

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil Action No. 66C1459
	)	66C1460
SAMUEL R. PIERCE, JR., Secretary	)	(Consolidated)
of the Department of Housing and	)	
Urban Development, and CHICAGO	)	
HOUSING AUTHORITY, et al.,	)	
	)	
Defendants.	)	

O R D E R

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1987 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

(A) The Chicago Housing Authority (the "CHA") has joined in plaintiffs' Motion for the appointment of a receiver for the reasons which CHA has heretofore stated in this cause.

(B) This Court has concluded that it has no reasonable alternative but to exercise its inherent power to effectuate its own orders and to so appoint said receiver for the scattered site program in accordance with the provisions of this order. It is the expectation of this Court that the appointment of a receiver will facilitate cooperation between the United States

Department of Housing and Urban Development ("HUD"), CHA and the receiver respecting the scattered site program.

(C) For purposes of this Order the "scattered site program" shall mean (i) the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii) CHA Development Programs numbered IL 2-096, IL 2-098, IL 2-103 through IL 2-109, and IL 2-113 (excluding any completed buildings in such programs) and all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby appoints Daniel E. Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court, such appointment to be effective as of the Effective Date (defined below). Until the Effective Date, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court. On the Effective Date CHA shall turn over to the Receiver possession and control of the Uncompleted Units, it being understood, however, that title to the Uncompleted Units shall remain in the name of CHA.

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefor in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program, (ii) employing, transferring and discharging staff for the scattered site program, (iii) purchasing insurance insuring the Receiver, and the interest of CHA if feasible and available at no additional cost, against liability for such risks and in such amounts as the Receiver and HUD shall from time to time agree upon, (iv) managing and administering buildings included within the scattered site program prior to the turnover thereof to the CHA in accordance with Paragraph 5 below, and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site

program and to enable the Receiver to discharge its duties pursuant to the provisions hereof.

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.8, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

4. The Receiver shall have no obligation to make any expenditure except from funds provided by HUD in accordance with procedures to be agreed upon between HUD and the Receiver. The Receiver shall keep separate accounts for costs incurred in connection with the scattered site program from and after the Effective Date. The Receiver shall not be responsible for (i) payment of any costs or performance of any obligations incurred

by CHA prior to the Effective Date, except obligations incurred pursuant to the ACC unless the Receiver is excused from complying with the terms thereof pursuant to Paragraph 3 above, or (ii) payment of any costs or performance of any obligations incurred by CHA thereafter, except as may be specifically authorized by the Receiver in writing. Notwithstanding the foregoing, the Receiver shall not be responsible for (iii) compliance with the provisions of any ACC with respect to buildings and sites previously acquired or completed by CHA except those described in Exhibit A, or (iv) any act or omission of CHA either before or after the Effective Date.

5. The Receiver shall promptly turn over to CHA, and CHA shall accept, any building within the scattered site program upon completion of construction or rehabilitation of each such building. For purposes hereof, subject to the reasonable approval of HUD, construction or rehabilitation of a building shall be deemed to be completed when the Receiver's project architect determines that such building is ready for occupancy, and, if required by applicable law or ordinance, a certificate of occupancy has been issued for such building.

6. The Receiver shall prepare reports respecting the status and implementation of the scattered site program as of the end of each month in the year 1987, commencing with the month of September, 1987, and thereafter quarterly as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be filed with the Court and served on

the parties within 20 days following the end of the period covered by each such report.

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program.

8. There shall be paid to the Receiver from funds provided by HUD pursuant to the ACC or Annual Contributions Contracts entered into between the Receiver and HUD, or by CHA if appropriate, (i) all direct costs and expenses reasonably incurred by the Receiver in connection with the performance by the Receiver of its duties pursuant hereto, (ii) to the extent not included in clause (i), a pro-rata share of all salary, compensation and other direct costs of those employees of The Habitat Company (other than Daniel E. Levin, James P. McHugh and Douglas R. Woodworth), James McHugh Construction Co. (other than James P. McHugh) or other entities which are affiliates of or controlled either directly or indirectly by the Receiver, who at the direction of the Receiver perform services on behalf of the scattered site program, for the actual time devoted by said employees to the performance of services for the scattered site program, and (iii) a fee in the amount of three percent (3%) of the aggregate development costs (excluding the costs described in clause (ii) above and any costs previously incurred by CHA)

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof. The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs, expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with Rule 9(b) of the Civil Rules of the United States District Court for the Northern District of Illinois.

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:


United States District Judge

August 14, 1987

DOROTHY GAUTREAUX et al., Plaintiffs, v. CHICAGO HOUSING AUTHORITY et al., and
ANDREW CUOMO, Secretary of the Department of Housing and Urban Development, Defendants.

Case No. 66 C 1459 / 66 C 1460 (Consolidated)

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

1997 U.S. Dist. LEXIS 12924

August 26, 1997, Decided

August 27, 1997, Docketed

DISPOSITION: [*1] Plaintiffs' motion to modify the judgment order against CHA denied; HUD's motion to terminate the consent decree while retaining jurisdiction over the plaintiffs' attorneys' fees petition granted; plaintiffs' motion to declare that HUD has a continued obligation for FY1997 denied; and the plaintiffs' motion to enforce P 5.8.1. denied.

COUNSEL: For CHICAGO HOUSING AUTHORITY, defendant (66-CV-1459): Susan Getzendanner, Nancy S. Eisenhauer, Skadden, Arps, Slate, Meagher & Flom, Chicago, IL.

JUDGES: MARVIN E. ASPEN, Chief Judge.

OPINIONBY: MARVIN E. ASPEN

OPINION: MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

This litigation dates back to 1966 when black residents of Chicago's public housing brought a class action n1 against the Chicago Housing Authority (CHA) and the Department of Housing and Urban Development (HUD), alleging that the defendants violated federal constitutional and statutory provisions by basing public housing policies and practices on race. Specifically, CHA intentionally limited the number of black families living in white housing projects and deliberately targeted only predominantly black neighborhoods in which to build public housing, while HUD knowingly assisted [*2] CHA in carrying out this discrimination. *Gautreaux v. CHA*, 296 F. Supp. 907 (N.D. Ill. 1969) (liability against CHA); *Gautreaux v. Romney*, 448 F.2d

731 (7th Cir. 1971) (liability against HUD). In 1969, a judgment order was entered against CHA, *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969), and after years of litigation at all levels of the federal judiciary, a consent decree was entered into with HUD, *Gautreaux v. Landrieu*, 523 F. Supp. 665 (N.D. Ill. 1981), aff'd, 690 F.2d 616 (7th Cir. 1982). Numerous disputes since then have generated several other orders dealing with the implementation of the CHA judgment and the HUD consent decree. E.g., *Gautreaux v. Chicago Housing Authority*, 1991 U.S. Dist. LEXIS 4123, 1991 WL 49568 (N.D. Ill. April 4, 1991).

n1 The class was defined as black tenants of and applicants for public housing in *Chicago*. 304 F. Supp. 736, 737 (N.D. Ill. 1969). Although we understand that the lead named plaintiff, Dorothy *Gautreaux*, has passed away, we presume that substitution of new class representatives has or will take place. See *Hassine v. Jeffes*, 846 F.2d 169, 176 n.3 (3d Cir. 1988) (if named plaintiff-inmate transferred from institution, current inmate may be substituted to represent class); *Van Horn v. Trickey*, 840 F.2d 604, 608 (8th Cir. 1988) (same); *Doe v. Reivitz*, 830 F.2d 1441, 1451 (7th Cir. 1987) ("Substitution of named parties might be necessary in the future to assure representativeness if additional proceedings take place in this case"); *Wilson v. Huntingdon Housing Authority*, 770 F.2d 168, 1985 WL 13513, at *1 (6th Cir. 1985) ("If this case is to continue as a class action, some current resident of public housing administered by the Huntingdon Housing Authority should be substituted as a named plaintiff").

[*3]

Presently before us are four motions: (1) the plaintiffs' motion to modify the judgment order against CHA; (2) HUD's motion to terminate the consent decree; (3) the plaintiffs' motion to enforce a provision of the consent decree prohibiting HUD from approving CHA's use of certain forms of § 8 housing assistance payments, 42 U.S.C. § 1437f, unless specific location requirements are met; and (4) the plaintiffs' motion to declare that HUD must set aside § 8 contract authority for fiscal year 1997. For the reasons discussed below, we deny the plaintiffs' motion to modify the judgment order, grant HUD's motion to terminate the consent decree, and deny the plaintiffs' two motions under the consent decree.

I. Modification of CHA Judgment Order

At the outset, we explain generally the 1969 judgment order to provide background for the plaintiffs' motion to modify it. The judgment order divided Cook County's census tracts into two categories: the Limited Public Housing Area and the General Public Housing Area. The Limited Area was essentially defined as those census tracts composed of 30% or more non-white population, while the remaining tracts constituted the General Area. Attempting [*4] to remedy the effects of past discriminatory site-selection and tenant assignment procedures, the judgment order in essence prohibited any development of public housing in the Limited Area without simultaneous development in the General Area. Judgment Art. II(C), 304 F. Supp. at 738. Because CHA proved inept at building public housing on scattered-sites, we appointed a Receiver for the program in 1987 and it was not until then that construction began in earnest.

Now, as the scattered-sites program continues under the Receiver, the plaintiffs contend that § 8 rent subsidies n2 have replaced new construction as the primary means for providing public housing. Pls.' Mot. P 4. According to the plaintiffs, this shift in federal housing policy justifies modifying n3 the judgment order in order to bring the CHA's use of § 8 certificates under the order's auspices. Furthermore, the plaintiffs point out, fewer than 3000 scattered-sites units have been built so far and approximately only 7000 more families have been assisted by the separate HUD § 8 program under the consent decree; meanwhile, the members of the class comprise 40,000 families.

n2 Section 8 of the United States Housing Act, 42 U.S.C. § 1437f (as amended), authorizes the Secretary of HUD to enter into "annual contributions contract[s]" with public housing agencies, §

1437f(b), (o), which in turn make assistance payments on behalf of recipients who hold the § 8(b) "certificates" or § 8(o) "vouchers," 24 C.F.R. § 982.1.

[*5]

n3 Although the plaintiffs belatedly attempt to characterize their request as one for "particularization, not expansion, of the judgment order," Pls.' Reply at 3, we agree with their earlier acknowledgment that "because the Section 8 rent subsidy program was not in existence when the judgment order was entered, CHA's Section 8 program was not part of the relief provided to the plaintiff class," Pls.' Mot. P 5. Indeed, it was the later HUD consent decree that purported to indirectly oversee CHA's use of § 8 rent subsidies by imposing limits on HUD's ability to approve CHA's contract authority. See Consent Decree P 5.8.1.

In order to prevail on a motion to modify the judgment order, the plaintiffs must show that the "principal objects" of the order have not been achieved. *United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 20 L. Ed. 2d 562, 88 S. Ct. 1496 (1968); see *United States v. Local 560 (I.B.T.)*, 974 F.2d 315, 331-32 (3d Cir. 1992); *Gautreaux v. Weaver*, 535 F. Supp. 423, 426-27 (N.D. Ill. 1982). We examine the "specific facts and circumstances," *United Shoe Machinery*, [*6] 391 U.S. at 248, and weigh the equities at stake in determining the propriety of modification, *Weaver*, 535 F. Supp. at 426. Importantly, even if the "principal objects" of the original order have not yet been fully achieved, we must consider whether other reasons outside the control of the defendant have prevented success and whether adherence to, rather than modification of, the current injunction may be the most fair alternative. These latter considerations inform our inquiry because, as the school desegregation cases instruct us, federal court supervision of local government operations should be a "temporary measure to remedy past discrimination" and is "not intended to operate in perpetuity." *Board of Educ. of Oklahoma City Pub. Schs. v. Dowell*, 498 U.S. 237, 247, 248, 112 L. Ed. 2d 715, 111 S. Ct. 630 (1991).

We start, then, with the judgment order's principal objects: "to prohibit the future use and to remedy the past effects of the defendant Chicago Housing Authority's unconstitutional site selection and tenant assignment procedures." 304 F. Supp. at 737. By 1968, CHA's site selection had placed 99.5% of 30,848 public housing units in mostly black neighborhoods and [*7] tenant assignment had reserved four projects to be populated almost entirely by whites. 296 F. Supp. at 909-10. n4 While

it might be expedient to simply accept the plaintiffs' assertion that "the vast majority of CHA's family public housing still consists of the same segregated units, in the still segregated neighborhoods," Pls.' Reply at 5, as well as the plaintiffs' unstated assumption that the assertedly segregative situation is entirely a result of CHA's original discrimination, we must insist on specific facts supported by evidence. For example, relevant information to test the first assertion would include the number of public housing projects that remain predominantly white and the number of projects located in the Limited Area and the General Area. If the evidence shows that segregation in public housing still exists, then we must explore the link between the current segregation and CHA's original discrimination, past remedial efforts (or lack thereof), current remedial efforts, and future plans. For example, we would examine the quantity and location of affordable land in the General Area remaining for site selection, the effects of private decisionmaking on the current segregative [*8] state, and the effects of the shift in demographics over the years.

n4 The 99.5% figure did not include the four almost entirely white public housing projects. 296 *F. Supp.* at 910.

Without such evidence, we cannot grant the plaintiffs' motion to modify the judgment order. In the absence of a showing that the judgment order's objectives are not being accomplished and that the extent of the lack of progress is largely grounded in the original discrimination, it would be improper to add thousands of § 8 rent subsidy certificates and vouchers to the judgment order. The Receiver has, relatively speaking, only recently begun to implement the judgment order and we should allow time for the scattered-site program to work before turning to another form of relief, especially if CHA is now cooperating in implementing the order to the extent practicable. Indeed, the scattered-site program most directly deals with CHA's original violations—placement of public housing projects solely in black neighborhoods—while § 8 rent [*9] subsidies are already usable by the recipients throughout Illinois, see 42 U.S.C. § 1437f(r). Although it is likely that some § 8 recipients would rather live in the General Area but cannot find affordable rental units in the private market, the plaintiffs have not shown that the original site selection and tenant assignment proximately created this situation. Cf. *Freeman v. Pitts*, 503 U.S. 467, 496, 118 L. Ed. 2d 108, 112 S. Ct. 1430 (1992). n5 Accordingly, we conclude that the record fails to support the plaintiffs' proposed modification.

n5 We acknowledge that the "vestiges of segregation . . . may be subtle and intangible," *Freeman*, 503 U.S. at 490, but even though the location of public housing sites is strongly linked to CHA's original site selection practices, the plaintiffs have thus far failed to proffer evidence that the private rental market is the product of the original discrimination.

II. Termination of HUD Consent Decree

Next, HUD moves to terminate the consent decree entered [*10] into in 1981. The consent decree divided not only Cook but its collar counties as well into Limited, General, and "Revitalizing" Areas. 523 *F. Supp.* at 668. "Recognizing that total relief to *Gautreaux* families outside the Limited Area could not be provided in the foreseeable future, the proposed decree introduced the concept of Revitalizing Areas, that is, areas which have substantial minority population and are undergoing sufficient redevelopment to justify the assumption that these areas will become more integrated in a relatively short time." *Id.* at 669. With this expanded metropolitan-wide relief, the primary goal was to place 7100 public housing residents in the General and Revitalizing Areas:

5.1. Following the effective date, HUD will provide assisted housing to eligible persons as set forth in this Part 5 until the number of occupancies of assisted housing units in the General Area and/or in the Revitalizing Area, pursuant to the contracts referred to in paragraph 5.4, commenced by eligible persons equals 7,100.

Consent Decree P 5.1.

HUD now moves to terminate the consent decree because on October 2, 1996, the 7100 target was met, although HUD acknowledges [*11] that we should retain jurisdiction over the plaintiffs' attorneys' fees petition. The plaintiffs do not object to termination of the consent decree, but have moved for enforcement of specific provisions of the decree that would continue to place certain obligations upon HUD. We deal with those motions below, and thus grant HUD's motion to terminate the consent decree and retain jurisdiction over the plaintiffs' attorneys' fees petition. n6

n6 It appears that HUD has voluntarily agreed to continue certain commitments to the *Gautreaux* programs, HUD's Resp. at 11, and we take this as a salutary sign. We hope HUD, having once assisted a local government violate the constitutional rights of thousands, will adhere to its declaration of policy: "to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing

conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income and, consistent with the objectives of this chapter, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs." 42 U.S.C. § 1437.

[*12]

III. HUD's Set Aside Obligation in Fiscal Year 1997

As indicated above, the plaintiffs acknowledge that the 7100 target was met October 2, 1996. Even though HUD has attained this target, however, the plaintiffs contend that HUD must still authorize § 8 New Construction/Substantial Rehabilitation units as provided for in PP 5.5.2 and 5.5.3 of the decree. n7 Those paragraphs provided:

5.5.2. HUD will set aside contract authority for 250 Section 8 New Construction and/or Substantial Rehabilitation units per year commencing at the beginning of Fiscal Year 1982 for use in multifamily projects to be located in the General Area or in the Revitalizing Area and that are insured under the National Housing Act. . . .

5.5.3. HUD will set aside contract authority for 100 Section 8 New Construction and/or Substantial Rehabilitation units per year, commencing at the beginning of Fiscal Year 1982, for use in projects that will increase housing choice for large minority families living in the Limited Area of the City of Chicago by providing Section 8 New Construction and/or Substantial Rehabilitation assisted housing for such families at locations in the General Area [*13] or in the Revitalizing Area accessible to public transportation.

According to the plaintiffs, HUD's obligation to "set aside contract authority" for fiscal year (FY) 1997 arose on October 1, 1996, and was not extinguished by the attainment of the 7100 target one day later.

n7 Because the particular § 8 programs referred to in PP 5.5.2 and 5.5.3 were repealed in 1983, the plaintiffs actually seek comparable relief as provided for in P 8.6 of the decree. See HUD's Resp at 3 n.3; 523 F. Supp. at 681-62.

It is true that HUD's obligation to "set aside" the § 8 units arose on the first day of FY1997. We earlier held that the appropriate reading of the consent decree

required HUD to set aside the funds on that particular day, rather than permit HUD to set aside funds anytime during the fiscal year. *Gautreaux v. Pierce*, 548 F. Supp. 1298, 1300-01 (N.D. Ill. 1982). Setting a firm date for the set aside obligation comported best with the purpose of the decree: to provide a "continuous stream of relief" [*14] instead of "repeated gaps [in funding] of indeterminate length." *Id.* at 1300.

We did not, however, expressly or implicitly determine that HUD, having set aside the funds at the start of the fiscal year, would be required to continue to execute the § 8 contracts after reaching the 7100 target. We are instead persuaded that P 5.1 means exactly what it says when it directs HUD to provide assisted housing "until" the 7100 target is reached. Although HUD must "set aside" the § 8 units at the start of the fiscal year, the units are "for use" after that date, PP 5.5.2, 5.5.3, and nothing in P 5.1 suggests that HUD must continue to provide the units after the 7100 goal is reached. Indeed, even "unused" units otherwise available "for use" in the next year expire when "HUD's obligations have terminated pursuant to paragraph 5.1, 5.2, 8.1 or 8.2." PP 5.5.2.c., 5.5.3.b. n8 Accordingly, we conclude that HUD's obligation to provide further assistance under PP 5.5.2 and 5.5.3 ended on October 2, 1996.

n8 We find unpersuasive the plaintiffs' reliance on a purported implication contained in an October 1992 agreement entered into with HUD. In that agreement, HUD received, in exchange for some other consideration, a 50 occupancy credit toward the 7100 target; the parties conditioned the agreement so that if the 7100 target would be reached at the end of the fiscal year because of the credit, then the credit would not be counted that year. Letter of October 28, 1992. However, the agreement can be read as simply ensuring that the set aside obligation would arise in those circumstances and the plaintiffs could take advantage of the funds in the next fiscal year until the 7100 target was reached without the 50 occupancy credit.

[*15]

IV. HUD's Approval of CHA § 8 Contract Authority

Finally, the plaintiffs move to enforce P 5.8.1 of the consent decree. Paragraph 5.8.1 generally prohibits HUD from approving certain § 8 assistance in Chicago unless at least one-third of the units are used in the General Area and no more than one-third of the units are used in the Limited Area:

5.8.1. In any fiscal year unless otherwise ordered by

the Court under paragraph 8.4, HUD will not approve housing assistance plans or approve or set aside contract authority for Section 8 New Construction or Existing (other than Moderate Rehabilitation) housing in the City of Chicago unless (a) not less than one-third of the units of Section 8 New Construction housing and not less than one-third of the units of Section 8 Existing housing (other than Moderate Rehabilitation) within the City of Chicago are to be physically located within the General Area, and (b) not more than one-third of the units of Section 8 New Construction housing and not more than one-third of the units of Section 8 Existing housing (other than Moderate Rehabilitation) within the City of Chicago are to be physically located within the Limited Area.

[*16]

523 F. Supp. at 679-80. According to the plaintiffs, and not seriously disputed by HUD, over one-third of the § 8 assistance units have been used in the Limited Area since the entry of the consent decree in 1981. Apparently, the plaintiffs and HUD have been negotiating for several years to resolve the noncompliance without success. Now, the plaintiffs seek unspecified relief.

We deny the motion because of the impracticality of shaping appropriate relief for the noncompliance after the plaintiffs year-after-year failed to enforce the provision. The plaintiffs themselves admit that "the last thing plaintiffs would have desired was a cut-off of Section 8 funding for Chicago families," Pls.' Reply at 11, but that is precisely what the consequence of enforcing P 5.8.1 would have been. Moreover, the decree itself contains a mechanism under which HUD could have an-

nually petitioned this court to waive the requirements of P 5.8.1 by reclassifying Limited Areas as Revitalizing or General Areas. See Decree P 8.4. After the plaintiffs' failures to move to enforce P 5.8.1, HUD each year lost a meaningful opportunity to petition for reclassification under P 8.4. Cf. *Zelazny v. Lyng*, [*17] 853 F.2d 540, 543 (7th Cir. 1988) (laches applied where plaintiff inexcusably delayed and defendant suffered prejudice). Furthermore, each year's approval of § 8 contract authority in Chicago resulted in the use of the subsidies; the plaintiffs provide no suggestion regarding how to undo or remedy those tenants' voluntary uses of the subsidies. Indeed, we cannot identify the contours of the harm inflicted by HUD's annual approval, and without ascertaining the scope of the harm, fashioning relief would be arbitrary. Finally, we point out that HUD's duties under paragraph 5 of the decree ended when the 7100 target was reached, see Decree P 5.1, including the limitations imposed by P 5.8.1.

V. Conclusion

For the reasons explained above, we deny the plaintiffs' motion to modify the judgment order against CHA; grant HUD's motion to terminate the consent decree while retaining jurisdiction over the plaintiffs' attorneys' fees petition; deny the plaintiffs' motion to declare that HUD has a continued obligation for FY1997; and deny the plaintiffs' motion to enforce P 5.8.1. It is so ordered.

MARVIN E. ASPEN

United States District Judge

Dated 8/26/97

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.)

Plaintiffs,)

v.)

No. 66 C 1459

CHICAGO HOUSING AUTHORITY,)

Defendant.)

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

Nearly thirty years ago, United States District Judge Richard B. Austin entered a judgment order against the Chicago Housing Authority (the CHA) with the hopes of correcting the effects of that agency's unconstitutional public housing site selection and tenant assignment procedures. *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969). Blacks then made up 90% of the CHA's tenant base, but the CHA had deliberately restricted the number of blacks who could live in the four housing projects which were located in predominantly white areas, to the point where 93% to 99% of the tenants in those units were white. *Gautreaux v. CHA*, 296 F. Supp. 907, 909 (N.D. Ill. 1969). The other CHA units -- the 99 1 2 % which were located in predominantly black areas -- housed the rest of the CHA's tenants, 99% of whom were black. *See id.* at 910. This arrangement, ruled Judge Austin, violated the Fourteenth Amendment. *See id.* at 914. And in a comment worth recalling here for its relevance today, he wrote:

It is . . . undeniable that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and *urban renewal*. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued.

Id. (citing *Brown v. Board of Educ.*, 347 U.S. 483 (1954)) (emphasis added).

The building block of Judge Austin's remedial judgment order was the Dwelling Unit, "an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA." *Gautreaux*, 304 F. Supp. at 737. He barred the CHA from "authoriz[ing], approv[ing], or implement[ing] any plan for Dwelling Units" or from "seek[ing] any approval or request or accept[ing] any assistance from any government agency with respect thereto" unless the plan's Dwelling Units were located in conformity with the order's requirements. *Id.* at 738. The order mandated that the CHA erect three Dwelling Units in a General Area (i.e. areas in Cook County with a white population of 70% or more) for every one Dwelling Unit it erected in a Limited Area (i.e. areas with a minority population of 80% or more). *Id.* at 738-39, though it did not *require* any new construction. This ratio was later changed from 3-to-1 to 1-to-1.

In 1993, the CHA applied for and received \$50 million from the Department of Housing and Urban Development (HUD) under the auspices of the HOPE VI program (an acronym for Homeownership and Opportunity for People Everywhere). Congress created the HOPE VI program in 1992 with the goal of "empower[ing the] residents of severely distressed and obsolete public housing." S. REP. 102-356, at 70 (1992). It intended to accomplish this via a three-part plan: (1) eliminating or (in some form) replacing dilapidated public housing structures, (2) providing residents of those structures with the skills necessary to achieve self-sufficiency, and (3) instilling a sense of community activism in residents of the blighted areas. *See id.* at 71.

It is the first part which is now at issue, as the CHA believes that it must spend its HOPE VI construction funds exclusively in the "3 separately defined areas containing the community's most severely distressed projects," to which the 1992 HOPE VI appropriation refers. *See* Pub. L. No. 102-389, 106 Stat. 1579 (codified as a Note to 42 U.S.C. § 1473f). This would mean, of

course, that any construction of new public housing units would take place in the distressed areas, which, by unfortunate circumstance, are also Limited Areas as defined by the judgment order. Recognizing that the judgment order requires equal construction in the General and Limited Areas, the CHA has asked that we "clarify" the judgment order and read it as not governing any use of HOPE VI funds.

The plaintiffs take issue with this request. They have previously pointed out to this Court that the construction of new public housing units is no longer in vogue, *see Gautreaux v. CHA*, 981 F. Supp. 1091, 1093 (N.D. Ill. 1997), and the HOPE VI money may be one of the few remaining funding sources for the construction of desegregated housing. Of course, if construction funds permanently dry up (and if the plaintiffs do not succeed in convincing us to modify the judgment order, *see, e.g., id.* at 1093-94), then this particular effort to desegregate public housing in Chicago will come to an end. We need not contemplate this possibility today, however, for the dilemma posed by the CHA -- that the HOPE VI program compels spending only in Limited Areas while the judgment order compels equal spending in General Areas -- rests on an illusion.

The 1992 HOPE VI authorization contemplates an "urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects," which is to be focused on "up to 3 separately defined areas containing the community's most severely distressed projects." Pub. L. No. 102-389. This does not, however, amount to a

The CHA attempts to draw a distinction between replacement construction -- construction which does not add to the agency's aggregate housing stock -- and wholly new construction; the CHA argues that the injunction only governs the latter. This distinction may, as the CHA claims, have great significance to other housing decisions, but the judgment order does not differentiate between replacement construction and new construction: it speaks simply of Dwelling Units "initially make available to and occupied by a low-income, non-elderly family, subsequent to the date hereof." *Gautreaux*, 304 F. Supp. at 737. Housing units constructed with HOPE VI funds obviously qualify, and the use of such funds for the ends of desegregation is in keeping with the sweeping nature of the judgment order, the terms of which are as broad as the violation which it was designed to correct.

requirement that all HOPE VI money must be spent physically within those distressed areas. One way to revitalize a distressed public housing neighborhood is to tear down some of the units there and rebuild them elsewhere, thereby lessening the concentration of public housing on the old site. See Pub. L. No. 104-134, 110 Stat. 1321 (the 1996 HOPE VI appropriation, providing funds for "replacement housing which will avoid or lessen concentration of very low-income families"); Pub. L. No. 104-204, 110 Stat. 2874 (the 1997 HOPE VI appropriation, providing for the same). HUD's HOPE VI Guidebook contemplates just such an approach, discussing "[p]ublic housing development (including on-site reconstruction *as well as construction of off-site housing*) funded by HOPE VI." Pls.' Br. Ex. D (Guidebook p. 1.D.1) (emphasis added), and the legislative history is in agreement, see S. REP. 102-350, at 73 ("The balance of the [demolished] units could be replaced through . . . traditional replacement means, including major reconstruction and *scattered-site development* [emphasis added]. . . ."). In a similar vein, the HOPE VI program also requires that some demolished public housing be replaced by Section 8 housing vouchers, see Pub. L. 103-124, which may be used without regard to the boundaries of the General or Limited Areas. See 42 U.S.C. § 1473f(r). We see no incompatibility between the HOPE VI program and the judgment order.

It is ironic that the CHA has chosen to argue that it must use the HOPE VI funds for urban renewal and to the exclusion of desegregation, for, as we observed earlier, in 1969 it attempted to characterize desegregation as a byproduct of urban renewal efforts. No matter: Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities. See *Gautreaux*, 304 F. Supp. at 741 (judgment order Article VIII); see also *Gautreaux v. Landrieu*, 498 F. Supp. 1072, 1075 (N.D. Ill., 1980) ("Difficulty in attaining racially integrated public housing shall not be further condoned. . . . The CHA must have only one concern, housing in compliance with the repeated orders of this Court, ").

We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements. It is so ordered.

MARVIN E. ASPEN
United States District Judge

Dated

2/23/58

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/12/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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BY MAIL ☐BY HAND ☐

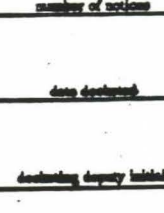
MAY 18 1998

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] CHA's motion to stay enforcement pending appeal of our order of 2/25/98, is denied.

SKADDEN, ARIS, SLATE,
MEAGHER & FLOM

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court.					Document Number
No notices required.					
☒ Notices mailed by judge's staff.					
Notified counsel by telephone.					
Docketing to mail notices.					
Mail AO 450 forms.					
Copy to judge/magistrate judge.					
GL	courtroom deputy's initials				
		Date/time received in central Clerk's Office			

ORDER

Now before us is defendant Chicago Housing Authority's motion to stay enforcement pending appeal of our order of February 25, 1998, which held that the judgment order entered in *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969), governed the CHA's use of HOPE VI funds.

Rule 62(a), the basis for this motion, provides our order "shall not be stayed . . . during the pendency of an appeal" unless we "otherwise order[]." The parties agree that the usual four injunction factors govern our analysis here: to obtain a stay, the CHA must show "(1) some likelihood of winning its appeal, (2) some likelihood of irreparable injury absent a stay, (3) that the stay would not unduly harm plaintiffs, and (4) that the stay would be consistent with the public interest." *Thomas v. City of Evanston*, 636 F. Supp. 587, 590 (N.D. Ill. 1986) (Aspen, J.); see also 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 62.06[3] (3d ed. 1997).

First. We seriously doubt that the CHA will win its appeal. Beyond our usual confidence in our own decisions, see *Thomas*, 636 F. Supp. at 590, we observe that the plaintiffs have presented to the Seventh Circuit a substantial motion to dismiss for lack of jurisdiction. The CHA's original motion to us was to clarify the injunction, and it insisted that it was not asking for a modification thereof. In fact, at oral argument, the CHA's attorney stated that "We agree that the HOPE VI new construction . . . does fall within the definition of dwelling unit, no question about it." This was, of course, our eventual holding; an exemption for HOPE VI would have required a modification of the judgment order. We therefore doubt that the Seventh Circuit's jurisdiction may be predicated on 28 U.S.C. § 1292(a)(1). See *ACORN v. Illinois State Bd. of Elections*, 75 F.3d 304, 306 (7th Cir. 1996) ("[I]nterpretations of injunctions as distinct from modifications of them are not appealable. . . , [and this] injunction has not been changed."). We also doubt that 28 U.S.C. § 1291 will suffice for appellate jurisdiction, as we think it is a stretch to say, as the CHA does (in its Seventh Circuit docketing statement with a citation to *ACORN*, *supra*), that our order "sets forth the steps that the CHA must take to comply with the Injunction." (We note as an aside that the Seventh Circuit will, of course, decide its jurisdiction for itself.)

Second. We question whether the CHA will suffer any irreparable injury. The only claimed injury which does not spring from wholesale speculation is that the CHA will have to devote time and resources to bringing itself into compliance with our order, but the CHA's Executive Director has stated that "All Judge Aspen said is that locational restrictions apply as we have assumed that they do throughout. We asked that they did not, and he said no, they do. Judge Aspen did not break new ground, he maintained the status quo." Pls.' Resp. Ex. A (emphasis added). It seems that the CHA has been planning its HOPE VI expenditures on this basis all along.

Third. The requested stay would harm the plaintiffs. As they argue, they have waited decades for the desegregation of public housing, and we see no reason to extend that period any longer than necessary.

Fourth. A stay would not be consistent with the public interest. The public's interest here is in the desegregation and modernization of its public housing, and nothing in the CHA's submission has convinced us that our order is inconsistent with those goals.

For the foregoing reasons, we deny the CHA's motion to stay. It is so ordered.

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/19/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Receiver's emergency motion for entry of order implementing CHA's duty of cooperation.

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Motion is granted.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court.			number of notices date dictated dictating deputy initials date mailed notice mailing deputy initials	NOTICE TO: [] FROM: [] DATE: [] RE: []
☐ No notices required.				
☐ Notices mailed by judge's staff.				
☒ Notified counsel by telephone.				
☐ Docketing to mail notices.				
☐ Mail AO 450 form.				
☐ Copy to judge/magistrate judge.				
GL	courtroom deputy's initials	Date/time received in central Clerk's Office		

ORDER

Now before us is the "Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation." In it the Receiver asks that we order the CHA to cooperate with the Receiver and other parties in preparing and filing a 1998 HOPE VI application with HUD and to provide the Receiver with the information it needs to proceed with this project.

This motion is the outgrowth of three of our earlier decisions. In the first, issued August 14, 1987, we appointed the Receiver on the joint motion of the plaintiffs and the CHA. We gave the Receiver "all powers of CHA" with regard to the development and administration of the *Gautreaux* scattered site program, which included "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. In the second, issued February 23, 1998, we held that the *Gautreaux* "judgment order governs the CHA's use of HOPE VI funds" distributed by HUD. Our conclusion was compelled by the clear language of the judgment order and our view that there was no conflict between its requirements (as later amended) and those of the HOPE VI program. The CHA appealed this order. In the third, issued May 12, 1998, we denied the CHA's motion to stay our February 23 order pending appeal. The CHA filed today a motion to stay with the Seventh Circuit.

The CHA, in open court this morning, made clear that the basis for its objection to the Receiver's motion is its view that our February 23 order did not directly address the Receiver's status with regard to the HOPE VI program and that the Receiver's status is not obvious from our prior orders in this case. We disagree. HOPE VI is a "non-elderly public housing development program[] . . . authorized during the pendency" of the *Gautreaux* litigation, and it therefore fits entirely within the Receiver's jurisdiction. On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver. Moreover, the Receiver has indicated its willingness to work with CHA to ensure that the 1998 HOPE VI proposal meets the requirements of both the HOPE VI program and the *Gautreaux* judgment order, as well as to assist in making that proposal as competitive as possible. The Receiver even indicated its interest in the CHA's thoughts on decisions which are ultimately the Receiver's responsibility. We hope that this open-minded and enthusiastic offer of cooperation sets an example for everyone involved in this case.

We denied the CHA's motion for stay pending appeal, and unless and until the Seventh Circuit issues its own stay or reverses our underlying order, the parties must comply with our orders. Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

It is so ordered.



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/19/1998
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
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- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Receiver's oral motion for permission to participate in pending or future appeals concerning the relationship between the Hope VI Program and this court's orders is granted.

- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐	No notices required, advised in open court.		3	Document Number	
☐	No notices required.		number of notices		
☒	Notices mailed by judge's staff.		date docketed		
☐	Notified counsel by telephone.		docketing deputy initials		
☐	Docketing to mail notices.		5/20/1998		
☐	Mail AO 450 form.		date mailed notice		
☐	Copy to judge/magistrate judge.		GL		
GL		courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/20/1998
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	☐	Filed motion of [use listing in "Motion" box above.]
(2)	☐	Brief in support of motion due _____.
(3)	☐	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	☐	Ruling/Hearing on _____ set for _____ at _____.
(5)	☐	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	☐	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	☐	Trial[set for/re-set for] on _____ at _____.
(8)	☐	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	☐	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] ☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
(10)	☒	[Other docket entry] Plaintiff's oral motion that the court order the defendant, CHA to produce documents is granted. The defendant, CHA, is ordered to allow Mr. Alexander Polikoff and Barry Miller to inspect Hope VI Applications forthwith. Defendant's oral motion to stay this order is denied.
(11)	☐	[For further detail see order (on reverse side of/attached to) the original minute order.]

☐	No notices required, advised in open court.		3	Document Number
☐	No notices required.		number of notices	
☒	Notices mailed by judge's staff.		date docketed	
☐	Notified counsel by telephone.		docketing deputy initials	
☐	Docketing to mail notices.		5/20/1998	
☐	Mail AO 450 form.		date mailed notice	
☐	Copy to judge/magistrate judge.		GL	
GL		courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/21/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
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- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Plaintiffs' motion for further relief is denied as moot.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court.		4	Document Number
No notices required.		number of notices	
☒ Notices mailed by judge's staff.		date docketed	
Notified counsel by telephone.		docketing deputy initials	
Docketing to mail notices.		5/21/1998	
Mail AO 450 form.		date mailed notice	
Copy to judge/magistrate judge.		GL	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

ORDER

Now before us is the plaintiffs' "Motion for Further Relief." In it they register their concerns with the CHA's conduct vis-à-vis the Receiver and ask that we enter a detailed order directing the CHA to take certain steps to rectify the situation.

We do not believe that such an order will be necessary. In an order issued on May 19, in response to an emergency motion from the Receiver, we wrote that "we [have previously] held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the Gautreaux judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver." Accordingly, we held that the parts of the HOPE VI program discussed in our opinion of February 23 "fit[] entirely within the Receiver's jurisdiction." (We do not wish to be misunderstood; our order neither gave sole authority over HOPE VI in Chicago to the Receiver nor gave the Receiver sole authority to prepare Chicago's 1998 HOPE VI application, as a motion filed earlier today by the CHA states. See CHA's Emergency Mot. to Stay Order Pending Appeal at ¶¶ 13, 14, 27.) Many of the problems detailed in the plaintiffs' motion concern the CHA's HOPE VI-related activity, and those problems were addressed by our prior order.

To the extent that the plaintiffs' motion raises issues unrelated to the Receiver's role in the HOPE VI program, we think it best that the Receiver bring those issues to this Court's attention if it so chooses.

It is so ordered.

A handwritten signature in black ink, appearing to be "JMS", is written in the center of the page.

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/22/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
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- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] CHA's emergency motion to stay order of May 19, 1998, pending appeal is denied.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐	No notices required, advised in open court.			Document Number
☐	No notices required.		number of notices	
☐	Notices mailed by judge's staff.		date docketed	
☒	Notified counsel by telephone.		docketing deputy initials	
☐	Docketing to mail notices.		date mailed notice	
☐	Mail AO 450 form.		mailing deputy initials	
☐	Copy to judge/magistrate judge.			
GL		courtroom deputy's initials	Date/time received in central Clerk's Office	

ORDER

Now before us is the CHA's "Emergency Motion to Stay Order of May 19, 1998, Pending Appeal." In that order we held that the terms of the receivership order in this case clearly encompassed construction paid for by HOPE VI dollars and that the CHA was duty-bound to cooperate with the Receiver on HOPE VI matters, specifically the CHA's 1998 HOPE VI application, insofar as those matters fell within the Receiver's delegated duties.

We first observe that the CHA's motion rests at least in part on untenable overreadings of our May 19 order. That order did not "turn over all of the CHA's powers and responsibility for the 1998 HOPE VI application to the Receiver." CHA's Mot. ¶ 13; *see also id.* ¶ 14. It merely stated that the Receiver would have to be involved (i.e. that the Receiver and the CHA would have to cooperate) in preparing the application in light of the fact that the receivership order gave the Receiver "all powers of CHA" with regard to the development and administration of "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. (Of course, if the 1998 HOPE VI application will not request funds for the development of new housing, the Receiver would not need to be involved with it.) We do not believe that this order may fairly be characterized as a new "mandatory injunction," CHA's Mot. ¶ 13, since it does nothing more than reaffirm that the receivership order means what it already says. Also, the CHA's position that we committed an error by not making factual findings, *see* CHA's Mot. at pp. 5-7, has the situation in reverse: only if we modified or terminated the receivership order (and the CHA has repeatedly threatened to make a motion to that effect but has not yet made one) would factual findings be necessary.

We do not believe that the traditional four "stay" factors favor the CHA. *See Thomas v. City of Evanston*, 636 F. Supp. 587, 590 (N.D. Ill. 1986) (Aspen, J.). First, we doubt that the CHA will win its appeal. It has never offered any argument as to how the plain language of the receivership order could be interpreted to give the Receiver no role in HOPE VI-funded development, and we are aware of none. The CHA's only hope of achieving that outcome is to move for a modification (or termination) of the receivership order, but it has not made such a motion, it has not presented any evidence justifying such a motion, and a modification of the receivership order is not before the appellate court. Second, we doubt that the CHA will suffer irreparable injury if we do not issue a stay. The Receiver and the plaintiffs, responding to the CHA's motion, presented substantial, credible evidence that the CHA's prior HOPE VI applications acknowledged the role of the Receiver and of the *Gautreaux* requirements in proposed HOPE VI development projects. Also, the HUD representative present at the February oral argument stated that from HUD's perspective compliance with the *Gautreaux* requirements was a "non-issue," so we do not credit the CHA's claim that it will not be able to prepare a competitive HOPE VI application if the Receiver is involved. Third, a stay may harm the plaintiffs, for if the CHA is permitted to submit a HOPE VI application without the Receiver's input, that application may violate the *Gautreaux* requirements and cause further unnecessary delay in the desegregation of Chicago public housing. Fourth, a stay would not be consistent with the public interest. We know of no possible justification for the presumption offered by the CHA on this issue -- that since it is a public agency, its interests are the public's interests, for under this logic the original segregation of Chicago public housing was in the public interest. The public's interest is in the speedy desegregation and modernization of its public housing, and nothing in the CHA's motion convinces us that our order is inconsistent with these goals.

Accordingly, the CHA's motion for a stay pending appeal is denied. It is so ordered.



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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Business and Professional
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For Defendant CHA: SKADDEN ARPS SLATE MEAGHER & FLOM
BY: MS. SUSAN GETZENDANNER
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For Defendant Department
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MR. JOHN A. JENSEN
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Chicago, Illinois 60604)

ALSO PRESENT: MR. MICHAEL SHAKMAN

MS. MARY M. GALLAGHER
Official Court Reporter
219 South Dearborn Street
Room No. 2524A
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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.

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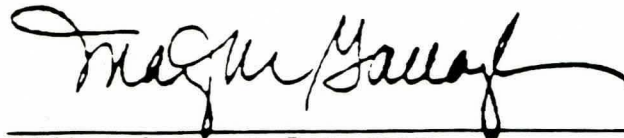
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Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division

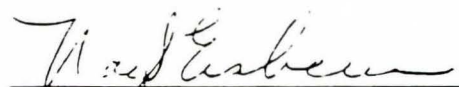
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Date

CERTIFICATE OF SERVICE

I, Nancy Eisenhauer, an attorney, hereby certify that on Wednesday, April 8, 1998, I caused a copy of the foregoing DESCRIPTIVE LIST OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL to be served by U.S. Mail on counsel listed below:

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Nancy S. Eisenhauer

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
) May 19, 1998
SAMUEL R. PIERCE, et al.,) 9:30 o'clock a.m.
)
Defendants.)

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

APPEARANCES:

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

2 MS. EISENHAUER: Good morning, your Honor. Nancy
3 Eisenhower for CHA and Joseph Shuldiner.

4 THE COURT: Good morning.

5 MR. SHAKMAN: Good morning, Judge. Mike Shakman and
6 Eddie Feldman for the Receiver.

7 THE COURT: Good morning.

8 MR. POLIKOFF: Good morning, your Honor.

9 THE COURT: Mr. Polikoff.

10 MR. SHAKMAN: Judge, this is the motion by the
11 Receiver for emergency relief in connection with the HOPE VI
12 application which we hope to file in cooperation with the CHA,
13 if possible, by June 29, which is the deadline established by
14 HUD for submission of applications.

15 We view it as an emergency because we have been unable
16 to obtain a response from the CHA to our request for
17 cooperation and information needed to move forward with the
18 application.

19 The City of Chicago has indicated that it supports the
20 principle of a joint application, will work with us on it.
21 There is up to \$35 million in funding for housing and for other
22 services that's potentially available.

23 Mr. Levin and his colleagues, Valerie Jarrett, who's
24 in court today, and the others of the Receiver's staff are most
25 concerned that the opportunity to obtain this kind of funding

1 for the city not be lost because of lack of cooperation, and
2 for that reason we have filed the motion.

3 I could go into greater detail but I know you read
4 these things.

5 THE COURT: Any response?

6 MS. EISENHAUER: First two factual matters -- or one
7 factual matter.

8 We're not aware of a response from the City of Chicago
9 to this. I'm not saying it hasn't happened; I just want you to
10 know the CHA has not been informed of that.

11 More importantly, we filed a motion to stay in the
12 Seventh Circuit this morning. I --

13 THE COURT: Has it been granted?

14 MS. EISENHAUER: We filed it this morning. We --

15 THE COURT: All right. Well, the case is still here,
16 so I'm not really concerned about that.

17 MS. EISENHAUER: I'm just informing you we did. And
18 in connection with that motion to stay we filed an affidavit of
19 Joe Shuldiner in which he states the CHA will not be able to
20 prepare a timely or competitive application before the June
21 28th deadline if it is forced to work with the Receiver, and
22 because of that the CHA and the City of Chicago may lose up to
23 \$35 million worth of funding.

24 Second of all, the issues raised by the Receiver here
25 are the same issues raised by the plaintiffs in the motion for

1 further relief, which we believe requires briefing on the scope
2 of the receivership order and also hearing from Mr. Shuldiner
3 to present his views on the topic and his description of his
4 actions.

5 And third, in the response to the motion to clarify
6 that the plaintiffs filed with this Court, they wrote that the
7 applicability of the judgment order cannot be determined
8 definitely at the HOPE VI application stage; that is at page 8
9 of their response. Because of that statement and for other
10 reasons, we would argue that this injunction is too vague to be
11 enforced against the CHA in this context.

12 MR. SHAKMAN: I would like to briefly respond, unless
13 Mr. Polikoff wants to say something?

14 MR. POLIKOFF: No.

15 MR. SHAKMAN: First of all, I want to note that we
16 have not received a response to Dan Levin's letter to the
17 Receiver that he wrote on May 5th or to my letter to
18 Mr. Butler, general counsel of the CHA, that I wrote last
19 Friday. The only response is the filing of a motion for a
20 stay, which indicates that the CHA, as counsel has said, has
21 concluded that it can't work with the Receiver. I don't
22 understand why that couldn't have been communicated by a phone
23 call to Mr. Levin or a letter to me or a phone call to me.

24 So I want to raise a question because it seems to me
25 that the fact that that conclusion had been reached but not

1 communicated to us illustrates in part some of the problems we
2 are having in our relationship with the CHA. We were entitled
3 to be told that and we shouldn't have had to file a motion with
4 this Court to receive that information.

5 In terms of the connection between the motion for
6 further relief and this motion, all I can say is Mr. Polikoff,
7 representing the plaintiffs, does what he deems appropriate
8 representing his clients.

9 Mr. Levin operates as the Court's agent. He has
10 duties the Court has entrusted to him and he is attempting to
11 carry those out. Mr. Levin, as I am sure the Court knows, is
12 not by nature a litigious man or a confrontational man. His
13 staff shares his views. We are here only because nothing else
14 seems to hold promise for moving this process forward.

15 In terms of the application of the judgment order for
16 HOPE VI, we are here seeking to enforce the 1987 order
17 appointing the Receiver and the cooperation requires that that
18 order imposes upon the CHA.

19 Whether or not the HOPE VI order is stayed, no effort
20 has been made to stay the 1987 order appointing the Receiver,
21 no effort is being made to stay the obligations of the CHA to
22 cooperate with the Receiver as specified in that order.

23 So for those reasons, I would suggest that Ms.
24 Eisenhower's comments really aren't addressed in the merits of
25 this motion.

1 MS. EISENHAUER: May I respond to that?

2 THE COURT: Sure.

3 MS. EISENHAUER: First, on the point of has the CHA
4 advised the Receiver that they can't work with them on these
5 applications, the CHA believes it has been advising the
6 Receiver of that for several months now.

7 Part of the reason the CHA believes that it will not
8 be able to file a timely application, that was not simply
9 because it cannot work with the Receiver but because of the
10 information that would need to be compiled and the fact that it
11 appears that the Receiver and the CHA have different views on
12 what HOPE VI requires and what the Gautreaux injunction
13 requires. And for that reason any negotiation would not come
14 to anything except for the same disputes that have been going
15 on in this Court repeatedly.

16 Second, I understand it's the Receiver's motion. My
17 only point with regard to the motion for further relief is that
18 it raises the same underlying issues, and one of those issues
19 is whether the 1987 order applies to HOPE VI, whether this
20 Court's February 25th order envisions that the 1987 order
21 necessarily applies.

22 As you know, the CHA has argued from the beginning
23 that the conclusion that you reached on February 25th does not
24 necessarily lead to the conclusion that the Receiver is drawing
25 today here with regard to the 1987 order. And again, we've

1 raised that issue repeatedly in the past month, at least.

2 MR. SHAKMAN: One comment, if the Court -- if counsel
3 is done?

4 MS. EISENHAUER: Yes.

5 MR. SHAKMAN: If the CHA believes that the August 14,
6 1987 order appointing the Receiver should be modified, the CHA
7 has been free to make that motion for these many months that
8 this issue has been percolating in this Court and it's elected
9 not to make that motion. Therefore, the Court has not had an
10 opportunity to address such a motion.

11 So we, as the Receiver, are operating under the duties
12 imposed upon us by the Court and we willingly accept it in
13 trying to carry out those duties.

14 THE COURT: Okay. Mr. Polikoff, do you have anything
15 you want to say?

16 MR. POLIKOFF: No, your Honor.

17 THE COURT: Well, I am concerned that Mr. Shuldiner
18 feels that he can't go along with the Receiver. I find that
19 disturbing and I find that surprising because everyone else
20 involved in this litigation through the years, other than
21 Mr. Shuldiner, has had no problem getting along with the
22 Receiver.

23 But my focus is not on whether he can get along with
24 the Receiver or not. My focus is whether or not everyone,
25 including the CHA, complies with the orders of this Court, the

1 orders that I have issued thus far and the orders that I will
2 issue in the future. I expect Mr. Shuldiner to comply with
3 those orders, whether or not he feels that it's an impediment
4 to follow my orders because he can't get along -- or feels he
5 can't get along with the Receiver.

6 I will issue an order, and as long as the Seventh
7 Circuit has not changed my order it's a viable order and I
8 expect Mr. Shuldiner to comply with it. If he does not comply
9 with it, I will do what I have to do to make him comply with
10 it. I hope you will give him that message.

11 Thank you.

12 MS. EISENHAUER: Your Honor, could I ask a question?

13 I just want to clarify that it is not that
14 Mr. Shuldiner has some problem with the Receiver, refuses to
15 work with him on a personal level. It is that he believes and
16 the CHA believes that the 1997 order does not -- and the
17 February 25th order does not necessarily lead to the conclusion
18 that the CHA must turn over authority for this program to the
19 Receiver, and that's the basis for the objection.

20 THE COURT: Well, if that belief conflicts with the
21 orders of this Court, then Mr. Shuldiner will have to opt to
22 follow the orders of this Court. You know, we're not in a
23 lawless society where somebody has their own views as to the
24 law or the construction of an agreement and can follow those if
25 there is a Court order to the contrary.

1 Mr. Shuldiner is not reluctant to appeal my orders and
2 I hold no animosity toward anyone who appeals one of my orders.
3 But until and unless an order of the Court has been overturned
4 by a reviewing court, I expect that order to be followed,
5 regardless of Mr. Shuldiner's personal views as to how he
6 thinks the law ought to operate. And please convey that to
7 him.

8 Thank you.

9 MR. SHAKMAN: Your Honor, I have one other request, if
10 I may.

11 It's fairly apparent that the proceedings are under
12 way, that additional appeals may be taken to the Seventh
13 Circuit. There is law in the Seventh Circuit that the Receiver
14 needs the approval of the appointing court to participate in
15 the appellate process. We would, therefore, ask permission to
16 participate in any pending or future appeals from this
17 collection of issues.

18 THE COURT: All right. I will enter an order to that
19 effect.

20 MR. SHAKMAN: Thank you, Judge.

21 MS. EISENHAUER: Your Honor, can I make one more
22 comment?

23 I would just like to say that Joseph Shuldiner
24 certainly intends to comply with this Court's orders. He does
25 have obligations under state statutes and under -- that he's

1 already made to HUD, and he believes that the orders as
2 interpreted by the Receiver are in conflict with those other
3 obligations that he has.

4 Second of all, I certainly understand your point, and
5 Joseph Shuldiner does as well, that he must comply with orders
6 of this Court. We do not read any of the orders of this Court
7 to require CHA to turn over responsibility for this program to
8 the Receiver.

9 THE COURT: If there are any problems with the
10 construction of any of my orders, obviously it will be brought
11 to my attention and I will make it perfectly clear for
12 Mr. Shuldiner.

13 MS. EISENHAUER: We believe that we brought that issue
14 to your attention in connection with the briefing on the motion
15 for further relief.

16 MR. POLIKOFF: Your Honor, might I add one word if Ms.
17 Eisenhower is finished?

18 THE COURT: Yes.

19 MR. POLIKOFF: The rhetoric of turning over this
20 program to the Receiver that's been used in the briefs and
21 responded to, is not an accurate characterization of what is
22 involved, and I didn't want my silence to --

23 THE COURT: I agree with you, Mr. Polikoff, and I
24 should have said something as well. That's Mr. Shuldiner's
25 pique at having to follow the orders of the Court and that's

1 the language he uses.

2 Go ahead. I didn't mean to interrupt.

3 MR. POLIKOFF: No. That's all I wanted to say.

4 MR. SHAKMAN: Your Honor, I will second that.

5 The whole thrust of Mr. Levin's approach to this issue
6 and Mr. Shuldiner has been that this should be done on a
7 cooperative, joint basis, not that Mr. Levin should scoop up
8 all the responsibility and run away from it and not permit the
9 CHA to participate.

10 THE COURT: Mr. Levin has never done anything in the
11 past, nor have I found any of his actions in the recent
12 brouhaha to indicate that he wants to usurp any of
13 Mr. Shuldiner's authorities.

14 On the contrary, I find that Mr. Shuldiner has thus
15 far indicated that he would rather contest every aspect of the
16 relationship between the Receiver rather than attempt to
17 cooperate. And to the extent that I can, I will straighten it
18 out when I rule on the motions.

19 MR. SHAKMAN: Thank you.

20 THE COURT: Thank you.

21 (Which were all the proceedings had at the hearing of
22 the within cause on the day and date hereof.)
23
24
25

1 CERTIFICATE

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

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7 Official Court Reporter
8 U.S. District Court
9 Northern District of Illinois
Eastern Division

5/20/58
Date

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

DOROTHY GAUTREUX, et al.,) Docket No. 66 C 1459
) No. 66 C 1460
Plaintiffs,)
)
vs.) Chicago, Illinois
) May 20, 1998
SAMUEL R. PIERCE, et al.,) 2:00 o'clock p.m.
)
Defendants.)

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

APPEARANCES:

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KURTZON & SCHLIFKE
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MS. NANCY EISENHAUER
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ALSO PRESENT:

MS. VALERIE JARRETT

MS. MARY M. GALLAGHER
Official Court Reporter
219 South Dearborn Street
Room No. 2524A
Chicago, Illinois 60604
(312) 663-0049

MARY M. GALLAGHER, CSR

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

2 MS. GETZENDANNER: Good afternoon, Judge.

3 THE COURT: Good afternoon.

4 MS. GETZENDANNER: Susan Getzendanner and Nancy
5 Eisenhower for the movants, and Mr. Butler is here from the
6 CHA.

7 If you have read the papers, Judge, we will rely on
8 our papers.

9 MR. POLIKOFF: Alex Polikoff for the plaintiffs.

10 MR. MILLER: Barry Miller and Edward Feldman for the
11 Receiver. Ms. Jarrett is here on behalf of the Receiver.

12 THE COURT: Proceed. It's your motion.

13 MS. GETZENDANNER: Judge, I said, if you have read the
14 papers, we will rely on them.

15 THE COURT: I'm sorry. I didn't hear you.

16 Any response?

17 MR. POLIKOFF: Yes, your Honor.

18 Maybe we will defer to the Receiver for starters but
19 reserve the opportunity.

20 THE COURT: All right.

21 MR. MILLER: Your Honor, we would like an opportunity
22 to respond in writing by either first thing Friday or the end
23 of the day tomorrow. The reason for that is there are factual
24 errors in the CHA's filing that, in our view, cry out for
25 correction, and we would like to put that in the record here

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1 before it goes up to the Seventh Circuit. It may help the
2 Court of Appeals if your Honor has made factual findings on
3 some of these issues and that might help in their understanding
4 of this matter.

5 Your Honor ought to know that they have filed this
6 afternoon an expedited motion in the Seventh Circuit for
7 expedited consideration of their motion for a stay before you
8 have ruled on this motion for a stay.

9 MS. GETZENDANNER: No, no.

10 MS. EISENHAUER: We did not.

11 MR. MILLER: You just served it?

12 MS. GETZENDANNER: We just gave it to you as a
13 courtesy.

14 MR. MILLER: Okay. Thank you. I apologise.

15 Some of the points we would like to make go to the
16 ability of the Receiver to cooperate and accomplish the matters
17 that have to be accomplished. And if Ms. Jarrett could address
18 you for a minute to inform the Court of some of the points we
19 would like to put in more detail in writing, we thought that
20 would be useful.

21 MS. GETZENDANNER: Judge, we did file notice of
22 appeal, so the order is on appeal and we view it as final.

23 THE COURT: My order of yesterday is on appeal?

24 MS. GETZENDANNER: Yes.

25 THE COURT: Ms. Jarrett?

MARY M. GALLAGHER, CSR

1 MS. JARRETT: Thank you, your Honor. Good afternoon.

2 Four quick points, your Honor. First I wanted to
3 inform you that last Friday the Habitat Company
4 representatives, Alex Polikoff and representatives from the
5 City of Chicago, had a meeting that I would describe as very
6 constructive, focusing on this HOPE VI application and looking
7 at the ABLA area, one where the city is currently engaged in a
8 very expansive redevelopment program, as an area that we should
9 examine for potential for the HOPE VI application. So on a
10 positive note, that was a very constructive meeting.

11 Second point, at that meeting representatives from
12 Habitat were informed that a meeting was scheduled for
13 yesterday between the city and CHA, a meeting that Habitat was
14 specifically not invited to attend, again to focus on the HOPE
15 VI application for ABLA.

16 We understand that at the meeting yesterday, when your
17 order was received by Joe Shuldiner, he terminated the meeting
18 and broke off discussions with the city on the ABLA
19 application.

20 And the final point I would make this afternoon -- or
21 this morning, rather, I had a phone call from Commissioner
22 Stash (phonetic), the Commissioner of Housing, inviting Mr.
23 Levin and I to attend a meeting this Friday, one to which he
24 was also inviting Joe Shuldiner, to see if there was a way that
25 the city, Habitat and the CHA could work together to prepare

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1 this application.

2 On behalf of Habitat, we certainly are very interested
3 -- we are completely confident that we can prepare a
4 competitive application with the city's involvement and also
5 with the involvement of the CHA. So we would obviously like to
6 work collaboratively with both the city and the CHA.

7 MR. MILLER: Thank you, your Honor.

8 THE COURT: Mr. Polikoff?

9 MR. POLIKOFF: Yes, your Honor.

10 I want to agree with the Receiver's request now on
11 behalf of the plaintiff. Although this is primarily the
12 Receiver's motion for cooperation, it's obvious that positions
13 that the plaintiffs have taken and continue to take, both
14 before your Honor and before the Seventh Circuit, are
15 implicated.

16 We view -- I say this with some regret. We view the
17 presentations, the multiple presentations that the defendants
18 have now made, both before your Honor and the Seventh Circuit,
19 as factually, substantially off base. Things are said
20 repetitively of a factual nature, not of a legal, interpretive
21 nature, that are simply wrong, both about the history of the
22 case and about the current situation.

23 We would request formally, if desirable, for those
24 errors, those misstatements, to be pointed out and to have them
25 pointed out in the record before your Honor.

MARY M. GALLAGHER, CSR

1 It's clear to everybody that the whole ball of wax is
2 going on up to the Seventh Circuit. We now have notices of
3 appeal with respect to two orders that are on file, and your
4 Honor has pending the plaintiffs' motion for further relief.

5 CHA takes the position that sub silentio a portion of
6 that motion was granted by your order yesterday. Unlike some
7 other CHA positions, this one may be accurate. It might well
8 be that that further relief motion ought to be disposed of as
9 promptly as your Honor is able so we avoid the possibility of
10 successive appeals and get it all up there together. But
11 that's, of course, for you to consider and decide.

12 Regardless of that, the desirability of getting in
13 the record before your Honor at least our view of what the
14 factual misstatements are, something you can have before you
15 when you make your ruling on the pending motion and before it
16 gets upstairs, seems to me to be pretty clear.

17 We are not talking delay. As Mr. Miller has indicated
18 -- and we would agree with the same time schedule -- if you
19 gave us until, say, Friday morning -- this is Wednesday
20 afternoon, so we're talking about less than 48 hours. We're
21 certainly not trying to delay the CHA. And I think it would be
22 beneficial to everybody if that opportunity to correct the
23 record, so to speak, were afforded to us and make a
24 presentation before you prior to the next ruling.

25 THE COURT: Well, I have no problem with that. I do

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1 want to tell you some of my time constraints. I am leaving the
2 country on Saturday but, strangely enough, am coming back on
3 Wednesday. I've just got to go to London for a couple of days,
4 but I'll be back, probably jetlagged, Wednesday afternoon in my
5 chambers. That doesn't give us a lot of time.

6 Would you want to respond to whatever they're filing?

7 MS. GETZENDANNER: Judge, we would view the order as
8 you entered it yesterday as final. We filed a notice of
9 appeal. We think a hearing on factual errors in presentations
10 is not necessary.

11 THE COURT: What they want to do is respond --

12 MS. GETZENDANNER: They want to reopen the record.

13 THE COURT: -- to your motion of today. Do you want
14 to reply to their response?

15 MS. GETZENDANNER: Well, Judge, if they are permitted
16 to file a response, I don't think that would prevent us from
17 going upstairs and seeking a stay today. But, yes, if they are
18 permitted to file a response, we would want to reply to it.

19 THE COURT: All right.

20 MR. POLIKOFF: To make it clear, the response that we
21 would like time to file is to your pending motion for a stay
22 before Judge Aspen.

23 MS. GETZENDANNER: Judge, we were not given an
24 opportunity to respond to the Receiver's emergency motion
25 yesterday. We terminated a meeting immediately upon receipt of

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1 your order.

2 These planning sessions are in process; they have
3 nothing going on right at this moment but they are in process.
4 They are vital to the timeliness of preparing this application.
5 We cannot wait for a stay until next Wednesday. We simply
6 cannot.

7 THE COURT: Okay. Well, I will ask you to file your
8 response by the end of the business day tomorrow and serve it
9 by the end of the business day tomorrow, and I'll ask for your
10 reply, if you wish to file a reply, by 10:00 a.m. on Friday.
11 You will have a ruling before I leave.

12 MS. GETZENDANNER: Judge, we have worked all night for
13 two nights in a row, first in response to their emergency
14 motion, last night in connection with the motion to stay. I
15 don't think Ms. Eisenhower or I have it in us to stay up again
16 tonight.

17 THE COURT: That's entirely up to you. Obviously --

18 MS. GETZENDANNER: We don't feel it's reasonable.

19 THE COURT: -- if we had a lot of leisure -- but it is
20 an emergency matter, and as you said, you can't wait until
21 Wednesday and I want to resolve it before Wednesday. That's
22 the only reason why I have set this accelerated briefing
23 schedule.

24 MS. GETZENDANNER: Your Honor, the plaintiffs have
25 brought to the attention of the Court of Appeals in the

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1 pleadings that are pending there now that there are factual
2 errors in our presentation and that's briefed upstairs.

3 I don't know what kind of factual errors --

4 THE COURT: I don't either. But, you know, I
5 certainly am not going to stop them from filing what they want
6 to file in response to a written motion before me.

7 Okay. We'll keep that briefing schedule and --

8 MS. GETZENDANNER: You will rule by --

9 THE COURT: -- you will hear from me by the end of the
10 business day on Friday.

11 MS. GETZENDANNER: Very good. Thank you.

12 MR. POLIKOFF: Thank you, your Honor.

13 THE COURT: Thank you.

14 (After a brief recess, the following further proceedings
15 were had herein:)

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

17 MR. POLIKOFF: Alex Polikoff, your Honor.

18 MS. EISENHAUER: Nancy Eisenhower.

19 MR. POLIKOFF: I appreciate your coming back, and I
20 guess I will go first. In a sense, this is my motion.

21 Last night I called Nancy Eisenhower, one of the
22 attorneys for CHA, and said that I would like to look at copies
23 of the CHA applications for the HUD NOFA grants which are
24 referred to time and time again in the papers and which I
25 believe I have seen in the distant past but in the context of

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1 the current papers needed to examine again. She said, to the
2 best of my recollection, that she would arrange for that but
3 that she had to talk to Jerome Butler, the general counsel of
4 CHA, because the documents were in his possession, not hers.

5 I spoke to her again this morning about that, among
6 other things, and received the same answer. It was a cordial
7 and responsive answer. It was a question, as I understood it,
8 of time and making the arrangements and not a question of
9 refusal to allow me to either have copies or look at the
10 documents. And I offered, if necessary, given the exigency of
11 the time, to go over to Mr. Butler's office and look at the
12 documents, and Ms. Eisenhower responded she hoped that that
13 wouldn't be necessary.

14 In the course of this afternoon's proceedings, I again
15 renewed the request in the presence of Mr. Butler, and he, too,
16 indicated responsiveness but said that he had to call the CHA
17 employee and, indeed, as I understood it, tried to on the
18 telephone get in touch with the CHA employee who would be the
19 one to make the documents available to me.

20 We all went up together just a few minutes ago to the
21 Seventh Circuit at the request -- or invitation of the CHA
22 attorneys. They wished to present to either the clerk or the
23 Judge, if the Judge would hear them, a motion for a stay.

24 The papers were filed up there, as I understand it.
25 In the course of our conversations in the Seventh Circuit

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1 clerk's anteroom Ms. Getzendanner said, we are not going to
2 give you the documents, or words to that effect.

3 She gave an explanation that I didn't fully
4 understand, but it had something to do with our not treating
5 this as an emergency since we wanted time, as your Honor has
6 given us until tomorrow evening, to respond and, therefore, the
7 documents would not be provided to us. At least that's my
8 understanding of what she said.

9 We said that we, under those circumstances, would have
10 to ask your Honor to intervene because we do want and feel we
11 need to look at these documents before tomorrow evening. And
12 we came down here, asked your Honor if you would hear us and
13 your secretary said you would. And the CHA attorneys who at
14 first, we understood, had left the building and would not be
15 here, reversed course or changed their mind and Ms. Eisenhower
16 is indeed here.

17 Under those circumstances, I would move orally that
18 your Honor first invite, if you will, and, if necessary, order
19 the CHA attorneys to either produce or allow us to inspect no
20 later than 10:00 o'clock tomorrow morning the applications for
21 the HOPE VI -- responsive to the HOPE VI NOFAs that are
22 referred to in the CHA documents that have been filed with your
23 Honor.

24 MS. EISENHAUER: Your Honor, just a few facts.

25 We didn't leave the building. They asked us to come

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1 down; we said we weren't coming down with them and told the
2 minute clerk that we were available and here I am.

3 Second, I did talk to Mr. Polikoff about making them
4 available. I told him that they are huge documents, they are
5 at the CHA's offices and to copy them is impractical. He did
6 ask Jerome Butler about that this afternoon and Jerome said, do
7 you want to come over to the offices. I don't think that's
8 possible today; I'll call someone.

9 Mainly what I would like to say is, we have public
10 documents that have been available since 1992 and 1996. We
11 asked Mr. Polikoff if he needed them to respond tomorrow. He
12 said, for that, along with many other reasons, or something to
13 that effect.

14 So we say that we do not need to turn them over. They
15 have been available between six and two years to be looked at.

16 THE COURT: You say they have been available and you
17 don't want to turn them over. I don't understand it.

18 MS. EISENHAUER: They are public documents that have
19 been available since 1992 and 1996.

20 THE COURT: Well, if they're public documents --

21 MS. EISENHAUER: We don't have copies of them that we
22 could turn over.

23 THE COURT: But he can look at them?

24 MS. EISENHAUER: They would have to come to our
25 offices and --

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1 THE COURT: Do you have any problem with that, Mr.
2 Polikoff?

3 MR. POLIKOFF: No. In fact, as I said -- I think I
4 said I offered to do that.

5 THE COURT: All right. Why don't --

6 MS. EISENHAUER: We are not prepared at this time to
7 have the plaintiffs come in to the offices and supervise them
8 right now.

9 THE COURT: Why do you have to supervise them?

10 MS. EISENHAUER: That's what we have been telling them
11 for the past few days.

12 THE COURT: Why do you have to supervise them?

13 MS. EISENHAUER: I think that's pretty obvious.

14 THE COURT: Are you concerned they're going to steal
15 the documents?

16 MS. EISENHAUER: No, but we want to be there.

17 THE COURT: I take it you need the documents to
18 respond to the motion?

19 MR. POLIKOFF: Correct, your Honor.

20 THE COURT: All right. I am going to order that you
21 allow Mr. Polikoff to inspect the documents forthwith. He will
22 go over to your offices right now and you have them available.

23 MS. EISENHAUER: Okay. Then I would like to ask you
24 to stay this order.

25 THE COURT: Pardon?

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1 MS. EISENHAUER: I'm asking you to stay that order.

2 THE COURT: I will deny your motion to stay.

3 MR. MILLER: Your Honor, if I could just note for the
4 record, Ms. Jarrett informs me we requested copies of some, if
5 not all, of those documents previously, almost two years ago;
6 they were never provided.

7 THE COURT: All right. Do you want to go along with
8 Mr. Polikoff?

9 MR. MILLER: One of us from our office would, your
10 Honor.

11 THE COURT: All right. That will be part of the order
12 as well.

13 MS. EISENHAUER: And the motion to stay will be denied
14 as well?

15 THE COURT: Yes. And forthwith means right now.

16 MS. EISENHAUER: I understand.

17 MR. POLIKOFF: Thank you, your Honor.

18 MR. MILLER: Thank you, your Honor.

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

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CERTIFICATE

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


Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division


Date

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