborn Heights	Detroit

Provided, however, that if in the actual assignment of pupils it appears necessary and feasible to achieve effective and complete racial desegregation to reassign pupils of another district or other districts, the desegregation panel may, upon notice to the parties, apply to the Court for an appropriate modification of this order.

B. Within the limitations of reasonable travel time and distance factors, pupil reassignments shall be effected within the clusters described in Exhibit P.M. 12 so as to achieve the greatest degree of actual desegregation to the end that, upon implementation, no school, grade or classroom be substantially disproportionate to the overall pupil racial composition. The panel may, upon notice to the parties, recommend reorganization of clusters within the desegregation area in order to minimize administrative inconvenience, or time and/or numbers of pupils requiring transportation.

C. Appropriate and safe transportation arrangements shall be made available without cost to all pupils assigned to schools deemed by the panel to be other than "walk-in" schools.

D. Consistent with the requirements of maximum actual desegregation, every effort should be made to minimize the numbers of pupils to be reassigned and requiring transportation, the time pupils spend in transit, and the number and cost of new transportation facilities to be acquired by utilizing such techniques as clustering, the "skip" technique, island zoning, reasonable staggering of school hours, and maximization of use of existing transportation facilities,

including buses owned or leased by school districts and buses operated by public transit authorities and private charter companies. The panel shall develop appropriate recommendations for limiting transfers which affect the desegregation of particular schools.

E. Transportation and pupil assignment shall, to the extent consistent with maximum feasible desegregation, be a two-way process with both black and white pupils sharing the responsibility for transportation requirements at all grade levels. In the determination of the utilization of existing, and the construction of new, facilities, care shall be taken to randomize the location of particular grade levels.

F. Faculty and staff shall be reassigned, in keeping with pupil desegregation, so as to prevent the creation or continuation of the identification of schools by reference to past racial composition, or the continuation of substantially disproportionate racial composition of the faculty and staffs, of the schools in the desegregation area. The faculty and staffs assigned to the schools within the desegregation area shall be substantially desegregated, bearing in mind, however, that the desideratum is the balance of faculty and staff by qualifications for subject and grade level, and then by race, experience and sex. In the context of the evidence in this case, it is appropriate to require assignment of no less than 10% black faculty and staff at each school, and where there is more than one building administrator, every effort should be made to assign a bi-racial administrative team.

G. In the hiring, assignment, promotion, demotion, and dismissal of faculty and staff, racially non-discriminatory criteria must be developed and used; provided, however, there shall be no reduction in efforts to increase minority group representation among faculty and staff in the desegregation area. Affirmative action shall be taken to increase minority employment in all levels of teaching and administration.

H. The restructuring of school facility utilization necessitated by pupil reassignments should produce schools of substantially like quality, facilities, extra-curricular activities and staffs; and the utilization of existing school capacity through the desegregation area shall be made on the basis of uniform criteria.

I. The State Board of Education and the State Superintendent of Education shall with respect to all school construction and expansion, "consider the factor of racial balance along with other educational considerations in making decisions about new school sites, expansion of present facilities * * *"; and shall, within the desegregation area disapprove all proposals for new construction or expansion of existing facilities when "housing patterns in an area would result in a school largely segregated on racial * * * lines," all in accordance with the 1966 directive issued by the State Board of Education to local school boards and the State Board's "School Plant Planning Handbook" (see Ruling on Issue of segregation, p. 13.).

J. Pending further orders of the court, existing school district and regional boundaries and school governance

arrangements will be maintained and continued, except to the extent necessary to effect pupil and faculty desegregation as set forth herein; provided, however, that existing administrative, financial, contractual, property and governance arrangements shall be examined, and recommendations for their temporary and permanent retention or modification shall be made, in light of the need to operate an effectively desegregated system of schools.

K. At each school within the desegregated area provision shall be made to insure that the curriculum, activities, and conduct standards respect the diversity of students from differing ethnic backgrounds and the dignity and safety of each individual, students, faculty, staff and parents.

L. The defendants shall, to insure the effective desegregation of the schools in the desegregation area, take immediate action including, but not limited to, the establishment or expansion of in-service training of faculty and staff, create bi-racial committees, employ black counselors, and require bi-racial and non-discriminatory extra-curricular activities.

III.

The State Superintendent of Public Instruction, with the assistance of the other state defendants, shall examine, and make recommendations, consistent with the principles established above, for appropriate interim and final arrangements for the (1) financial, (2) administrative and school governance, and (3) contractual arrangements for the operation of the schools within the desegregation area, including steps for unifying, or otherwise making uniform the personnel

policies, procedures, contracts, and property arrangements of the various school districts.

Within 15 days of the entry of this order, the Superintendent shall advise the court and the parties of his progress in preparing such recommendations by filing a written report with the court and serving it on the parties. In not later than 45 days after the entry of this order, the Superintendent shall file with the court his recommendations for appropriate interim and final relief in these respects.

In his examination and recommendations, the Superintendent, consistent with the rulings and orders of this court, may be guided, but not limited, by existing state law; where state law provides a convenient and adequate framework for interim or ultimate relief, it should be followed, where state law either is silent or conflicts with what is necessary to achieve the objectives of this order, the Superintendent shall independently recommend what he deems necessary. In particular, the Superintendent shall examine and choose one appropriate interim arrangement to oversee the immediate implementation of a plan of desegregation.

IV.

Each party may file appropriate plans or proposals for inclusion in any final order which may issue in this cause. The intent of this order is to permit all the parties to proceed apace with the task before us: fashioning an effective plan for the desegregation of the Detroit public schools.

Fifteen days after the filing of the reports required herein, hearings will begin on any proposal to modify any interim plan prepared by the panel and all other matters

which may be incident to the adoption and implementation of any interim plan of desegregation submitted. The parties are placed on notice that they are to be prepared at that time to present their objections, alternatives and modifications. At such hearing the court will not consider objections to desegregation or proposals offered "instead" of desegregation.

Hearings on a final plan of desegregation will be set as circumstances require.

DATE: JUNE 14, 1972.



Stephen J. Roth
United States District Judge

MEMORANDUM #5

DESCRIPTION AND DISCUSSION OF "FAIR SHARE"
PLANS FOR THE DISPERSAL OF LOW INCOME
HOUSING IN METROPOLITAN AREAS

HUD has encouraged, rewarded, indeed insisted upon, the development of so-called "fair share" plans for allocating low and moderate-income housing throughout metropolitan areas. Secretary Romney recently characterized one such plan for the Washington, D.C. area as a "giant stride" toward achieving a balanced housing program "for the 'real city' of Washington." (Quoted in Remarks by Assistant Secretary Samuel J. Simmons, issued by HUD NEWS for release on January 20, 1972, p. 9.) Earlier Secretary Romney had said:

"The Department would be happy to reward Metropolitan Washington with a bonus of housing units beyond what the area would normally receive as a means of encouraging the Council of Governments' effort to establish a fair share plan on a 'real city' basis." (Secretary Romney, October 27, 1971 - quoted in Fair Share Housing Formula, Metropolitan Washington Council of Governments, January, 1972.)

In its "Response" filed on April 26, 1972, HUD described the Dayton, Ohio fair share plan, which it characterized as "bold" (HUD Response, pp. 26-27), and filed a summary of the plan with the Clerk of this Court. (Exhibit 15 to HUD's Response.)

In one recent instance HUD insisted upon the preparation of

a fair share plan as a condition of making planning funds available. On March 31, 1971, HUD withdrew its support of a housing study being conducted by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) for Milwaukee and six surrounding counties.* HUD said its primary concern with the SEWRPC housing program was its lack of a "short

* Letter from Edward M. Levin, Jr., acting Assistant Regional Administrator for Metropolitan Planning and Development, Chicago Regional Office of HUD, to George C. Berteau, Chairman, Southeastern Wisconsin Regional Planning Commission.

HUD's Response filed April 26, 1972 explains its insistence as follows:

"The Housing and Urban Development Act of 1968 amended Section 701 of the Housing Act of 1954 to require that 'Planning carried out with assistance under this section shall also include a housing element as part of the preparation of comprehensive land use plans, . . . ' (42 U.S.C. §461(a)). Since the passage of the Housing Element requirement in 1968, HUD has reflected the statutory mandate in the various rules, regulations and policies governing related HUD grants.

Beginning in 1968, all applications from eligible local, regional and state planning agencies for federal financial assistance in the preparation of plans to guide orderly growth and development in each jurisdiction, were required to incorporate an ongoing process of action oriented planning for the improvement of housing opportunities - with particular attention to the needs of low income and minority groups." (Appendix B, p. 18-19, emphasis added.)

Each of the fair share plans referred to in the text was developed in part with funds from HUD's Section 701 Planning Assistance program.

term action plan or strategy," and offered "an example of what might be done to meet that need." (Letter, dated March 31, 1971, from Mr. Levin to Mr. Berteau, supra, p. 1.)

The example was a fair share plan for the seven-county region.

Recently Under Secretary of HUD Richard C. Van Dusen said he was "encouraged" by the growing number of fair share plans:

"For a long time, the only specific example we could cite was the Dayton Plan . . . But recently the Metropolitan Washington, D.C. Council of Governments has adopted a 'fair share' plan. The Southeastern Wisconsin Regional Planning Commission is working on a short range housing plan which will locate actual sites for 2000 units of low and moderate income housing throughout the seven county area. The Sacramento Regional Area Planning Commission is working on a regional plan . . . [San Bernardino County] has developed a rather sophisticated model for allocating low and moderate income housing to eleven planning districts within the county. It's good to see the extent to which the example of the Dayton Plan is being applied, with appropriate variations, from coast to coast."

(Remarks prepared for delivery by Richard C. Van Dusen, issued by HUD NEWS for release on February 29, 1972, pp. 16-17.)

A "fair share" plan is a means of allocating the low-income housing needs of a metropolitan area among sub-areas in a way that is equitable to the recipient communities. In

a recent address Under Secretary Van Dusen quoted the following description of "the fundamental concept of the Dayton Plan":

"Our housing plan is based on a rather simple concept, namely, that we will fulfill the promise of providing decent housing for every citizen in our five-county region, by locating the housing throughout the five-county region, and not merely in the core city, so that every political subdivision within our region is to assist in providing the housing that we need in our five-county area."

(Remarks prepared for delivery by Richard C. Van Dusen, issued by HUD NEWS for release on January 19, 1972, p. 19.)

Certain elements are common to virtually all 'fair share' plans.

A. Determination of Need. First the need for low income housing in the metropolitan area is determined. Need is usually defined as the number of units that would have to be furnished to provide a decent, standard housing unit for each low-income family. The existing supply of standard housing within the financial means of low-income families is then subtracted from this number. (As indicated above, the plaintiffs' plan will be limited to the number of dwelling units appropriate for relief in this case, notwithstanding a larger total metropolitan area need, and the plan will be confined to the Chicago Urbanized Area.)

B. Sub-Areas. The metropolitan area is then divided into sub-areas. These are generally drawn along political boundary lines and often comprise groups of municipalities and their adjacent areas. The planning sub-areas are large enough that the number of potential housing sites in each area far exceeds the number of sites needed to fulfill the plan's objective. Planning sub-areas thus facilitate rational site selection, but do not commit specific plots of land. Fair share plans do not include specific site selections.

C. Criteria. Criteria are then developed to insure that each sub-area will receive its fair share of the metropolitan area's overall housing need. Commonly used criteria include: (1) ability to absorb new pupils into schools; (2) location of major job centers; (3) existing concentrations of low-income housing; (4) tax base; (5) availability of vacant land; and (6) population.

D. Distribution (Allocation). Finally, the criteria are applied to the overall housing need to arrive at numerical allocations of low-income housing units for each sub-area.

The fair share approach is thus designed to assure that low income housing will be located rationally and to prevent undue concentration of low income housing in one sub-area.

The U.S. Civil Rights Commission has described the benefits of fair share plans as follows:

"Unless the location of subsidized housing is determined on the basis of a metropolitan-wide analysis of the various social and economic factors involved, the result will be a perpetuation of the chaos and irrationality that characterizes the racial residential patterns we now have in metropolitan areas. Only through such an analysis, and resulting plan, can there be assurance that the location of subsidized housing will be realistically determined on the basis of need and that the sorry history of the past, in which federally subsidized housing programs have served to intensify problems of racial and economic polarization, will not be repeated."*

The American Institute of Planners, a national professional organization, testified recently before a Congressional committee that, in order "to end the pattern of racial and economic segregation in metropolitan areas,"

"We suggest the committee require that each metropolitan housing agency prepare a regional housing plan along the lines of the one recently adopted in the Miami Valley region of Ohio -- Dayton being the central city -- which allocates a fair share of the regional housing need for low and moderate-cost in each community in the metropolitan community." (Paul Davidoff, board of governors, AIP testimony on HR 9688, p. 674.)

As indicated in the Outline of Proposed Final Order, plaintiffs are preparing a fair share plan for the Chicago Urbanized Area for submission to the Court by September 1, 1972.

* Letter from Howard A. Glickstein, Staff Director, U.S. Civil Rights Commission, to Secretary George Romney, July 26, 1971, commenting on HUD's proposed site selection criteria for subsidized housing.

MEMORANDUM #6

RESPONSE OF PLAINTIFFS TO PROPOSED JUDGMENT ORDER
AND ACCOMPANYING MATERIALS FILED BY HUD ON APRIL
26, 1972

The only substantive provision of HUD's proposed judgment order says:

"[D]efendant George W. Romney [and his successors, employees, etc.] . . . shall use their best efforts to cooperate with CHA in its efforts to increase the supply of dwelling units . . . [in conformity with federal laws, HUD rules and regulations, and orders in this case]." (§B, emphasis added.)*

HUD's "Response" filed with its proposed judgment order states that the Letter of Intent of May 12, 1971 among HUD, CHA and the City of Chicago "represents the best thinking of all parties concerned as to a viable approach for solving the critical shortage of low income housing in Chicago." (pp. 2-3.) It also says that HUD "remains of the opinion that the proposals [of the Letter of Intent] are sound," and that HUD "will continue to use its best efforts in review and approval of housing programs for Chicago which address the needs of low income families . . ." (p. 3, emphasis supplied.) Included

* Although HUD's proposed order is in three sections, Section A provides for the superfluous entry of a second summary judgment and Section C would merely enjoin HUD from doing anything inconsistent with the other terms of the proposed order.

with the proposed order is Appendix B, consisting of a long (62 page) survey of HUD's existing programs and policies. HUD says these have established "a firm basis" for others (state and local governments and private sponsors) to address the housing needs of low income families. (Appendix B, p. 1.)

HUD's proposed order is thus a "best efforts" undertaking to cooperate with CHA. It does not include, as this Court directed by its order of December 23, 1971, a comprehensive plan for relief addressed to this particular case. HUD's "best thinking," the Letter of Intent of May 12, 1971, is a document which was not addressed to providing relief in this case at all. Its requirements would be satisfied if 4300 units of housing (including eliminated demolitions) were to be provided generally in the City of Chicago but not necessarily offered to the plaintiff class.

The 62 page description of HUD's general programs is of course no substitute for a plan addressed to the needs of this case. Those programs have not been shaped by HUD into a specific plan for relief in this case. Lacking that they are inadequate.

In testimony before the Subcommittee on Housing of the House Banking and Currency Committee Secretary Romney said:

"We are encountering great difficulty in the field in administering these programs because

of their great complexity. I have stated many times they are almost impossible of effective administration, they are so complex and diverse." (Hearings, supra, pp. 87-88.)*

In many other statements (see our April 27 letter and Memorandum #5 supra) HUD has made it perfectly clear that the only solution which is likely to be an effective solution is a comprehensive, metropolitan-wide plan.**

* Secretary Romney has also said:

"The accelerating decay of core cities, with loss of human and economic resources and continuing rural migration, has not been reversed. Fragmented local governments, weakened state governments, and too numerous and complex separately-financed federal programs are not equal to the challenge. Furthermore, the rotting of central cities is beginning to rot the surrounding suburbs."

(Statement of George W. Romney issued by HUD NEWS for release on January 4, 1972, p. 4.)

** Assistant Secretary Simmons has said:

"Community development programs, such as urban renewal, open space, new communities and water and sewer must be part of a comprehensive plan which expands low- and moderate income housing on a non-discriminatory basis."

(Remarks by Samuel J. Simmons issued by HUD NEWS for release on April 27, 1972, p. 7, emphasis in the original.)

Under Secretary Richard Van Dusen sounded a similar theme, quoting Vice President Agnew:

"Crime, poverty, unemployment, inadequate housing and transportation are problems that respect no geographic boundaries or mythical lines. Unless they are attacked on a regional basis -- rather than in fragmented, piecemeal fashion -- they will continue to prevail against our best separate efforts."

(Remarks prepared for delivery by Richard C. Van Dusen issued by HUD NEWS for release on March 14, 1972, p. 2.)

For these reasons we trust the Court will reject HUD's business-as-usual, best efforts suggestion. A court of equity is obligated to provide effective relief; it must surely look beyond a proposal whose proponent in effect acknowledges it is doomed to failure.

Late last year the U.S. Civil Rights Commission was asked to give its opinion as to the remedial measures which should be required of HUD in this case. The Commission responded as follows:

"HUD should be required to develop a plan for the selection of sites for housing under its various subsidized housing programs which will extend to the entire metropolitan area. The plan should be designed to assure that housing opportunities for lower-income minority families, such as the plaintiffs in the Gautreaux Case, are in fact available outside areas of existing minority or poverty concentrations

The plan also should demonstrate that the location of such subsidized housing will be attuned to opening up opportunities for employment and facilitating school desegregation on a metropolitan-wide basis. Further, the plan should assure that subsidized housing will not be disproportionately concentrated in a small number of jurisdictions in the metropolitan area. Thus, while it would not be essential that every suburban jurisdiction be assigned a given number of subsidized units, such units should be located on a sufficiently broad geographical basis to preclude the possibility of establishing new enclaves of minority poor."*

* Letter from the U.S. Commission on Civil Rights to the Honorable Joseph G. Minish, December 28, 1971, pp. 2-3.

A truly metropolitan-wide 6 county plan responsive to the housing needs of the total metropolitan area population (rather than of the plaintiff class) may be beyond the appropriate scope of relief in this case. Plaintiffs have therefore limited themselves to a plan for relief which is tailored, both geographically and in terms of the number of new dwelling units, to the wrong to be righted by the Court's final order. Within those limitations, plaintiffs Outline of a Proposed Final Order is an effort to develop a comprehensive plan for relief which rests on principles which HUD itself, as well as other governmental and professional bodies, have espoused.

Post-Script

With some heat, and therefor in this separate post-script, we wish to add a final comment on HUD's position. In our view it borders on official lawlessness. HUD was specifically ordered to file a proposed judgment order embodying a comprehensive plan to remedy in this case the wrong it helped to perpetrate in this case. What HUD filed is not even arguably responsive to that command.

HUD's "explanation" is twice disingenuous. The ex-

planation in that HUD lacks legal (i.e., statutory) authority to plan "for the implementation of the federally assisted low rent housing programs in the City of Chicago or the Chicago metropolitan area." (HUD Response, p. 1.) First, HUD was not ordered to plan for "implementation"; HUD was ordered to submit a plan. There must be a plan before there can be implementation. Second, HUD's statutory authority is irrelevant. Unless a statute otherwise clearly indicates, it will not be interpreted as withdrawing from courts their historic equitable remedial powers. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 17-18 (1971).^{*} HUD, as much as any other wrongdoer, is subject to those powers. Any limitations on the authority HUD may have been given by Congress to administer federal programs in the "normal" situation -- i.e., apart from adjudicated constitutional violations which necessitate the exercise of the historic equitable remedial powers of the judiciary -- do not preclude HUD from responding to an exercise of those powers.

* In Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946), the Court said:

"Unless a statute in so many words, or by a necessary and inescapable inference, restricts the Court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied."

As a governmental wrongdoer HUD has a special obligation to remedy its wrongs. In light of its expressed frustrations with its own programs HUD should have welcomed the opportunity with which this Court's order of December 23 presented it. Instead HUD has repeatedly refused to meet with the plaintiffs to formulate a plan for relief (§1 of the December 23 order) and has flaunted the Court's order (§2 of the December 23 order) by submitting a non-plan of its own.

Whether for political or other reasons, HUD's position is depressingly consistent.* It is a position that feeds the cynicism about government that appears to be so rife in our land.

* "HUD preferred, however, to see the problems [of discrimination against subsidized housing] in terms of technology. It was left to the federal courts to wrestle with the underlying discriminatory abuse of land controls largely unaided by assistance from the executive branch." The State of the Cities, Report of the Commission on the Cities in the '70's, Staff Paper on Housing, p. 71 (Praeger, 1972).