

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

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

PLAINTIFFS' PROPOSED JUDGMENT ORDER AND MEMORANDUM

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UNITED STATES DISTRICT COURT

September 25, 1972

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

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

JUDGMENT ORDER

This matter coming on to be heard pursuant to this Court's order of December 23, 1971, directing certain of the parties to submit proposed final orders for comprehensive relief, and pursuant to the submissions of the parties as so directed, to hearings held with respect thereto, and to prior orders entered and hearings held in these consolidated cases, and the Court being fully informed in the premises, the Court now makes the following findings of fact and reaches the following conclusions of law:

FINDINGS OF FACT

CONCLUSIONS OF LAW

Based on the foregoing findings of fact and conclusions of law, and upon the determination of the Court that the provisions of this judgment order are necessary to remedy the past effects of the unconstitutional site selection and tenant assignment procedures previously employed in the public housing system in Chicago,

IT IS HEREBY ORDERED:

- I. For purposes of this judgment order,
 - A. "HUD" shall mean the defendant, Department of Housing and Urban Development.
 - B. "CHA" shall mean the defendant, Chicago Housing Authority.
 - C. "Local Housing Authority" shall mean any public housing agency as defined in 42 U.S.C. §1402(11), including CHA unless otherwise stated.
 - D. "Dwelling Unit" shall mean an apartment or single family residence within the "Urbanized Area" as hereinafter defined which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through a Local Housing Authority, whether in a structure owned in whole or in part by such Local Housing Authority (whether

or not newly constructed) or to be otherwise made available for occupancy by or through such Local Housing Authority to such a family. "Dwelling Units" include "Leased Dwelling Units" as hereinafter defined.

- E. "Leased Dwelling Unit" shall mean a Dwelling Unit in a structure leased or partially leased by a Local Housing Authority from any person, firm or corporation.
- F. "Urbanized Area" shall mean those portions of Cook, DuPage and Lake Counties, Illinois, which comprise the Chicago Urbanized Area as such area is defined and determined in the 1970 census of the United States Bureau of the Census.
- G. "Limited Public Housing Area" shall mean that part of the Urbanized Area which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within the City of Chicago and within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining part of the Urbanized Area. The terms "non-white" and "white" shall have the meaning given to such terms by the United States Bureau of the Census.

For purposes of this Section G, results of the 1970 census taken by the Bureau of the Census shall presumptively determine the non-white population of census tracts until results of a subsequent such census are officially published; provided, that any party may, on motion, offer evidence as to the non-white population of any census tract for the purpose of rebutting such presumption; and provided further, that Dwelling Units located or proposed to be located in any census tract subsequent to official publication of the results of the last previous such census shall be taken into account in determining the population of such census tract, and for such purpose it shall be assumed that such Dwelling Units will be occupied by non-whites at the rate of two persons per bedroom.

- H. "Public Housing Project" shall mean any thirteen or more Dwelling Units which are located (1) in the same structure, (2) on the same lot or parcel of real estate, or (3) on two or more lots or parcels of real estate which are contiguous to one another, or are separated only by streets, alleys, bodies of water, railroad tracks or the like.

II. Following the date of this judgment order neither HUD nor CHA shall authorize, approve, provide funds for or implement any plan or program for Dwelling Units to be located within the Urbanized Area unless such plan or program affirmatively requires that,

- A. All Dwelling Units provided for in such plan or program shall be located in conformity with the provisions of Articles III or IV hereof, as the case may be, and
- B. The activities to be performed in order to render such Dwelling Units available for occupancy (whether construction, purchase, rehabilitation, leasing or otherwise) shall take place at such times as will result in the location of such Dwelling Units in conformity with the provisions of Articles III or IV hereof, as the case may be.

III. CHA shall continue to use its best efforts to increase the supply of Dwelling Units within the City of Chicago as rapidly as possible in conformity with the provisions of the judgment order of July 1, 1969, entered in this cause, as modified and enforced by subsequent orders also entered in this cause, provided that said order of July 1, 1969, is hereby modified by deleting Section E of Article III therefrom, and shall

continue to take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development. CHA's Tenant Assignment Plan, approved by this Court's order of November 24, 1969, shall continue to be applicable to all Dwelling Units provided under this Article III. HUD shall cooperate with and assist CHA in every feasible way to the end that the supply of Dwelling Units in the City of Chicago may be increased as rapidly as possible in accordance with this Article III.

IV. CHA and HUD shall use their best efforts to the end that Dwelling Units shall be provided within the Urbanized Area outside the City of Chicago equal in number to 50% of the Dwelling Units provided from time to time within the City of Chicago under Article III hereof. Such efforts shall initially be exerted to the end of providing 750 Dwelling Units pursuant to this Article IV, such number of Dwelling Units being a number equal to 50% of CHA's current reservation from HUD for Dwelling Units to be provided within the City of Chicago. Without limiting the foregoing,

- A. CHA shall immediately use its best efforts to enter into written agreements with other Local Housing Authorities in the Urbanized Area outside of Chicago pursuant to which such other Local

Housing Authorities will (i) make application to HUD for reservations of some portion or all of such 750 Dwelling Units to be provided in the Urbanized Area outside of Chicago, and seek to enter into appropriate cooperation agreements as provided in 42 U.S.C. §1415(7)(b) or obtain other local approvals as provided in 42 U.S.C. §1421b(a)(2) respecting the same, and (ii) promptly take all such additional steps, including carrying out all necessary planning and development and making appropriate applications for federal financial assistance, as will enable them to obtain and utilize such reservations to increase the supply of Dwelling Units in the Urbanized Area outside of Chicago as rapidly as possible in conformity with the provisions of this Article IV. Without limiting the foregoing, such agreements between CHA and other Local Housing Authorities shall provide that such other Local Housing Authorities shall from time to time apply to this Court for any orders they may deem necessary or desirable to enable them to so increase the supply of Dwelling Units, including without limitation such orders respecting 42 U.S.C. §1415(7)(b) and 42 U.S.C. §1421b(a)(2) as will enable them to so increase the supply of Dwelling Units in

the Urbanized Area outside of Chicago without first obtaining the cooperation agreements or other local approvals provided for under such statutes. Copies of any such agreements between CHA and other Local Housing Authorities and of any such applications to HUD, cooperation agreements and local approvals made or given pursuant thereto shall promptly be filed with the Court.

- B. To the extent such agreements between CHA and other Local Housing Authorities and such applications respecting such 750 Dwelling Units are not made pursuant to Section A of this Article IV within 180 days from the date of this judgment order, or to the extent thereafter actions are not diligently taken to provide such Dwelling Units as rapidly as possible, CHA shall itself immediately make application to HUD for reservations therefor. Such application shall be separate from and in addition to all other CHA applications to HUD for reservations for Dwelling Units, and shall be identified by CHA as being made pursuant to this Section B of Article IV of this judgment order. Thereafter CHA shall promptly take all such additional steps, including making appropriate

application for federal financial assistance and carrying out all necessary planning and development, as will enable it to obtain and utilize such reservations to increase the supply of Dwelling Units in the Urbanized Area outside of Chicago as rapidly as possible in conformity with the provisions of this Article IV. Without limiting the foregoing CHA shall from time to time apply to this Court for any further orders it may deem necessary or desirable to enable it to so increase the supply of Dwelling Units, including without limitation such orders respecting Ch. 67-1/2 Ill.Rev.Stats. §27(c), 42 U.S.C. §1415(7)(b) and 42 U.S.C. §1421b(a)(2) as will enable CHA to so increase the supply of Dwelling Units in the Urbanized Area outside of Chicago without first obtaining the contracts, cooperation agreements and local approvals provided for, respectively, under such statutes.

C. Dwelling Units provided pursuant to this Article IV shall conform with the following provisions:

- (1) The construction of any Dwelling Units in any Limited Public Housing Area outside of Chicago shall not be commenced unless within three

months following such commencement of construction at least 75% of the Dwelling Units on which CHA or another Local Housing Authority shall have commenced or caused to have commenced construction, and shall have continued or completed construction, shall have been located (at the time of commencement of construction thereof) in the General Public Housing Area outside of Chicago.

- (2) No leased Dwelling Unit shall be made available for occupancy in the Limited Public Housing Area outside of Chicago (in addition to Leased Dwelling Units in such Area which on the date of this order are already occupied) unless, within three months following such occupancy, at least 75% of the Leased Dwelling Units then occupied are located in the General Public Housing Area outside of Chicago; provided, that such number of Leased Dwelling Units located in the General Public Housing Area outside of Chicago may be less than such 75% to the extent Dwelling Units other than Leased Dwelling

Units have been occupied, or are under construction which is continuing, in the General Public Housing Area outside of Chicago in excess of the 75% minimum requirement of Subsection C(1) of this Article IV.

- (3) Neither CHA nor any other Local Housing Authority acting pursuant to this Article IV shall concentrate large numbers of Dwelling Units in or near a single location. Without limiting the foregoing, unless part of a development specifically designed to assist in achieving the purposes hereof as to which the Court by order shall have given its approval,

- (a) No Public Housing Project shall contain Dwelling Units designed for occupancy by more than 120 persons, except that if it is impossible for CHA or any other Local Housing Authority acting pursuant to this Article IV to provide within such limitation Dwelling Units which it is otherwise capable of providing, and if it will assist in achieving the

purposes of this judgment order, a Public Housing Project may contain Dwelling Units designed for occupancy by not more than 240 persons.

(b) No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA or any other Local Housing Authority in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract.

(c) No Dwelling Units shall be located in any municipality or in the unincorporated area within any township:

(i) if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA or any other Local Housing

Authority in such municipality or unincorporated area would constitute more than 4% of the total number of apartments and single family residences therein; or

(ii) if, within 180 days from the date of this order, a cooperation agreement pursuant to 42 U.S.C. §1415(7)(b) or local approval pursuant to 42 U.S.C. §1421b(a)(2) is voluntarily entered into or given on behalf of such municipality or unincorporated area that provides for a number of Dwelling Units to be located therein in accordance with the provisions of this Article IV at least equal to 2% of the total number of apartments and single family residences therein, and application is made to HUD by a Local Housing Authority for a reservation for such number of Dwelling Units to be located in such municipality or unincorporated area, and thereafter appropriate actions are diligently taken to provide such Dwelling Units as rapidly as possible.

(d) No Dwelling Units shall be provided above the third story in any structure except for families without children and except Leased Dwelling Units in a structure in which the number of Dwelling Units aggregates no more than 20% of the total number of apartments in such structure.

(e) Such 750 Dwelling Units, and the aggregate of all other Dwelling Units to be provided under this Article IV, shall be located among the urbanized areas of Cook (outside of Chicago), DuPage and Lake Counties in substantially the proportion 6 to 2 to 1.

(4) CHA's Tenant Assignment Plan approved by this Court's order of November 24, 1969 shall be applicable to all Dwelling Units provided under this Article IV, except that "municipality or unincorporated area within any township" shall be substituted for "community area" therein.

V. CHA and HUD shall affirmatively administer their respective responsibilities under state and federal law in every respect (whether or not covered by specific provision of this judgment order) to the end that the supply of Dwelling Units in the

Urbanized Area shall be increased as rapidly as possible in conformity with this judgment order.

VI. On the 15th day of March and September of each calendar year following the date of this judgment order, CHA and HUD shall, respectively, file with the Court and serve upon counsel for the plaintiffs a report of the activities carried out to implement the provisions of this judgment order. Such reports shall be prepared in such manner as to inform the Court as fully as possible concerning the progress being made in, and the existence of any obstacles to, such implementation, and shall include any recommendations for further action as will in the opinion of the reporting party aid in such implementation.

VII. This Order shall be effective from and after the date hereof and shall remain in force and effect until an aggregate of 60,000 Dwelling Units has been provided pursuant to the provisions hereof and of this Court's judgment order of July 1, 1969, entered in this cause.

VIII. This order shall be binding upon HUD and CHA, their officers, agents, servants, employees, attorneys, and their successors, and upon those persons in active concert or participation with them who receive actual notice of this

order by personal service or otherwise.

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

ENTER:

United States Judge

Dated: _____, 1972

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

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

MEMORANDUM RESPECTING PLAINTIFFS' PROPOSED FINAL
JUDGMENT ORDER, FILED SEPTEMBER 15, 1972

Pursuant to the Court's order of August 7, 1972, plaintiffs have filed concurrently herewith their proposed final judgment order (hereinafter sometimes the "1972 Order"). The order provides for dwelling units to be supplied to the plaintiff class that are located outside the City of Chicago and within an area described by the United States Bureau of the Census as the "Chicago Urbanized Area." The order does this without relieving CHA of its obligation to supply dwelling units located inside the City of Chicago as provided in this Court's judgment order of July 1, 1969 (hereinafter sometimes the "1969 Order"), and subsequent orders. Those previous orders would continue in effect, virtually without change, with respect to dwelling units inside Chicago.

I. THE BASIC PATTERN OF THE PROPOSED JUDGMENT ORDER

The 1969 Order obligates CHA to provide Dwelling Units within the City of Chicago. The 1972 Order does not relieve CHA of this obligation. Indeed, since all of the sites now selected by CHA for the initially required 1500 dwelling units are within the City, the 1972 Order eliminates the "suburban option" which was contained in the 1969 Order as to those units and requires - in the interest of prompt action - that all of those 1500 units be located within the City. Moreover, the 1969 Order would continue to apply to additional units located within the City.

The 1972 Order thus does not modify CHA's obligation to continue to increase the supply of Dwelling Units within the City as rapidly as possible. Instead, it imposes an additional requirement that, in addition to the units provided within the City, dwelling units be provided in the Urbanized Area outside the City equal in number to half the units provided from time to time within the City.

Plaintiffs believe, and on October 24 expect to prove, that it is necessary to achieve the objectives of the 1969 Order that Dwelling Units be located in the Chicago suburban area. Plaintiffs believe that this additional requirement is vital if the chances for ultimately achieving the objectives of the 1969 Order are to be maximized. As the evidence at the October 24 hearing will show, inclusion of suburban areas in the plan

is necessary to minimize the risk that the operation of the 1969 Order within the City of Chicago will result in increased "flight to the suburbs." If that flight should take place on a large enough scale it would produce resegregation and preclude attainment of the objectives of the 1969 Order.

It is to be emphasized, however, that this additional requirement is imposed without reducing CHA's obligation to provide dwelling units within the City of Chicago under the 1969 Order, and in particular without modifying CHA's obligation to provide the initially required 1500 Dwelling Units within the City of Chicago as rapidly as possible.

The basic pattern of the 1972 Order is to apply the substantive provisions of the 1969 Order (itself continued in effect with respect to dwelling units within the City) to the Urbanized Area, for example, the requirement of a preponderance of new units in white areas (the 3-to-1 ratio), identical or similar provisions respecting undue concentration, tenant assignment, etc.

The effect is that CHA and HUD must do all they can under the 1969 Order to increase the supply of dwelling units within the City of Chicago. In addition, they must similarly do all they can to increase the supply of dwelling units in the Urbanized Area up to an amount of dwelling units equal to 50% of the units provided within Chicago. The following article by article description of the 1972 Order briefly explains the proposed mechanics for accomplishing this.

II. ARTICLE-BY-ARTICLE DESCRIPTION

Article I contains definitions substantially identical to those in the 1969 Order, except that HUD and the Urbanized Area are defined and except that no "buffer zone" is employed outside Chicago (since concentrations of non-whites in suburbia are numerically minuscule as compared with Chicago).

Article II is substantially identical with Article II of the 1969 Order except that it obligates HUD as well as CHA to act in conformity to the provisions of the order (which now include the Urbanized Area).

Article III continues the provision of the 1969 Order in effect with respect to CHA's actions within Chicago, except that the optional suburban provision is eliminated (since Article IV makes it mandatory) and an obligation on HUD's part to cooperate is added.

Article IV provides that dwelling units shall be located in the Urbanized Area outside the City equal in number to half of those located in the City.

Section A obligates CHA to try to agree with other Local Housing Authorities that they will provide the units outside the City of Chicago, making 50% available to the plaintiff class (i.e., CHA's tenants and applicants). The "first stage" would be 750 units - half of the 1500 units presently scheduled to go into the City. Thus there is no reduction in the requirement

that the currently reserved 1500 dwelling units be provided within the City of Chicago as rapidly as possible in compliance with the Court's previous orders.

Section B provides that to the extent Local Housing Authorities do not obtain necessary local approvals and apply to HUD for reservations for such 750 dwelling units within 180 days after the date of the order, CHA shall itself make such application and do everything necessary to provide the units, including requesting such further orders from this Court as may be needed.

Section C applies the basic provisions of the 1969 Order to the Urbanized Area. It is identical or similar to the 1969 Order in providing for a 3-to-1 location ratio (§s 1 and 2), in prohibiting massive projects (§3a), undue concentration within census tracts (§3b), and high rises for families (§3d), and in prescribing tenant assignment standards. (§4.) Two additional provisions are designed to prohibit undue concentration within any one municipality in the Urbanized Area, while at the same time providing an incentive to municipalities to enter voluntarily into agreements respecting the new units (§3c), and to assure that the new suburban units will be located

equitably (roughly, in proportion to population and area) within the urbanized areas of the three counties involved. (§3e.)

Article V is substantially identical with a provision (Article VIII) of the 1969 Order except that HUD as well as CHA is obligated to try to increase the supply of dwelling units as rapidly as possible (in the Urbanized Area) in conformity with the order.

Article VI is a very general, semi-annual reporting provision.

Article VII provides that the order shall remain in effect only until an aggregate of 60,000 dwelling units has been provided under the 1969 and 1972 Orders.

Articles VIII and IX, dealing with technical matters, are substantially identical to Articles IX and X, respectively, of the 1969 Order.

III. CONCLUSION

The critical issue to be determined on October 24 is whether the objectives and purposes of the 1969 Order can be fully achieved without adding to that order a requirement for the provision of some dwelling units in suburbia. We believe the evidence will show that they cannot be, and that full equitable relief therefore requires the entry of an order such as plaintiffs have now proposed.

Since HUD has refused to discuss the development of the proposed order with plaintiffs, we are unfortunately not able to represent to the Court that the order takes account of HUD's views on how a suburban order should be shaped. Accordingly, while there is much to be said in its support, we have abandoned the detailed "fair share plan" approach, which HUD has in principle espoused, in favor of an application of the essential elements of the 1969 Order, already adopted by this Court, to the Chicago Urbanized Area.

The proposed judgment order is filed pursuant to the Court's order of December 23, 1971 (modified as to the time of filing by subsequent orders). The December 23 order resulted from plaintiffs' motion for further relief filed on November 24, 1971, supported by memoranda dated November 24, 1971 and December 21, 1971. Three other supporting documents have been filed by plaintiffs which are relevant to the proposed order: letters dated April 27 and June 30, 1972, to Judge Austin, with attachments, and a memorandum filed on July 24, 1972.

For the convenience of the Court copies of all of these previously filed papers are enclosed herewith and the Court is respectfully referred to them.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

September 25, 1972

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641-5570

DOROTHY GAUTREAU, et al.,
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v.
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) No. 66 C 1459
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1. Motion for further relief, November 24, 1971.
2. Memorandum in support of motion for further relief, November 24, 1971.
3. Reply memorandum in support of motion for further relief, December 21, 1971.
4. Order entered December 23, 1971.
5. Letter to Judge Austin, with attachments, April 27, 1972.
6. Letter to Judge Austin, with attachments, June 30, 1972.
7. Memorandum, July 24, 1972.

IN THE UNITED STATES DISTRICT COURT
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DOROTHY GAUTREAUX, et al.,

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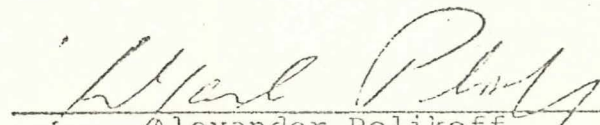
No. 66 C 1460

MOTION FOR FURTHER RELIEF

Now come plaintiffs by their attorneys and move the Court for the entry of an order, in the form submitted herewith, directing the parties to attempt to formulate a comprehensive plan to remedy the past effects of unconstitutional site selection in the Chicago public housing system, and, if the parties cannot agree, directing each party to submit a form of proposed judgment order.

In support of this motion plaintiffs submit herewith a memorandum.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

November 24, 1971

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IN THE UNITED STATES DISTRICT COURT
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	)	
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	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF MOTION
FOR FURTHER RELIEF

This memorandum is submitted in support of plaintiffs' motion for further relief of even date herewith.

THE FACTS

The relevant facts may be succinctly stated:

1. On February 10, 1969, this Court rendered its opinion in the companion case, Gautreaux et al. v. Chicago Housing Authority, et al., No. 66 C 1459, finding de jure segregation in the administration of the public housing system in Chicago.

2. Notwithstanding orders thereafter entered in the companion case on July 1, 1969, July 20, 1970 and March 1, 1971, recognizing that any remedy for the effects of such segregation requires the provision of new public housing, no such new housing has yet been provided and no such remedy has therefore been afforded to the plaintiff class.

3. On September 10, 1971, the Court of Appeals for the Seventh Circuit determined that the defendant in this case was equally responsible with the Chicago Housing Authority for the segregated public housing system in Chicago. The Court held that the Department of Housing and Urban Development ("HUD"), through its Secretary, "violated the Due Process Clause of the Fifth Amendment [citations omitted] and also violated Section 601 of the Civil Rights Act of 1964 [citations omitted]." Slip opinion, p.15.

4. While noting that "our holding should not be construed as granting a broad license for interference with the programs and actions of an already beleaguered federal agency," Slip opinion, p.15, the Court of Appeals explicitly left for the determination of this Court what relief, if any, should be granted against HUD. In this connection, the Court said:

"[T]he extent of possible equitable relief is extremely important, but is not before this Court on this present appeal." (Slip opinion, p.4.)

"[A] determination of just what type of equitable remedy might be appropriate in cases of this sort is a question best left initially to the sound discretion of the District Court. [citations omitted] Even though to the writer of this opinion it might appear that extensive relief would not be necessary, we do not, in any way, wish to anticipate the District Court on an issue properly for its decision." (Ibid.)

"Plaintiffs have contended that such 'other and further relief' might include a more vigorous utilization of the several different

types of housing programs which HUD administers in the form of a decree aimed at '... remedying the continuing effects of the discrimination of the past.'⁹ Such a decree arguably would represent an equitable remedy going beyond the scope of relief made available through the companion case and, it is contended, might facilitate the overall desired goal of desegregating the public housing sites around Chicago metropolitan area. We express no view on whether such requested relief is either necessary or appropriate. However, as long as a decree utilizing certain HUD programs still remains a possible form of relief not already available through the other case, this Court cannot deem the controversy moot.

⁹For example, we are advised that 'Section 236 Housing' is a low income housing program designed to increase the flow of such housing by favorable interest assistance payments to the mortgage lender. Unlike the public housing programs now before us, local governmental approval is not required for such housing to be constructed. See also: 'Section 235' and 'Section 231' housing programs." (Ibid at 7-8.)

"[A]t the present time, plaintiffs are in the anomalous position of having the full force of the federal judicial power at their command to enforce proven rights against CHA, yet having to rely solely on the voluntary promises of a party whose role is equally important, whose decisions pertaining to this matter may prove to be among the best means of insuring full compliance with the 'aims and objectives' of the CHA decree, but who never has been a party to that case or bound by its terms." (Ibid. at 9.)

5. On November 11, 1971, summary judgment against HUD was granted by this Court pursuant to the mandate of the Court of Appeals, but this Court specifically reserved for future consideration plaintiffs' request for an order directing HUD to prepare a proposed plan for relief.

THE LAW

The following principles are relevant to the Court's consideration of the plaintiffs' motion for further relief.

I. THE COURT HAS THE DUTY TO RENDER A DECREE WHICH WILL SO FAR AS POSSIBLE ELIMINATE THE DISCRIMINATORY EFFECTS OF THE PAST

It is a truism that the Court has the duty in constitutional litigation of this sort to exercise the powers of a court of equity to render a decree which will so far as possible eliminate the discriminatory effects of the past.

"[T]he Court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past ..." Louisiana v. United States, 380 U.S. 145, 154 (1965).

See also, U.S. v. School District 151 of Cook County, Illinois, 432 F.2d 1145, 1151 (7th Cir. 1970).

II. ADEQUATE RELIEF HAS NOT BEEN PROVIDED IN THE COMPANION CASE

It is clear, as noted above, that adequate relief has not been provided in the companion case to remedy the discriminatory effects of the segregated housing system in Chicago. Therefore orders entered in the companion case afford no reason for not granting relief - the first effective relief - in this case. In two places in its September 10 opinion, the Court of Appeals specifically invited consideration of granting affirmative relief in this case, notwithstanding orders previously entered in the companion case:

"[A]t the present time, plaintiffs are in the anomalous position of having the full force of the federal judicial power at their command to enforce proven rights against CHA, yet having to rely solely on the voluntary promises of a party whose role is equally important, whose decisions pertaining to this matter may prove to be among the best means of insuring full compliance with the 'aims and objectives' of the CHA decree ..." (Slip opinion, p.9, emphasis added.)

And, discussing plaintiffs' contention that a ruling against HUD might appropriately include "a more vigorous utilization of the several different types of housing programs which HUD administers," the Court of Appeals also said that "a decree utilizing HUD programs still remains a possible form of relief not already available through the other case ...". Slip opinion, pp. 7-8.

It is thus plain that the Court of Appeals has not foreclosed, but has specifically left open, the question of whether this Court should provide relief "beyond the scope of relief made available through the companion case." Since no relief at all respecting the obligation to remedy the effects of the past (as distinguished from prohibiting continued discrimination in the future) has yet been obtained in the companion case, it is clear that the question of providing such relief in this case must be considered by the Court.

III. ADEQUATE RELIEF FOR THE EFFECTS OF
THE PAST DISCRIMINATION CANNOT BE
PROVIDED IN THE COMPANION CASE

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 companion 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 companion case where it is not.*

IV. HUD HAS THE BURDEN OF COMING FORWARD
WITH A SPECIFIC PLAN FOR ADEQUATE RELIEF

The law is clear that the party responsible for discrimination has the duty to come forward with a plan which promises meaningful and immediate progress to correct the effects of past discrimination. In United States v. School District 151

*Where necessary to provide full relief from the effects of past discrimination, courts have directed the preparation of metropolitan wide plans. See, for example, the order entered in Bradley v. Milliken, Civil Action No. 35257, District Court, Eastern District of Michigan, Southern Division, on November 5, 1971: "It is further ordered that the State defendants submit a metropolitan plan of desegregation within 120 days." (p.2.)

of Cook County, Ill., 286 F.Supp. 786, 798-99 (N.D. Ill. 1968), this Court said:

"The defendants' present constitutional obligation is to take all appropriate affirmative steps to correct the effects of their racially discriminatory policies and practices ..."

Affirming, the Court of Appeals for the Seventh Circuit said:

"Defendants have the burden ... of presenting a plan which 'promises meaningful and immediate progress toward disestablishing' the existing unconstitutional discrimination. Green v. County School Board, 391 U.S. at 439, 88 S.Ct. at 1695, Northcross v. Board of Education, 333 F.2d 661 (6th Cir. 1964)." 404 F.2d 1125, 1135 (7th Cir. 1968).

In the Green case, cited by the Court of Appeals for the Seventh Circuit, the Supreme Court said:

"The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." 391 U.S. at 439, emphasis is the Court's.

Numerous other cases have similarly imposed upon responsible governmental bodies the burden of coming forward with a plan to remedy the effects of their past discrimination. See, for example, Hawkins v. Town of Shaw, 437 F.2d 1286, 1293 (5th Cir. 1971).

Thus it is appropriate to place upon HUD the duty to come forward with a specific plan to remedy the effects of its past discrimination that promises realistically to work and to work now. The fact that HUD is a federal agency rather than a local school board does not change or diminish that duty. We do not have one rule for dealing with the effects of discrimination practiced by state agencies, and a different rule (exonerating defendants from their burden of correction) for dealing with discrimination practiced by federal agencies. This is illustrated most dramatically, of course, by the five school segregation cases decided in 1954 and frequently referred to as Brown I, followed by a decision the following year, known as Brown II, providing relief in each case. Four of the cases involved discrimination by state agencies and one by a federal agency, yet the court decreed relief to correct the effects of past discrimination in each of the five cases. Brown v. Board of Education (Brown II), 349 U.S. 294 (1955). In remanding the cases to the district courts to take such proceedings and enter such orders and decrees as were necessary, the Supreme Court said:

"[T]he courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling ... They will also consider the adequacy of any plans the defendants may propose ..."
349 U.S. at 300-01.

Moreover, HUD has had imposed upon it by Congress specific duties which almost seem as if they were written for a case such

*HUD itself has of course been subjected to various remedial orders (see, e.g., Shannon v. HUD, 396 F.2d 809 (3rd Cir. 1970); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2nd Cir. 1968), as have other federal agencies such as the Department of State (Aptheker v. Secretary of State, 378 U.S. 500 (1964)), the Department of the Treasury (Green v. Kennedy, 309 F.Supp. 1127 (D.D.C. 1970)), the Environmental Protection Agency (Environmental Defense Fund v. Ruckelhaus, No. 23,813 (D.C. Cir. Jan. 7, 1971)), the Federal Power Commission (Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (3rd Cir. 1965)), the Department of Agriculture, (Environmental Defense Fund, Inc. v. Hardin, 428 F.2d 1093 (D.C. Cir. 1970)), and the Atomic Energy Commission (Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, ___ F.2d ___ (D.C. Cir. 1971).)

as this one. In Section 808(d) of the Housing and Urban Development Act of 1968 Congress directed:

"(d) The Secretary of Housing and Urban Development shall -

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

...

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter." 42 U.S.C.A. §3608(d).

Such duties are almost precisely those which are now requested to be performed by HUD, related to the specific circumstances of this case. Thus, in the preparation of a plan such as has been requested in plaintiffs' motion, HUD is merely being asked to study "the nature and extent of discriminatory housing practices" in the Chicago metropolitan area, to supply to the Court "reports, recommendations and information" derived from such a study, to "cooperate with and render technical assistance to [a] Federal [agency] which [is] formulating or carrying on programs to prevent or eliminate discriminatory

housing practices," namely this Court, and to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further [fair housing] policies ...", that is, by eliminating the discriminatory effects of its own past discrimination.

Thus, the order which plaintiffs now seek is hardly more than an order to HUD to do what Congress has already ordered it to do, here, however, with specific reference to a particular situation in which HUD has been adjudicated to have contributed to a discriminatory housing situation which HUD itself now has a legal duty to remedy.

CONCLUSION

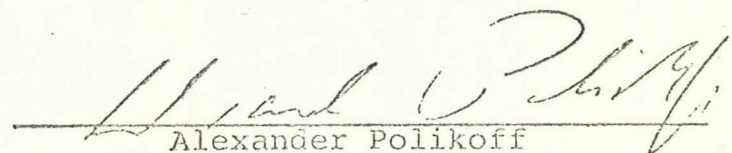
Plaintiffs are not at this point asking for an affirmative order providing specific relief. They are merely asking the Court to consider the question that the Court of Appeals has directed it to consider - what further relief against HUD is appropriate.

The Court cannot adequately explore that question without hearing from both parties, including HUD.*

* "That these formal doctrines of administrative law do not preclude federal jurisdiction does not mean, however, that a federal court must deprive itself of the benefit of the expertise of the federal agency that is primarily concerned with these problems."
Rosado v. Wyman, 397 U.S. 397, 406 (1970).

There can be no doubt, we assume, that if the Court were to make an affirmative request to HUD to supply it with the studies, recommendations, and technical assistance called for by Section 808(d), HUD would respond voluntarily. Here, where the Court has the duty to provide full relief from HUD's past discrimination, and where HUD has the duty to come forward with a plan to remedy that discrimination, HUD can and should be required to aid the Court in its task by producing a plan for the Court's consideration.

Respectfully submitted,


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One of the Attorneys for Plaintiffs

November 24, 1971

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

DOROTHY GAUTREUX, et al.,	)	
	)	
Plaintiffs,	)	No. 66 C 1459
	)	
v.	)	No. 66 C 1460
	)	
CHICAGO HOUSING AUTHORITY and	)	(Consolidated)
GEORGE W. ROMNEY, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR FURTHER RELIEF AGAINST HUD

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PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR FURTHER RELIEF AGAINST HUD

INTRODUCTION

In the CHA case this Court, without question or argument, directed the parties to prepare a proposed plan for relief. 296 F.Supp. at 914. Precisely the same step is now sought in the HUD case. The question is, why should that step not be taken?

HUD's basic answer to this question is that HUD doesn't build housing. This answer totally ignores what the Court of Appeals has said in this case: "... a decree utilizing certain HUD programs still remains a possible form of relief not already available through the other [CHA] case." (Slip opinion p.8.)

It also ignores the view of the Court of Appeals that "[HUD's] decisions pertaining to this matter may prove to be among the best means of insuring full compliance with the 'aims and objectives' of the CHA decree." (Slip opinion p.9.) In any event, the simple response is that if HUD can't build housing, HUD's plan won't call for HUD to do so. But that is no reason not to provide the Court with a plan respecting HUD "programs" and "decisions pertaining to this matter."

The remainder of this reply is largely designed to clear away the underbrush with which HUD has tried to obscure that simple issue now before the Court.

I. HUD'S DUTY IS NOT LIMITED TO "EVALUATION"

Ignoring the many cases in our opening memorandum showing HUD's duty to come forward with a plan for relief, HUD says,

"The responsibility to draft a comprehensive plan rests with the City of Chicago and the Chicago Housing Authority since they possess the power to plan and construct housing within the City of Chicago. HUD's responsibility is limited to evaluating said plan."
(p.9.)

The only authority HUD gives for limiting its responsibility to "evaluating said plan" is Crow v. Brown, a case plainly not relevant since, as HUD's own memorandum notes, HUD was dismissed from that action and found not liable. (p.9, n.6.) Obviously it would therefore have been inappropriate in Crow v. Brown to order HUD to do anything.

The case which is relevant is Hamtramck, the opinion in which was supplied to the Court by our letter of November 30, 1971. There HUD was ordered to do exactly what plaintiffs here seek to have HUD ordered to do:

"... in cooperation with the plaintiffs, [to] present to this Court within ninety (90) days from the date of this order a program designed to remedy the wrongs suffered by virtue of defendants' conduct."

HUD's memorandum fails to mention Hamtramck. It seems ostrich-like for HUD to ignore Hamtramck and the other cases cited in our memorandum while referring only to a case like Crow to support its argument that its responsibility for the correction of wrongs it helped to perpetrate is limited to evaluating other peoples' plans.

Inconsistently, HUD then announces it already has a plan:

"That plan is the one outlined by Secretary Romney in his testimony." (p.5.)

Moreover, we are told that joining the City as a defendant is all that is needed to make the plan effective.

"All that is needed to make it fully effective in Chicago is to join the City as a party-defendant in these proceedings." (p.5.)*

We are of course pleased to learn that HUD already has a plan. (Why then does it protest so strongly when asked to file

*HUD not only urges that the City, the Mayor and the Aldermen should be added as parties (p.4.), but says plaintiffs should explain why they have not done this sooner (p.9.), even though HUD agrees "there is ample precedent for by-passing State statutes which would impede justice to parties who have not obtained relief." (p.4.)

its plan with the Court?) We are also pleased to learn that the plan can be made "fully effective" by the simple step of joining the City. If this is all that is needed, we do not understand why HUD itself has not made the appropriate motion, which it is entitled under Federal Rule 21 to do. Indeed, under that rule, the Court is expressly empowered "of its own initiative" to add parties. Plaintiffs think it premature to join the City, the Mayor and the Aldermen at this point, and have explained why they hold that view in their brief filed in support of their motion for further relief against CHA.

(Part IV of Supplemental Memorandum in the CHA case, filed December 1, 1971.) But HUD and the Court are of course free to act under Rule 21 if they believe that plaintiffs' judgment in this respect is wrong. In any event, none of this supports the view that HUD's responsibility is limited to evaluating the plans of others.

In this connection, presumably as part of the "plan ... outlined by Secretary Romney" (see pp. 24-28, Statement of George Romney, Appendix A to HUD's memorandum), HUD has submitted to the Court its proposed "Project Selection Criteria." (Appendix C to HUD's memorandum.) It may be of interest to the Court to know that these criteria have been severely criticized by the United States Commission on Civil Rights as "doomed to failure" precisely because they do not constitute a plan, and precisely because they suggest "incorrectly that Department officials have

no alternative but to rely exclusively on the receipt of individual proposals drawn up in isolation from other such proposals." (Exhibit A to this memorandum, pp. 2, 3.) The Commission, making specific reference to the decision in this case, says:

"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 ..."
(Exhibit A, pp. 2-3.)

A copy of the Commission's letter to Secretary Romney, dated November 4, 1971, is attached hereto as Exhibit A.

II. HUD'S LACK OF POWER TO BUILD HOUSING DOESN'T PRECLUDE IT FROM PLANNING RELIEF

The basic argument for limiting HUD's duty to "evaluation" is, as noted above, that HUD has no power to build housing. The basic answer has already been given, but two additional matters should be noted.

The first is that testimony before this Court shows that HUD is already engaged in developing a low income housing plan for Chicago. Plaintiffs' Exhibit 26 (in the model cities proceeding), the HUD-City Preliminary Report on Chicago Housing Supply, dated November 19, 1970, states that the joint HUD-City team was given three tasks, one of which was:

"Develop a strategy for increasing the supply of low income housing in the Chicago metropolitan area." (Ex. 26, p.2.)

Mr. Vavoulis testified that this planning activity was now being carried on by HUD. (Tr. pp. 206-07.)*

The second is that HUD's memorandum on the subject of HEW's role in school desegregation cases is disingenuous. HUD implies that HEW's aid to the courts has been confined to "analyzing plans proposed by school boards." (p.9., n.5.) The fact of the matter is that in the very case referred to by HUD and discussed in our initial memorandum, HEW did propose not one but two plans of its own. Its role was not confined to analyzing plans proposed by others. See United States v. School District No. 151 of Cook County, 301 F.Supp. 201, 224, 234 (N.D. Ill. 1969). A decree adopting HEW's plan and ordering its implementation was affirmed. 432 F.2d 1147 (7th Cir. 1970).

HEW has no power to build schools or run school systems, but it submits school desegregation plans to the courts. Similarly HUD, which says it has no power to build housing or run housing systems, may submit housing desegregation plans to

* "Q. ... Has this city HUD team been working on that function [to prepare intermediate and longer term recommendations as part of a housing strategy] since November 19, 1970? ...

"THE COURT: ... The question is a simple question that doesn't refer to the May 12 letter or the June 21 letter or any other letter. It is a question have they been doing what this function, have they been performing this function to your knowledge.

"BY THE WITNESS:

"A. The answer is yes." (Tr. 206-07.)

the courts.

HUD in effect argues that, since it does not itself build housing, its decisions are irrelevant to the problem with which the Court is confronted. It forgets that the Court of Appeals said HUD's role is "equally important," and that "[HUD's] decisions pertaining to this matter may prove to be among the best means of ensuring full compliance with the 'aims and objectives' of the CHA decree." (Slip opinion p.9.) HUD's asserted lack of power to build housing is plainly no reason for not submitting a plan to the Court.*

III. A DECISION ON THE METROPOLITAN SCOPE OF
THE PLAN IS PREMATURE

HUD also asserts vigorously that a plan of metropolitan scope is beyond the power of the court. The answer is that if HUD believes a metropolitan plan is undesirable or improper, it need not submit one. Plaintiffs' proposed order does not require a plan of metropolitan scope unless HUD deems such a plan "necessary or appropriate to provide full relief." (p.2. of proposed form of order, attached to plaintiffs' motion for further

*In his First Annual Report on National Housing Goals the President of the United States, speaking of the location of HUD's subsidized housing programs, particularly outside of central cities, said:

"The evidence suggests that sufficient sites can be made available to accommodate the required housing if the federal programs which help provide the sites are pursued vigorously."
(House Document No. 91-63, p.5, emphasis added.)

relief.) At this stage, therefore, argument about a metropolitan plan is a red herring.

But HUD has not been silent on the need for metropolitan relief.* We have already noted that HUD personnel are presently engaged, according to Mr. Vavoulis, in the following task:

"Develop a strategy for increasing the supply of low income housing in the Chicago metropolitan area." (Ex. 26, p.2, emphasis added.)

In the statement of Secretary Romney attached to HUD's memorandum the following appears:

"[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding community. 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." (Appendix A, pp. 15-16, emphasis added.)

This statement of Secretary Romney followed hard upon a quotation from the President of the United States to the effect that HUD and other federal agencies, "will administer their programs in a way which will advance equal housing opportunity for people

*The Court may recall that plaintiffs' counsel met with a rather vigorous response when he stated orally that he believed all the parties had agreed that full relief in this cause would involve a plan of metropolitan scope. While the transcripts have not been checked to find support for that statement, and plaintiffs' counsel apologized if he had misstated, the material referred to in the text above should be read against this background.

of all income levels on a metropolitan area wide basis." (Id., p.15, emphasis added.)

Nor should HUD's assertion (without supporting authority) that this Court lacks the power to go beyond Chicago's geographic boundaries to afford full relief be allowed to go unanswered. It is basic that federal constitutional rights do not stop at city or county boundaries.

"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." Reynolds v. Sims, 377 U.S. 533, 575 (1964).

"The United States Constitution recognizes no governing units except the federal government and the states. A contrary position would allow a state to evade its constitutional responsibilities by carve-outs of small units." Hall v. St. Helena Parish School Bd., 197 F.Supp. 649, 658 (E.D. La. 1961), aff'd 287 F.2d 376 (5th Cir. 1961), aff'd per curiam, 368 U.S. 515 (1962).

"Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights." Haney v. County Board of Education, 410 F.2d 920, 925 (8th Cir. 1969).

"[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." Jenkins v. Township of Morris School District, 279 A.2d 619, 628 (S.Ct. N.J. 1971).

Thus, where necessary to afford full relief, federal courts will enter orders not confined to the boundaries of political

subdivisions of the state. One such case was referred to in our opening memorandum (p.6.) and, typically, was not commented on in HUD's responsive memorandum. (The order referred to is attached hereto as Exhibit B.) There are other such cases. See, e.g., Haney v. County Board of Education, 429 F.2d 364 (8th Cir. 1970), and Bradley v. School Board of City of Richmond, 324 F.Supp. 396 (E.D. Va. 1971). Indeed, in this Circuit Judge Dillin, of the Southern District of Indiana, grappling with the question of remedial orders respecting Indianapolis' segregated school system, joined several suburban school districts as parties at the relief stage of the case. The suburban districts sought writs of prohibition, contending that Judge Dillin lacked the power to order their joinder, but the Seventh Circuit Court of Appeals denied the writs. Carmel-Clay Schools v. Honorable S. Hugh Dillin, No. 71-1702 (7th Cir., October 1, 1971), and Avon Community School Corp. v. Honorable S. Hugh Dillin, No. 71-1695 (7th Cir. September 27, 1971).

Nonetheless, even though HUD's unsupported assertion about the Court's lack of power is clearly erroneous, at this stage of the case the metropolitan question is a red herring. If HUD honestly believes that metropolitan relief is unnecessary or improper, it is not obligated to submit a metropolitan plan under plaintiffs' proposed form of order.

IV. THE ORDER REQUESTED IS NOT BARRED BY THE
DOCTRINE OF 'SEPARATION OF POWERS'

HUD's final argument is to talk repeatedly about "separation of powers." Again, the argument is premature. It will be time enough to consider such an argument when a decree is proposed which orders HUD to administer its programs in a particular way. Clearly there can be no separation of powers question with respect to an order to submit a plan merely to aid the court in formulating a decree.

However, notwithstanding the argument's prematurity, it should be noted that HUD does not deign to comment on the numerous cases cited in our opening memorandum in which courts have entered orders providing many different forms of relief against federal agencies, including agencies of cabinet level. The Court's attention is also directed to Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971), involving correction of the racially discriminatory provision of services by the Town of Shaw, where this was said about separation of powers:

"The separation of powers principle assumes that we have a system of checks and balances. In Madisonian terms, each department or power center is to act as a curb on other departments or centers. Indeed, 'unless these departments be so far connected and blended, as to give to each a constitutional control over the others, the degree of separation which the maxim requires as essential to a free government, can never in practice, be duly maintained.' Madison, The Federalist, No. 48." 437 F.2d at 1292.

In any event, at this point the separation of powers issue is prematurely and, lacking even a cursory effort to deal with the

many cases granting relief against federal agencies, hardly even seriously, raised.

CONCLUSION

The cases show that this Court has a duty to provide full, including remedial, relief and that the parties responsible for discrimination have the duty to come forward with a plan to provide such relief. The Court of Appeals has invited this Court to give full consideration to the question of relief. It said plainly that "a decree utilizing certain HUD programs still remains a possible form of relief." (Slip opinion p.8.) It observed that HUD's "decisions pertaining to this matter may prove to be among the best means of ensuring full compliance with the 'aims and objectives' of the CHA decree." (Slip opinion p.9.) Obviously this Court must explore those possibilities.

HUD's real views emerge (from its camouflaging arguments about the power to build housing, metropolitan relief, and the like) where it says, pejoratively, that plaintiffs would have this Court "administer separate requirements in the Chicago Metropolitan Statistical Area." (p.5.) The plain fact appears to be that notwithstanding the adjudication of housing segregation in Chicago, and notwithstanding the Court's and HUD's duty to eliminate the discriminatory effects of that segregation, HUD does not believe that "separate requirements" for Chicago are appropriate. In other words, HUD wishes to conduct its programs

in the Chicago area exactly as it does elsewhere in the country, that is, exactly as it does where there has been no such adjudication, and where there exists no such duty! If this is in fact HUD's real meaning, we trust the Court will consider it utterly irresponsible and, as Hamtramck clearly shows, improper.

Plaintiffs will of course do what they can, with or without HUD, to develop and propose to the Court a plan for comprehensive relief. But we respectfully suggest that the Court would be derelict in its duty "to render a decree which will so far as possible eliminate the discriminatory effects of the past" Louisiana v. United States, 380 U.S. 145, 154 (1965), and unresponsive to the opinion of the Court of Appeals in this case, if it does not require HUD to participate in at least that preliminary process.

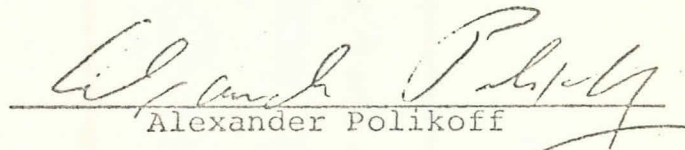
Respectfully submitted, (

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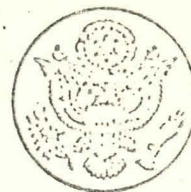
December 21, 1971

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By:


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UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425



STAFF DIRECTOR

NOV 4 1971

Honorable George Romney
Secretary of Housing and
Urban Development
Washington, D. C. 20410

Dear Mr. Secretary:

On October 8, 1971, the Department of Housing and Urban Development invited this Commission's comments on its proposed "Project Selection Criteria" and "Affirmative Fair Housing Marketing Regulations", dated October 2, 1971. We commented on earlier versions of the regulations and criteria in our letters to you dated July 22, 1971 and July 26, 1971 (copies enclosed), and we appreciate the opportunity to express our views on the revisions of these documents. The following constitute our comments on the criteria and the regulations.

I. PROJECT SELECTION CRITERIA

The regulations would establish a system of rating applications for Federal assistance for homeownership projects under Section 235, for rental projects under Section 236 or rent supplement, and for public housing projects. Under the current proposed regulations, a project will be rated "superior", "adequate", or "poor", with respect to eight criteria (seven for Section 235) which are as follows:

1. Need for low(er) income housing
2. Effect of project on minority housing opportunities
3. Improved location for lower income families
4. Relationship to orderly growth and development
5. Relationship of proposed project to physical environment
6. Ability of sponsor to perform
7. Project potential for creating minority employment and business opportunities

EXHIBIT A

8. Provision for sound housing management (applicable only to rental and public housing and inapplicable to Section 235 ownership projects).

In order to qualify for assistance, a proposed project must obtain at least an "adequate" rating on each of the eight criteria (seven for Section 235).

Basic Policy of the Proposed Regulations

In our July comments to you, we stated that we believe that the basic scheme of the proposed regulations was deficient in presenting an effective solution to the lack of housing opportunities and choices for low income and minority families in metropolitan areas. As we stated earlier, the civil rights laws relied upon as authority for the proposed criteria represent legal requirements of equal housing opportunity which would support HUD in requiring all communities which receive Federal grants to accept federally assisted housing.

The recent decision of the U.S. Court of Appeals for the Seventh Circuit in Gautreaux v. Romney, decided September 10, 1971, followed by Judge Austin's order of October 1, 1971, implementing that decision, clearly illustrate that HUD has an obligation not only to avoid acting in a discriminatory fashion, but to act affirmatively to prevent housing discrimination and segregation. Judge Austin has required HUD not to release Model City funds to the City of Chicago unless the City fulfills its obligation under Title VI of the Civil Rights Act of 1964, and the Constitution, to undo the effects of past discriminatory site selection policies. The proposed site selection criteria, in our view, should proceed to implement the policy of the Gautreaux decision in every metropolitan area in the country.

The proposed regulations raise serious questions with respect to whether they will promote balanced housing development. The regulations are much improved in detail over the first proposal, but their fundamental approach, one of passivity, has not changed. If I may, I will repeat our basic objections as we stated them in July:

The proposed criteria would operate on a project-by-project, rather than a metropolitan-wide, basis...

We are convinced that site selection criteria based on a project-by-project approach are doomed to failure. 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....

The project-by-project approach also reflects an unduly passive posture on the part of HUD, suggesting incorrectly that Department officials have no alternative but to rely exclusively on the receipt of individual proposals drawn up in isolation from other such proposals.

While the proposed criteria may have some effect in encouraging builders and sponsors of subsidized housing (including low rent public housing) to seek locations outside areas of existing minority or poverty concentration, they cannot achieve full implementation of the constitutionally and statutorily required desegregation policy enunciated in Gautreaux. The HUD criteria do not address themselves to the role of local governmental agencies, which play such a large part in determining the location of subsidized housing. In the case of low rent public housing and rent supplement, Federal law requires local governmental approval for each project. In the case of 235 and 236 projects, (which were not at issue in the Gautreaux litigation, but which in our view, and in HUD's view also, should be subject to the same site selection criteria as low income public housing) local governments often prevent builders and sponsors from establishing such housing by means of zoning laws and other land use controls. The failure of the HUD criteria to address themselves to these problems may well prevent such criteria from achieving unsegregated site location.

It is our view, in sum, that the Federal government has the duty to force local governments to face up to their obligations to play their part in providing all residents of metropolitan housing areas with meaningful housing choices, regardless of race or income. It is also clearly the obligation of the Federal government to insure that housing built with its assistance plays a role in dismantling the present housing patterns which restrict minority persons to the inner cities. In order to do this, at the minimum, HUD should institute a periodic review of the applications received and approved under these criteria in order to evaluate their collective effect on metropolitan housing opportunities. This would not impose an undue burden on the Department since applications are funded on a periodic basis due to budgetary considerations. Such a review cannot take the place of a carefully prepared plan designed to disperse low and moderate income

4

housing in accordance with a sound growth pattern. It can, however, prevent a project-by-project approval system from contributing to further irrationality in the development of our cities.

We would also like to repeat one general comment we made in July because of its inherent importance: we believe that the role of HUD's equal opportunity staff in implementing the regulations should be clearly defined in the criteria.

Specific Comments on Criteria

1. Need for low(er) income housing

This criterion, like criterion 2, requires determinations based in part on the character of the local "housing market area". This term is not defined. It seems very important to define this term as including the entire metropolitan area in order to make these regulations effective. We must get away from the notion that housing needs are limited to individual communities--people, not communities, need and choose housing, and in this mobile country, people are not confined by artificial jurisdictional lines.

In determining need for the purposes of criterion 1, the instructions for criterion 1 require that a "poor" rating be given to proposals in a market area where sale vacancies in all price categories exceed 2 ½ percent. It is not quite clear why this information is relevant. One would assume that only the vacancies in the price-size category proposed would be relevant in determining need, especially since most available housing is not within the reach of low or lower income families.

2. Minority housing opportunities

This section is a considerable improvement over the earlier version. It insures that low and moderate income housing will only be located in areas of minority concentration if there is an overriding need for such housing which cannot be met outside that area for reasons that exclude racial discrimination. Such reasons can include zoning obstacles and excessive land costs. Such reasons can also include the preference of minority residents for projects in their own neighborhoods. We hope that the careful definition of "overriding need" will insure that this exception to the requirement of nondiscriminatory location will not serve as an excuse for further impaction in areas of racial concentration.

We would propose as an addition to this criterion that wherever a project is approved because of an "overriding need" which cannot be met outside of areas of minority concentration (for reasons other than residents' desires), HUD should undertake a study of the obstacles that were found to contribute to this circumstance and take

steps to eliminate such obstacles. If the obstacles are exclusionary practices of municipalities, such as, for example, exclusionary zoning ordinances, HUD should institute proceedings to terminate Federal assistance to such municipalities on the basis of the racial effects of their policies.

3. Improved location for low(er) income families

This criterion is considerably improved over the earlier version. The revisions meet our objections to the earlier draft.

4. Relationship to orderly growth and development

This criterion is also an improvement over the earlier version. It gives preference to projects that conform to a regional plan, and it requires HUD to consider whether an application is consistent with "sound growth" if no local plan exists. On its face, it appears to meet some of the objections we raised in July and reiterated above. The Commission is uncertain, however, that this criterion will in fact lead to a metropolitan-wide dispersal of low and moderate income housing. If HUD relies on the existence of a plan, it must take steps to assure that the plan has adequate housing provisions. The planning process as it is presently conducted in many local and regional areas does not include detailed provisions for the location, type, or occupancy of assisted housing units. Often plans are made with little regard for minority group concerns, without the opportunity for more than nominal citizen participation, and with no equal opportunity review. Although the Commission approves of the inclusion of criterion 4, we feel that it should be more detailed, and incorporate safeguards to assure that any plan relied upon is sound. Similarly, we would recommend guidelines defining the phrase "sound growth patterns", which is the standard to be applied in assessing a project application from a community which does not have a plan.

5. Relationship of proposed project to physical environment

The revised criterion meets our objections to the earlier version.

6. Ability to perform

The revised criterion meets our objections to the earlier version.

7. Minority employment and business opportunities

Again, the revised criterion is an improvement over the earlier version. We are concerned, however, with the exception for proposals which cannot satisfy the minority employment requirement because the "area from which

labor would customarily be recruited has a very low minority population." This exception may make sense in many rural areas but it could be abused in suburban areas which may be the customary recruiting source for all-white labor, but are in fact accessible to minority persons. The instructions for this criterion should be revised to prevent such abuse.

8. Sound housing management

No comment.

Conclusion

As our comments indicated, we find the regulation substantially improved over the earlier draft and we appreciate HUD's apparent receptivity to public comments on its proposals. We still retain fundamental reservations concerning the policy embodied in the criteria, as explained above.

II. AFFIRMATIVE MARKETING GUIDELINES

The purpose of HUD's "Affirmative Fair Housing Marketing Regulations" is to promote fair housing by requiring applicants for participation in FHA subsidized and unsubsidized housing programs to pursue affirmative fair housing marketing policies in the sale and rental of federally assisted housing.

The revised regulations are an improvement over the earlier version in that they broaden the coverage of the regulations to cover housing in excess of five units (as opposed to the 25 units provided by the earlier draft). They are also improved in the specificity of their provisions (for example, the regulations now specify, as the earlier draft did not, developers' responsibility for the acts of their marketing agents).

In addition, the regulations spell out more clearly the sanctions for noncompliance. However, they do not state what procedures would be followed. In the case of proceedings under E.O. 11063 which may result in the termination of Federal insurance, public notice of such proceedings would seem important to protect potential buyers of properties which may no longer be covered by Federal mortgage insurance.

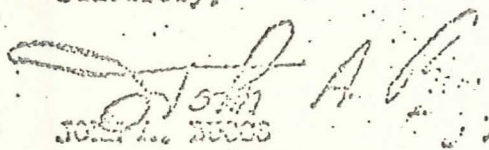
On the whole, however, the revised draft does not meet most of the Commission's concerns with respect to the earlier version, which were set forth in our letter of July 22, 1971. Instead of explaining those concerns fully, I will summarize the most important ones and refer you to the above letter:

1. The regulations still only apply to projects "hereafter developed" under FHL programs. We believe that coverage could be considerably broader (p. 3 of July 22 letter).
2. Only assisted housing of assisted developers or sponsors is covered. Again, we feel that this limitation is unduly restrictive. (Id.)
3. The regulations still do not require affirmative recruiting of minority sales or rental staff. (Id.)
4. The regulations do not require affirmative marketing plans to contain specific goals and timetables. (p. 4 of July 22 letter)

Conclusion

In contrast to the site selection criteria, the affirmative marketing guidelines do not seem to us deficient in their basic approach but rather in the details of their requirements. We hope that their further revision will result in making them a really effective device in combatting the pernicious effects of discrimination in the housing market.

Sincerely,



JOHN L. STUDD
Acting Staff Director

Enclosures

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al.,

Plaintiffs

v.

WILLIAM G. MILLIKEN, et al.,

Defendants

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

Defendant-
Intervenor

and

DENISE MAGDOWSKI, et al.,

Defendants-
Intervenor

A TRUE COPY

FREDERICK M. JOHNSON, Clerk

BY *Beverly L. Berub*
DEPUTY CLERK

CIVIL ACTION NO:
35257

ORDER

At a session of said Court held in
the Federal Building, City of
Detroit, on this 4th day of
OCTOBER, A.D. 1971.

PRESENT: HONORABLE STEPHEN J. ROTH
United States District Judge

The Court having entered its findings of fact and
conclusions of law on the issue of segregation on
September 27, 1971;

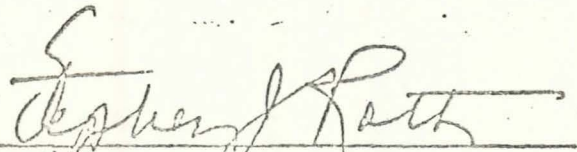
IT IS ORDERED that the Detroit Board of Education
submit a report on and an evaluation of the so-called
Magnet Plan within 30 days; and that other parties litigant
may within 10 days thereafter file responses to such
report and evaluation.

EXHIBIT B

IT IS FURTHER ORDERED that the Detroit Board of Education submit a plan for the desegregation of its schools within 60 days.

IT IS FURTHER ORDERED that the State defendants submit a metropolitan plan of desegregation within 120 days.

IT IS FURTHER ORDERED that as to both the Detroit and the State plans, other parties litigant shall have an additional 30 days in which to submit objections and/or alternate plans.


UNITED STATES DISTRICT JUDGE

DATE November 5, 1971.
SIGNED:

(4)

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

DOROTHY GAUTREUX, et al.,

Plaintiffs,

v.

GEORGE W. ROMNEY,

Defendant.)

ENTERED
12/23/71
No. 66 C 1460

ORDER

This matter coming on to be heard pursuant to plaintiffs' motion for further relief, and the Court having considered the opinion of the Court of Appeals for the Seventh Circuit of September 10, 1971 in this cause and the mandate issued pursuant thereto, and this Court's order herein of November 11, 1971, and the Court having heard the presentations of the parties and being fully advised,

It is hereby ordered:

1. The parties shall attempt to formulate a comprehensive plan to remedy the past effects of unconstitutional site selection procedures in the public housing system in the City of Chicago and present the same to the Court within sixty days from the date hereof;

2. If the parties cannot agree, each party shall file with the Court a proposed judgment order embodying a comprehensive plan to remedy the past effects of such unconstitutional site

selection procedures within ninety days from the date hereof;
and

3. In the preparation of such plan or plans, the parties are requested to provide the Court with as broad a range of alternatives, as seem to the parties feasible as a partial or complete remedy for such past effects, including, if the parties deem it necessary or appropriate to provide full relief, alternatives which are not confined in their scope to the geographic boundary of the City of Chicago.

ENTER:

12/23/71

15/ RBA

Judge

BUSINESSMEN FOR THE PUBLIC INTEREST
109 NORTH DEARBORN STREET
SUITE 1001
CHICAGO, ILLINOIS 60602
(312) 641-5570

EDMOND SHERMAN
President
ALEXANDER POLIKOFF
Executive Director
MARSHALL PATNER
General Counsel
DAVID DINSMORE COMEY
Director of
Environmental Research
THOMAS R. MEITES
Associate Counsel

April 27, 1972

The Honorable Richard B. Austin
Federal Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Re: Gautreaux et al v. CHA, HUD et al
No. 66 C 1459/60

Dear Judge Austin:

Your order of December 23, 1971, requires HUD and the plaintiffs to file with the Court "a proposed judgment order embodying a comprehensive plan to remedy the past effects of . . . unconstitutional site selection procedures" in public housing in Chicago, and to include in the order, to the extent deemed necessary or appropriate, alternatives not confined to the geographic boundary of Chicago. The time for filing has previously been extended to April 26, 1972.

On April 26, during your absence from the City, the plaintiffs filed a motion requesting an additional 90 days to file their proposed judgment order. This motion has been noticed for 10:00 A.M., May 2, 1972. The purpose of this letter is to explain the present status of plaintiffs' work on the form of judgment order and to justify the request for additional time to file it.

Objective. The final judgment order must provide full relief for past wrongs by remedying their effects. (See various briefs previously submitted by the plaintiffs on the obligation to provide full relief.) Since the wrong to be remedied consists of providing approximately 30,000 dwelling units on a discriminatory basis (and the physical location of those units prevents their being made non-

Honorable Richard B. Austin

Page 2

April 27, 1972

discriminatory), in plaintiffs' view full relief would at a minimum consist of providing approximately 30,000 additional dwelling units on a non-discriminatory basis. Therefore, plaintiffs' proposed judgment order will be a plan for the provision of this number of units.

Metropolitan Location. Each of the major defendants -- CHA, HUD and the City of Chicago -- agrees that additional housing should be provided on a metropolitan basis. (Examples of statements to this effect are attached.) In addition, CHA has taken the position that there is probably not enough land available in Chicago to provide even 7,000 new dwelling units. (CHA Response, March 17, 1972, ¶7.) Although plaintiffs do not agree with this conclusion, we do agree that it would be difficult to provide 30,000 additional dwelling units within Chicago in conformity with the provisions of the judgment order of July 1, 1969, within any reasonable time, and that such number of units can be provided much more expeditiously on a metropolitan basis. Moreover, for separate reasons mentioned below, metropolitan location is desirable in principle. Accordingly, plaintiffs' proposed judgment order will provide for metropolitan location.

Authority for Metropolitan Location. Briefs previously submitted by the plaintiffs shown that it is the duty of the Court to provide full relief and that where, as here, the vindication of federal constitutional rights is at stake, whatever steps are appropriate to that end may and should be taken. This principle embraces metropolitan location of housing. Plaintiffs are preparing a legal memorandum for the Court showing that in the circumstances of this case it is well within the equitable powers of the Court to order metropolitan location.

Considerations Supporting Metropolitan Location. The certainty that 30,000 additional dwelling units could not be provided within Chicago in a reasonable time strongly supports metropolitan location, but other considerations also support it and a court of equity may appropriately take these into account. Such other considerations include the location of employment and education opportunities and the social undesirability of continuing to

Honorable Richard B. Austin

Page 3

April 27, 1972

locate low-income housing exclusively in the central city. Plaintiffs are also preparing a memorandum for the Court discussing these considerations which furnish important additional reasons for metropolitan location.

(Metropolitan location plans for low-income housing have been developed in the Dayton, Ohio, Twin Cities, Minnesota, and San Bernardino, California metropolitan areas. Plans of the same sort are in various stages of development in other metropolitan areas. The plaintiffs are studying these several metropolitan location plans and their memorandum will include relevant information about them.)

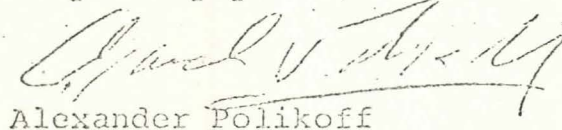
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*

*

Plaintiffs have been working diligently since entry of your December order and have secured and are utilizing the assistance of experts in their work. However, it is clear that preparation of a judgment order based on the foregoing principles will require additional time. For these reasons, we will on May 2 ask that plaintiffs' motion for an extension of time be granted. We have asked for 90 days because realistically we believe that preparation of a suitable judgment order may take that much additional time, although we hope to file the memoranda mentioned above well in advance of that date. We wish the Court to know that although we have affirmatively sought their participation, HUD, CHA and the City have all declined to join with us in the preparation of a judgment order and that CHA and the City have even refused to meet with us to discuss such a joint effort.

Very truly yours,



Alexander Polikoff

AP:kw

Attachments

cc: All counsel of record

Examples of Statements by
Defendants Supporting
Metropolitan Location
of Housing

Statements by CHA

"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."

(CHA Memorandum, December 21, 1971, p. 27.)

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

(Comments of Charles R. Swibel, June 26, 1970, CHA Exhibit 3, p. 2, attached to plaintiffs answer, August 12, 1970.)

Statements by HUD

"[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding community. 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, Appendix A, pp. 15-16, to HUD's Memorandum, December 17, 1971.)

"One of our most urgent needs is to discourage the increasing concentration of the poor and minorities, to end the polarization between central city and suburb, and to begin meeting our housing needs on a metropolitan basis."

(Speech of Secretary Romney at 33rd National Convention, National Association of Housing and Redevelopment Officials, October 5, 1971.)

Statements by the City of Chicago

"[I]t is obvious to anyone that the [housing] concern must relate not just to what is taking place in any part of the City but what is taking place in the region . . . [I]t has been the position in the City . . . that the only way we will be able to solve a housing problem is to solve the total problem . . . [T]he program as we envision it has got to be that total [metropolitan area] program and not a segmented program."

(Lewis Hill, City of Chicago Commissioner of Development and Planning, Transcript of Hearing, September 22, 1971, pp. 319, 321.)

"The entire metropolitan area must share in the responsibility for providing housing for all income groups."

(Statement, March 8, 1971, Mayor Richard J. Daley.)

(6)

BUSINESSMEN FOR THE PUBLIC INTEREST
109 NORTH DEARBORN STREET
SUITE 1001
CHICAGO, ILLINOIS 60602
(312) 641-5570

June 30, 1972

ALEXANDER POLIKOFF
Executive Director
MARSHALL PATNER
General Counsel
DAVID DINSMORE COMLY
Director of
Environmental Research
THOMAS R. MEITES
Associate Counsel

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-

criminatory 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

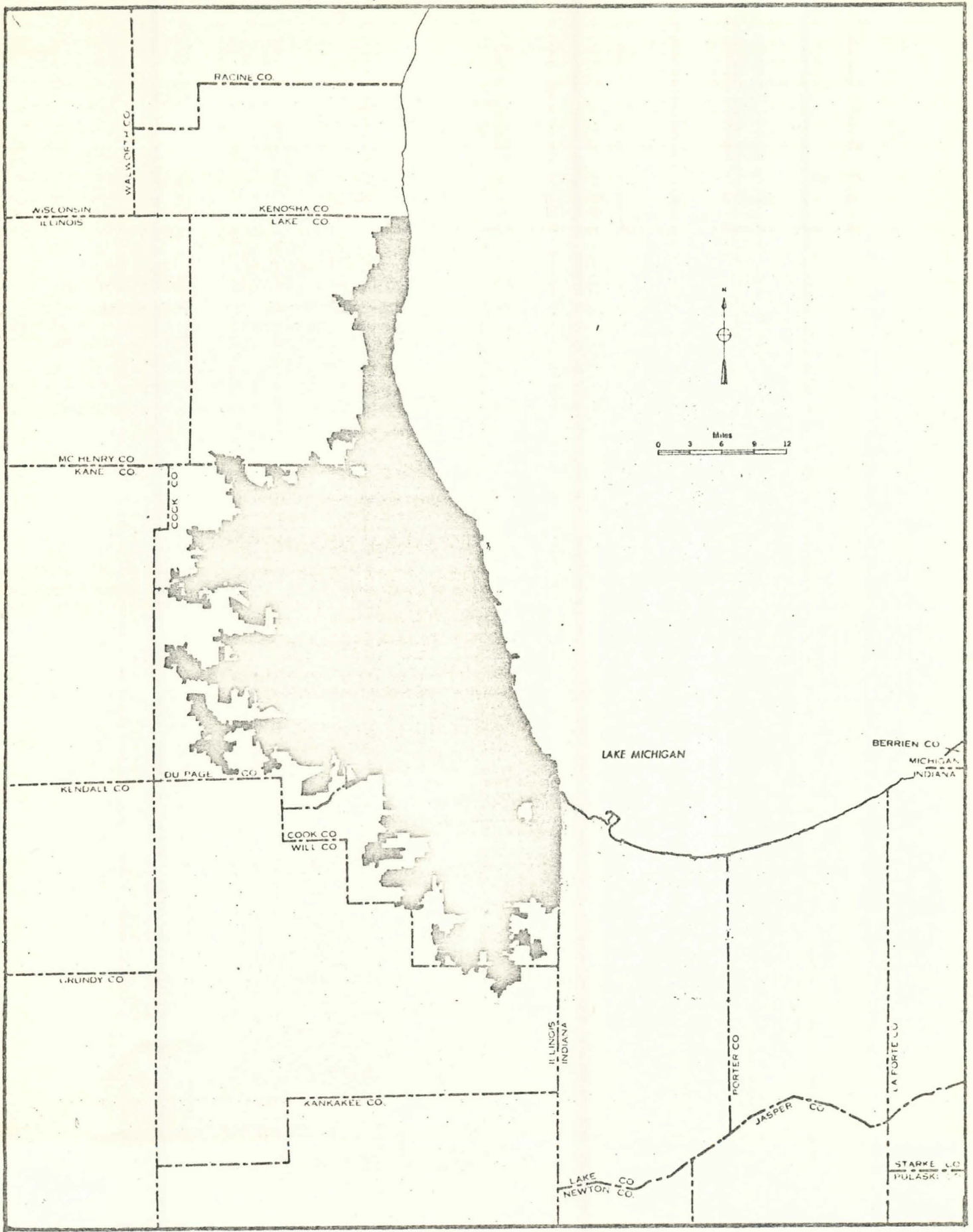
The Bureau of the Census recognizes approximately 250 so-called "Standard Metropolitan Statistical Areas" (SMSAs) in the 1970 census. The SMSA for the Chicago area consists of the 6 northeastern Illinois counties of Cook, Lake, McHenry, Kane, DuPage and Will. Although defined by HUD as the Chicago Housing 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. Samuels
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.

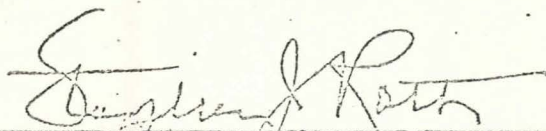
Each party may file appropriate plans or proposals for inclusion in any final order which may issue in this cause. The intent of this order is to permit all the parties to proceed apace with the task before us: fashioning an effective plan for the desegregation of the Detroit public schools.

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.

A handwritten signature in dark ink, appearing to read "Stephen J. Roth", is written over a horizontal line.

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).

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.	)	

MEMORANDUM

PLAINTIFFS' PROPOSED FINAL ORDER DOES NOT
RELIEVE CHA OF RESPONSIBILITY OR CONSTITUTE
A NEW LAW SUIT

On July 6, 1972 the Court expressed concern that plaintiffs' outline of a proposed final order would "let CHA off the hook" and looked like a "new law suit." This memorandum addresses those two concerns.

I. PLAINTIFFS DO NOT PROPOSE "LETTING CHA OFF THE HOOK."

The Court has so far entered two orders against CHA which specify numbers of dwelling units - 1,500 units in the order of April 10, 1972 (preceded by several other orders respecting development of the same 1,500 dwelling units), and 7,000 units in the order of January 3, 1972. Both orders stem from the underlying obligation imposed

upon CHA by the judgment order of July 1, 1969 "to increase the supply of Dwelling Units as rapidly as possible."

Plaintiffs' proposed final order would not affect CHA's obligations under these outstanding orders in any way. Plaintiffs' intend to do everything in their power to see that such orders are complied with, and that the 8,500 dwelling units of which they speak are ultimately provided by CHA as rapidly as possible in compliance with the terms of the 1969 order.

But if these 8,500 units were miraculously provided tomorrow, plaintiffs would not have full relief. Only as few as 4,250 of the 8,500 units need be offered to the plaintiff class under the terms of the 1969 order. These 4,250 non-discriminatory units must be measured against the more than 30,000 segregated units which constitute the wrong the Court is obligated to remedy. 4,250 families is only a fraction of the number of families in the plaintiff class who have been discriminated against by CHA and HUD; who now live in segregated public housing or do not live in public housing at all because by deliberate government action they have been denied the opportunity to live in unsegregated public housing; and who are entitled under this Court's orders and under the law of the land to be offered unsegregated housing as constitutionally required relief.

Therefore, many more than 4,250 units must be supplied and offered to the plaintiff class before it will have received full relief. Moreover, as the sad history of the first 1,500 units shows, the "lead time" necessary to provide adequate housing is substantial. If housing beyond the 4,250 units is to be provided while plaintiffs are still alive to enjoy it, the orders setting in motion the necessary procedures should be entered now, not at some distant future date.

Plaintiffs' outline of a proposed final order is an effort to develop those procedures - an order providing for the appropriate number and general location criteria for the remaining dwelling units which are necessary for full relief in, and therefore to terminate, this litigation.

The fair share plan to be submitted by the plaintiffs by September 1, 1972 may well call for more than 8,500 units to be located in the City of Chicago. If so, such additional units would be provided under the terms of the orders governing the first 8,500 units, as they may be modified from time to time by the Court. However, it is obvious (and a principle agreed upon by plaintiffs and defendants alike) that the total number of units needed for full relief in this case cannot and should not be located exclusively within Chicago. (See Memorandum #2, submitted to the Court on July 3, 1972. The Court has itself recognized this in principle in the 1969 order by authorizing

certain of the dwelling units to be located outside of Chicago.) The outline of a proposed final order merely proposes a rational way in which to develop criteria for the general location of the necessary additional units and to assure that, as and when Congress appropriates funds and HUD allocates them to this area, HUD and CHA in fact see to it that the units are provided in accordance with such criteria.

The responsibility to provide such additional units would not, under plaintiffs' proposed order, be any the less CHA's obligation than the responsibility to provide the first 8,500 units. But in deference to the principle of local determination and the desirability of community acceptance, other housing authorities would be given a "first option" to provide the court-ordered housing in their own areas of operation. Plaintiffs' proposed order specifically contemplates that if the local housing authority does not exercise this "option" and provide the court-ordered housing, CHA will be ordered to do so.

We do not believe that any of the above can fairly be described as relieving CHA of its responsibilities, or letting it off the hook in any way.

II. PLAINTIFFS HAVE NOT PROPOSED A NEW LAW SUIT.

Nor can any of the above fairly be said to constitute a "new law suit." It is certainly not a new law

suit to propose that some of the additional dwelling units needed for relief be located outside of Chicago. That is made plain by the 1969 order itself. And this Court's order of December 23, 1971 specifically invited the submission of plans for full relief "which are not confined in their scope to the geographic boundary of the City of Chicago."

Nor does the potential desirability or necessity of involving additional parties make this proposal a new law suit.* Previously in this litigation, when non-parties (members of the Chicago City Council) blocked CHA from carrying out orders of this Court by their inaction, the Court authorized the joinder of such non-parties and then entered a declaratory judgment setting aside the requirement that CHA obtain their consent to its proposed action. Thereby it unblocked the way to CHA's performance. No order requiring affirmative action by the newly joined parties was needed or entered.

This is a precise analogy to what is contemplated by plaintiffs' proposed final order. No order requiring affirmative action by non-parties is suggested or

* The practical effect of the first option principle may be to make it unnecessary to add very many new parties. If this Court's order presents local housing authorities and communities with the choice between providing the needed housing themselves or having CHA do so, they may well choose the former and thereby obviate the need for their formal participation in this case.

contemplated. All that is proposed is that, if and when a factual record develops which shows that CHA is being blocked from compliance with this Court's orders by the refusal of non-parties to consent to necessary CHA action, a declaratory judgment be entered setting aside the requirement of such consent for the limited purpose of achieving full relief in this law suit. In the briefs and arguments which preceded the entry of this Court's order of April 10, 1972, granting precisely such a declaratory judgment, we have shown that there is "ample authority" (quoting a HUD memorandum on the point) for the Court to take such action. Doing so again would not make this a "new law suit."

* * *

The Court is obliged to provide full and effective relief.

"[T]he Court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past ..." Louisiana v. United States, 380 U.S. 145, 154 (1965).

"The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation....[W]hatever plan is adopted will require evaluation in practice, and the

Court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed." Green v. School Board of New Kent County, 391 U.S. 430, 439 (1968).*

In this very case the Court has said, "[E]xisting patterns of racial segregation must be reversed if there is to be a chance of averting the desperately intensifying division of Whites and Negroes in Chicago." Gautreaux v. CHA, 296 F.Supp. 907, 915 (N.D.Ill. 1969).

4,250 units compared to more than 30,000 would not "eliminate the discriminatory effects of the past" or "completely remove" state-imposed segregation. It would not reverse the pattern of public housing segregation in Chicago. It would leave over 25,000 families residing in public housing, and many times that number of eligible families, without any remedy at all for governmentally imposed housing segregation. Plaintiffs' approach to a final order does not let CHA off the hook or constitute a new law suit because it proposes a rational way to provide the necessary relief for those remaining thousands of families, and does so based

* Green also shows that it is the duty of defendant governmental agencies to formulate and carry out effective plans to provide a full remedy for past segregation. However, CHA and HUD have refused to produce realistic plans of their own and have refused to cooperate with plaintiffs to produce a joint plan. In default of performance by those who should have done the work, plaintiffs have tried to comply with the command of this Court and the law to develop a comprehensive plan for full and effective relief.

on legal principles which this Court has already employed
and on planning principles which HUD affirmatively espouses.*

Respectfully submitted,



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July 24, 1972

* It should perhaps be emphasized that at this stage plaintiffs have merely proposed for informal discussion with the Court and the parties an outline of a proposed final judgment order. Plaintiffs expect to bear the burden of persuading the Court in a formal evidentiary hearing that a specific proposed judgment order is both necessary and appropriate.