

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

23
3/30/79

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

PATRICIA R. HARRIS, Secretary
of the U.S. Department of Housing
and Urban Development and CHICAGO
HOUSING AUTHORITY, et al.,

Defendants.

No. 66 C 1459
66 C 1460TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable
JOHN POWERS CROWLEY, one of the Judges of said Court,
in his courtroom in the United States Courthouse,
Chicago, Illinois, on Friday, March 30, 1979, at 9:30 a.m.

PRESENT:

MR. ALEXANDER POLIKOFF
MR. MILTON I. SHADUR
MS. ELIZABETH LASSAR
on behalf of Plaintiffs;

MR. RICHARD J. FLANDO,
on behalf of Defendant HUD;

MR. EARL L. NEAL,
on behalf of City of Chicago;

MR. ROBERT R. RETKE,
Assistant Corporation Counsel.
RAYMOND J. COMEAU, CSR.

OFFICIAL REPORTER
UNITED STATES DISTRICT COURT

1 MR. FLANDO: Good morning, your Honor.

2 THE COURT: Good morning..

3 Counsel, I have had an opportunity to
4 review the report of the Magistrate, re-review the
5 briefs that were submitted and the materials that were
6 submitted in addition to the further objections of
7 plaintiffs to the report of the Magistrate. I don't
8 have a written opinion for you, but I have what I call
9 my bench memorandum and I will give you my oral ruling
10 today.

11 Basically the plaintiffs are seeking an
12 injunction against HUD which would prevent HUD from
13 providing funds under the City of Chicago's fourth year
14 Community Development Block Grant Program. The total
15 amount available to the Community Development Block
16 Grant Program is \$114,279,000, in excess of 114 million.

17 Briefly, under this program, the City
18 is given federal funds which the City uses to implement
19 a broad range of urban community programs. Judging
20 from the City's application, the expenditures are geared
21 to reach all facets of urban living, including but not
22 limited to, housing, employment, the environment, senior
23 citizens, the handicapped, recreation, industrial and
24 commercial development, day care centers, education,
25 health services, and various social services.

1 Before the City's application for these
2 funds can be approved, the City must provide extensive
3 information to HUD. Most relevant to the present
4 inquiry is the Housing Assistance Plan. According to
5 the plaintiff, the Housing Assistance plan must, one,
6 survey the condition of existing housing in the community;
7 two, assess the housing assistance needs of lower income
8 persons, three, specify a realistic annual goal for
9 the number of dwelling units or persons to be assisted;
10 and, four, indicate the general location of proposed
11 housing for lower income persons, consistent with 42 USC
12 Section 5304(a)(4). In addition, Chicago's Housing
13 Assistance program must address itself to the needs of
14 the plaintiffs in this litigation.

15 In support of this motion, plaintiffs
16 begin with the assertion that notwithstanding the
17 numerous remedial orders and agreements entered into
18 during the course of this litigation, the relief afforded
19 to the members of the plaintiff class has been negligible.
20 Fewer than 400 remedial housing units have been provided
21 to members of the plaintiff class, virtually none of
22 which involved new construction.

23 The problem is compounded, the plaintiffs
24 argue, by HUD's apparent refusal to exercise its power
25 to require the City to provide more remedial housing.

1 To spur HUD to action, plaintiffs ask this Court to
2 enjoin the distribution of the block grant funds unless
3 and until specific, enforceable conditions are imposed
4 on the City that will facilitate the development of
5 remedial housing.

6 Plaintiffs correctly point out that a
7 district court's equitable powers to remedy past wrongs
8 is broad, for breadth and flexibility are inherent in
9 equitable remedies, *Swan v. Charlotte-Mecklenburg Board*
10 *of Education*. However, that power is discretionary and
11 should only be exercised in order that the remedy be
12 commensurate with the violation to be repaired, *Hills*
13 *v. Gautreaux*, 425 U.S. 284.

14 In *Gautreaux v. Romney*, the Seventh
15 Circuit reversed the District Court's order enjoining
16 HUD from dispensing Model City funds until the City had
17 complied with certain stated conditions. The order
18 involved approximately \$26 million in federal funds.
19 In reversing, the Seventh Circuit found that the District
20 Court had failed to properly balance the individual and
21 collective interest at stake. The collective interests
22 of which the Seventh Circuit was speaking consisted of
23 those aspects of the Model Cities program which were
24 untainted with discrimination but which would have been
25 seriously jeopardized if funds were terminated. For

1 example, breakfast programs, day care centers, improved
2 and expanded educational facilities and medical facil-
3 ities.

4 Accordingly, the Court held that:

5 "It was improper to threaten the termina-
6 tion of a program which was not tainted with dis-
7 criminatory action in order to bring about a cure
8 of a separate program which was found to have been
9 so tainted."

10 In United States v. the City of Chicago,
11 the Seventh Circuit upheld an order pursuant to Section
12 122(a) of the Fiscal Assistance Act which enjoined
13 distribution of approximately \$76 million to the City
14 of Chicago. In so doing, the Seventh Circuit elaborated
15 on the rationale behind its earlier decision in
16 Gautreaux. The Court there said at 549 F. 2d at 442:

17 "The key to the Gautreaux decision was
18 that an insufficient nexus existed between the
19 failure of the Chicago City Council to approve
20 public housing sites in predominantly white areas
21 and payments by the Department of Housing and
22 Urban Development to the Chicago Model Cities
23 Program, which was untainted by discrimination.
24 This case presents different facts. In contrast
25 to the situation in Gautreaux, all of the funds

1 withheld by the District Court were to be paid to
2 one set of local officials pursuant to one statute.
3 Also, between 1972 and 1974, when payments were
4 suspended, 97.7 percent of the revenue-sharing
5 funds paid to the City were allocated to public
6 safety, with 75 percent of those funds going
7 directly to the Police Department. Thus, the
8 relationship between the funds withheld and the
9 discriminatory conduct at issue was considerably
10 closer in this case than in Gautreaux."

11 The present case involves a grant for
12 in excess of \$114 million. Approximately 11-1/2 per-
13 cent or \$10,520,000 of the grant funds are earmarked
14 for housing. Without making any comment on the
15 defendants' compliance with the remedial orders of
16 this Court, I cannot find in the exercise of my discre-
17 tion to enjoin over a hundred million dollars of
18 Federal funds which are designated for programs untainted
19 by defendants' discriminatory conduct. Though such a
20 Sword of Damocles remedy might be effective, I believe
21 that it would be contrary to the public interest.

22 Public interest in this setting is not
23 merely an academic inquiry; rather, it is the very heart
24 of the block grant program. Thousands, if not millions,
25 of innocent individuals, the intended beneficiaries of

1 the grant program, would be directly and adversely
2 affected by an order restraining distribution of the
3 block grant fund.

4 Accordingly, the plaintiffs' motion for
5 additional relief is denied.

6 MR. POLIKOFF: May I comment, your Honor?

7 THE COURT: Yes, you may, Mr. Polikoff.

8 MR. POLIKOFF: It seems to me that the way that
9 your remarks are framed, you address a Sword of Damocles
10 situation which is not presented by our motion for
11 further relief.

12 . You characterized the relief we sought,
13 although you didn't use the word "immediate" as an
14 injunction against the expenditure of those federal,--
15 \$117 million of federal funds, and I think it is a fair
16 implication from what you said that if you were to have
17 gone the other way, what you would have been confronted
18 with was a situation in which you would have had to
19 promptly stop the payment of \$117 million.

20 THE COURT: No.

21 MR. POLIKOFF: I hope we made it clear --

22 THE COURT: I don't think so, Mr. Polikoff, no,
23 that money has not been drawn down at this stage, but
24 there have been commitments made on some of that money,
25 and I would have to enjoin the further commitments for

1 the expenditure of that money.

2 MR. POLIKOFF: I believe not, your Honor, and that
3 goes precisely to the key point which I think involves
4 a misapprehension.

5 THE COURT: All right.

6 MR. POLIKOFF: We have asked for the imposition
7 of conditions.

8 THE COURT: Yes.

9 MR. POLIKOFF: And in our response to the Master's
10 recommendations, we explicitly stated that conditions
11 could be imposed which would avoid catastrophic types
12 of timetables that could not reasonably be met, and we
13 had in mind worked out the remedial provisions which
14 would operate in futuro over a reasonable period of
15 time with respect to the time frame necessary for the
16 production of housing so that the City would have ample
17 opportunity to comply with the conditions before there
18 would be any cutback and in no event a cutback of \$117
19 million, but a cutback pro tanto to the extent the
20 housing performance was not sufficient, and when they
21 got around to performing the housing obligations, they
22 would then recapture the lost funds.

23 That kind of approach, which is not any-
24 thing that we dreamed up, but something that HUD has
25 employed, as indicated in Toledo and in Philadeophia and

1 in Pittsburgh and in other cities is what we had in
2 mind.

3 That seems to me to be a far cry, a far
4 cry from a Sword of Damocles instant injunction against
5 the expenditure or obligation or further commitment of
6 \$117 million.

7 Since your remarks focus exclusively
8 on the negative terms of public interest, negative impli-
9 cations of the remedy that I think you had in mind when
10 you were writing those remarks, I would like to explain
11 what I am saying in terms of the remedial options open
12 to your Honor a little further and ask for seven or
13 ten days to file an explanatory document.

14 THE COURT: Absolutely, Mr. Polikoff.

15 MR. POLIKOFF: Commenting and asking reconsideration
16 of what you said in that respect.

17 THE COURT: Absolutely, I will certainly give you
18 that opportunity.

19 You want ten days in which to do that?

20 MR. POLIKOFF: That would be fine.

21 MR. NEAL: May we also have ten days, your Honor?

22 THE COURT: You may have ten days to respond and
23 I will rule very promptly on it.

24 MR. POLIKOFF: Thank you, your Honor.

25 MR. FLANDO: Thank you, your Honor.

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C E R T I F I C A T E

I hereby certify that the foregoing transcript, consisting of Pages 1 to 9, inclusive, is a full, true and accurate transcript of my official shorthand notes taken at the hearing of the above-entitled cause before the Honorable JOHN POWERS CROWLEY, one of the Judges of said Court, on March 30, 1979.

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division