

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES,)
DOREATHA R. CRENCHEW, EVA RODGERS,)
JAMES RODGERS, ROBERT M. FAIRFAX)
and JIMMIE JONES,)

Plaintiffs,)

v.)

THE CHICAGO HOUSING AUTHORITY,)
a corporation, and C.E. HUMPHREY,)
Executive Director,)

Defendants.)

Civil Action
No. 66 C 1459

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UNITED STATES DISTRICT COURT

Initial Brief of Plaintiffs in Support of
their Motion for Summary Judgment and in
Opposition to Defendants' Motion for Summary
Judgment

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I. THE FACTS.

On December 6, 1956, the Advisory Committee to the
Chicago Housing Authority of the Welfare Council of Metro-
politan Chicago unanimously approved a "Report on Site
Selection in Public Housing in Chicago." (Elson Aff. 2-3;

Ex. E.)* The Report stated:

"Although bi-racial occupancy is contemplated by law, and discrimination on account of race, creed or color is expressly forbidden, the fact is that most public housing today is concentrated in a Negro ghetto, in large part situated in the area known as the black belt. Most attempts from 1949 to date to place projects in areas which presented possibilities for bi-racial occupancy have been frustrated. The situation today is that unless there is a reversal of present trends in site selection, the existing pattern of segregation will be perpetuated." (Elson Aff. Ex. D, p.1.)

Immediately following its approval, General William B. Kean, then Executive Director of the Chicago Housing Authority (hereinafter "CHA"), transmitted copies of the Report to the members of the Board of Commissioners of CHA. (Humphrey dep. Ex. 5.)

Among the members of the Advisory Committee which unanimously approved the Site Selection Report were General Kean, Harry J. Schneider, then Director of Management of CHA, and Mrs. Mary Wirth, then Supervisor of Community and Tenant

* See explanatory note on citations to affidavits and depositions at the end of the brief. The function of the Advisory Committee was to give advice to the Housing Authority (Rose dep. 187, 192). It was staffed by the Housing Authority (Ibid. 191) and generally met upon the call of the Executive Director of the Housing Authority. (Ibid. 189.)

Relations of CHA. (Elson Aff. 1; Ex. A.) The present Executive Director of CHA, defendant C.E. Humphrey (then Director of Development of CHA), was consulted by the subcommittee which prepared the Report (Elson Aff. Ex. B, p.1), he testified that the Report's forecast that segregation would be perpetuated unless site selection trends were reversed was correct. (Humphrey dep. 69-71; 80-81.)

Another person consulted by the subcommittee was Mr. Robert Taylor, former Chairman of the Board of Commissioners of CHA. Mr. Taylor told the subcommittee,

"... that the reason for the pressure against public housing was the desire to prevent the influx of Negroes into white neighborhoods."
(Elson Aff., Ex. C, p.1.)

He added that the reasons for the enactment in 1949 of a state statute (Ill. Rev. Stat. Ch. 67 1/2, §9) giving the Chicago City Council a power of veto over sites which CHA proposed to acquire,

"... are not the ones being given publicly but are in reality to control the movement of Negroes ..." (Ibid.)

Although all of CHA's top officials were thus forcefully reminded in 1956 that the location of CHA housing projects constituted a pattern of segregation, by 1956 segregation was

an old story in CHA's life. As early as 1948 and 1949 CHA Commissioners had voted for a "compromise" group of sites knowing, as their then Chairman, Robert Taylor, told them, that a principal objection of Chicago aldermen to CHA's initially proposed sites "was that Negroes would be moved into white areas of the City." (Benjamin Aff. 1-2.) Even the compromise was conditioned on CHA agreement to limit Negro occupancy of the new projects to 10%, a condition which the Commissioners agreed to accept. (Ibid.)

In 1950 the Commissioners again approved a "compromise" group of sites (the compromise eliminated most of the sites in white areas of the City - Benjamin Aff. 3), knowing that the difficulty with CHA's initial proposal was the "purposeful intention on the part of the aldermen of the City Council to keep Negroes out of white areas of the City." (Ibid. 2.)

Between 1950 and 1956 aldermanic opposition to locating projects where Negroes would move into white neighborhoods was frequently discussed among top CHA staff (Hirsch Aff., ¶3), and in both 1955 and 1956 CHA again supinely acquiesced in site packages from which all sites in white neighborhoods had been eliminated. (Humphrey dep. Vol. II, 114, 119-120.)

It is against this history of eight years of segregation

in site location that Mr. Taylor's 1956 recommendation should be viewed. Said Mr. Taylor to the subcommittee:

"... CHA should accept the role of fighting for its sites ..." (Elson Aff., Ex. C., p.1.)

This was essentially the same advice later given to the Chairman of CHA's Board of Commissioners not only by Edwin Berry, Executive Director of the Chicago Urban League ("put the monkey on the City Council's back" - Berry Aff. 2), but even by CHA's own general counsel, Kathryn Kula Moore ("letting the chips fall where they may" - Moore dep. 12).

It was also the fervent prayer of public organizations. Kale Williams, Executive Secretary of the American Friends Service Committee, told CHA Executive Director Alvin Rose that his organization, along with others, "would like to work on this problem of helping promote the use of public housing outside the all-Negro areas, and to win acceptance for it ..." (Williams dep. 28.) But, Williams said, it was "very difficult ... if sites were not proposed by the Housing Authority, and made in that way a subject of public discussion ..." (Ibid.)

What, then, was CHA's course, knowing as it did that since before the beginning of the decade the location of its

projects had produced a pattern of segregated public housing in Chicago, and that without a change in site selection policies that pattern would be perpetuated. The incredible answer is that, notwithstanding what had happened in the previous years, CHA abandoned any pretense of concern about segregation and embarked upon policies which made it an active and willing partner of a segregationist City Council in a vast extension of housing segregation in Chicago.

This part of the story begins in early 1955 when the newly appointed Executive Director of CHA, General William Kean (see below as to why in late 1954 Elizabeth Wood, General Kean's predecessor, was ousted by the CHA Board of Commissioners) met with Alderman Murphy, Chairman of the Housing and Planning Committee of the Chicago City Council. The purpose of their meeting was to establish an arrangement for preliminary and informal pre-clearance of proposed public housing sites by aldermen before any such sites were formally submitted (through a CHA-sponsored ordinance) to the Committee and then to the City Council for approval. (Humphrey dep. 91-95; Ex. 6.) In other words, knowing that individual aldermen had been objecting to CHA site proposals on the ground that Negroes would be moved into white areas of the city, CHA sat down with the

representative of these very aldermen to work out a private and informal veto procedure concerning the sites it would submit to the City Council!

The discussions were a great success. On May 23, 1955, General Kean advised the CHA Commissioners of the arrangement he had entered into with Alderman Murphy: CHA would not formally submit a site to the City Council which had not first been informally approved by a subcommittee of Alderman Murphy's committee and "cleared" with the alderman in whose ward the site was located. (Humphrey dep. Ex. 6, ¶s 3, 4, 6, 7, 8.) Pursuant to this arrangement, it became CHA's invariable practice never to submit a site for City Council approval if such informal aldermanic pre-clearance had not first been obtained. (Humphrey dep. 97-100.) If the arrangement were not followed, said Humphrey, "we wouldn't be very popular over at the City Council, I am sure." (Ibid., 100.)

But even this was not a foolproof system for avoiding public exposure of discriminatory aldermanic attitudes. Sometimes an alderman might wish to change his mind, even about pre-cleared sites:

"[W]e cleared with the alderman and he didn't clear with his constituents. He said, 'Okay,'

and so we put it in the package. And then when the public hearing comes up and his constituents begin to really get excited about it, then the alderman has changed his mind ... " (Rose dep. 86.)

"There have been sites where the aldermen have been in favor of the sites ... and they had the people take an informal vote in the neighborhood and they got more no votes than they got yes votes, so he says I can't go along with the site." (Humphrey dep. 117.)

Thus, there remained a risk that the aldermen would desire to eliminate even some of the pre-cleared sites which had already been formally submitted to the City Council. But, unless CHA had included some "extra" Negro sites in its ordinance, such elimination of sites would be awkward because it would cause the City to lose federal funds allocated to the City for public housing units - "they would lose the units." (Humphrey dep. Vol. II, p.112.) Therefore, to solve this problem, CHA also agreed with the aldermen that even though sites had been pre-cleared it would always submit to the City Council sites for twice the number of apartments it needed, "twice the number of units that we feel that we are going to be able to get under contract with the federal government." (Humphrey dep. 106-107.)

"[W]e always go to the Council with nearly twice as many locations and would accommodate nearly

twice as many units as we had an authorization for, and that is to take care of the loss, so that we do not lose the units for Chicago." (Humphrey dep. Vol. II, p. 124-25.)

This arrangement, of course, gave the aldermen the opportunity to pick and choose among the submitted sites. (Humphrey dep. Vol. II, 112-13; Elson Aff. Ex. B, p.1.) It "covered" the alderman who wished to change his mind about a pre-cleared site in a white neighborhood which had already been formally and publicly submitted to the City Council by CHA, because even if that site were eliminated there would remain a sufficient number of Negro-area sites to fill CHA's allotment from the federal government "so that we do not lose the units for Chicago." (Humphrey dep. Vol. II, p.125.) The effect of this arrangement, as we shall see, was as if the aldermen had requested CHA never to submit a site in a white neighborhood, and CHA had complied with that request.

In short, CHA deliberately abandoned its prerogative of making its own, non-racial site selections and submitting such selections to the City Council, "letting the chips fall where they may." (Moore dep. 12.) Instead it worked out an informal and private veto arrangement, coupled with a safety valve to "cover" aldermen who changed their minds, with the very persons

who, as CHA knew, objected to Negroes moving into white areas. CHA did not fight for sites, as Robert Taylor had recommended, or even make the segregation issue a matter for public discussion by selecting and formally submitting sites in white neighborhoods without pre-clearance as Edwin Berry, Kale Williams and even its own general counsel, Kathryn Kula Moore, had urged. Instead CHA chose to help a segregationist City Council sweep the dirt of segregation under the City's rug and perpetuated the pre-existing pattern of segregated site locations, exactly as the Advisory Committee had predicted.

The cooperative arrangement between CHA and the City Council accomplished its clearly intended result, as the following resume (taken from the affidavit filed by CHA in support of its summary judgment motion*) shows:

In 1955, four sites in white or substantially white neighborhoods (of a total of 25 sites) were included in an ordinance introduced into the City Council at the request of CHA. (Humphrey Aff. 4.) No site in a white or substantially white neighborhood was recommended by Alderman Murphy's committee and all were deleted from the ordinance passed by the City Council. (Ibid.) The remaining Negro sites were

* References to the Humphrey affidavit are to the affidavit dated March 3, 1968, of C.E. Humphrey, Executive Director of CHA, filed in support of CHA's motion for summary judgment.

enough to fill CHA's federal allotment, and CHA made no effort to develop and present any alternate sites in white neighborhoods. (Humphrey dep. Vol. II, p. 114.)

In 1956 two of the previously eliminated sites plus two others in white neighborhoods (of a total of eleven) were included in another CHA-sponsored ordinance. (Humphrey Aff. 4-5.) Again, none of these four sites was recommended by the committee and all were deleted from the ordinance as passed. (Ibid.) Again, the remaining Negro sites were sufficient to fill CHA's allotment and CHA made no effort to submit alternate sites in white neighborhoods. (Humphrey dep. Vol. II, 119-20.)

In 1958 (no sites were submitted in 1957), two of eleven sites included in the CHA-sponsored ordinance were in substantially white neighborhoods; these two sites were not recommended by the committee and were deleted from the ordinance as passed. (Humphrey Aff. 5.) Humphrey could recall no discussion of the fact that again CHA's program consisted of "sites exclusively in Negro neighborhoods"; nor was there any effort to develop alternate sites in white neighborhoods. (Humphrey dep. Vol. II, 124.) The arrangement of "always" going to the Council "with nearly twice as many locations and ... units as we had authorization for ..." continued in effect. (Ibid.)

In 1963 (the next CHA submission) the only site submitted by CHA was in a Negro area and it was approved without difficulty. (Humphrey Aff. 6; Baron Aff. Ex. A, no. 43.)

In 1965, one site in a white neighborhood (of a total of ten) was included in the CHA ordinance; it was not recommended by the committee and was deleted from the ordinance as passed. (Humphrey Aff. 6-7.) Humphrey recalled no CHA discussion

of the fact that after the deletion "the 1965 sites were now exclusively located in Negro neighborhoods." (Humphrey dep. Vol. II, 155.) In this instance seven other sites in white or substantially white neighborhoods which had been under consideration by the CHA staff were not even submitted by the staff to the CHA Commissioners or included in the CHA-sponsored ordinance "because the Aldermen in whose wards those sites were located advised of community opposition and indicated they were opposed to such sites in their wards." (Humphrey Aff. 6-7.)

Later in the same year 30 apartments were authorized as parts of two urban renewal plans - 12 in Hyde Park (Humphrey Aff. 7; Baron Aff. Ex. A, no. 50), a predominantly white neighborhood whose alderman had long unsuccessfully sought public housing for his ward (Kreinberg dep. 19; Despres dep. 18-20), and 18 in the Lincoln Park area (Humphrey Aff. 7-8; Baron Aff. Ex. A, no. 49).

In 1966 two sites in white or substantially white neighborhoods (of a total of twelve) were included in the CHA-sponsored ordinance and were approved by the City Council. (Humphrey Aff. 8.) One, being developed for 33 apartments, is in a neighborhood which has a sizeable and increasing Negro population (Baron Aff. Ex. A, p.7, no. 53); development of the other has been indefinitely deferred by CHA. (Humphrey dep. 255.)

The net result of the foregoing may be summarized in this way: Since the Kean-Murphy discussions in 1955 CHA has either completed or is currently developing 10,256 family apartments. (Baron Aff. Ex. A, nos. 36-54.) Of these, 18 and 12 apartments, respectively, are in the substantially

white Lincoln Park and Hyde Park urban renewal areas (Ibid., nos. 49 and 50), and 33 are in a neighborhood which, though majority white, has a sizeable and increasing Negro population. (Ibid., no. 53.) These 63 apartments constitute about 6/10ths of 1% of the family apartments completed or being developed, commencing with CHA's 1955 program. The remaining 10,193 apartments, about 99.4% of the total, are in Negro neighborhoods. Since Humphrey has acknowledged that a neighborhood tends to become predominantly Negro if the Negro population reaches 30 to 40% (Humphrey dep. 82), the 33 apartments probably should not be placed in the white neighborhood category. If they are not, the percentage of apartments located in white neighborhoods drops to about 3/10ths of 1%. Either figure, 6/10ths of 1% or 3/10ths of 1%, justifies the observation that since the Kean-Murphy deal the pattern of segregation has been nearly perfect.*

* If we go back to 1950 the percentage of apartments in white neighborhoods increases to about 1.7% - if the 33 apartments are not placed in the white neighborhood category, 1.5%. (Baron Aff. Ex. A, beginning with no. 20.) The increased percentage is attributable to a 300 apartment project built in a white neighborhood in 1954. (Ibid., no. 24.) This project was an extension of an existing project as to which (both original project and extension) CHA maintained a Negro quota. (Webb dep. 97.)

CHA's site location segregation has produced a nearly all-Negro family public housing system, as of course CHA knew it would. (Humphrey testified that it had been the experience of CHA that projects in Negro areas "would be or would become largely Negro occupied projects" - Humphrey dep. 22.) With the exception of four early projects located in white neighborhoods from which CHA entirely excluded Negroes for many years (and more recently has maintained a tiny Negro quota - see discussion below as to these projects), CHA family projects are occupied almost entirely by Negroes. (Stipulation filed July 29, 1968.) Thus, at the end of 1967, exclusive of the four white projects, about 99% of CHA tenants were Negro (Ibid.), even though there are far more whites eligible for public housing in Chicago than Negroes. (Baron Aff. Ex. C.) As to this situation Mrs. Louise Webb, Supervisor of Community and Tenant Relations for CHA, testified:

Q. "In your opinion would the volume of applications from white families be larger if there were more family projects located in white neighborhoods of the city than is the case in fact?"

A. "I am sure there would be."

Q. "Is it also your opinion then, Mrs. Webb, that the reason for the relatively small number of applications from white

families for housing in family projects is the fact that most of the projects have been located in Negro ghetto areas rather than in white communities?"

A. "Yes." (Webb dep. 119-20.)

With regrettable disingenuousness the CHA brief tries to tell a different story. There are two elements to this piece of fiction. First, the CHA brief says that over the years CHA "recommended for City Council approval" many sites in white neighborhoods (CHA br. 11), and then lists the impressive percentage of apartments which would have been located in white neighborhoods had these "recommendations" been followed. (Ibid. 12-13.) How could the CHA be segregationist if 30 to 50% of its "recommendations" were for apartments in white neighborhoods?

The answer of course is that many of the "recommendations" for white-area sites upon which these percentages are based were never submitted by the CHA to the City Council - the CHA brief is candid enough to acknowledge, but only in parentheses, that "many sites recommended for development by CHA were not actually submitted to the City Council because the Aldermen in whose wards the sites were located advised of community opposition and indicated they were opposed to such

sites in their wards." (CHA br. 13.) Moreover, as we have seen, the white sites that survived pre-clearance and were included in a CHA-sponsored ordinance were always coupled with enough Negro sites so that when the former were eliminated enough Negro sites remained to utilize CHA's full allotment from the federal government - a procedure which the CHA brief does not even mention.

CHA's brief also refers to its program for housing the aged - the so-called "elderly", as distinguished from "family", program - and observes that a number of elderly projects are located in white neighborhoods. (CHA br. 13.) The complaint in this case is limited to the family program, but it is relevant to note that the CHA "proximity rule" for admission to elderly projects assured that elderly projects in white neighborhoods would be occupied largely or exclusively by whites. This rule was ultimately condemned by the Public Housing Administration "because of its obvious correlation to race and its effect of inequality in opportunity afforded to individuals of different races." (Rose dep. Ex. 4., p.11.) The facts as to the proximity rule are discussed below - but not mentioned in the CHA brief.

The second disingenuous element in the CHA brief is its

detailed list of racially neutral site selection criteria - "slum clearance, cost limitations, accessibility, surrounding land uses, municipal planning." (CHA br. 9-10.) Although the CHA brief does not quite have the presumption to say it in so many words, the impression sought to be created is that CHA site selection was based on these non-racial criteria.

The testimony of CHA's own top officials belies that effort to rewrite history. Both Humphrey and Rose asserted that the City Council's attitude prevented CHA from "scattering" its sites in all sections of the City. (Humphrey dep. 203-04; Ex. 23, p.2; Rose dep. 14.) CHA's general counsel, Mrs. Moore, in a speech to the Advisory Committee, said that the City Council's veto power prevented CHA from using cheaper sites on the "outskirts of the City" - a euphemism for white areas. (Moore dep., Ex. 4, p.1.) Time and again CHA officials, including Humphrey, observed that they did not believe in "spending money" to develop and present sites in white areas because it would be futile. (For example, Humphrey dep. 99, 134-35; Despres dep. 30-31; Kreinberg dep. 20; Rose dep. 186.) Humphrey even testified to this effect in a public hearing in City Hall, adding, "I am not going to pay for it out of my pocket" (Humphrey dep. 134), and told Alderman Despres that

the Alderman knew "damn well why there aren't any sites in there outside the Negro areas." (Humphrey dep. 133; Humphrey was not certain he used the swear word - Ibid., 133-34.)

Humphrey also said,

"I could have said that once we have a turndown from the alderman that there is no sense in spending money to develop it ..."
(Humphrey dep. 135)

He added that Alderman Despres complimented him on his frankness, and, "He don't do that very often either." (Ibid.)

Lewis Kreinberg, of the staff of the Jewish Council on Urban Affairs who was present at the hearing, said:

"... what I heard Colonel Humphrey say is that they don't pick sites in white neighborhoods because they know that would be a waste of money and their time, because they would not be approved because the bulk of the public housing would be for Negroes. It would place them in white neighborhoods; there would be objections from the aldermen on these grounds so the Chicago Housing Authority does not waste its time." (Kreinberg dep. 34-35.)

Rose testified that while efforts were made to promote projects for the elderly in white areas (under the proximity rule assuring white occupancy), no such efforts were made with respect to family housing. (Rose dep. 74-75.) He said that the reason CHA had not submitted more sites from such areas to the City Council was that the aldermen from such

areas had generally disapproved, and that in such cases "it would be a waste of time to work up a development plan, and everything else ... it would be a waste of time and money."

(Ibid., 17.) When Kale Williams pleaded for the submission of sites outside the all-Negro areas Rose responded that was a "fruitless course" and that he didn't think it was "worth his time" to pursue it. (Williams dep. 28-29; Rose dep. 186.) And Charles Swibel, Chairman of the CHA Board of Commissioners, told Edwin Berry that "CHA tried to select sites only in Negro areas which would be approved by the City Council." (Berry Aff. 2.)

Such testimony makes it plain that CHA's site "recommendations" were not racially neutral but were significantly shaped by segregationist views, and that whenever CHA-sponsored ordinances included white-area sites the "twice-as-many-as-needed" arrangement assured the aldermen of a painless opportunity, almost uniformly availed of, to change their minds and to eliminate such sites if they desired to do so.

Perhaps, notwithstanding the foregoing discussion, it may still be thought too harsh to call the CHA an "active and willing partner" in the perpetuation of segregated public housing in Chicago. But the record justifies that description.

as the following resume of some additional CHA history shows.

A convenient point of departure is the dramatic announcement in August, 1954 by the CHA Commissioners that General William Kean would shortly assume the role of chief administrative officer of CHA, thus by-passing Elizabeth Wood, then the veteran (for 17 years) head of CHA. (Moore dep. Ex. 1.) In a public statement Miss Wood said that the question was "one of basic principle," and that

"... the most significant and dramatic area of conflict has been on the subject of race relations and segregation. The truth is that the differences that have arisen between the Commissioners and the Executive Secretary have been related primarily to the issue of the elimination of segregation in public housing and the opening of all public housing projects in the City of Chicago to Negro and white persons without discrimination or segregation." (Ibid., p.2.)

Miss Wood then described some of the facts from which the conflict stemmed - the refusal of CHA to permit Negroes to move into four projects which, in CHA's early years (1938 and 1943), had been located in white neighborhoods and maintained as all-white projects ever since.

"Despite the proclaimed policies of the Commission - now more than four years old - and despite repeated protests on my part, the fact is that to date:

No Negro families have yet been admitted to public housing in Julia Lathrop Homes.

No Negro families have yet been admitted to public housing in Lawndale Gardens.

No Negro families have yet been admitted to public housing in Bridgeport Homes.

When a suit was brought against the Authority to compel the non-discriminatory admission of Negro families to public housing, the Commission knowingly allowed its General Counsel, Mr. Von Allan Carlisle, to speak in open court as a representative of the Commission in support of the discredited 'separate but equal' doctrine which the Dixiecrats have used to support segregation.

In July 1953, when, without my knowledge, a Negro family moved into Trumbull Park Homes, I was under direction not to admit Negro families to that project.

Between July 1953 and October 1953, I was under direction not to admit any additional Negro families to public housing in Trumbull Park Homes, so that the single Negro family then residing there was left in a state of total isolation. Even as of now, I have not been given clear authority to admit families to Trumbull Park Homes without regard to race or color. As recently as three weeks ago, I

brought this situation to the Commission and asked for clarification of authority so that policy could be effectively implemented. To date such clarification has not been forthcoming." (Ibid., p.3.)

Since the facts Miss Wood related have changed only slightly in the last 14 years, it will be appropriate to bring this facet of CHA's segregation policies down to date.

The four projects mentioned by Miss Wood were in exclusively white neighborhoods and date from CHA's early years. Trumbull Park Homes and Lathrop Homes were each completed in 1938 (Baron Aff. Ex. A, nos. 2 and 3), and Bridgeport Homes and Lawndale Gardens in 1943 (Ibid., nos. 7 and 8). From the initial operation of each of the four projects until July, 1953, no Negro family was permitted in any of them. (Tabb Aff. 7-8.) Both the Central Rental Office Staff of CHA and the staffs of each of the four projects were under firm instructions that no "B" families (the CHA code for Negro families) were to be housed in them. (Tabb Aff. 8.) CHA's Director of Management put it more gently: "Negro applicants were not referred to those locations." (Schneider dep. 59.)

In July, 1953, a Negro family was moved into Trumbull Park Homes by "accident" (Schneider dep. 63), i.e., as noted

above, without Miss Wood's knowledge and while she was under directions not to admit Negro families to that project. In the three succeeding years, "a small number of specially selected "B" families were admitted to Trumbull (in 1954), to Lathrop (in 1955), and to Lawndale (in 1956)." (Tabb Aff. 8.) No Negroes were admitted to Bridgeport and the CHA staff was instructed that none were to be housed in any of the four projects "except with the specific prior clearance of the Executive Director or his designee." (Tabb Aff. 8.)

Thereafter, Negro occupancy of the four projects was maintained at a predetermined level (Webb dep. 60) - Rose called the system an "elastic quota" (Rose dep. 181). The "quotas" through 1967 have not been particularly elastic, as the following schedule shows (the figures are from Exhibit F to admissions made under Federal Rule 36 and stipulations of fact filed, respectively, on January 6, 1967 and July 29, 1968):

Trumbull Park Homes (462 total apartments)

1954: 15 Negro families (about 3%)

1955-1967: 23 to 31 Negro families (about 5% to 7%)

Lathrop Homes (923 total apartments)

1954: 0 Negro families
1955: 7 Negro families (less than 1%)
1956-1967: 21 to 35 Negro families (about 2% to 4%)

Lawndale Gardens (128 total apartments)

1954-1955: 0 Negro families
1956-1967: 1 to 8 Negro families (about 1% to 6%)

Bridgeport Homes (141 total apartments)

1954-1965: 0 Negro families
1966-1967: 1 Negro family (less than 1%)

The Negro quotas at the four projects have been maintained through the years despite relatively high "vacancy losses" - i.e., apartments have been held vacant awaiting white applicants while eligible Negroes have been turned away (Tabb Aff. 8; Webb dep. 101.) CHA staff persons who interview applicants have been instructed to "guide" Negro applicants into expressing preferences for other projects (Tabb Aff. 7), and the quota system for the four projects continues in effect at the present time. (Webb dep. 61; Schneider dep. 78.)

The result of the foregoing is that while tenants in the CHA family program are more than 90% Negro (CHA br. 7) and the waiting list of about 10,000 persons (Schneider dep. 68) is more than 90% Negro (CHA Br. 7), the occupancy of all four projects located in white neighborhoods has been maintained at

more than 90% white.

Matching its policy of keeping its white-area family projects white-occupied, CHA's more recent program for housing the aged ("elderly" housing), which has a much higher percentage of white applicants, was similarly carried out so as to create and maintain segregation. To this end CHA employed an ingenious device, conceived by Alvin Rose himself, which is known as the "proximity rule." (Rose dep. 195-96.) Under this rule persons living within a two block radius of the site of an elderly project had the first priority for residence in that project, and successive priorities were given to persons living within successive concentric half mile circles. (Ibid., 196.) The result was that if an elderly project were located in a white neighborhood it was a "fair assumption" that the project would be occupied by whites. (Rose dep. 197.) The rule was of course discussed with the aldermen and it helped "very obviously," Rose said, to get aldermanic approval of elderly sites in white neighborhoods. (Ibid.) As we have already noted, the rule was eventually condemned by the federal government "because of its obvious correlation to race and its effect of inequality ... to individuals of different races." (Rose dep., Ex. 4, p.11.)

The proximity rule is thus another illustration of CHA's determination to maintain a segregated public housing system in Chicago.

There is still another example - CHA's "community opposition" policy. In early 1958 Rose made a frankly segregationist speech to the City Club of Chicago. He said that, "a lot too much has been made over this interracial business." (Hirsch dep. Ex. 3, p.1.) He added that he felt he knew the feelings of Negroes who were not actively involved "in pushing this business," and asserted, "We are not going to use public housing as a wedge." (Ibid. 2.) Any ambiguity in these remarks was resolved when Rose was asked whether the CHA would put a project in Uptown. The community, the questioner said, "would welcome some public housing." (Ibid. 1.) Rose's unbelievable answer was that a project in Uptown "would create another problem - namely, that CHA could not guarantee that the projects would be all-white, that Negroes would have to come in." (Ibid.)

Rose then described CHA's community opposition site selection policy: a site would be selected "only in a community that asked for it or desired it, and not ... [in] neighborhoods which obviously did not want public housing."

(Hirsch dep. 32.) As CHA's top officer, Rose could not help but know exactly how many white communities in Chicago had "asked for" or "desired" family public housing.

The "community opposition" euphemism for segregation was later restated by Rose in his testimony before the U.S. Commission on Civil Rights:

"We [CHA] do not intend to force a project upon any community. Our policy is to build only where projects are acceptable to the community and its leaders." (Rose dep. 210-11.)

The same policy has been more recently expressed by Swibel, current Chairman of the Board of Commissioners, who said CHA would not "force ourselves upon a hostile neighborhood."

(Swibel dep. Ex. 1. p.2.)*

* The community opposition policy thus described by Rose and Swibel is a reformulation of long-standing CHA policy. With respect to CHA's very first project, Jane Addams Houses, CHA Commissioners resolved to accept Negroes for tenancy "in the same proportion as they are at present represented in the neighborhood." (Stipulation filed on July 29, 1968, Ex. 1.) (The percentage at that time was near zero - Baron Aff. Ex. A., no. 1.) Later Miss Wood stated the policy as follows:

"[T]he Authority would not permit a housing project to change the racial make-up of the neighborhood in which it was located." (Stipulation filed July 29, 1968, Ex. 3.)

The community opposition policy of course meant that precious few sites would be located in white neighborhoods. (In one year, Rose testified, he personally contacted every alderman in the City to ask if they were "interested" in public housing in their ward, but the only "yes" answers were from Negro or "changing" areas - Rose dep. 75-76.) Sometimes, however, if CHA wanted badly enough to locate a project in a white community - even if a community was "violently opposed" (Rose dep. 73-74) - CHA sent out its very top people to do a selling job. But it did this only for elderly projects which, under the proximity rule, would be occupied largely or exclusively by whites; CHA engaged in no such selling efforts for family units which would be occupied by Negroes. (Ibid.)

* * *

When in 1959 Mr. Rose, then Executive Director of CHA, testified before the U.S. Commission on Civil Rights, his questioner said,

"Well, somebody is guilty of contributing to the segregation of housing of people in the City of Chicago because when you look at the present location of the housing projects, they are predominantly within the Negro area."

Mr. Rose answered, "That is true." (Rose dep. 9.)

That "somebody" is CHA. The following discussion of the law will demonstrate that plaintiffs are entitled to relief which effectively ends that CHA contribution to housing segregation in Chicago.

II. THE LAW.

This Court has already ruled that plaintiffs, as present and future users of the public housing system,

"... have the right under the Fourteenth Amendment to have sites selected for public housing projects without regard to the racial composition of either the surrounding neighborhood or of the projects themselves." (Gautreaux v. CHA, 265 F.Supp. 582, 583 (1967).)

It is clear from the facts recited above that CHA's sites were not so selected. It was therefore unlawful for CHA to construct and operate public housing projects on those sites. It needs no citation other than the Fourteenth Amendment itself to establish that, by reason of such construction and operation, without more, plaintiffs and the class they represent have been deprived of their Fourteenth Amendment rights.

But there is much more. One may speculate about whether, in their respective hearts of hearts, CHA officials who formulated and carried out its policies are, as individuals, segregationists. But whatever the fact as to this, the official actions of CHA and its stated policies include:

- (1) the Kean-Murphy deal for pre-clearance of sites;
- (2) the twice-as-many-as-needed policy on site submissions;
- (3) the ousting of Elizabeth Wood;
- (4) the exclusion of Negroes from the four white-area family projects;
- (5) the proximity rule; and
- (6) the community-opposition policy.

These affirmative actions and policies clearly establish that CHA was an "active and willing partner" in promoting and perpetuating the pattern of segregated public housing in Chicago. Since plaintiffs were deprived of their Fourteenth Amendment rights merely by CHA's construction and operation of public housing projects on sites selected on a racially discriminatory basis, a fortiori those rights were violated by this panoply of CHA actions and policies.

Are there any defenses? The only legal argument in the

CHA brief is that a "presumption of regularity" supports the official acts of public officials. (CHA br. 14-18.) In addition, the CHA brief implies (but does not seriously argue) two excuses for its segregation policies. The first is "community opposition" (CHA br. 13) - i.e., the hostility of residents and their local alderman to public housing in their neighborhoods presumably is supposed to have justified CHA in entering into the pre-clearance and twice-as-many-as-needed arrangements which shaped along color lines the packages of sites assembled by CHA for presentation to the City Council. The second is the City Council's power to disapprove sites proposed by CHA - "while CHA can propose, only the Chicago City Council can dispose." (CHA br. 14.) This power of disapproval presumably is supposed to have justified CHA in building approximately 99% of its family apartments in Negro neighborhoods. Each of these three "defenses" will now be examined.

A. The "Presumption of Regularity" Defense.

Apparently unwilling to deal with the uncontroverted facts, CHA relies upon a "presumption of regularity" respecting its official acts. Of course a presumption by its very nature only applies in the absence of facts. When facts impel an

opposite conclusion a presumption has no part in a case at all.

The contrast between CHA's world of presumption and the real world of fact is pointed up sharply by Kankakee County Housing Authority v. Spurlock, 3 Ill.2d 277 (1954), one of the principle cases relied upon in the CHA brief. In Kankakee the county had condemned lands to build two housing complexes in the future. The plaintiff sued, claiming there would be discrimination in the future. The Court said:

"As the situation appears in the record, appellant has proved at most that appellee might, in the future, perform some illegal act. The presumption is that appellee will refrain from an illegal act and will make the ultimate distribution of its housing units in a lawful manner. If that is not done, or it is thought that appellee is guilty of discrimination, such questions can be decided and presented in proceedings for that purpose." (3 Ill.2d 277, 284, emphasis added.)

Since we deal here with evidence that CHA is guilty of discrimination, the relevance of Kankakee is not apparent.

Thompson v. Housing Authority of City of Miami, Fla., 251 F.Supp. 121 (S.D. Fla. 1966), another CHA case, says the presumption of regularity will prevail until overcome by evidence to the contrary. Here we have such evidence.

Indeed, though we do not deny CHA's presumption doctrine

as an abstract proposition in a proper case, it borders on the ridiculous for CHA to argue that doctrine here. CHA should have turned its attention to the facts because in a racial discrimination case the presumption may well be the other way.

In United States v. School District 151 of Cook County, Illinois, 286 F.Supp. 786 (N.D. Ill. 1968), Judge Hoffman said:

"The contemporaneous existence, within one system, of some schools whose faculties and student bodies are almost exclusively white and other schools whose faculties and student bodies are almost exclusively Negro creates a presumption of discriminatory faculty assignments which requires the school authorities to demonstrate the constitutionality of their procedures." (286 F.Supp., at 797.)

The Court also held that a presumption of unconstitutionality arose as to school attendance zones where some schools were without Negro students and others were almost exclusively Negro. (Ibid., at 798.)

And in Evans v. Buchanan, 207 F.Supp. 820 (D. Del. 1962), where a Negro school was surrounded by predominantly white attendance areas, the Court stated:

"The Rose Hill-Minquadale Board as promulgator of the plan and the State Board of Education

as the party having the ultimate responsibility for administering a non-discriminatory system of public education should have the initial burden of coming forward since a presumption of unconstitutionality arises under this set of facts." (207 F.Supp., at 825.)

What it really comes down to is that presumptions can neither substitute for facts nor make them vanish. The facts here prove that CHA has violated plaintiffs' Fourteenth Amendment rights.

B. The "Community Opposition" Defense.

Does "community opposition" justify CHA's pre-clearance and twice-as-many-as-needed policies? In Cooper v. Aaron, 358 U.S. 1 (1958), the Little Rock, Arkansas, Board of Education sought a temporary moratorium on desegregation of public schools because of "extreme public hostility" (358 U.S., at 12), stimulated by the Governor and legislature. The Supreme Court recognized the existence not only of public hostility to desegregation but of violence and disorder as well. It accepted "without reservation" the view that the School Board had "displayed entire good faith." (Ibid., at 14-15.)* But

* Cooper is thus also relevant to CHA's assertion that it lacked "racial animus." (CHA br. 11.) Presumably, what CHA means by this phrase is that its employees and agents, as individuals, were not racists. But the Little Rock School Board not only was not racist but displayed "entire good faith." The record was clear that the Board did not want to operate a segregated school system. These facts, like the public hostility, were held to be irrelevant to the issue of the right of the plaintiffs to have the school system operated on a desegregated basis.

it nonetheless upheld an order denying the requested moratorium and said that "hostility to racial desegregation" was not a relevant factor - the Board simply could not operate a segregated school system. (Ibid. 7.)

In Cooper community opposition was stimulated by official state action. But even without such stimulation community opposition does not afford an excuse for discriminatory conduct by the state. In Jackson v. Rawdon, 235 F.2d 93 (5th Cir. 1956), school children sought to end the carrying on of a segregated school system. The defendant school board argued that "the local climate of opinion" and "dis-satisfaction among the community" had precluded it from taking steps to desegregate. (Ibid., 94-95.) The Court reversed an order rendering judgment for the school board. It said:

"We think it clear that, upon the plainest principles governing cases of this kind, the decision appealed from was wrong in refusing to declare the constitutional rights of plaintiffs to have the school board, acting promptly, and completely uninfluenced by private and public opinion as to the desirability of desegregation in the community, proceed with deliberate speed consistent with administration to abolish segregation ..."
(235 F.2d 93, 96; emphasis added.)

Most recently, Judge Hoffman in this District discussed the "community opposition" defense. In United States v.

School District 151 of Cook County, Illinois, 286 F.Supp.

786 (N.D. Ill. 1968), the electorate had voted down a school construction referendum because the proposed location of the school would have resulted in integration of students. Moreover, the school board believed that voters would not approve any other referendum for schools which would, by reason of location, result in integration. (286 F.Supp. 786, 794.) Accordingly, the board proposed a referendum authorizing construction of two schools, one in a Negro residential area and one in a white. (Ibid.) Judge Hoffman held that these facts were no defense to the discriminatory site locations selected for the second referendum:

"A school board may not, consistently with the Fourteenth Amendment, maintain segregated schools or permit educational choices to be influenced by a policy of racial segregation in order to accommodate community sentiment or the wishes of a majority of the voters." (286 F.Supp. 786, 798.)

The parallel is a compelling one. CHA ordinances, as they reach the floor of the City Council, contain substantially all Negro sites because CHA's "community opposition" policy has led it to adopt its pre-clearance and twice-as-many-as-needed policies. To paraphrase Judge Hoffman, CHA's site location choices have been influenced by these segregationist

policies "in order to accommodate community sentiment." The foregoing authorities show that CHA may not, consistently with the Constitution, make that accommodation.*

C. The "City Council" Defense.

"[W]hile CHA can propose, only the Chicago City Council can dispose," says the CHA brief. "The role of CHA in site selection is to initiate ... and CHA does not have the final say." (CHA br. 14.) The implication presumably is that when only all-Negro site packages are approved by the City Council, CHA is constitutionally free to construct projects on such sites and, having done exactly that for many years, lacks responsibility for the result that 99% of its family apartments are in Negro neighborhoods.

The City Council's power to disapprove sites in white neighborhoods submitted to it by CHA is no more of an excuse for operating a segregated public housing system than is community opposition to the selection and submission of white sites by CHA in the first instance. Under long

* See Reitman v. Mulkey, 387 U.S. 369 (1967), and Hall v. St. Helena Parish School Board, 197 F.Supp. 649 (E.D. La. 1961), aff'd., 368 U.S. 515 (1962), for other cases disallowing "community opposition" as a defense to discriminatory conduct where such opposition was expressed in a vote of the electorate.

recognized principles, the operating agency of a public institution can be enjoined from acting in an illegal manner even though a higher governmental authority tries to compel it to act in that manner.

In Orleans Parish School Board v. Bush, 268 F.2d 78 (5th Cir. 1959), the Louisiana legislature passed a statute which removed from local school boards the power to change the racial classification of schools (then classified either Negro or white). In an action to enjoin it from continuing to operate a segregated school system the Orleans Parish School Board defended on the ground that it had no legal power to desegregate its schools. In affirming a judgment entered against the school board the Court of Appeals said:

"It has long been held that state officers found to be operating state institutions or performing state functions contrary to the provisions of the Constitution may be enjoined from continuing such acts.

* * *

It makes no difference how the state laws may be changed in order to take away from the Board the power to change the operation of the schools to a non-segregated basis. The Board still cannot operate them illegally. The plaintiffs, under long recognized principles, ... can, by injunction, prevent the operating agency from acting ... in an illegal manner ... [The Board] is subject to injunction even though the state in its wisdom might see fit to deprive it of the power to operate legally." (268 F.2d, 80-81.)

In Cooper v. Aaron, discussed above, the Supreme Court considered attempts by the legislature and the Governor to prevent the Little Rock School Board from desegregating Central High School. The Court said:

"Had Central High School been under the direct management of the State itself, it could hardly be suggested that those immediately in charge of the school should be heard to assert their own good faith as a legal excuse for delay in implementing the constitutional rights of these respondents, when vindication of those rights was rendered difficult or impossible by the actions of other state officials. The situation here is in no different posture because the members of the School Board and the Superintendent of Schools are local officials; from the point of view of the Fourteenth Amendment, they stand in this litigation as the agents of the State."
358 U.S. 1, 15-16 (1958).

It follows from Orleans Parish and Cooper that even though the legislature deprived CHA of power to acquire sites without City Council approval, and even though the City Council consistently refused to approve sites in white neighborhoods, CHA could not constitutionally construct and operate a housing system located on the exclusively Negro sites which remained.

Also of interest is Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). The Fourteenth Amendment was

there held to be violated by a parking authority's passive acquiescence in a restaurant lessee's discrimination.

'It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith ... By its inaction, the Authority, and through it the State, has ... made itself a party to the refusal of service ...' (365 U.S., at 725.)

And in Ethridge v. Rhodes, 268 F.Supp. 83 (S.D. Ohio 1967), state officials were enjoined from contracting with union-shop contractors where the officials knew that membership in certain of the unions was not available to all without regard to race or color. The Ethridge court said:

'Defendants' failure to assure qualified minority workers equal access to job opportunities on public construction contracts by acquiescing in the discriminatory practices of contractors and craft unions clearly falls within the proscription of the Fourteenth Amendment, and a cause of action is stated under Section 1983.' (268 F.Supp. 83, 88.)

In Burton and Ethridge state officials were found to have violated the Constitution because of their passive acquiescence in the racially discriminatory acts of private persons. Here CHA apparently seeks to avoid the same conclusion upon the ground that it has merely acquiesced in such acts of another governmental agency! Orleans Parish, Cooper, Burton and Ethridge show that such acquiescence is

barred by the Fourteenth Amendment.

CONCLUSION

CHA controls public housing both at the "input" and "output" stages: CHA alone has the power to determine what sites are to be submitted to the City Council in the first instance, and CHA alone has the power to determine which, if any, of the sites approved by the City Council are to be built upon.

If - contrary to the facts - CHA had at the "input" stage vigorously pressed upon the City Council balanced and non-segregated site packages of its own choosing, and had the City Council over the years consistently eliminated the white-area sites without any CHA participation or acquiescence in the elimination process (i.e., without the aid of CHA's community opposition policy or the pre-clearance and twice-as-many-as-needed arrangements), it would still have been constitutionally impermissible for CHA to have constructed and operated a public housing system on the segregated sites which remained available to it.

But the case here is far stronger than that. At the "input" stage CHA did not submit to the City Council (let alone vigorously press) balanced and non-segregated site packages of its own choosing. Instead, contrary to the advice of its own general counsel and the entreaties of others, CHA chose to follow the community opposition policy and to enter into the pre-clearance and twice-as-many-as-needed arrangements, declining even to prepare development plans for (much less to submit to the City Council) sites which did not survive pre-clearance. Indeed, since the departure of Elizabeth Wood, no one at CHA except its general counsel appears even to have seriously considered changing these policies and procedures, notwithstanding they were rapidly making its housing system all Negro. (Though not necessary to the conclusion that CHA has acted unconstitutionally, it is a permissible - perhaps compelling - inference from such facts as the ousting of Elizabeth Wood, the exclusion of Negroes from the four white-area projects, the proximity rule, Alvin Rose's speech to the City Club, the rejection of the general counsel's advice, the failure to consider or discuss alternatives to the succession of all Negro site packages, etc., that these policies and procedures were not reluctantly adopted and followed by

CHA in spite of, but were conceived and willingly employed by
CHA because of, the segregated public housing they produced.)
These affirmative policies and procedures make CHA doubly
responsible for Chicago's segregated public housing system.

"[T]he prohibitions of the Fourteenth
Amendment extend to all action of the
State denying equal protection of the
laws, whatever the agency of the State
taking the action [citations omitted],
or whatever the guise in which it is
taken [citations omitted]." Cooper v.
Aaron, 358 U.S. 1, 17 (1958).

On the facts of this case those prohibitions clearly extend
to the actions of the CHA in constructing and operating a
segregated public housing system in Chicago.

Respectfully submitted,

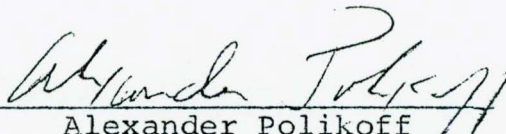
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DATED: October 21, 1968

(i)

NOTE ON CITATIONS

Two principal groups of affidavits have been filed by plaintiffs. The first was filed on December 15, 1966, in opposition to the defendants' motion to dismiss the complaint. It consists of affidavits of the following persons:

1. Philip Hauser, Professor of Sociology, University of Chicago.
2. Harold M. Baron, Director, Research Department, Chicago Urban League.
3. Tamaara Tabb, formerly Supervisor of Tenant Selection of the CHA.
4. J.S. Fuerst, formerly Director of Research and Statistics of the CHA.
5. Kale Williams, Executive Secretary of the American Friends Service Committee.
6. Dorothy Gautreaux, plaintiff.
7. Odell Jones, plaintiff.
8. Doreatha R. Crenchaw, plaintiff.
9. Robert Fairfax, plaintiff.

The second group of affidavits was filed on July 22, 1968, in support of the plaintiffs' motion for summary judgment. It consists of affidavits of the following persons:

1. Harold M. Baron, Director, Research Department, Chicago Urban League.
2. Claude A. Benjamin, formerly Commissioner of the CHA.
3. Edwin C. Berry, Executive Director of the Chicago Urban League.
4. Alex Elson, formerly Chairman of the Site Selection Subcommittee of the CHA Advisory Committee of the Welfare Council of Metropolitan Chicago.
5. J. S. Fuerst, formerly Director of Research and Statistics of the CHA.
6. Emil G. Hirsch, II, formerly Director of Public Information of the CHA.
7. Bernard Kaplan, formerly Chief of Community and Tenant Relations of the CHA.

(ii)

Citations to the Baron and Fuerst affidavits are to the affidavits filed on July 22, 1968.

Depositions of the following persons are on file

1. Barold M. Baron, Director, Research Department, Chicago Urban League.
2. Leon Despres, Alderman, City of Chicago.
3. Alex Elson, formerly Chairman of the Site Selection Subcommittee of the CHA Advisory Committee of the Welfare Council of Metropolitan Chicago.
4. Calvin Hall, Assistant Counsel of the CHA.
5. Emil G. Hirsch, II, formerly Director of Public Information of the CHA.
6. C. E. Humphrey, Executive Director of the CHA.
7. Louis Kreinberg, Research Director for the Jewish Council on Urban Affairs.
8. Kathryn Kula Moore, General Counsel of the CHA.
9. Alvin Rose, formerly Executive Director of the CHA.
10. Harry J. Schneider, Deputy Executive Director of the CHA.
11. Charles Swibel, Chairman of the Board of Commissioners of the CHA.
12. Louise Webb, Supervisor of Community and Tenant Relations of the CHA.
13. Kale Williams, Executive Secretary of the American Friends Service Committee.