

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

DOROTHY GAUTREAUX, et al.,) Docket No. 66 C 1459
) No. 66 C 1460
 Plaintiffs,)
)
 vs.) Chicago, Illinois
) February 10, 1998
 SAMUEL R. PIERCE, et al.,) 10:30 o'clock a.m.
)
 Defendants.)

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HON. MARVIN E. ASPEN

APPEARANCES:

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ALSO PRESENT: MR. MICHAEL SHAKMAN

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1 THE CLERK: 66 C 1459, Gautreaux versus CHA.

2 MS. GETZENDANNER: Good morning, Judge.

3 MR. POLIKOFF: Good morning, your Honor.

4 THE COURT: Good morning.

5 Okay. This is the motion of the CHA, so I guess the
6 CHA will go first, right?

7 MS. GETZENDANNER: Judge, if you have any questions, I
8 would be happy to answer them, otherwise I am content to rely
9 on the briefs, so long as I can go after these fellows.

10 THE COURT: Okay.

11 Anything you wish to say?

12 MR. POLIKOFF: I will be happy to start, your Honor.

13 THE COURT: All right.

14 MR. POLIKOFF: Thank you.

15 Your Honor, as we see it, CHA advances two basic
16 arguments to support its view that the judgment order does not
17 apply to new HOPE VI funded public housing. One is that the
18 order only covers funding that adds to the aggregate housing
19 stock, not replacement funding; and the other is that the
20 judgment order's locational requirements are incompatible with
21 HOPE VI. And if you were to rule that the order applies to new
22 HOPE VI housing, you would effectively eject CHA from the HOPE
23 VI ballgame.

24 I will address these two basic arguments momentarily
25 and persuade you, I believe, that the judgment order clearly

1 does cover replacement housing based on its language, its logic
2 and the conduct of the Court and the parties in carrying it
3 out. And we will also show that there is no incompatibility
4 whatsoever between the judgment order and HOPE VI.

5 But first I would like, in a few words, to place this
6 HOPE VI dispute within the larger framework of the litigation.

7 The Fisher and Hickman affidavits attached to our
8 brief demonstrate that a dramatic current racial imbalance
9 still persists in CHA's housing stock. Largely thanks to the
10 receivership and your subsequent orders, the figure has been
11 reduced from 99 percent to the middle 80's, but we've still got
12 a long way to go.

13 It is, of course, indisputable that sufficient
14 desegregated housing opportunities for plaintiff class families
15 have not been provided to enable anyone to say -- and CHA
16 doesn't even assert -- that this principle remedial purpose of
17 the judgment order has been achieved.

18 Under these circumstances, the law places the burden
19 on CHA, not the plaintiffs, to show that the current racial
20 imbalance is not traceable in a proximate way to the prior
21 violation. That's a quote, as you may recognize, from Freeman
22 versus Pitts, 503 U.S. at 494.

23 And subsequent to Freeman the Supreme Court in U.S. v.
24 Fordice reiterated the same point, quote, that the burden of
25 proof falls on the state, not the aggrieved plaintiffs, to

1 establish that it has dismantled its prior de jure segregated
2 system.

3 Therefore, your Honor, with a current racial imbalance
4 not shown by CHA to be divorced from its original
5 constitutional wrong and as yet unachieved principle remedial
6 purpose, the law stands flatly opposed to CHA's desire to have
7 the judgment order interpreted in a relief-limiting way.

8 We've set forth some of the relevant cases at pages 13
9 to 17 of our written response. CHA's reply brief doesn't
10 address those cases, doesn't even refer to CHA's continuing
11 desegregation obligation. And I suggest, your Honor, that
12 those cases provide the legal framework within which the CHA
13 arguments, to which I now turn on the HOPE VI matter, must be
14 considered.

15 The first of the two major CHA arguments that the
16 judgment order should be interpreted as not applying to
17 replacement housing, flies in the face of the unambiguous
18 language of the judgment order. Indeed, CHA concedes that HOPE
19 VI funded replacement housing is covered by the dwelling unit
20 definition in the judgment order.

21 CHA says -- and I quote from page 6 of its reply brief
22 -- quote, the CHA does not disagree that HOPE VI funded units
23 would come within the definition of dwelling unit in the
24 judgment order. It's perfectly understandable that CHA doesn't
25 disagree. That dwelling unit definition was obviously written

1 to cover every imagineable way in which CHA might provide new
2 housing -- and I am quoting now from the order -- directly or
3 indirectly, whether in a structure owned in whole or in part by
4 CHA, whether or not newly constructed, whether otherwise made
5 available by or through CHA.

6 Plainly, Judge Austin was strained not to overlook any
7 kind of new housing CHA might provide.

8 THE COURT: How about replacement housing on the site
9 that's demolished?

10 MR. POLIKOFF: Replacement housing -- it is new
11 construction -- is covered by this, your Honor, clearly, new
12 housing initially made available after the date of the judgment
13 order. And as I will show you in a moment, you have already
14 ruled, already exercised jurisdiction over replacement housing
15 designed for precisely that purpose.

16 THE COURT: How does that differ from a situation
17 where CHA might rehab completely?

18 MR. POLIKOFF: Big difference, because the judgment
19 order says, "initially made available after the date of the
20 order."

21 As we pointed out in our briefs, we have not sought --
22 ever in this case we have not sought to stretch the judgment
23 order to cover a rehab of a prior unit.

24 We have only said, when you are putting up a new unit,
25 even if it's in replacement of a demolished unit, it's covered

1 by the language of the judgment order, which, as I point out,
2 CHA itself concedes.

3 THE COURT: As a practical matter, is there really any
4 difference between the two?

5 Let's assume a hypothetical of 100 units; CHA razes
6 the building, puts up another building of 100 units, or, CHA
7 takes that original building, really guts it, rehabs it and
8 comes up with 100 units. You're saying one would be treated
9 differently than the other?

10 MR. POLIKOFF: Enormous difference, your Honor. Why?

11 THE COURT: But as a practical matter, should there be
12 any difference?

13 MR. POLIKOFF: Yes, there should be, and I will tell
14 you why.

15 If CHA razes a 100-unit building and is going to build
16 100 new replacement units, it has the opportunity thereby to
17 provide relief for the plaintiff class, because the 100 new
18 units don't have to be built in the same place that the razed
19 building stands. If you're gutting a building and rehabbing it
20 on site, you don't have that opportunity.

21 So desegregation opportunities, relief for the
22 plaintiff class, can be provided by the new 100 units. You can
23 put 50 of them out there, 50 of them in here, under your
24 current orders 50/50, so we would get 50 units of desegregated
25 housing.

1 If, on the other hand, they are simply rehabbing a
2 building, we could have drafted the order differently -- I
3 don't know whether Judge Austin would have gone along -- but we
4 made a distinction right at the outset between -- and he made a
5 judgment order on his own, a judgment decision on his own, I am
6 not going to tell CHA how to run its existing housing stock.
7 They want to rehab it -- and we didn't oppose that. We never
8 argued for that.

9 The distinction then is the distinction between an
10 opportunity to provide remedial housing opportunities to the
11 plaintiff class through newly constructed housing which has no
12 locational requirements imposed upon it and rehabbing an
13 existing building which obviously isn't being moved.

14 From the look on your face, I'm not sure you're 100
15 percent persuaded, but --

16 THE COURT: Well, following your construction, CHA may
17 have the -- assuming that your construction is the one that
18 will be followed, CHA may have the very difficult task of
19 making a policy decision that would be more costly.

20 For example, if CHA decides that it wants to keep the
21 100 units in the hypothetical building that I suggested and the
22 cost to rehab those units is more than the cost to raze the
23 building and put up 100 new units, CHA would be in a position
24 of having to pay that extra cost in order to keep those units
25 at the same site.

1 MR. POLIKOFF: They may very well, your Honor, if the
2 economics worked out that way; they might work out differently.
3 But --

4 THE COURT: It's taxpayers' money that we're talking
5 about, though.

6 MR. POLIKOFF: Yes, but if CHA has an obligation to
7 provide desegregation housing opportunities to the plaintiff
8 class members, which it does, that decision as to which way to
9 go ought to include a consideration of that persisting CHA
10 obligation to provide desegregation.

11 Indeed, I would argue -- not here arguing this point,
12 but in a hypothetical situation I would argue that that
13 obligation to provide desegregation housing for the plaintiff
14 class should weigh very heavily in CHA's decision-making.

15 But we have not tried to get into that, your Honor.
16 And if they decide to rehab under the language of the order,
17 they are free to do it without consequences under the Gautreaux
18 orders.

19 I pointed out that your Honor is being asked to
20 interpret the order in a way that does violence to its
21 language. For the reasons we have just discussed, it also does
22 violence to the logic.

23 The purpose of the order can be served, i.e.,
24 desegregation housing opportunities provided to the plaintiff
25 class through replacement housing just as effectively as

1 through incremental housing. So the purpose of the order also
2 argues for not imposing the restrictive limitation on it that
3 CHA is proposing. Indeed, I would say that CHA's request to
4 you is at war not only with the language of the order, but also
5 with its logic.

6 Finally, and perhaps most tellingly, the Court and the
7 parties have already interpreted the judgment order to embrace
8 replacement housing, starting with the Court's order of
9 December 10, 1993. The order is cited and discussed in the
10 briefs, but I've made extra copies for the Court and counsel.
11 This is the order that HUD calls the nunc pro tunc order.

12 (Document tendered.)

13 MR. POLIKOFF: Do you need an extra copy?

14 MS. GETZENDANNER: Sure.

15 MR. POLIKOFF: On page 2 and 3 of this so-called nunc
16 pro tunc order, you see that paragraph -- it's at the bottom of
17 page 2 -- paragraph number 1 refers to CHA funding applications
18 for the familiar 18 units in Lawndale.

19 But paragraph 1 over at the top of page 3 now, your
20 Honor, also covers an additional 377 units. And two project
21 numbers are referenced there, which are at Washington Park,
22 which is at North Kenwood/Oakland, for 187 units, and Cabrini
23 Green for 190, making the total of 377.

24 Paragraph 2 of the order in the middle of page 3
25 authorizes the joint venture, led by Habitat as Receiver and

1 previously approved by the Court, to develop those 18 Lawndale
2 units. And then if you drop down to paragraph 4, at the bottom
3 of page 3, you see that that authorizes the same joint venture
4 to develop the 377 Washington Park and Cabrini units.

5 Now, your Honor, a couple of months before you entered
6 this order the funding for these same 377 units had begun to
7 come from HUD.

8 On September 10, 1993, HUD notified CHA that its
9 funding application for these Washington Park and Cabrini units
10 had been partially approved, quote -- and I emphasize this --
11 for replacement housing. That's in one of the letters that was
12 delivered to the Court and counsel early last week, and I
13 emphasize those replacement housing words. In other words,
14 your Honor, these 377 units were being funded with true
15 replacement, not incremental dollars.

16 Incidentally, the same HUD letter, which is signed by
17 Mr. Shuldiner, who was then in Washington with HUD, also says
18 -- and I am quoting -- these fund reservations are conditioned
19 upon agreement of the parties to the Gautreaux litigation and
20 approval by the Court of the entity that will develop these
21 replacement units, end quote.

22 So two months later, when the Court signed the nunc
23 pro tunc order you're holding in your lap, it was not only
24 authorizing the joint venture to develop true replacement
25 housing funded with replacement, not incremental dollars; it

1 was also satisfying the HUD requirement that the Court and the
2 Gautreaux parties agree on the entity to do the developing of
3 those 377 units.

4 By the way, your Honor, the Gautreaux-funded portion
5 of the 466 units at Horner, those are also true replacement
6 dollars, not incremental dollars.

7 Now, of course, we pointed out in our brief, referring
8 to this nunc pro tunc order, that true replacement housing
9 funding had already been subjected to the Court's orders.

10 Now, what does CHA say about that? Well, in its reply
11 brief CHA says correctly that the 18 Lawndale units are being
12 built with incremental funding. But CHA is then thunderously
13 silent about the Washington Park and Cabrini Green units,
14 thereby implying that the nunc pro tunc order relates only to
15 incremental funding and does not embrace true replacement
16 funding as well.

17 We are not favored with an observation from CHA,
18 therefore, your Honor, on the fact that the Court, with the
19 written approval of all the parties -- you will note that that
20 order was consented to in writing; the signature pages are also
21 in your lap, by all the parties. The Court and all the parties
22 already agreed upon an exercise by the Court of its
23 jurisdiction over true replacement housing.

24 Parenthetically, I want to note that this nunc pro
25 tunc order covers not only true replacement housing in a

1 non-HOPE VI context, which is Washington Park in North
2 Kenwood/Oakland, but it also covers replacement housing funding
3 to be used in a HOPE VI project at Cabrini Green, 190 out of
4 those 377 units.

5 It's true, those aren't HOPE VI dollars, but they are
6 dollars to be used in a HOPE VI project for the same
7 replacement housing purpose as HOPE VI dollars themselves may
8 be used.

9 In conclusion, your Honor, the replacement housing
10 horse has long since left the barn. The Court, with the
11 written concurrence of CHA and the other parties, has already
12 exercised judgment-ordered jurisdiction over replacement
13 housing, specifically including replacement housing for HOPE VI
14 projects. And you've done this not just in the nunc pro tunc
15 order but in subsequent orders.

16 As to the location of those replacement units, you
17 will note that paragraph 4 of that order refers to subsequent
18 orders having to do with location.

19 In the face, your Honor, of these several orders
20 relating to North Kenwood/Oakland, Cabrini, Henry Horner and
21 with the language of the judgment order concededly covering
22 replacement housing, while the rationale of the order supports
23 such coverage, it would be totally inappropriate to now reverse
24 field and act inconsistently with a whole series of the Court's
25 orders as well as extensive conduct of the parties based on

1 those orders.

2 I turn to the second major CHA argument, which is the
3 supposed incompatibility between HOPE VI and the judgment
4 order, a point made about a dozen times -- I counted them -- in
5 the CHA's briefs.

6 HOPE VI and the judgment order are said to be
7 inherently and absolutely inconsistent. We are told that CHA
8 could not hope to be competitive in HOPE VI awards if the
9 judgment order applied, and that denying CHA's motion is the
10 functional equivalent of enjoining CHA from HOPE VI
11 participation.

12 Simple answer to all this: It ain't true. It is not
13 true if one compares HOPE VI and judgment order language, and
14 it is not true if one looks at the competitive record of CHA in
15 HOPE VI competitions.

16 Let me turn to the language first. CHA says -- and
17 I'm quoting -- HOPE VI has clear locational requirements for
18 which proposition it cites and quotes the HOPE VI statute which
19 provides funding for addressing, as you know, severely
20 distressed or obsolete public housing projects, for the HOPE VI
21 statute does say the following: No more than 500 units shall
22 be provided to each participating city, and such units shall be
23 located in up to three separately defined areas containing the
24 community's most severely distressed projects, including family
25 high-rise projects, end quote. That's from the HOPE VI

1 statute, which is Exhibit B to CHA's brief.

2 And this is the locational requirement, the one I just
3 quoted, to which CHA refers when it says we are, quote, clearly
4 wrong in contending that HOPE VI has no locational requirements
5 for replacement housing.

6 But, your Honor, this locational requirement I just
7 quoted applies only to the 500 selected distressed or obsolete
8 units, not to their replacement units. That's perfectly clear
9 from the statutory, quote, such units, end quote, language that
10 I just quoted. Just read it; you can see it.

11 Moreover, the same statute specifically says
12 replacement housing may include tenant-based Section 8, which,
13 of course, can be located anywhere.

14 Now, if there were any doubt about the statutory
15 language point I am making, which there is not, there is a HUD
16 HOPE VI handbook, as you know, and that would resolve the
17 doubt.

18 For the guidebook says explicitly -- and the relevant pages are
19 in the exhibits to the briefs -- that replacement housing may
20 include, quote, construction of off-site housing, end quote,
21 and it says not one word about where off site.

22 And if there were any doubt about that, under the
23 heading Purpose of the HOPE VI Program, the guidebook includes
24 the following quote as a purpose: Lessening concentrations of
25 poverty by placing public housing in non-poverty neighborhoods.

1 Obviously the neighborhoods that contain the community's most
2 distressed and obsolete public housing units are not likely to
3 be non-poverty neighborhoods.

4 In short, your Honor, there exists no locational
5 requirement for HOPE VI replacement housing at all, and CHA is
6 simply wrong in implying that the locational requirement
7 applicable to the 500 selected distressed or obsolete units
8 applies to the replacement housing for those units.

9 Now, CHA then attempts to buttress this mistaken
10 argument with a flat-out misstatement, presumably designed to
11 show that contrary to the statutory and guidebook language,
12 replacement housing is confined to these severely distressed
13 neighborhoods.

14 Referring to each of CHA's HOPE VI applications, CHA
15 says at page 15 of its reply brief, "All new construction was
16 designated for neighborhoods that were in limited areas." And
17 again, "No application called for the building of any new units
18 in any general area."

19 From among many statements which demonstrate the
20 contrary, I will refer to but one which has to do with
21 replacement housing for Cabrini.

22 Here is what CHA said in its August 11, 1993
23 application to HUD, which is another of the letters that was
24 delivered to Court and counsel early last week. In this letter
25 CHA seeks HUD's approval to demolish the first building it

1 wanted to tear down at Cabrini. The sentence appears under the
2 heading, quote, Location of Replacement Units, and I now quote
3 the sentence: The proposed new units will be built on
4 scattered sites in community areas around the Cabrini Green and
5 in other sites throughout the Chicago metropolitan area in
6 accordance with the consent decree and subsequent orders of the
7 Gautreaux litigation, end quote. That statement and the others
8 like it cannot be reconciled with CHA's reply brief assertion
9 that all new construction was designated for limited areas.

10 I turn to the competitiveness issue, the other aspect
11 of this HOPE VI judgment order alleged incompatibility.
12 CHA won its initial HOPE VI award at the end of '93 in a
13 nationwide competition.

14 Now, look at the dates of the letters I've just
15 referred to. In August '93 CHA says, we're going to develop
16 replacement housing in accordance with Gautreaux. In September
17 CHA receives its first HOPE VI replacement housing funding from
18 HUD.

19 Moreover, we know what HUD believes from its own
20 lawyer's legal opinion; I'm quoting from Receiver Exhibit B.
21 Quote, in regard to the 377 replacement units for Cabrini and
22 Washington Park approved for funding by HUD in September of '93
23 and '94, the joint venture has clearly been authorized by Judge
24 Aspen. Still quoting, we also believe that any funds under
25 HOPE VI which go to replacement housing are currently a

1 Receiver responsibility. We do not believe the CHA currently
2 has any development authority for non-elderly units, end quote.

3 Now, both the joint venture and the Receiver are, of
4 course, obligated to adhere to the locational requirements of
5 the judgment order, so HUD's understanding that HOPE VI
6 replacement housing would be developed under Gautreaux clearly
7 didn't render CHA uncompetitive.

8 It didn't render it uncompetitive at first, when it
9 got the Cabrini award in '93, and it hasn't rendered it
10 uncompetitive since, for subsequent to its Cabrini award CHA
11 has received, as you know, two more HOPE VI awards: One for
12 Robert Taylor and one for Henry Horner, ABLA.

13 Thus, your Honor, a HUD that believes replacement
14 housing, including in HOPE VI projects, must be developed under
15 Gautreaux, has awarded CHA three separate HOPE VI grants.

16 What is there, then, to support the competitiveness
17 argument? In answer, your Honor, there's nothing but rhetoric.

18 In sum, there is no incompatibility between HOPE VI
19 and the judgment order. And CHA has not been uncompetitive,
20 even though HUD, not to mention CHA itself, has viewed the
21 judgment order's locational requirements as applicable to HOPE
22 VI public housing.

23 Now, before I conclude, having thus dealt with CHA's
24 two principle arguments, I would like to address a couple of
25 the CHA's subsidiary arguments very briefly, your Honor.

1 First, CHA says we haven't objected to its HOPE VI
2 applications and, therefore, we must not ourselves believe that
3 the judgment order covers new HOPE VI housing. And it derides
4 our explanation; namely, that the applications covered
5 non-housing matters as well that aren't covered by the judgment
6 order.

7 Since this isn't the waiver of rights argument but an
8 argument about what we believe, it's really not worth taking
9 much of your time, for we have told CHA unambiguously what we
10 believe. And I quote from our letter to CHA dated July 15,
11 '97, which is CHA Exhibit F. Quote, it remains the Gautreaux
12 position that court orders require the Receiver to develop all
13 public housing units even though HOPE VI funds are used, end
14 quote.

15 That is what we believe, that is what we have
16 consistently told CHA we believe, and no tortured analysis is
17 required to determine what we believe.

18 Second, CHA says in its reply brief that plaintiffs
19 admit that the HOPE VI Cabrini project has gone forward without
20 any involvement of the Receiver. And they add there is, quote,
21 no dispute that the Receiver has had, quote, no role in the
22 Cabrini HOPE VI project.

23 Your Honor, these assertions are simply not true. For
24 example, among many other things, as a direct recipient from
25 HUD of replacement housing for Cabrini, the Receiver is deeply

1 engaged in the development of the very first Cabrini
2 replacement units. These are the 44 units in the Mohawk North
3 development adjacent to Cabrini that you yourself drove right
4 by, and they were pointed out to you in the bus tour
5 Mr. Shuldiner took you on last year.

6 Now, recently Habitat submitted a public housing
7 development proposal to HUD as Receiver for CHA -- it says it
8 right on the cover -- for these very first replacement units in
9 that Mohawk North development. This is the October 24th
10 letter, also delivered to the Court and counsel last week.

11 These units, by the way, represent not only the first
12 replacement unit at Cabrini, but a potentially important
13 forward step toward mixed income housing for Gautreaux
14 plaintiff class families because they are part of and dispersed
15 throughout a market rate development.

16 Getting approval for these units from HUD is a big
17 deal, as you can easily see by the thickness of the development
18 proposal, which I'm not going to do anything more than show
19 you. These are two thick volumes. (Indicating.)

20 The cover page, which you received as part of the
21 letter that was given to you last week, says, CHA development
22 proposal, Cabrini extension, replacement units, 44 units, the
23 Habitat Company as Receiver for the Chicago Housing Authority
24 Scattered Sites Program, two volumes to get HUD approval for
25 those units. And it was Habitat, as Receiver, that submitted

1 that.

2 But another letter had to be sent, which was the
3 fourth and final letter delivered to you and counsel last week.
4 Why? Because on receipt of this huge two-volume development
5 proposal for the 44 Mohawk North replacement units, HUD pointed
6 out that a couple of the certifications contained in the
7 proposal, the development proposal, were made by CHA and not by
8 the joint venture.

9 You see, these first 44 units, replacement at Cabrini,
10 are part of the original 190 units your nunc pro tunc order
11 authorized the joint venture to develop. Under that order the
12 joint venture, not CHA, has development authority for the
13 units, so HUD wanted the certifications to come from the joint
14 venture, not from CHA. And that's what was done in the second
15 letter sent to HUD December 17, 1997. You have that letter and
16 what was delivered last week.

17 The letter explicitly says, by the way, that the
18 development proposal for these 44 units is submitted pursuant
19 to your order of ten years ago appointing Habitat as Receiver.

20 So much, your Honor, for the assertions that the
21 Cabrini HOPE VI project is going forward without any
22 involvement of the Receiver.

23 A final CHA subsidiary argument seeks to draw an
24 analogy between our current dispute here and your 1991
25 Kenwood/Oakland order as well as a Seventh Circuit decision in

1 Romney. Suffice it to say that our controversy here is about
2 developing new public housing, something clearly covered by the
3 judgment order, whereas the 1991 Kenwood/Oakland order involved
4 only rehabilitation of existing housing, something not covered
5 by the judgment order, as we discussed a few minutes ago, and
6 the Romney model city's order involved no housing at all.

7 Your Honor, you will be pleased to know I am ready to
8 conclude.

9 Even if in the face of the language of the judgment
10 order, the logic of the order and the conduct of the Court and
11 the parties under the order, you were to accept CHA's view that
12 the judgment order doesn't cover new HOPE VI housing, it would
13 be the responsibility of the Court, as we have argued in our
14 briefs, to exercise its, quote, inherent capacity to adjust
15 remedies under Freeman, 503 U.S. at 487, to see to it that the
16 remedial possibilities offered by the new HOPE VI funded public
17 housing aren't lost to the plaintiff class.

18 But given the language, the logic and the conduct of
19 the Court and the parties that we do have, the right answer is
20 not to reach that issue of inherent capacity to adjust
21 remedies, but simply to deny CHA's motion.

22 What is really at stake here, your Honor, is neither
23 the figment of a judgment order that fails to embrace
24 replacement housing, nor an imagined incompatibility between
25 the judgment order and HOPE VI.

1 What is really at stake is whether CHA shall be free
2 to replace its old high-rise ghettos with new low-rise ones
3 and, thereby, deny Gautreaux families the remedial
4 opportunities HOPE VI replacement housing holds out to them.

5 The judgment order in this case is all that prevents a
6 CHA, whose briefs don't even mention its desegregation
7 obligations, from once again taking great swaths of Chicago
8 neighborhoods and thousands of families who have not yet
9 received the relief they are entitled to, down the old familiar
10 path of least resistance to hyper-segregation and concentrated
11 poverty.

12 Happily, your Honor, the judgment order by reason of
13 its language, its logic and your enforcement orders entered
14 with the concurrence of all the parties, does stand in the way.

15 I thank you.

16 THE COURT: Thank you, Mr. Polikoff.

17 Before -- yes, Mr. Shakman, you want to say something
18 on behalf of the Receiver?

19 MR. SHAKMAN: Yes. On behalf of the Receiver, if you
20 would like to hear a little bit, we had some comments.

21 THE COURT: Sure.

22 MR. SHAKMAN: Really three points, your Honor.

23 First, Mr. Levin, who's present in court today and is
24 available to answer any questions the Court may have,
25 recognizes that he serves as the Court's agent and at the

1 Court's discretion. He has not sought to be and does not want
2 to be in an adversarial relationship with anybody, but he does
3 think to the extent he has information that bears on the issue
4 before the Court, it's appropriate that he present that to the
5 Court.

6 It's for that reason that we filed a brief on behalf
7 of the Receiver. And in the brief we pointed out that from the
8 beginning of the appearance on the radar screen of HOPE VI, the
9 Receiver has taken the position that he reads the Court's order
10 appointing the Receiver as requiring that the Receiver
11 construct all new housing that is not elderly housing, and that
12 that includes the HOPE VI program.

13 At times the CHA has agreed with that, and we have
14 attached a letter from Mr. Eisendrath that reflects that
15 agreement. At other times the CHA has not agreed with that, as
16 they do not agree now.

17 Throughout that process Mr. Levin has asked me to
18 emphasize his attitude has been to try to avoid unnecessary
19 disputes with the CHA or with anyone else and to find a way of
20 working through these problems. And he's often been able to do
21 that by agreement with the CHA; for example, by operating under
22 the title of development manager pursuant to an agreement with
23 the CHA, which has permitted him to fulfill what he understands
24 to be the obligation that he assumed when he became the Court's
25 Receiver, and to do so in a manner that has been acceptable to

1 the CHA and has avoided unnecessary disputes. That's point
2 one. I have two more points.

3 The second point I would like to make relates to
4 correcting some errors that are found in the CHA's last brief
5 that, of course, we didn't have an opportunity to respond to.
6 Part of those issues have been addressed by Mr. Polikoff and I
7 won't repeat what he has said. They relate to the Cabrini
8 Green project.

9 But one point he didn't focus on that the Receiver has
10 asked me to respond to, to mention, is this: The last brief
11 filed by the CHA states in passing, but it's one of those
12 passing comments that stings and hurts, that the Receiver has
13 sought to extract a three percent fee solely for its work on
14 these 44 townhouses that Mr. Polikoff just referred to.

15 The Receiver asked me to mention to the Court that its
16 involvement in Cabrini Green went way beyond that. It included
17 at least a thousand hours of effort, over a year-and-a-half in
18 planning the redevelopment project, in hiring architects, in
19 preparing the request for proposal that then generated ten
20 responses.

21 In reviewing all of those responses and meeting with
22 the city, with the Park District, with the Board of Education,
23 of course with HUD, of course with the CHA, and in formulating
24 plans and responding to a large redevelopment program, the
25 Receiver also developed initially in Kenwood/Oakland the

1 concept of using rental units on a long-term lease basis for
2 CHA resident housing, and that was then applied and that led to
3 this 44-unit development in Mohawk North that is actually the
4 first housing that -- new housing that Cabrini Green residents
5 have moved into.

6 When it came time to build the 44 units, the
7 Receiver's fee for that would have been \$120,000 computed at
8 the three percent rate. The CHA's brief does not mention that
9 the Receiver offered to accept less than that and, in fact,
10 accepted \$35,000. And the brief doesn't mention that this was
11 the first townhouse -- that the townhouse occasion was the
12 first occasion on which the Receiver could seek to be
13 compensated because it was the first project being built.

14 Perhaps this is more detail than the Court needs in
15 connection with the present motion. I simply wanted to put it
16 before the Court because we did not want to leave you with the
17 impression that those inappropriate comments by the CHA,
18 suggesting a mercenary attitude on the part of the Receiver,
19 were accurate.

20 Indeed, Mr. Eisendrath and Mr. Shuldiner, both of the
21 CHA, told the Receiver that they recognized that the Receiver
22 was entitled to be compensated for efforts made in connection
23 with Cabrini Green. The question was not whether but how it
24 should be structured, out of what project funds it should come.

25 So then I would like to come, if I may, to the third

1 point that the Receiver would like me to make. And he is, as I
2 mentioned, available in court to answer any questions the Court
3 may have.

4 The third point is this: That from the Receiver's own
5 experience in creating housing pursuant to the court order
6 appointing him as Receiver, he has something to say about
7 whether it is possible, as Mr. Polikoff says, or impossible, as
8 CHA says, to provide housing that meets both the goals of HOPE
9 VI and the goals of the Gautreaux receivership.

10 And what he has to say is this: If you look at the
11 material that's attached as Exhibit B to the initial motion
12 filed, the brief filed by CHA, it includes the guidebook
13 published by HUD. And the guidebook makes it quite clear that
14 the purposes of HOPE VI housing are, as Mr. Polikoff indicated,
15 quote, tearing down the eyesores that are often identified with
16 obsolete public housing and replacing them with homes that
17 complement the surrounding neighborhoods and are attractive and
18 marketable to the people they are intended to serve, end of
19 quote. And that they are, quote, intended to lessen
20 concentrations of poverty by placing public housing in non-
21 poverty neighborhoods or by promoting mixed-income communities
22 where public housing once stood, thereby ending the social and
23 economic isolation of public housing residents, end of quote. ✓

24 What Mr. Levin would like me to mention to the Court
25 is that that is exactly what he has been doing in implementing

1 Gautreaux and in using HOPE VI funds, because ABLA and the
2 Horner Phase II are both Receiver projects that use HOPE VI
3 funds. So the notion of incompatibility is inconsistent with
4 what is actually happening in the field.

5 And in doing that, the objective that is reflected in
6 the HUD guidebook, which is a terribly important piece of
7 national policy as well as Gautreaux objective, of
8 deconcentrating and integrating public housing residents into
9 the community so that they have an opportunity for all of the
10 advantages that flow from that kind of deconcentration and that
11 kind of integration, economic, educational, employment
12 opportunities, many others -- that's precisely what the
13 Receiver has been doing in working with the community, because
14 there is an intensive community component in persuading
15 communities that CHA replacement housing will be an asset to
16 the community, in working with elected officials, in working
17 with HUD, in working with the CHA.

18 The message that I have been asked to deliver, and I
19 hope I have, is that there appears to be, to the Receiver, no
20 incompatibility whatsoever between those two programs; that is,
21 this Court's Gautreaux objectives and what the Receiver is
22 actually doing in implementing Gautreaux housing, in some cases
23 using HOPE VI funds.

24 If you have questions for Mr. Levin, he is available.

25 THE COURT: Thank you, Mr. Shakman.

1 Is there anybody from HUD here who wishes to address
2 the Court?

3 MR. JENSEN: Good morning, your Honor. I am Jon
4 Jensen. We did file a brief response.

5 THE COURT: I know you did.

6 MR. JENSEN: But we really had not been prepared to
7 address this particular issue, unless you had any questions for
8 us.

9 THE COURT: Well, by the fact that you have decided
10 not to file a brief and are not prepared to address the issue,
11 I take it that my ruling really is a non-issue as far as HUD is
12 concerned?

13 MR. JENSEN: I think that is true.

14 I guess the only point is, we decided -- HUD decided,
15 that is, to defer to the suggestion in CHA's original brief.
16 In a footnote in their brief they claim that the issue was not
17 who had development responsibility for HOPE VI funding but
18 whether HOPE VI funded activity was subject to the basic order
19 of the Court.

20 We had very definite opinions, very much reflected in
21 Mr. Shakman's brief of the Receiver, that indeed the Receiver
22 has all responsibility connected with the development, whether
23 HOPE VI or otherwise.

24 But CHA indicated in its footnote that that was not
25 the issue that was being presented to the Court. I think they

1 said that that would entail an entirely different briefing
2 schedule and -- a motion and entirely different briefing. HUD
3 as a department deferred to CHA's suggestion in that regard.

4 THE COURT: Thank you.

5 MR. JENSEN: Thank you.

6 THE COURT: Ms. Getzendanner?

7 (Brief pause.)

8 THE COURT: Let's take about a two-minute break for
9 this case so I can call one other case and let the lawyers go
10 on their way.

11 (Whereupon, the Court directed its attention to another
12 matter on its call, after which the following proceedings were
13 had herein:)

14 THE CLERK: Clerk 66 C 1459, Gautreaux versus CHA.

15 MS. GETZENDANNER: The CHA paid \$35,000 for these two
16 volumes. They have paid him nothing more, the Receiver.

17 The Receiver has no contract with respect to Cabrini
18 Green, he has no role with respect to Cabrini Green. He did
19 ask for a three percent fee based on the building of the
20 townhouses, and knowledge of that was more than the work he had
21 done for which he could be compensated. I believe that's what
22 he said. For the work where he could not be compensated, he
23 wanted that fee to cover that work and the CHA refused. It's
24 that simple.

25 There is no role for the Receiver at Cabrini Green and

1 that's been clear, I think, from the outset, since 1993.

2 To the extent that HOPE VI funds were made available
3 to this Court and to the Gautreaux plaintiffs, those were
4 pursuant to a set-aside that was negotiated back in 1993 when
5 HUD was still in the case.

6 Basically what happened was, HUD agreed to 350 units
7 that could be built with HOPE VI money, provided they got
8 credit under Gautreaux for it. And so that's what brought the
9 Gautreaux order into that 350 units.

10 HUD is no longer a party to the case, at least I don't
11 think -- has it been dismissed?

12 THE COURT: I believe so.

13 MS. GETZENDANNER: They're not here.

14 So the only time HOPE VI money has been used has been
15 for that, quote, replacement housing pursuant to a negotiated
16 deal between HUD, the Receiver and the plaintiff.

17 No other HOPE VI funds have been drawn down, nothing.
18 Nothing has been used at Cabrini Green. No HOPE VI funds are
19 used there. They haven't been drawn down yet. HUD is waiting
20 for the Court's order.

21 So there is no precedent here that HOPE VI funds have
22 been used willy-nilly for replacement housing. That's not what
23 has happened.

24 The public housing, a program that HOPE VI presents,
25 is wildly different from the Gautreaux judgment. We believe

1 there are geographic requirements in the HOPE VI program. The
2 whole thing talks about neighborhoods where distressed public
3 housing exists.

4 If CHA were to submit an application that met the
5 terms of the decree, it would provide 50 percent of any funds
6 used for new construction would be used in general areas. And,
7 Judge, it's the CHA's position that that is a non-starter.
8 That will not be approved by HUD.

9 THE COURT: I think HUD has had the opportunity to
10 speak to that point and apparently has chosen not to.

11 MS. GETZENDANNER: Pardon?

12 THE COURT: I say, HUD has had the opportunity to
13 speak to that point and apparently has chosen not to.

14 MS. GETZENDANNER: There's no question that we have a
15 letter from HUD that says that we cannot draw down the HOPE VI
16 funds unless we get this Court's approval, and that's what
17 drove us to file our motion. And we do not believe that the
18 Court has jurisdiction over the HOPE VI funds.

19 The HUD lawyer who wrote the letter, I am told, was
20 reprimanded for writing that letter. I don't think there's any
21 basis for HUD's conclusion that the injunction governs HOPE VI.

22 They looked at the order appointing the Receiver,
23 which is different. The Receiver has no authority if the
24 plaintiffs have no authority. So the fact that the Receiver's
25 order is broadly stated is not terribly relevant to what we are

1 raising with this Court, which is, what is the scope of this
2 injunction.

3 Now, I think the best way to talk about why HOPE VI
4 isn't covered by the injunction is to assume that it is. If
5 HOPE VI applies to -- or, I'm sorry, if the injunction applies
6 to HOPE VI, what will happen is that to present a competitive
7 application to HUD we will need a waiver from this Court. We
8 cannot submit a program that calls for 50 percent of new
9 construction in general areas.

10 It's the waiver process that is the most intrusive,
11 and we've spent a lot of time in our briefs talking about the
12 waiver process. But here's how it goes in reality: CHA needs
13 to get a waiver from the Court to do a HOPE VI program. That
14 means the Court will ask us to negotiate with Mr. Polikoff, as
15 plaintiffs' representative. And that's a perfectly appropriate
16 thing for the Court to do, to ask the parties to sit down --

17 THE COURT: It's gone on for a couple decades.

18 MS. GETZENDANNER: Yes, no question about it. So we
19 will sit down and negotiate.

20 Mr. Polikoff will begin the negotiations by first
21 examining what neighborhood it is we're focusing on; next, what
22 buildings do we want to demolish; next, what buildings do we
23 want to rehabilitate; next, where are we going to build the
24 replacement housing; and then it's going to go all the way down
25 to tenant selection and then to all of the other miscellaneous

1 things that were brought to the attention of the Court by the
2 Receiver in connection with Horner.

3 So the negotiation that would be required by the
4 Court, and properly so, would bring the plaintiffs into the
5 whole program. It's very intrusive. I don't think that their
6 statement that all they care about is new construction -- the
7 new construction of new units is just part of the whole. It's
8 part of the whole program designed by CHA.

9 So they are going to want to negotiate from the
10 beginning, and in order to get an agreed waiver we would have
11 to negotiate.

12 Now, when CHA negotiates and they agree on a waiver
13 and they bring it to you, they're not happy with that order.
14 That's what they've been able to negotiate. That's not what
15 they wanted, it's not what they hoped for, but it was what they
16 were able to negotiate. So you would be subjecting the entire
17 HOPE VI program to that process because you cannot expect any
18 application to meet the HOPE VI objectives and comply with the
19 injunction. The injunction will have to be waived.

20 And I think when you look at it that way, how can the
21 injunction cover this, this whole program, which is designed to
22 rehabilitate neighborhoods which are in limited areas? I don't
23 -- all the social services, for example -- 20 percent of the
24 funds have to be used for social services. I don't think you
25 can build the units in general areas and have social services

1 make any difference.

2 The whole thing is pointing to neighborhood
3 redevelopment and it's a new program. We cannot agree to waive
4 the HOPE VI requirements. CHA has no power to do that.

5 I think when HUD was in the case this Court had a lot
6 of authority because the HUD consent decree required them to
7 build so many new units, but that authority is now gone. The
8 Court can't tell HUD what to do, and I don't think the Court
9 would want to. I think that really would interfere with the
10 federalism concerns.

11 Mr. Polikoff argued in terms of HOPE VI presents an
12 opportunity for desegregation opportunities for his class.
13 HOPE VI does not provide a desegregation opportunity in the
14 general areas; it simply does not. And that's what the whole
15 injunction is tilted toward, building in general areas. It's a
16 way to achieve integration. It's a 30-year-old way; it's not
17 the way Congress is doing it today.

18 THE COURT: What about the language in the HOPE VI
19 manual? It seems to be consistent with the aims of the
20 plaintiffs.

21 MS. GETZENDANNER: Judge, think of the general areas
22 in the City of Chicago. How can building in the few remaining
23 general areas in the city help the reconstruction of the Robert
24 Taylor home neighborhood? It can't. It's unconnected. It's
25 not part of the program. It's an integrated program, it

1 requires demolition, rehabilitation, Section 8 certificates,
2 building of new replacement units and social services, job
3 training, the whole thing, all devoted to that neighborhood.
4 And the goal is to make it an economically diverse
5 neighborhood.

6 I don't think you can take a line out of a handbook
7 and ignore the legislative history, the language of the
8 statute, the fact that this is a new program that's supposed to
9 reform public housing policy. It's a brand new program. It's
10 never been before this Court before in this context directly:
11 Does HOPE VI apply? Is it governed by the injunction?

12 The CHA is required under HOPE VI to work with the
13 local government, which is the City of Chicago. There's no
14 requirement to -- there's no opportunity to use HOPE VI funds
15 for any remedial injunctive relief. After the Cisneros
16 set-aside for the 350 units, Congress amended the act and said
17 that's not going to happen again. So there really is no
18 opportunity to use those monies for the Gautreaux remedy.

19 We did not respond to the cases cited in
20 Mr. Polikoff's brief -- he made that point -- because they are
21 general statements and totally inconsistent with the Seventh
22 Circuit.

23 So if you look at the Seventh Circuit law, I don't
24 think since alliance to end repression, which was my case -- I
25 don't think there's been a consent decree that the Seventh

1 Circuit hasn't sent back for re-writing, which I think the
2 Rockford case -- or totally rejected; they set it aside. So no
3 consent decree has survived Seventh Circuit scrutiny.

4 I think there was a recent case --

5 THE COURT: CHA has never moved to terminate the
6 consent decree.

7 MS. GETZENDANNER: Nor do we want to, Judge.

8 THE COURT: With your track record in the Seventh
9 Circuit, it might be in your interest to do so.

10 (Laughter.)

11 MS. GETZENDANNER: We think that the evidentiary
12 battle necessary to establish the grounds for changing the
13 injunction would be very divisive for the community. You know,
14 is there segregation, who's responsible for it, what impact
15 does white flight have on it, what impact does any number of
16 factors have to do with it. We don't want that fight, Judge.
17 We don't want it for the community.

18 The Gautreaux remedy should stay in place. In the
19 event future funding is made available which would permit the
20 CHA to build housing in general areas, where we have an
21 opportunity to use that funding for that purpose, a Gautreaux
22 remedy will be there. Perhaps at that time we will move to
23 vacate the decree, but there is no need to do that now.

24 Just as the Court held that the Section 8 certificates
25 are not governed by this decree, there is no distinction

1 between that analysis and the HOPE VI funds.

2 We agree that the HOPE VI new construction, forgetting
3 that it is replacement housing, that does fall within the
4 definition of dwelling unit, no question about it. But we are
5 asking the Court to construe the injunction in a way that's
6 consistent with its requirements, and its requirements are
7 geographical.

8 Judge Austin required the building of housing in
9 general areas. He said, if you're going to build, build one
10 here and three there, and now it's 50/50. And those kinds of
11 requirements only are applicable to new housing, housing that
12 adds to the stock.

13 THE COURT: How do you square that with the language
14 that Mr. Polikoff read about replacement housing in the decree?

15 MS. GETZENDANNER: In the what?

16 THE COURT: How do you square that with the language
17 that Judge Austin used which specifically dealt with
18 replacement housing, the language that Mr. Polikoff read
19 before?

20 MS. GETZENDANNER: I don't recall him saying that.

21 THE COURT: Okay.

22 MS. GETZENDANNER: Surely the rehabilitation process
23 of existing housing was left to the CHA.

24 Mr. Polikoff, what did you say?

25 THE COURT: Well, he will have a chance in a minute.

1 MS. GETZENDANNER: I would like to respond. I just
2 don't recall what he said.

3 THE COURT: I will let you respond to that later, if
4 need be.

5 MS. GETZENDANNER: Okay.

6 I don't think that the Court should interpret the
7 order as applying to HOPE VI because it is, in effect, an
8 injunction against the CHA from applying for the funds. That's
9 exactly the essence of it.

10 The CHA knows they're not going to get funds if you're
11 going to build in general areas, so we can't apply. And we
12 would suggest to the Court that that's as a result of the court
13 order. And that raises concerns, federalism concerns,
14 separation of power concerns, which we have addressed in our
15 brief.

16 Judge, the program, the HOPE VI program, cannot be cut
17 into pieces. It's an integrated, complex solution. Congress
18 has said it's new, it's to reform a new way of thinking about
19 public housing. It is clearly designed to repair neighborhoods
20 that have been destroyed by distressed public housing.

21 There is no possibility that we can apply for funds
22 and expect to use those funds for general areas.

23 We've gone back and forth in our briefs about who said
24 what to whom. And again, we don't want an evidentiary battle
25 here, but there are some things that are in the record,

1 including the letters Mr. Polikoff sent to you. But there are
2 also clear indicia that plaintiffs have known for years that
3 HOPE VI funds were not considered to be under the injunction.

4 On July 11, 1996, Mr. Cisneros wrote to Mr. Polikoff,
5 and that's at Exhibit D attached to our original memorandum,
6 and he says, as a matter of law we cannot use HOPE VI funds as
7 a set-aside for Gautreaux. As a matter of law we can't do
8 that. A set-aside to the Receiver is not appropriate because
9 the statute in the first instance leaves to the public housing
10 authority's discretion whether it wants to apply for a HOPE VI
11 grant at all and how it would want to use the funds for which
12 it applies.

13 So that's a clear statement by the then secretary of
14 HUD that the HOPE VI money could not be used for the Gautreaux
15 remedy, and this is after the 1993 set-aside, which did get
16 through but which Congress then condemned with an amendment to
17 the law. I withdraw condemned. They made sure it wasn't going
18 to happen again.

19 So the plaintiffs have known. We think that their
20 application on the Section 8 certificates is pretty positive
21 proof that they didn't think HOPE VI was governed.

22 There's nothing in the record that should be binding
23 on the CHA that their view is that the injunction covers HOPE
24 VI funds. I don't think there's anything in Edwin Eisendrath's
25 letter from several years ago; I don't think there's anything

1 in the record that should be binding on the CHA.

2 The CHA has taken the position since 1993 that HOPE VI
3 funds are outside the scope of the decree.

4 Thank you.

5 THE COURT: Thank you, Ms. Getzendanner.

6 I have a couple of questions of Mr. Polikoff, which I
7 will let you respond to, if you wish.

8 First of all, as a practical matter, assuming that the
9 social service and job training dollars of HOPE VI are used in
10 the area where the housing is demolished, how will the social
11 service and job training dollars be available in the general
12 areas? Is that a logistical problem?

13 MR. POLIKOFF: It isn't a problem because the
14 objective is not one that's required or even sought. I have an
15 example of that at Horner, which I will give you in a moment.
16 Even though it's not a HOPE VI project, it presents the
17 identical question you're raising.

18 I want to make it clear at the outset, in answering
19 your question, that as I think is plain but it keeps getting
20 blurred in CHA's written and oral presentations, we are not
21 talking about all of HOPE VI funding and programs, including
22 specifically the one you used in your question, the social
23 service programs. We have not suggested, are not suggesting,
24 we do not intend to suggest that your orders cover in any way
25 the social service programs --

1 THE COURT: No, and I understand that completely.

2 MR. POLIKOFF: Okay.

3 THE COURT: I am just concerned about whether the
4 persons in the new housing in the general areas will, by
5 necessity, not have the benefit of the HOPE VI dollars for
6 these other ancillary activities.

7 MR. POLIKOFF: It's up to CHA, your Honor, and I refer
8 to the example of Horner. In Horner a vote was taken -- which
9 is not a HOPE VI project but which CHA acknowledges in its
10 brief in many respects is like a HOPE VI project.

11 The tenants were given an opportunity to express their
12 choice with respect to the form of replacement housing, on
13 site, in the neighborhood, in other neighborhoods, scattered
14 site or Section 8. Roughly about half chose one, half chose
15 the other. So half of the Horner people have been dispersed to
16 other neighborhoods of the city.

17 Are the job training dollars, if there were any at
18 Horner, all the social services activities at Horner, to follow
19 those people to West Rogers Park? That's for CHA to decide or
20 not to decide. I think it's pretty clear that they are not.

21 Indeed, there was supposed to be a family needs
22 assessment taken under the Horner consent decree of all of the
23 people, and my understanding is it's pretty well decided not to
24 take such an assessment of people who have chosen to leave.
25 But even if it is taken, not to follow up the services.

1 Ms. Getzendanner is right when she says there is a
2 neighborhood focus to HOPE VI activities, and the focus on the
3 neighborhood of the job training dollars would be perfectly
4 appropriate.

5 If CHA wanted to offer any of those social services to
6 people who moved, it would be up to them. They could do that;
7 nothing to prevent them. We are not asserting, have not
8 asserted, any claim by a Gautreaux on anything but the
9 replacement housing, where it's located.

10 THE COURT: Okay.

11 Ms. Getzendanner --

12 MR. POLIKOFF: By the way, I want to add a footnote to
13 what I just said. That's consistent with the language of HOPE
14 VI. HOPE VI talks, as I quoted to you, about replacement
15 housing going into non-poverty neighborhoods. There is not one
16 indication in the statute or the guidebook that the HOPE VI
17 proponent, in this case CHA, has got to follow those people
18 into non-poverty neighborhoods with job training.

19 The whole theory of desegregation is that if you
20 enable families to move into non-poverty neighborhoods, they
21 would be forced to get into places where security is better,
22 where access to jobs is better, where schools is better and
23 they have a lesser need by reason of their location for social
24 services.

25 THE COURT: You quoted some language earlier of Judge

1 Austin's that applied to replacement housing in particular.

2 Ms. Getzendanner, I think --

3 MR. POLIKOFF: Yes. I think Ms. Getzendanner is -- it
4 pains me to say this, your Honor -- right and that we were not
5 right in this respect.

6 THE COURT: All right.

7 MR. POLIKOFF: I think what she is referring to and
8 what you were asking about was language that I quoted from the
9 judgment order.

10 THE COURT: Okay.

11 MR. POLIKOFF: And it referred -- it didn't use the
12 word replacement. It did talk in terms of housing provided
13 directly or indirectly by CHA, whether in a structure owned in
14 whole or in part by CHA, whether or not newly constructed or
15 not, et cetera. It did not use the word replacement.

16 THE COURT: It did not use the word replacement.
17 Okay. That's fine.

18 It's your contention that that language embraces
19 replacement housing, is that correct?

20 MR. POLIKOFF: Well, not only the language embraces
21 it, but as I argued, that's the rational thrust of the order,
22 because through replacement housing you can provide
23 desegregation opportunities. But, also, that your prior
24 orders, the nunc pro tunc and subsequent orders --

25 THE COURT: I understand my prior orders. I just want

1 to make sure we all have the same reference to Judge Austin's
2 --

3 MR. POLIKOFF: When I say embraces -- answer you
4 affirmatively by saying, yes, it's my contention it embraces
5 replacement housing, I mean that not because it says that in so
6 many words, but that it obviously sought to cover all kinds of
7 housing provided by CHA which could be used to provide
8 desegregation opportunities, and replacement housing answers
9 that description.

10 THE COURT: Okay. Thank you.

11 MR. POLIKOFF: Thank you, your Honor.

12 THE COURT: Do you want to reply to either of those
13 points, Ms. Getzendanner?

14 MS. GETZENDANNER: No. I'm happy to have his
15 concession.

16 MR. SHAKMAN: Mr. Levin asked me if I would poke my
17 nose in for a moment. May I?

18 THE COURT: Sure.

19 MR. SHAKMAN: He asked me to make this point, that
20 Cabrini, Horner II, which is a HOPE VI program, and ABLA, which
21 involves HOPE VI money, none of those required a waiver from
22 Gautreaux to permit a HOPE VI application. He asked me to
23 underscore that point for the Court.

24 Therefore, the statement that automatically you must
25 have a Gautreaux waiver in order to implement a HOPE VI

1 activity, for example, in those revitalizing areas, is not
2 correct.

3 And I am going to resist the urge to further debate
4 the scope of the --

5 THE COURT: You don't have to debate any ancillary
6 issues. I understand your position.

7 MR. POLIKOFF: Your Honor, might I make one more
8 observation?

9 THE COURT: Yes.

10 MR. POLIKOFF: Ms. Getzendanner has repeatedly said,
11 both today and in the briefs, they couldn't file a HOPE VI
12 application that provided 50/50. The answer is that in your
13 Horner order you have clearly recognized that housing on site,
14 if done under the right conditions imposed by your orders, as
15 at Horner, mixed income and so on, under revitalizing
16 conditions, is an alternative way of providing desegregation
17 opportunities to the plaintiffs. And the Horner precedent
18 stands against the contention that the only way is to do 50/50.

19 THE COURT: Okay. Thank you.

20 MS. GETZENDANNER: Your Honor, I just make the
21 observation that there's your orders to which we could agree --
22 CHA could agree to those orders. The CHA cannot agree to
23 divert money from HOPE VI to general areas.

24 THE COURT: Okay. Thank you very much.

25 I will rule in due course and due course will be soon.

1 Thank you.

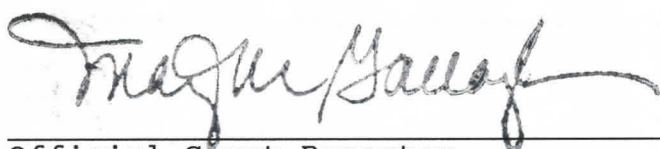
2 MR. POLIKOFF: Thank you, your Honor.

3 (Which were all the proceedings had at the hearing of
4 the within cause on the day and date hereof.)

5 CERTIFICATE

6 I HEREBY CERTIFY that the foregoing is a true,
7 correct and complete transcript of the proceedings had at the
8 hearing of the aforementioned cause on the day and date hereof.

9

10 

11 Official Court Reporter
12 U.S. District Court
13 Northern District of Illinois
14 Eastern Division

15 
16 Date

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