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In the
United States Court of Appeals
For the Seventh Circuit

Nos. 74-1048 and 74-1049

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellants,

vs.

**CHICAGO HOUSING AUTHORITY and
JAMES T. LYNN, Successor to George W.
Romney, Secretary of the Department of
Housing and Urban Development, et al.,**
Defendants-Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of Illinois, Eastern Division.

—
Honorable
Richard B. Austin,
Judge Presiding.

BRIEF OF DEFENDANT-APPELLEE CHA.

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BRIEF OF DEFENDANT-APPELLEE CHA.

THE ISSUE PRESENTED.

① wrong issues
Whether the district court abused its discretion in entering the judgment order of September 11, 1973 and in denying consideration of plaintiffs' plan for what plaintiffs call metropolitan area relief. wrong

STATEMENT OF THE CASE.

This appeal is the fifth appearance of this litigation before this Court.¹ As such, a detailed statement of the background of this litigation will be omitted. However, because of the protracted nature of this litigation which commenced in 1966, it is helpful to state at the outset who the plaintiffs are. According to paragraph 3 of the 1966 complaint, they are:

"* * * all Negro citizens of the United States who presently reside in the City of Chicago, Illinois and are tenants in 'regular family' public housing projects (i.e., projects for persons other than the elderly operated by the defendant, The Chicago Housing Authority (the "Authority"), or have filed, on forms provided by the Authority, written applications for and are eligible to be housed in, and have a right in accordance with Authority Rules to be housed in, such projects." Rec. Doc. 1 ¶ 3

The discrimination alleged by plaintiffs relevant to this appeal was in the site selection process for low income family public housing in Chicago. The gist of the 1969 judgment order relevant to this appeal is that future construction of family units would proceed as follows: three of every four new units must be built in "General Public Housing Areas" defined as census tracts which have less than 30% non-white population and the

1. Previous decisions of this Court and of the district court are reported in 265 F. Supp. 582; 296 F. Supp. 907; 304 F. Supp. 736; 436 F. 2d 306 cert. denied 402 U. S. 922, 91 S. Ct. 1378, 28 L. Ed. 2d 661; 448 F. 2d 731; 332 F. Supp. 366 reversed 457 F. 2d 124; and 342 F. Supp. 827 aff'd 480 F. 2d 210 cert. denied, U. S. The order now appealed from is reported at 363 F. Supp. 690. For additional background on legal issues involving public housing for low income families in Chicago see *Nucleus of Chicago Homeowners Association, et al. v. Chicago Housing Authority, et al.*, 72 C 1197, now on appeal to this Court, 74-1206.

fourth unit may be built in the "Limited Public Housing Areas" defined as census tracts which have 30% or more non-white population and a buffer zone of one mile around the Limited Areas.

This Court, in its 1971 decision (448 F. 2d 731) reversing summary judgment in favor of the Department of Housing and Urban Development (HUD), and directing that judgment be entered against HUD, determined that HUD, as well as the Chicago Housing Authority (CHA), was responsible for segregation in the site selection of low income family public housing within the City of Chicago. This Court declined to express an opinion as to the appropriate relief because "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." 448 F. 2d at 734. And this Court also stated: "It may well be that the District Judge, in his wise discretion, will conclude that little equitable relief above the entry of a declaratory judgment and a simple 'best efforts' clause will be necessary to remedy the wrongs which have been committed." 448 F. 2d at 740-741.

On remand, the district court granted summary judgment against HUD on November 11, 1971, and on December 23, 1971, the parties were directed to propose remedial plans "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." On April 2, 1972, HUD filed a "response" and a "best efforts" judgment order, the order which was ultimately adopted and entered by the district court. On September 25, 1972, plaintiffs filed their proposed judgment order calling for metropolitan relief in the form of requiring CHA to construct public housing in suburban municipalities with or without the consent of the latter entities. CHA supported HUD's proposed best efforts judgment order.

On November 27-29, 1972 an evidentiary hearing was held to consider the appropriate relief in this matter. Plaintiffs called Professor Phillip M. Hauser, an urbanologist, in an attempt to show the necessity for their proposed metropolitan area plan (Transcript of Proceedings November 27, 1972 (TR.) pp. 81-121). Based on Bureau of Census statistics for the City of Chicago Prof. Hauser concluded that "if one assumes that the changes in black and white population respectively during the intercennial decade of the '60's were to continue" then by simple extrapolation the population of the city would be 70 percent black by the turn of the century (TR. p. 86). Also by simple extrapolation, assuming continuation of current trends, Prof. Hauser concluded that by the year 2000 all of the census tracts in the city would have at least 30 percent blacks (TR. p. 89). Thus, under the terms of the judgment order of July, 1969, no family public housing could be built in Chicago because the whole city would fall within the "Limited Public Housing Areas." At no time, however, did Prof. Hauser state any basis for or reason why the district court or anyone else should accept his assumption that current trends will continue uninterrupted over the next 25 years. Plaintiffs also attempted to demonstrate that the lack of progress in new low income family public housing was due to the unreliability of HUD's "best efforts" in the past (TR. pp. 81-330). Hud presented evidence showing that one of the major problems facing HUD and CHA was the lack of funds available (TR. 330-367).

On cross-examination, Prof. Hauser all but admitted that plaintiffs' metropolitan plan would not effectively provide relief for plaintiffs (TR. 105-107, 110-116), i.e., a City of Chicago with sufficient census tracts with less than 30% non-white population. Prof. Hauser was asked to assume that plaintiffs' proposed order was granted and that 20,000 units could be placed in suburban sites yearly until the year 2000 and was then asked whether this action would prevent the City of Chicago from becoming 70% black.

A. "... the answer would be that this order alone, in my judgment, could not begin to do that. It would constitute one step in the direction that, in my judgment, would be desirable public policy . . .

Q. So your answer would be no?

A. My answer is not no. It is the first step. It is a step in that direction. By itself it certainly cannot. (TR. p. 106)

On January 29, 1973, plaintiffs filed a motion requesting that the district court defer entering anybody's proposed judgment order and instead enter an order calling for the submission of a metropolitan area relief plan. See *Bradley v. Milliken*, 484 F. 2d 215 (6th Cir. 1973) cert. granted, U. S. (1973).

On September 11, 1973 Judge Austin denied plaintiffs' motion of January 29, 1973 and entered the general "best efforts" judgment order proposed by HUD, 363 F. Supp. 690 (N. D. Ill. 1973).

The various bases for the district court's decision were its following findings of fact.

(1) The "wrongs" of HUD and CHA against plaintiffs were committed only within the City of Chicago and solely against residents of the city (*id.* at 691).

(2) It has never been alleged that HUD or CHA discriminated or fostered discrimination in the suburbs (*id.* at 691).

(3) The only testimony supporting plaintiffs' motion is the opinion of an urbanologist that by the year 2000 the entire City of Chicago will be within the limited public housing areas as defined in the order of July 1, 1969, i.e., every census tract will be 30% or more black (*id.* at 691).

(4) Plaintiffs' urbanologist's opinion testimony is insufficient to demonstrate that metropolitan wide relief is necessary in order to provide the plaintiffs the relief they seek (*id.* at 691).

not a finding
2 feet

Answer
question?

(5) No public housing has been built since the order of July 1, 1969 due to the city's refusal to approve sites and due to the lack of funds (*id.* at 691).

(6) To grant plaintiffs' motion would allow the passing of City of Chicago problems onto the suburbs (*id.* at 691).

It was on the basis of all of these findings of fact that the district court concluded that the metropolitan relief approach of the Chicago plaintiffs was not appropriate and it, therefore, entered the "best efforts" order from which the plaintiffs appeal.

ARGUMENT.

Initially, it is best to consider what is *not* involved in the present appeal. This lawsuit has always been concerned only with alleged racial discrimination in the site selection of low income family public housing within the City of Chicago. It never has been nor should it be the purpose of the relief given herein to attempt to adjust all of the housing patterns in the Chicago metropolitan area which are contrary to the general goal of an integrated society. This case does not involve the "myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious or ethnic grounds;" this "vehicle can only carry a limited amount of baggage."³ The objective in discrimination cases "does not and cannot embrace all the problems of racial prejudice even when those problems contribute to disproportionate racial concentration in" housing.⁴ Nor is it a proper purpose of any remedy in this case to rectify so-called "white flight." That was all that was said when the district court stated that *Bradley* type relief "goes far beyond the issues of this case." 363 F. Supp. at 690-691. Thus, the fact that there is or may be a so-called "white flight" from Chicago to the suburbs is not an issue before this Court. In addition, it is not

2. The issue of tenant selection has not been a live issue since the 1969 decree.

3. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 22, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971) reh. denied 403 U. S. 912, 91 S. Ct. 2200, 29 L. Ed. 2d 689 (1971) and at 403 U. S. 912, 91 S. Ct. 2201, 29 L. Ed. 2d 689 (1971).

4. *Id.* at 23.

but it is a factor to be taken into account by the district court

a proper purpose of the remedy in this case to attempt to cure either the problem of location of jobs or the fact that many schools within Chicago may be predominantly black. These are all proper concerns of the public and perhaps new lawsuits, but not this one. All this case is now concerned with is seeing that CHA and HUD do not discriminate in the site selection of low income family public housing within the City of Chicago and that rational efforts be made to correct the consequences of past practices.

Plaintiffs' position is that the basic reason for the denial of their motion was that the district court held that it lacked the power to enter an order for metropolitan relief. However, it is abundantly clear from the district court's opinion that this is not so. Nowhere does the district court state that it lacks such power and nowhere does it even discuss the scope of its power. Plaintiffs' argument (Brief p. 9) that the district court's finding that the wrongs to plaintiffs were committed within the City of Chicago and solely against residents of the city implies that the court determined that it was powerless to grant relief that would extend beyond Chicago's boundaries shows that plaintiffs have forgotten why they brought their suit. Moreover, this finding was simply a finding of fact and nothing more. It was one of the findings of fact which the district court considered in deciding the appropriateness of metropolitan relief.

Plaintiffs attack the district court's statement that "unlike education, the right of adequate housing is not constitutionally guaranteed and is a matter for the legislature." 363 F. Supp. at 691 (Brief p. 9). However, plaintiffs ignore what the district court said in the next sentence:

"Of course, once such legislation is enacted into law, it is constitutionally impermissible to administer it in a racially discriminatory manner." 363 F. Supp. at 691.

It cannot be denied that the district court and this Court have already determined that constitutional rights have been denied; after all, that is what this case is all about.

In passing it should also be noted that the district court's finding that plaintiffs' proposed order would allow CHA to pass its problems onto the suburbs, 363 F. Supp. at 691, in no way indicates that the district court felt it was without power to order metropolitan relief.

Plaintiffs fail to recognize that the district court made two crucial findings of fact:

- (1) That plaintiffs' urbanologist's opinion was simply insufficient to demonstrate the necessity for metropolitan relief; and
- (2) That the reason for the lack of new housing was the lack of funds and the refusal of the Chicago City Council to approve new sites. 363 F. Supp. at 691.

Plaintiffs also fail to recognize that those findings must stand unless plaintiffs show that they are "clearly erroneous," and that the orders from which plaintiffs appeal must be affirmed unless the district court abused its discretion.

I.

WHILE THE DISTRICT COURT HAS A DUTY TO REMEDY RACIAL DISCRIMINATION, HOW IT DOES SO IS WITHIN THE DISCRETION OF THE TRIAL COURT.

In part I of plaintiffs' brief (pp. 12-41) plaintiffs take the position that the district court had an absolute duty to grant metropolitan area relief. This position rests on two misapprehensions: (1) that the district court found the facts as plaintiffs claim them to be; and (2) that the district court was under a duty to agree with plaintiffs.

While the district court has, of course, the duty to provide plaintiffs relief, it is clear that the formulation of that remedy

is within the equitable remedial discretion of the district court. *Swann v. Charlotte-Mecklenberg Board of Education*, *supra*, at 25; *Wright v. Council of the City of Emporia*, 407 U. S. 451, 460, 92 S. Ct. 2196, 33 L. Ed. 2d 51 (1972); *United States v. Scotland Neck City Board of Education*, 407 U. S. 484, 489, 92 S. Ct. 2214, 33 L. Ed. 2d 75 (1972). As was said by this Court in *Gautreaux v. Romney*, 448 F. 2d 731 (7th Cir. 1971) at p. 734:

"Similarly, 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 . . ."

Thus, the test for reversal is whether the district court has abused its discretion. *Wright v. Council of the City of Emporia*, *supra*, 470; *Gautreaux v. Romney*, 457 F. 2d 124, 128 (7th Cir. 1972).

In order to make a meaningful assessment of whether the district court abused its discretion the facts upon which it based its decision must be examined.

II.

THE DISTRICT COURT'S FINDINGS OF FACT ARE NOT CLEARLY ERRONEOUS.

Initially, it should be stated that plaintiffs misstate the record when they suggest that all of the parties agreed that metropolitan relief was necessary in this case (Brief p. 30). Each of the statements by CHA and HUD quoted by plaintiffs are taken out of context. The fact is that at no time in the history of this case has any defendant agreed that this lawsuit was a proper vehicle for metropolitan relief. Thus, CHA in a December 21, 1971 memorandum (Record Doc. 167 p. 28), stated:

"If plaintiffs' goal is metropolitan-wide public housing they should amend the pleadings and join as defendants

all of the municipalities within the Northern District of Illinois, and, after hearings on, among other things, the capacity of each for the location of public housing, seek to have quotas assigned to each of them . . ."

At the November 29, 1972 hearing (TR. p. 451), counsel for CHA stated:

"We have always said, Judge, that we believe in the . . . , the metropolitan approach, but that is from the social point of view. This lawsuit, we suggest, has specific parameters and we are being sent, if you sign an order like proposed [by plaintiffs], or anything like it, off on a great big snipe hunt."

In its memorandum of April 5, 1973 (Rec. Doc. 318 p. 6), CHA stated:

"CHA has expressed to this Court on many occasions that from a social view (e.g., TR. November 29, 1972, p. 451) the problems in providing public housing should be approached on a metropolitan basis. But CHA has always and still insists that this lawsuit as presently constituted is not a proper vehicle to solve that complicated problem."

Plaintiffs have only brought suit against CHA and HUD for discriminatory site selection of low income housing within the City of Chicago. This is the lawsuit that we are dealing with and the one in which the remedy and facts must be assessed.

Plaintiff's position in the trial court was that the present orders of the district court were insufficient to provide them with adequate relief. To support their position, they called as a witness Prof. Phillip Hauser, a noted urbanologist. Based on Bureau of Census statistics for the City of Chicago, Prof. Hauser concluded that "if one assumes that the changes in black and white population respectively during the intercennial decade of the '60's were to continue" then, by the turn of the century, the population of the city would be 70 percent black (TR. 86). Also by simple extrapolation, assuming current trends to con-

tinue, Prof. Hauser concluded that by the year 2000 all of the census tracts in the city would have at least 30 percent blacks (TR. 89). Based on this testimony, plaintiffs unsuccessfully attempted to convince the district court that its current orders restricting relief to the city are and will be ineffective and that only a metropolitan wide remedy would provide them an adequate remedy.

The trial court rejected Prof. Hauser's opinion and stated:

"... The factual basis for their request is an opinion of an urbanologist that by the year 2000 the entire geographic area of the City of Chicago will be within the limited public housing area as defined by the judgment order entered on July 1, 1969. This is simply inadequate to support a request to consider imposing obligations upon those who were and are incapable of discriminatory site selection within the City of Chicago." 363 F. Supp. at 391.

The district court plainly was unwilling to adopt as a matter of fact the opinion of Prof. Hauser and, therefore, find as a fact that its existing orders would not provide plaintiffs with an adequate remedy.

Plaintiffs intimate that the district court erred in not adopting Prof. Hauser's opinion as its own (Brief p. 38). But plaintiffs forget that:

"... Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses ... " Rule 52(a), F. R. Civ. P.

In applying the "clearly erroneous" test of Rule 52(a) courts of appeal must be mindful of the fact "that their function is not to decide the issues *de novo*." *Zenith Radio Corp. v. Hazeltine Research Inc.*, 395 U. S. 100, 123, 89 S. Ct. 1562, 1576, 23 L. Ed. 2d 129 (1969). It is not enough that the reviewing court might give the facts another construction, *United States v. National Ass'n of Real Estate Bds.*, 339 U. S. 485, 495, 70

S. Ct. 711, 717, 94 L. Ed. 1007 (1950); rather the finding must be "clearly erroneous" and a finding is only "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U. S. Gypsum Co.*, 333 U. S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948); *Zenith Radio Corp. v. Hazeltine Research Inc.*, *supra*, 123, 1576.

It is also well accepted that the party challenging a finding of fact has the burden of demonstrating that it is clearly erroneous.⁵ In *Aunt Mid, Inc. v. Fjell-Oranje Lines*, 458 F. 2d 712 (7th Cir. 1972) cert. denied 409 U. S. 877, 93 S. Ct. 130, 34 L. Ed. 2d 131 (1972) this Court stated:

"... In determining whether there is a sufficient evidentiary basis for the court's findings of fact, we must take the view of the evidence and the inferences deducible therefrom which is most favorable to the ... [party prevailing below] ... " *Id.* at 718.

The approach is no different when expert testimony is involved. "[T]he opinion of an expert, even if uncontradicted, is not required to be accepted as such testimony must pass through the screen of the fact trier's judgment of credibility." *United States v. Pittman*, 449 F. 2d 623, 628 (7th Cir. 1971). Deference towards the trial court's ability to assess the credibility of the witnesses is of paramount importance when an expert's opinion is involved. *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U. S. 271, 274, 69 S. Ct. 535, 93 L. Ed. 672 (1949).

With these principles in mind, Prof. Hauser's testimony must be examined to determine whether the trial court's rejection of his opinion was clearly erroneous. Prof. Hauser testified that based on past trends in Chicago, the city by the year 2000

5. *Case v. Morrisette*, 475 F. 2d 1300, 1307 (D. C. Cir. 1973); *Purer & Company v. Aktiebolaget Addo*, 410 F. 2d 871, 878 (9th Cir. 1969) cert. denied 396 U. S. 834, 90 S. Ct. 90, 24 L. Ed. 2d 84 (1969).

will be 70 percent black (TR. 86) and that all of the census tracts in Chicago will have 30 percent or more blacks (TR. 89). Each of these projections were made by simply extrapolating from the current racial demographic data. However, in each instance Prof. Hauser made a crucial assumption—he assumed that the current trend in racial change in Chicago will persist over the next quarter of a century (TR. 86, 88). However, his testimony is devoid of any basis for his assumption. The assumption was simply stated and the trial court was asked to accept Prof. Hauser's assumption without any reasons why it should do so. This the district court properly refused to do.

Prof. Hauser was attempting to forecast the behavior of millions of human beings over the next 25 years. However, the law knows that predicting the behavior of even one human being is an especially difficult, if not impossible, task. *Cross v. Harris*, 418 F. 2d 1095, 1107 (D. C. Cir. 1969). Common sense suggests that the trial court was not bound to accept Prof. Hauser's assumptions and so does the law:

“An expert may give his opinion based on assumptions stated by him. *However, if the assumptions needed to support the opinion are not proved, or at least testified to, and not otherwise taken to be true, the opinion is worthless.* See *International Paper Co. v. United States*, 5th Cir., in which we stated: ‘Of course, opinion evidence may of itself be substantial enough to take a case to the jury. However, an opinion is no better than the hypothesis or assumption upon which it is based.’ 227 F. 2d 201, 205 . . .” *United States v. Cooper*, 277 F. 2d 857, 860 (5th Cir. 1960) (Emphasis added).

The operative principle was recently acknowledged by this Court in *Bohus v. Board of Election Commissioners*, 447 F. 2d 821 (7th Cir. 1971). The plaintiff claimed that the Board's habitual placement of Democratic candidates on the top line of the ballot was a violation of the equal protection clause of the Fourteenth Amendment because this favored Democratic candidates and was and continued to be a factor in the outcome

of the elections. Plaintiff called three “expert” witnesses: one was a professor of both political science and sociology, one a former candidate and the third an alderman. All three opined that the margin of victory of the plaintiff's opponent was due to ballot placement. But each expert failed to give reasons for his opinion or assumption that ballot placement in fact was the reason for the advantage. Although this testimony was uncontradicted, the trial judge concluded that plaintiff failed to sustain its burden of proof. This Court affirmed holding that the district court's finding was not clearly erroneous.

“We understand that exactitude in proof of voting behavior may be an impossible goal in trials such as this. As the experts below explained, it is difficult to isolate one factor among many which affects the outcome of an election. Nevertheless, we do not think it was error for the district judge to determine that the opinion evidence was fatally defective. The judge believed that the witnesses produced no cogent basis justifying their opinions that top placement was advantageous. As stated by Ladd in *Expert Testimony*, 5 Vand. L. Rev. 414, 421 (1952): ‘Generally, as expert testimony approaches the speculative, the possibility of its admissibility and its weight if admitted is lessened; * * *’ See *Witcomb v. Chavis*, 403 U. S. 124, 145, 91 S. Ct. 1858, 1870, 29 L. Ed. 2d 363 (1971).

“We do not doubt that plaintiff's witnesses qualified as experts on electoral politics and balloting in Cook County. But the foundation testimony which established their expertise as political experts cannot, without more, support their opinion on the advantages of placement on Line A. It was within the province of the district judge as trier of fact to conclude that this expertise did not form an adequate basis for the opinion testimony given. During the cross-examination of these witnesses, the judge made it clear that, notwithstanding their expertise, they had not adequately explained the basis for their opinion. The lack of a sufficiently factual basis for the opinions of the experts permitted the judge to disregard their testimony and find for the defendant.” *Id.* at 824.

The obvious healthy skepticism of the trial judge in this case is supported not only by judicial precedent (and, of course, by common sense) but by scholars of sociology and social statistics.

In a book which has influenced sociologists for the last 30 years, Robert S. Lynd, co-author of the "Middletown" studies says:

"We write books on *Recent Social Trends*, and *Economic Tendencies in the United States*. But with all our industry and technical refinements, we manage to be vastly more accurate in our descriptions of what *has* happened than in our predictions of what *will* happen. This is not surprising, since effective prediction is difficult at best; but our relative ineptitude is caused to no small degree by the fact that we are so largely attempting to predict and control on the basis of only part of the necessary data, * * *"—Knowledge for What? *The Place of Sociology in American Culture*, pp. 39, 41 (Emphasis in original).

And, in a recently published sociology text book, Professor Smelser states that:

"Sociology, like many of its sister social sciences, is characterized by a proliferation of schools—such as functionalism, social behaviorism, symbolic interactionism, and so on—and consequently great disagreement among sociologists as to fundamental problems, concepts, theories, and methods in the field."⁸

Just as important, however, as the difficulty in predicting human behavior is the difficulty in Prof. Hauser's assumption that a future population will behave as a different population has in the past. Professor John G. Peatman, a noted social statistician, in his text explains the problem as follows:

"A fair degree of correlation (association) is found between student's entrance examination marks and their college grades obtained during the freshman year. Can it be therefore logically inferred from such statistics that a

8. N. J. Smelser, "*Sociology and the Other Social Sciences*," in Lazarfeld, ed. *The Uses of Sociology*, at pp. 3, 8 (1967).

similar degree of correlation will obtain for next year's crop of entering freshmen? Logically the answer is NO even though, speculatively, a forecast of this kind may work out fairly well. Next year's population of students cannot be sampled and statistically analyzed today. Today's population can be sampled and may be used as a statistical model of tomorrow's population, but guessing and forecasting the morrow are not examples of inferential statistics. They are examples of prophecy. Some prophetic guesses come close to the target; many don't."⁹

Professor Peatman's comment succinctly illuminates the inherent faults of Prof. Hauser's opinion.

An extrapolation is a simple algebraic calculation. The key determinative in Prof. Hauser's opinion was his assumption that present trends would continue. However, he provided no cogent basis for justifying his assumption (one which is contrary to basic social statistics principles) and thus, his opinion was mere prophecy approaching the speculative. "The lack of a sufficiently factual basis for [Prof. Hauser's opinion] permitted the judge to disregard [his] testimony and find for defendant."¹⁰ *Bohus v. Board of Election Commissioners, supra*, at 824. Surely, in light of the foregoing and the record the findings below cannot be said to be clearly erroneous.

9. John G. Peatman, *Introduction to Applied Statistics*, pp. 6, 7, Harper & Row, New York, 1963.

10. Plaintiffs devote much attention to HUD's "best efforts" (Brief p. 28). Contrary to what plaintiffs would like to believe, the fact that the district court believed in HUD's best efforts is demonstrated by its entry of HUD's best efforts order and its findings of fact as to lack of funds and Chicago City Council's non-cooperation.

III.

**THE DISTRICT COURT DID NOT ABUSE ITS EQUITABLE
REMEDIAL DISCRETION IN REFUSING TO IMPLEMENT
METROPOLITAN RELIEF.**

The formulation of a proper remedy in this case is within the sound equitable remedial discretion of the district court. *Gautreaux v. Romney*, 448 F. 2d 731, 734 (7th Cir. 1971). Thus, the question on appeal is whether the district court abused that discretion in light of its findings of fact. *Wright v. Council of the City of Emporia*, *supra*, 470; *Gautreaux v. Romney*, 457 F. 2d 124, 128 (7th Cir. 1972).

✓ The district court merely concluded the plaintiffs failed to demonstrate the necessity of metropolitan relief and on that basis refused to provide such relief. Contrary to what plaintiffs contend (Brief p. 25), the district court did not reject the joinder of the suburbs as parties.

The district court decided that the lack of new housing was not due to any failure in HUD's efforts. For good and proper reasons as stated above, it was unwilling to make the findings suggested by Prof. Hauser. Thus, it is clear that the district court did not abuse its discretion.

CONCLUSION.

For all of the reasons stated above Defendant-Appellee, CHA, prays that this Honorable Court affirm the district court's orders of September 11, 1973.

Respectfully submitted,

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