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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Nos. 74-1048 and 74-1049

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DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellants,

v.

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.

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

MEMORANDUM

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MEMORANDUM

This memorandum is filed pursuant to the order of this  
Court of August 7, 1974. It discusses the relevance to this  
appeal of Milliken v. Bradley, \_\_\_ U.S. \_\_\_, 42 U.S.L.W. 5249,  
decided on July 25, 1974.

I. MILLIKEN V. BRADLEY DOES NOT BAR INTER-DISTRICT RELIEF  
IN NON-SCHOOL CASES WHERE THE EQUITABLE FACTORS WHICH  
BARRED SUCH RELIEF IN THAT CASE ARE ABSENT

The holding of Milliken v. Bradley is that because of the long and important tradition of local control of schools, together with the extreme difficulty of a judicially supervised restructuring of local administration of schools, it is inequitable and therefore improper to order an inter-district remedy in a school desegregation case as a response to a constitutional violation found to have occurred only within a single school district and not to have inter-district effects.

That this is the holding is made clear in several ways. First, the opinion written by Mr. Chief Justice Burger emphasizes the "deeply rooted" tradition of local control over the operation of public schools and the serious administrative difficulties - indeed, the disruption and alteration of "the structure of public education in Michigan" - that would result from upholding the inter-district remedy. The opinion refers to "logistical and other serious problems attending large-scale transportation of students" and the "array of other problems in financing and operating this new school system" that would thereby be produced, and lists a considerable number of them. It concludes that "it is obvious from the scope of the inter-district remedy itself that absent a complete restructuring of the laws of Michigan relating to school districts the District Court will become first, a de facto 'legislative authority'

to resolve these complex questions, and then the 'school superintendent' for the entire area." 42 U.S.L.W. 5257.

Second, Mr. Justice Stewart's concurring opinion (Mr. Justice Stewart's being the "fifth vote") expressly states his understanding of the opinion of the Court:

"The opinion of the Court convincingly demonstrates ... that traditions of local control of schools, together with the difficulty of a judicially supervised restructuring of local administration of schools, render improper and inequitable ... an inter-district response to a constitutional violation found to have occurred only within a single school district." 42 U.S.L.W. 5261.

Third, the four dissenting justices give a like explanation of the majority opinion. Mr. Justice White's opinion, joined by the other dissenters, says that the core of his disagreement with the majority is that deliberate acts of segregation and their consequences would go unremedied "because an effective remedy would cause what the Court considers to be undue administrative inconvenience to the State." 42 U.S.L.W. 5263.

Thus, in the view of all nine members of the Court the rejection of the inter-district remedy ordered below was a product of the interference such a remedy would cause with the tradition of local control of schools together with the difficulty of judicially supervising a restructuring of local administration of the schools.

It is true that Mr. Chief Justice Burger's opinion also says that inter-district remedies may be permitted only in situations

in which school district boundaries are drawn with discriminatory intent or in which discriminatory actions cause discriminatory effects across district boundary lines. 42 U.S.L.W. 5258. However, these broad statements are to be taken in connection with the case before the Court, not abstractly, and must (particularly in light of Mr. Justice Stewart's opinion) be viewed as confined to the equitable problems presented in remedying school segregation.\* The opinion itself of course deals only with school desegregation: "Before the boundaries of separate and autonomous school districts may be set aside ..." 42 U.S.L.W. 5258, emphasis supplied. Elsewhere the Court has expressly acknowledged that the desegregation of public schools presents "uniquely attendant problems,"

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\* "It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." Cohens v. Virginia, 19 U.S. 264, 399-400, 5 L.Ed. 257, 290 (1821). (Opinion of Mr. Chief Justice Marshall.)

"In equity as nowhere else courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests, notwithstanding those interests have constitutional roots." Lemon v. Kurtzman, 411 U.S. 192, 201 (1973). (Opinion of Mr. Chief Justice Burger.)

Watson v. City of Memphis, 373 U.S. 526, 534 (1963), and has been careful not to apply uncritically to the desegregation of other public facilities the equitable remedial considerations that govern in school desegregation cases. In Watson the Court said:

"Desegregation of parks and other recreational facilities does not present the same kinds of cognizable difficulties inhering in elimination of racial classification in schools ..." 373 U.S. at 534-35.

Mr. Chief Justice Burger's opinion in Milliken specifically notes, "[I]n its present posture, the case does not present any question concerning possible state housing violations." 42 U.S.L.W. 5253.

Thus, Milliken v. Bradley does not bar inter-district relief for intra-district violations in cases involving the desegregation of public facilities other than schools. In non-school cases courts should look to the equitable factors relevant to the facilities involved, particularly whether traditions of local control and problems of restructuring local administration similar to those found in the public school system are present. If they are, Milliken would of course control. If they are not, Milliken would not bar an inter-district remedy found to be necessary to provide effective relief.\*

\*That there is no constitutional or legal, as distinguished from equitable, bar to interdistrict relief is further evidenced by the Milliken Court's acceptance of "the legal reality that the constitutional violations, even if occurring locally, were committed by governmental entities for which the State is responsible and that it is the State that must respond to the command of the Fourteenth Amendment." The quotation is from the  
(footnote continued on page 6)

II. THE ABSENCE OF THE EQUITABLE PROBLEMS PRESENTED BY SCHOOL DESEGREGATION, AND THE PRESENCE OF AFFIRMATIVE EQUITABLE FACTORS IN THIS CASE, SUGGEST THAT AN INTER-DISTRICT REMEDY MAY BE APPROPRIATE HERE

A. The Equitable Problems Presented by School Desegregation are not Presented by Public Housing Desegregation

\* The public housing system presents no tradition of local control comparable to that which has existed in public education since the inception of the public education system in this country.\* Public housing is rooted in a federal law which dates back only to 1937. While the program has a number of local control components, such as locally appointed housing authority commissioners, and basic operations are conducted by the local housing authority, federal participation in both the financing and administration of

(footnote continued from page 5)

dissenting opinion of Mr. Justice White. 42 U.S.L.W. 5265. Mr. Chief Justice Burger's opinion accepts arguendo the view that the State is "derivatively responsible" for the Detroit School Board's violations - "the correctness of this finding of State responsibility for the segregated conditions within the City of Detroit." 42 U.S.L.W. 5259.

All nine justices also accepted the proposition that local boundaries are not sacrosanct and may be bridged by the remedial order of a federal court in appropriate circumstances. The four dissenting judges, of course, held that the case presented an appropriate circumstance. Mr. Chief Justice Burger's opinion says, "Of course, no state law is above the Constitution. School district lines and present laws with respect to local control, are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies." 42 U.S.L.W. 5257.

\*See San Antonio School District v. Rodriguez, 411 U.S. 1, 49-50 (1973).

the public housing system is pervasive. For example, at an earlier stage of this case this Court said:

"[T]here can be no question that the role played by HUD in the construction of the public housing system in Chicago was significant. The great amount of funds for such construction came from HUD. Between 1950 and 1966 alone HUD spent nearly \$350,000,000 on CHA projects. The Secretary's trial brief acknowledged that 'in practical operation of the low-rent housing program, the existence of the program is entirely dependent upon continuing, year to year, Federal financial assistance.' We find no basis in the record with which to disagree with that conclusion. Moreover, within the structure of the housing programs as funded, HUD retained a large amount of discretion to approve or reject both site selection and tenant assignment procedures of the local housing authority. HUD's 'Annual Contributions Contract' contained detailed provisions concerning program operations and was accompanied by eight pages of regulations on the subject of site selection alone." Gautreaux v. Romney, 448 F.2d 731, 739 (1971).\*

Thus the first necessary ingredient of Milliken - the long-standing tradition of local control - is absent from this case.

\*This paragraph from the Court's opinion is illustrative only and does not reflect the scope and detail of the extensive federal role in the administration of the public housing program. For more information as to that see HUD's "Annual Contributions Contract" with CHA, virtually every clause of which conditions CHA activity on approval by HUD. Part One of the contract is 22 single-spaced typewritten pages and deals with a variety of topics. There are, in addition, numerous amendments. Part Two is a 56 page printed booklet (plus a 15 page index) containing ninety-seven different sections, each dealing with a separate subject. These contractual provisions are supplemented by voluminous regulations which HUD issues from time to time, of which the eight pages on site selection are only one. (The contract is Rec. Item 20 in Appeal No. 71-1073, and is a part of the Record in this case.)

Nor would an inter-district remedy require restructuring the administration of the public housing system. Indeed, the form of remedy proposed by plaintiffs below required nothing more than setting aside, for the limited remedial purposes of this case, a state law (Ill.Rev.Stats. ch. 67-1/2, §27c) which precludes CHA from providing public housing outside of the city limits of Chicago without the concurrence of other housing authorities. The proposed order did not require suburban housing authorities to enter into any arrangements with CHA, administrative or otherwise, or to make any change in their own operations; indeed, they were not required to do anything at all. Neither the administration of CHA, nor the administration of the housing programs of other areas, was directly affected. Whatever indirect effects might occur would in no wise be remotely comparable to the restructuring of the local administration of schools - the "complete restructuring of the laws of Michigan relating to school districts" - which the five majority Justices in Milliken v. Bradley emphasized would be a consequence of an inter-district remedy in that case.\*

\*Plaintiffs' proposed judgment order appears at A.14. In effect, it simply extended to the Chicago Urbanized Area the provisions of the judgment order entered on July 1, 1969 (304 F.Supp. 736), but allowed suburban housing authorities the option of providing the contemplated remedial housing within their own areas of operation rather than having CHA do so. As we said in our opening brief, "unlike a remedial plan embracing adjoining school districts which necessarily involves changing the way in which those districts administer their school systems, plaintiffs' proposed judgment order required only that CHA be directed to provide housing outside as well as inside Chicago. It did not require changing in any way the administration of the housing programs of suburban housing authorities." Appellants' Brief, p.7. See also p.25. The proposed order is further discussed in Part III of this memorandum.

Accordingly the second ingredient of Milliken - the difficulty of restructuring local administration - is likewise not present in this case.

B. Affirmative Equitable Factors Suggest that an Inter-District Remedy May be Appropriate in this Case

There are affirmative equitable factors present in this case that strongly suggest the appropriateness of inter-district relief. First, the relevant geographic area is a "housing market area," defined by HUD itself, which extends beyond the borders of Chicago.\* In developing a recent regulation applicable to various of its housing programs, including public housing, HUD rejected suggestions "that the term 'housing market area' ... should be defined to coincide with boundaries of local political jurisdictions" because, "[H]ousing market areas often are independent of arbitrary political boundaries ..." (Plaintiffs' Exhibit 16, p.1.) As HUD's General Counsel has explained,

"The provisions in State housing authorities laws which authorize a city housing authority to operate ... in a county or other city with the consent of the governing body concerned

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\*"The Chicago, Illinois, Housing Market Area (HMA) is composed of Cook, DuPage, Lake, McHenry, and Will Counties." Plaintiffs' Exhibit 14, a HUD Document entitled, Analysis of the Chicago, Illinois Housing Market, p.1.

[e.g., Ill.Rev.Stats. ch. 67-1/2, §27c], were included in these laws because it was realized that many cities would have to utilize the areas outside their borders in meeting their low-rent housing needs. It was recognized that the elimination of slums and the provision of decent housing for families of low income in the locality are matters of metropolitan area scope but of primary concern to the central city because the problem and impact are intensified there. In effect, therefore, the State legislatures have determined that the city and its surrounding area comprise a single 'locality' for low-rent housing purposes." (Plaintiffs' Exhibit 13, pp. 3-4, emphasis added.)

And the same housing market area concept is applicable to the administration of the newest form of public housing, the so-called Section 23 Leasing Program, 42 U.S.C.A. §1421b, for which the federal suspension of funds has now been lifted. (HUD Br. 16.) In relation to an aspect of the relief in this case which extends beyond Chicago - see Part III of this memorandum - HUD's Regional Administrator has said:

"[W]hat Congress intended by the term 'community', as used in Section 23(a)(3) [42 U.S.C.A. §1421b(a)(3)], was not a political subdivision, as such, but the housing market area in which the housing to be leased is located." Attachment No. 11, p.1, to CHA Report No. 5, Rec. Doc. 274.

This federal housing program concept that the city and its surrounding area comprise a single "locality" for low-rent housing purposes of course has no counterpart in laws governing the operation of public school systems.\*

\*Moreover, the housing program concept is to be administered within the framework of a Congressionally established national housing policy to "affirmatively promote fair housing," Shannon v. HUD, 436 F.2d 809, 816 (3d Cir. 1970), that likewise has no educational counterpart.

Second, the housing market area in the Chicago Metropolitan Area is a dual one and a high degree of racial residential segregation exists throughout it. This Court has recently had occasion to conclude that there are "dual housing markets in the Chicago Metropolitan Area as a result of racial residential segregation," and that it is judicially noticeable that "there exists in Chicago and its environs a high degree of racial residential segregation." Clark v. Universal Builders, \_\_\_ F.2d \_\_\_, Slip opinion 14, 15 (July 26, 1974). Such segregation is found in the public as well as the private market.

Although the time had not yet arrived to make such proof definitively - see Part III of this memorandum - there is already evidence in the record in this case of segregation in the public housing system in the suburban part of the Chicago housing market area. Plaintiffs' Exhibit 11, in evidence, shows that ten of a dozen suburban public housing projects in the Chicago Urbanized Area are located in (or, in one case in which the census tract boundaries were changed, adjacent to) census tracts whose racial composition is overwhelmingly black. (A predictable result is that the occupancy of all but one of the projects is virtually all black.

In Clark v. Universal Builders, supra, this Court held that, in light of the dual housing market and the high degree of racial residential segregation in the Chicago metropolitan area, it was a violation of section 1 of the Civil Rights Act of 1866,

42 U.S.C. §1982, for private persons, even though "well-intentioned" and in "good-faith," to sell real estate in such a manner as to "reflect or perpetuate discrimination against black citizens." (Slip opinion 10.) The Court also held that it was no defense that the underlying residential segregation was created by others (id. at 8), and pointed out that such discrimination was prohibited regardless of the source, whether government or private. (Id. at 6.) Thus, if public housing authorities had conducted themselves as did Universal Builders and the other defendants in Clark, this Court would have had no difficulty in finding a violation of the Thirteenth Amendment and, presumably, of the Fourteenth Amendment as well.\*

The discrimination shown by Plaintiffs' Exhibit 11 is analogous to that practiced in Clark. There the discrimination

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\*The Supreme Court has long recognized that the Thirteenth and Fourteenth Amendments are inextricably tied together. In Hurd v. Hodge, 334 U.S. 24, 32-33 (1948), the Court said,

"It is clear that in many significant respects the statute [Civil Rights Act of 1866] and the [Fourteenth] Amendment were expressions of the same general congressional policy,"

and that one purpose of the Fourteenth Amendment was to "incorporate the guaranties of the Civil Rights Act of 1866 in the organic law of the land."

In Jones v. Alfred H. Mayer Co., 392 U.S. 409, 436 (1968), the Court said,

"[I]t certainly does not follow that the adoption of the Fourteenth Amendment or the subsequent readoption of the Civil Rights Act were meant to limit its [§1982, which is §1 of the Civil Rights Act of 1866] application to state action."

In Clark, of course, the Fourteenth Amendment was inapplicable because the defendants were private persons.

inherited in the price charged for real estate; here it inheres in the location in which the real estate is placed. Each is, however, a form of discrimination having to do with the sale or rental of real estate, as this Court found in Clark and in Gautreaux v. Romney, 448 F.2d 731 (1971). Clark therefore supports the proposition that, given the dual housing market and the high degree of racial residential segregation that exists in Chicago and environs, the segregated location pattern of suburban public housing projects shown by Exhibit 11 constitutes evidence of discrimination in violation of both the Thirteenth and Fourteenth Amendments.

By contrast, Mr. Chief Justice Burger's opinion in Milliken repeatedly emphasized the absence of "any finding that ... [suburban] school districts have failed to operate unitary school systems within their districts" (42 U.S.L.W. 5251), pointing out that the suburban districts were "not shown to have committed any constitutional violation," that the record contained evidence of de jure segregated conditions "only in the Detroit schools," and that there were "no proofs" and "no claim" and "no evidence hinting" at any segregation or anything but unitary school systems in the suburban school districts. 42 U.S.L.W. 5258, 59.

\* \* \*

Accordingly, since neither the local control tradition nor

the administrative problems of the public education system are present in this case, Milliken v. Bradley does not bar an inter-district remedy here. Moreover, the nature of the relevant housing market area in this case - its geographic extent and its racially segregated quality - and the presence of public housing segregation in the Chicago suburban areas, all factors without counterpart in Milliken, strongly suggest that an inter-district remedy may be appropriate.\*

\*The precise form of inter-district remedy has yet to be determined. The argument in the text is designed to show merely that an inter-district remedy is possible that does not present the administrative problems discussed in Milliken v. Bradley. Presumably, in fashioning the form of remedy on remand, the district court will, in light of Milliken, select that form of inter-district remedy which minimizes administrative problems. On remand, of course, adjacent housing authorities or other public bodies would have the opportunity of demonstrating that "a compelling governmental interest" of theirs should preclude the entry of even the limited form of inter-district relief proposed by plaintiffs below. See, Gautreaux v. City of Chicago, 480 F.2d 210, 216 (1973), and the discussion in Part III of this memorandum.

In this connection it should be emphasized that the issue before the court in Milliken v. Bradley was "the validity of a remedy mandating cross-district or inter-district consolidation to remedy a condition of segregation found to exist in only one district." 42 U.S.L.W. 5258. No "consolidation" has been decreed in this case, and none is necessary to provide the relief plaintiffs seek.

III. THE PROCEDURAL SITUATION IN THIS CASE IS UNLIKE THAT IN MILLIKEN V. BRADLEY AND MAKES APPROPRIATE A REMAND FOR A HEARING IN WHICH THE FOUNDATION FOR INTER-DISTRICT RELIEF MIGHT BE ESTABLISHED

The opinion of Mr. Chief Justice Burger in Milliken v. Bradley emphasizes that the theory of that case was altered in midstream from an intra- to an inter-district approach, calls this a "crucial fact" (42 U.S.L.W. 5260), and points out that neither the parties nor the trial judge "were concerned with a foundation for inter-district relief." (Ibid.) In that connection the opinion says,

"Apparently, when the District Court, sua sponte, abruptly altered the theory of the case to include the possibility of multidistrict relief, neither the plaintiffs nor the trial judge considered amending the complaint to embrace the new theory." 42 U.S.L.W. 5260.

The opinion also emphasizes the "significant factors" that suburban school districts were ultimately given only extremely limited intervention rights and, even then, were ordered to confine their arguments to the "size and expanse of the metropolitan plan" and were precluded from opposing any metropolitan plan. 42 U.S.L.W. 5254.

In this case the situation is, and since 1969 has been, quite different. First, a limited (voluntary) form of metropolitan relief was included in the judgment order entered on July 1, 1969. 304 F.Supp. at 739, Section III.E. CHA regularly reported to the court on that phase of the remedy (see CHA Reports, Rec. Docs. 152, 158, 171 and 235), and eventually entered into

an agreement to implement it with the Housing Authority of Cook County that was specifically approved by HUD. (The agreement is Attachment No. 14 to CHA Report No. 5, Rec. Doc. 274. HUD's approval is Attachment No. 9.)

Then, in 1971, after HUD's liability was established, the Court invited recommendations for comprehensive relief "not confined ... to the geographic boundary of the City of Chicago." (A. 6-7.) Responding to that invitation plaintiffs submitted recommendations for metropolitan relief. But they ultimately asked only that the court "consider" such relief; the order they proffered at the conclusion of the hearing below said:

"The Court is not now called upon to decide whether to order a metropolitan remedy in this case; the Court is only called upon to decide at this time whether it has the power and duty to consider such a remedy." (A. 40.)

The proposed order also invited recommendations from HUD and CHA as to any additional parties they might wish to join in connection with the consideration of a metropolitan remedy. (A. 41.) Plaintiffs had already specified the additional parties they would add if leave were granted - the State of Illinois and the five public housing authorities in the Chicago Urbanized Area. (Record Doc. 301. Appendix to Plaintiffs' Memorandum, p.i.)

Thus, there was neither an abrupt midstream switch in this case nor any denial of procedural rights. The metropolitan remedy possibility has been slowly and deliberately approached. At the hearing below plaintiffs offered evidence showing why such a

remedy must be considered. They then proposed that before the court acted on the metropolitan remedy question, the parties be given leave to join appropriate additional defendants. There was no suggestion that the procedural rights of newly joined parties be limited in any way; in particular, there was no suggestion that new parties be limited to offering evidence on the "size and expanse" of a metropolitan plan as distinguished from opposing any such plan. It clearly cannot be said here, as it was in Milliken v. Bradley, that the plaintiffs were not concerned with the foundation for inter-district relief.

This case is therefore in an essentially different procedural posture than the Milliken situation addressed in Mr. Chief Justice Burger's opinion. Rather, the procedural situation here is almost identical to what it was at the inception of the phase of the case considered by this Court in Gautreaux v. City of Chicago, 480 F.2d 210 (1973). There plaintiffs determined that to implement effective relief it was necessary to add additional parties and to hold an evidentiary hearing in which the proposed further relief, and its impact on the additional parties were it to be granted, could be explored in a due process hearing in which the additional parties would be accorded a full opportunity to be heard and to present evidence. A supplemental complaint was filed after the trial court granted leave to do so, and this Court held that the procedure was proper. Gautreaux v. City of Chicago, supra.

Indeed, the relief proposed by plaintiffs below is closely analogous to that upheld in Gautreaux v. City of Chicago. At issue there was CHA's power under Ill.Rev.Stats. ch. 67-1/2, §9, to provide housing within the City of Chicago with the concurrence, but only with the concurrence, of a subordinate state entity - the Chicago City Council. In Gautreaux v. City of Chicago this Court affirmed an order setting aside in a limited way, i.e., to the extent necessary for the remedial purposes of this case, the state statute that conferred that "veto power." Here, under Ill.Rev.Stats. ch. 67-1/2, §27c, CHA possesses the power to provide housing beyond the borders of the City with the concurrence, but only with the concurrence, of other housing authorities or, in areas where there is no housing authority, a state agency. Here, too, the form of relief proposed by the plaintiffs (A.14) was to set aside to the same limited extent the state statute which confers that veto power over CHA activities upon other subordinate state entities. The suburban housing authorities, possessed of such veto power, were proposed to be added as defendants, if leave of court were granted, and afforded a full opportunity to be heard as to their interests, just as the City of Chicago was added as a defendant and participated fully in the hearing in Gautreaux v. City of Chicago. The parallel to the earlier Gautreaux appeal is thus complete.

In summary, unlike the situation in Milliken v. Bradley, the plaintiffs here were concerned with a foundation for inter-district relief and were concerned with amending their complaint

to embrace a prayer for such relief and to add parties who might be thought to be affected by it. For this separate reason Milliken v. Bradley is no bar to an order in this case directing that plaintiffs be given leave to file a supplemental complaint, adding additional parties, and proceeding to a hearing in which the right to inter-district relief could be established.

#### CONCLUSION

In Milliken v. Bradley a sharply divided court concluded that equitable problems of great weight precluded upholding the metropolitan remedy for school segregation lower courts had there authorized. Those problems are absent in this housing segregation case, and are replaced by other factors which strongly support a metropolitan remedy.

In Congressional testimony a few years ago then Secretary of HUD, George Romney, said that historically support or condonation of social and institutional separation of the races had become fixed in public law and public policy at every level and branch of government. "Thus," he concluded, "it was adopted as a matter of course by the Federal Government when it entered the housing field in the 1930's." Senate Report No. 92-000, 92nd Cong., 2d Sess., 121-22 (1970), quoted at Oliver v. Kalamazoo Board of Education, 368 F.Supp. 143, 184 (W.D. Mich. 1973).

He added that the federal government, through past and present policies, had contributed to the creation of segregated housing patterns, and pointed out that although the policies were changed beginning in the 1960's, the changes had had little practical effect on the pattern of residential segregation.\* Continuing, he said:

"Deep divisions exist. Our metropolitan areas today consist of miles of slums, miles of grey areas, and miles of sprawling suburbs ... These are the miles which separate the black and the poor from good schools, and from new promising job opportunities." Hearings before the Select Committee on Equal Educational Opportunity of the United States Senate, 91st Cong., 2d Sess., August 26, 1970, pp. 2754-56.

The same hearings recognized the degree to which housing segregation underlies school segregation. Senator Hatfield said that as the Committee attempted to deal with discrimination in education it kept coming back to housing. Id. at 2777. Asked by Senator Javits whether, in trying to come to grips with school segregation principal efforts should be directed to areas other than housing, Secretary Romney answered, "No, no. I think housing is the most important aspect of the situation." Id. at 2784.

The courts have of course also recognized the awesome problems of apartheid along central city-suburban lines, of the miles of slums and grey areas, and of the "segregated

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\*Evidence to the same effect was presented in this case. See Transcript of Proceedings of November 28, 1972, pp. 121-187.

residential patterns which, when combined with 'neighborhood zoning,' further lock the school system into a mold of separation of the races." Swann v. Charlotte Mecklenburg, 402 U.S. 1, 21 (1971). Cf. Clark v. Universal Builders, supra, slip opinion 14.

Milliken v. Bradley indicates that, except in rare instances, traditions of local control and the administrative difficulties involved in restructuring school administrations will preclude courts from responding to those problems in the context of school desegregation. It therefore becomes all the most important for courts to be free to respond to them in the possibly more fundamental field of housing segregation where, as this case indicates, (1) the equitable obstacles which school desegregation confronts are absent, (2) affirmative factors, such as a segregated metropolitan housing market area, strongly suggest that an inter-district remedy may be appropriate, and (3) the federal government's historical role in contributing to housing segregation has been significant.

Respectfully submitted,

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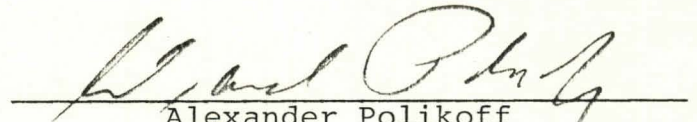
NOTICE

|                              |                         |
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Stephen F. Eilperin  
Anthony J. Steinmeyer  
Attorney, Appellate Section  
Civil Division  
Department of Justice  
Washington, D.C. 20530

PLEASE TAKE NOTICE that we have this day filed appellants'  
Memorandum with the Clerk of the United States Court of Appeals

for the Seventh Circuit, copies of which are attached hereto.

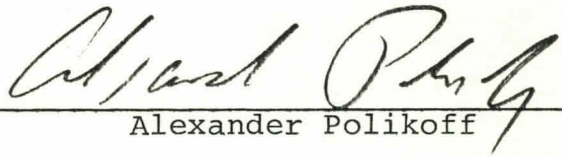
  
Alexander Polikoff  
One of the Attorneys for Plaintiffs

August 14, 1974

Alexander Polikoff  
109 N. Dearborn Street  
Chicago, Illinois 60602  
(312) 641-5570

CERTIFICATE OF SERVICE

Alexander Polikoff, one of the attorneys for plaintiffs-appellants, hereby certifies that he served a copy of the foregoing Notice and Memorandum referred to therein upon the parties named in the Notice at the addresses there shown, by mailing a copy to them, postage prepaid, this 14th day of August, 1974.

  
Alexander Polikoff