

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

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UNITED STATES DISTRICT COURT

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

REPLY BRIEF OF PLAINTIFFS IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT IN THEIR FAVOR

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INTRODUCTION

CHA states the "basic issue" in the case this way:

"Defendants acknowledge that if, as Plaintiffs argue, CHA had been an 'active and willing partner' in promoting the discriminatory placement of public housing in Chicago, Defendant has abridged Fourteenth Amendment rights. This is the basic issue in the case."
(CHA br. 27.)

*Each side has filed summary judgment motions. CHA's brief in support of its motion (herein cited "Initial CHA br.") was filed September 30, 1968. Plaintiffs' initial brief (herein cited "Our br.") was filed October 21, 1968, and served both as the answering brief with respect to CHA's motion and as the brief in support of plaintiffs' motion. CHA's second brief (herein cited "CHA br."), filed November 25, 1968, was the reply brief with respect to CHA's motion and (though not so labeled) the answering brief with respect to plaintiffs' motion. These briefing arrangements were agreed upon by the parties and approved by the Court by agreed orders entered May 22, July 22, August 29, November 8, and December 9, 1968.

We do not agree that this is the "basic issue" in the case. Unquestionably CHA has abridged plaintiffs' Fourteenth Amendment rights if CHA has been "an active and willing partner in promoting the discriminatory placement of public housing in Chicago." The evidence, discussed below, shows this to be the case. But CHA has also abridged those rights if it has promoted the discriminatory placement of public housing only passively (Burton v. Wilmington Parking Authority and Ethridge v. Rhodes, Our br. 39-40), or reluctantly (Cooper v. Aaron, Our br. 34). The Fourteenth Amendment prohibits CHA conduct which is in fact racially discriminatory, regardless of CHA's subjective motivation. We need not show that CHA officials are racists or segregationists and that therefore they have adopted and pursued policies to keep Negroes out of white neighborhoods. We need only show that CHA has in fact pursued such policies. (See the authorities in Part II hereof.)

Nonetheless, even on CHA's erroneous view of the "basic issue," what the record does and does not show is controlling. Yet CHA's brief makes only scanty references to the record while vigorously criticizing us for our more detailed handling of it. We are accused of pulling together "bits and pieces

culled from a period of history covering twenty years or so ... into untruths or half-truths" (CHA br. 4); of putting together "a mosaic of bits and pieces of untruths or partial truths or fabrications that are immaterial in any event" (Id. 28); of using a "cut-and-paste technique" (Id. 11), a "cut-and-paste argument ... fabricated from bits of statements" (Id. 30) and an "imaginative technique of advocacy" (Id. 5); and of utilizing "notes artfully edited" (Id. 12) and even "sheer fabrication" (Id. 7).

In Part I of this brief we will reply with particularity to these serious - if strident - charges. The uncontradicted facts in the record (most of them evidenced by testimony of CHA persons and by documents taken from CHA files) show that CHA has been carrying on a racially discriminatory housing program - one in which Negroes have been deliberately kept out of white neighborhoods. In Part II we will respond to CHA's legal arguments.

I. THE UNCONTRADICTED FACTS.

In all of CHA's charges of "bits and pieces," "cut-and-paste" and "fabrications," there is little that is specific.

The basic CHA complaint seems to be that we have selected testimony out of context or given it improper weight so that the factual portion of our initial brief did not fairly portray the record.

We do not believe this is so. But to enable the Court better to judge for itself we will set forth an outline of facts which are not only uncontradicted but which CHA's briefs either have not commented on or have expressly admitted. (Exceptions to this will be specifically noted.) For convenience, this outline will be organized along the lines of the categories in CHA's discussion of the facts (CHA br. 3-12) except for three "Background Facts" showing (1) CHA's continuous recognition of the City Council's desire to keep Negroes out of white neighborhoods, (2) CHA's cooperation with and implementation of that desire, and (3) the results of the foregoing - i.e., the location of family projects almost exclusively in Negro neighborhoods, notwithstanding there were numerous sites in white neighborhoods which met all CHA's racially neutral criteria.

First, however, brief comment should be made on the five "controlling facts" set forth, without a single record reference, at the outset of CHA's factual discussion, with

most of which we are said to "expressly or impliedly agree without question." (CHA br. 3-4.)

1. CHA's purpose is said to be to construct decent, low income housing, furthering slum clearance as well, not to integrate Chicago. We agree. But it is also a "controlling fact" that CHA did not have to use exclusively Negro sites to accomplish its purpose since "numerous sites located in white or substantially white neighborhoods ... met the criteria - e.g., slum clearance, cost limitations, accessibility, surrounding land uses, and zoning and other municipal planning - imposed by law." (CHA br. 3.)

2. The City Council's approval has been a condition precedent to CHA's acquisition of sites. True,* but only to that; not to decisions as to what sites to submit for approval, or to the assignment of tenants to

*The statute provides:

"...[N]o real property or interest in real property shall be acquired in such municipality by the housing authority until such time as the housing authority has advised the governing body of such municipality of the description of the property or interest therein proposed to be acquired, and the governing body of the municipality has approved the acquisition thereof by the housing authority." Ill. Rev. Stat. 1967, ch. 67-1/2, §9.

projects, or to decisions to build or not to build.

3. CHA has "looked all over Chicago" for sites and "recommended" for City Council approval sites in white neighborhoods. Not completely true, and in any event misleading. Although CHA may have "looked" all over the City,* it never sought to persuade a white community to accept family housing as it did with respect to (proximity rule) elderly housing. (Rose dep. 72-75.) And, in CHA's lexicon, "recommend" is always a synonym for the initial step in the pre-clearance procedure by which "recommended" sites were filtered out and not formally submitted to the Council. CHA's initial brief acknowledged 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." (Initial CHA br. 13, emphasis supplied.) But where CHA "looked" or what it "recommended" is irrelevant.

What matters is what sites CHA chose not to submit to

*The extent of the "looking" is questionable. Rose said that, except for one instance, much of the testimony he had given about "looking" related to elderly, not family, housing. (Rose dep. 75.)

the Council and why, and its decisions to build on sites located exclusively in Negro neighborhoods recognizing, as it did (see the first Background Fact, *infra*), that all white sites had been eliminated because of the City Council's desire to keep Negroes out of white neighborhoods.

4. Sites were "recommended" by CHA not because of the racial character of the neighborhood but because of racially neutral criteria. A half-truth, and a misleading half-truth at that. Undoubtedly the sites which were "recommended" did meet the several criteria, but many sites were not "recommended" (let alone formally submitted to the City Council) precisely because of race. (See, e.g., Berry Aff. 2; Hirsch Aff. ¶5; Humphrey dep. 134; Kreinberg dep. 17-20.)

5. All CHA can do in site selection is "consider and recommend." Not true. CHA can submit sites without regard to the racial character of the neighborhood; it can defend - "fight for" - its site submissions; and it can refuse to build exclusively on Negro sites when it knows that, although numerous white sites meet all statutory criteria, these have all and always been

eliminated to keep Negroes out of white neighborhoods.

These are CHA's five "controlling facts" - an abbreviated and distorted performance by those who dislike "bits and pieces." We believe a fuller and more accurate statement of the facts, with record references, is called for.

A. Three Background Facts.

- (1) CHA was continuously aware of the desire of the City Council to keep Negroes out of white neighborhoods.*

Claude Benjamin, former Commissioner
of CHA:

- (a) In 1948 and 1949 the Chairman of the CHA Board of Commissioners told the other Commissioners that a principal objection of Chicago aldermen to CHA's proposed sites "was that Negroes would be moved into white areas of the City." (Benjamin Aff. 1-2.)
- (b) The Chairman also told the Commissioners that a so-called compromise package of sites would be acceptable to the City Council only if CHA would agree that

*CHA claims the record fails to show the City Council's desire - that it is something 'everyone just knows' (CHA br. 18), and that we rely on "general hearsay allegations in challenging the purposes and motives of the City Council and its members." (Id. 19.) We are not concerned with what "everyone" knows but with what CHA knows and has itself testified to. Accordingly, we are setting forth in the text some of the uncontradicted record, chronologically and in sufficient detail (though by no means exhausting the record as to this point) to avoid the charge of selecting only "bits and pieces." Emphasis is supplied throughout. CHA's confusion about "hearsay" is explained in Part II of this brief.

Negro occupancy of the projects would not be permitted to exceed 10%. (Id. 2.)

- (c) In numerous discussions between late 1949 and June 16, 1950 among CHA Commissioners and staff respecting the next group of CHA proposed sites, it was many times observed that the principal difficulty in obtaining City Council approval of such sites "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.)

J. S. Fuerst, former Director of Research and Statistics of CHA:

- (d) In numerous conversations when Benjamin was a CHA Commissioner, both Fuerst and Benjamin stated that the principal cause of CHA's inability to obtain City Council approval of sites located elsewhere than in Negro ghetto areas was the "unwillingness of aldermen from white wards to acquiesce in action which would involve the movement of Negroes into their neighborhoods." (Fuerst Aff. 1.)

Emil G. Hirsch, II, former Director of Public Information of CHA:

- (e) In numerous meetings with other staff persons Elizabeth Wood, then Executive Secretary of CHA, frequently observed that a principal reason for the difficulty in obtaining City Council approval for sites in white neighborhoods "was that the aldermen would not approve sites where the result would be to move Negroes into white neighborhoods." (Hirsch Aff. 1.)
- (f) In a meeting in 1955 or 1956 between CHA Executive Director General Kean and Hirsch,

Kean referred to the impossibility of getting the City Council to approve sites in white areas and said, "What's the use of even studying and spending money if we know we're not going to get the City to approve?" (Id. 2.)

Alvin Rose, former Executive Director of
CHA:

- (g) On May 5, 1959, Rose testified before the U.S. Commission on Civil Rights as follows:

"REVEREND JAMES: Because of the present location of the existing sites, then, the Council of Chicago is guilty of practicing to a certain degree segregated housing, is that true?

MR. ROSE: You are only agreeing with me." (Rose dep. 9.)

- (h) On June 16, 1959, in a meeting with Kale Williams and others, Rose stated that it would be fruitless for the CHA to propose sites in white areas to the City Council and the CHA wasn't going to waste time doing so because of the opposition to putting projects in white areas based on the fact that the projects would have Negro occupants. (Rose dep. 185-86.)

Bernard Kaplan, former Chief of Community and
Tenant Relations of CHA:

- (i) In numerous conversations from 1958 to 1964 among Kaplan, Rose, Humphrey, Schneider and Kula, all top CHA officials, it was stated by such persons that in their view the principal reason for the opposition of the City Council aldermen to site locations in white neighborhoods was "the likelihood that Negroes would

move into white neighborhoods ..."
(Kaplan Aff. 1-2.)

C. E. Humphrey, Executive Director of CHA:

- (j) From the Kean-Murphy deal in 1955 until 1965, every single site located in a white neighborhood which was included in a CHA-sponsored ordinance was eliminated - 4 in 1955; 2 in 1956; 2 in 1958; and 1 in 1965. (Our br. 10-12.)* (In 1965, 30 apartments, constituting 3/10ths of 1% of the family apartments completed or under development since the Kean-Murphy deal, were authorized as parts of the Hyde Park and Lincoln Park urban renewal plans. Ibid.) Humphrey said the City Council "invariably" rejected sites outside the Negro areas (Humphrey dep. 130), and had "no doubt" that the Council would not approve sites in white neighborhoods. (Humphrey dep. V.II, 204.)
- (k) At a public hearing in 1966 Humphrey testified that CHA did not waste money and time picking sites in white neighborhoods because the sites would not be approved since the bulk of the housing would be for Negroes and there would be objections from the aldermen on these grounds. (Kreinberg dep. 34-35; Despres dep. 28-32; Humphrey dep. 132-35.)

Charles R. Swibel, Chairman of the Board of Commissioners of CHA:

- (l) In various conversations during the past five years Swibel told Edwin Berry, Executive Director of the Chicago Urban League, that the City Council would not

*Where our initial brief is cited for factual statements, the record references and a fuller discussion appear at the pages cited.

approve sites for public housing projects outside the Negro ghettos since it was "unwilling to have such projects with Negro tenants placed in white neighborhoods." (Berry Aff. 1-2.)

- (2) CHA cooperated with this desire of the City Council to keep Negroes out of white neighborhoods.*

Claude Benjamin:

- (a) In 1948 CHA Commissioners agreed to accept a 10% limit on Negro occupancy in the relocation housing sites then approved as a "compromise package." (Benjamin Aff. 2.)
- (b) In 1950 CHA Commissioners approved another compromise group of sites from which most of the white area sites had been eliminated, over the objection of Benjamin. (Id. 3-4.)

Emil G. Hirsch, II:

- (c) CHA Executive Secretary Elizabeth Wood stated in a meeting with Hirsch that sites then under discussion could not be selected by CHA because they were in all white neighborhoods and "the aldermen wouldn't approve moving Negroes there." (Hirsch Aff. 2.)

*CHA does not contest the fact of its cooperation with the City Council. However, as noted under Background Fact Number (1) above, CHA does claim that the record fails to show the Council's desire to keep Negroes out of white neighborhoods, and CHA therefore denies that there was anything wrong with its cooperation with the Council. The general CHA attitude of cooperation with the known discriminatory attitude of the Council has been consistent ever since 1948 and is shown by the uncontradicted evidence referred to in the text. Some specific mechanics of this cooperation are referred to below under the Kean-Murphy deal and the Twice-as-Many-as-Needed Policy

Alvin D. Rose:

- (d) CHA's formal submissions of sites to the City Council have been largely confined to Negro and immediately adjacent areas because of the City Council's attitude. (Rose dep. 21-22.)

C. E. Humphrey:

- (e) The CHA did not believe in spending money developing and presenting sites outside the Negro areas which it believed the city administration would not approve. (Humphrey dep. 134.)
- (f) "[W]e don't find sites where we know there will be resistance." (Kreinberg dep. 19.)

Kathryn Kula Moore:

- (g) CHA General Counsel Mrs. Moore was "concerned that we [CHA] weren't able to go other than in the ghetto areas." (Moore dep. 11. When her deposition was submitted for signature Mrs. Moore changed her testimony to read, "concerned that we weren't able to get more sites approved outside of ghetto areas.") She told CHA's Chairman she "felt that there might be a lot of merit in submitting the site to the City Council directly and letting the chips fall where they may," but her advice was not followed and CHA's pre-clearance policies remained unchanged. (Moore dep. 12.)

Charles R. Swibel:

- (h) CHA Chairman Swibel said that, "in view of the City Council's opposition to projects in white neighborhoods, CHA

tried to select sites only in Negro areas which would be approved by the City Council." (Berry Aff. 2.)

- (3) CHA's family apartments have been located almost exclusively in Negro neighborhoods although there were numerous sites in white neighborhoods which met all racially neutral criteria.

- (a) Subsequent to the passage of the 1949 amendment to the Illinois Housing Authorities Act, 21,010 CHA family apartments have been completed or are being developed (Baron Aff. Ex. A, nos. 20-54); of these over 98% have been in Negro neighborhoods. (Our br. 13.) The percentage for the 10,256 apartments completed or under development since the Kean-Murphy deal (Baron Aff. Ex. A, nos. 36-54) is over 99%. (Ibid.)

- (b) Numerous sites located in white or substantially white neighborhoods met all of CHA's racially neutral criteria. (CHA br. 3.)

B. The Kean-Murphy Deal.

- (1) The fact of the Kean-Murphy deal is admitted. (CHA br. 5-6.)*

*CHA's head-in-the-sand characterization of this pre-clearance arrangement as merely procedural and going "through channels" (CHA br. 28) will be dealt with in Part II of this brief. Though it makes little difference, the document included in CHA's appendix is not Exhibit 6 to the Humphrey deposition (and there is nothing in the record pertaining to it), but appears to be a later, spruced-up version of that Exhibit intended to de-emphasize CHA's abdication of responsibility to the City Council. Compare paragraphs 1d, 1e, 1f, 1g and 7 of the two documents.

- (2) Following the Kean-Murphy deal CHA strictly adhered to the pre-clearance arrangement and never again submitted sites to the City Council which had not first been pre-cleared. (Humphrey dep. 97-100; 103.)

C. The Twice-as-Many-as-Needed Policy.

- (1) The facts as to this policy are admitted. (CHA br. 6-7.)
- (2) The origin of the policy was an aldermanic request. (Humphrey dep. V.II, 112-13.)*

D. The Ousting of Elizabeth Wood and the Exclusion of Negroes from the Four White Area Family Projects.

- (1) The facts as to the ousting of Elizabeth Wood are admitted. (CHA br. 8.)
- (2) The facts as to the total exclusion of Negroes "in the early years covered by the Complaint" are admitted. (Ibid.)
- (3) CHA's quota policy in the four projects continues in effect. (Webb dep. 101.)**

*CHA says, "It is not true, however, that this procedure had any relationship to any 'agreement' between CHA and the City Council aldermen." (CHA br. 7.) Our statement to this effect is called "sheer fabrication." (Ibid.) It is not. Humphrey testified that the twice-as-many-as-needed policy was adopted following a specific request from the aldermen, "so that if we [the City Council] knock some [sites] out you [CHA] can still carry the ball." (Humphrey dep. Vol. II, 113.)

**CHA says the situation in the four projects has changed "in recent years" (CHA br. 8), presumably referring to the quota policy begun in three of the projects in 1954, 1955 and 1956 (see Our br. 22-24), and calls this its "modest success at racial integration" in the four white area projects. (CHA br. 9.) CHA may choose this characterization of its quota policy, but the uncontradicted facts as to this are as stated in the text above.

(a) Negro occupancy at the four projects for over a decade has been as stated in our initial brief, i.e., less than 7%, 4%, 6% and 1%, respectively (Our br. 23-24), notwithstanding the CHA waiting list of thousands of persons is more than 90% Negro. (Initial CHA br. 7.)

(b) CHA's Supervisor of Community and Tenant Relations, Mrs. Webb, testified as follows:

"Q. Is it still the practice to maintain Negro occupancy at a level in these four projects?

A. I would say yes." (Webb dep. 61.)

"Q. I also understand from your earlier testimony, tell me if I am wrong on this, I want to get it clear in the record, that the practice of the Authority today is to seek to maintain some kind of level of Negro occupancy in each of these four projects, is that correct?

A. Yes." (Webb dep. 114.)

(c) Mrs. Webb also testified:

"Q. If you know, Mrs. Webb, have the vacancy figures for the four projects ... been higher or lower or about the same as the vacancy figures on the other projects?

A. Periodically they have been higher.

Q. If you know, ... is the reason those vacancy figures have been higher the fact that apartments have been held, dwelling units have been held in those projects for white families?

A. I would say yes." (Webb dep. 101.)

(d) Mrs. Webb further testified as follows:

"Q. Is it true even today, Mrs. Webb,

that white applicants are promptly interviewed and referred out for housing?

A. Depending on the size of the family and the availability of housing.

Q. Generally isn't it true that except in a particular category for a three or four bedroom family, for example, where you may have no immediate vacancy generally a white family is invited in promptly for an interview?

A. Yes.

Q. Whereas a Negro family having the same qualification, same bedroom size and so on, would not be that promptly interviewed and referred out for housing?

A. Yes." (Webb dep. 111.)

(e) Mrs. Webb had read the affidavit of her predecessor, Mrs. Tabb, and to her knowledge nothing in Mrs. Tabb's affidavit was incorrect. (Webb dep. 100.) Mrs. Tabb's affidavit describes in detail the manner in which CHA "guided" the preferences of Negro applicants away from the four projects. (Tabb Aff.)

(f) Although CHA witnesses suggested that racial tension in the communities in question, not a segregationist attitude, explains CHA's unwillingness to permit more Negroes into the four projects (e.g., Webb dep. 98), Mrs. Webb could think of no major incident of racial tension in any one of the four projects since she had been in the Central Rental Office (Webb dep. 100), that is, since 1957 (Id. 58), only "some minor incidents, nothing that you could say was overt." (Id. 98.)*

*In any event, as Cooper v. Aaron teaches, even violent community opposition is not a defense to a racially discriminatory policy. It is therefore no more a defense to a token quota system in the four white area projects than it is to CHA's refusal to select white areas for new projects.

E. The Proximity Rule.

- (1) The facts as to this rule are admitted (CHA br. 9-10), including its condemnation by the federal government because of its "obvious" correlation to race and its "effect of inequality." (Rose dep., Ex. 4, p.11.)
- (2) The proximity rule came up in discussion with aldermen (Rose dep. 196-97) and it helped "very obviously" in obtaining City Council approval for elderly projects because it was a "fair assumption" that, by reason of the rule, such projects would be occupied largely by whites. (Id.)
- (3) The proximity rule had the effect of overcoming the objections of aldermen to locations of sites in white areas. (Moore dep. 13.)*

F. The Community Opposition Policy.

- (1) The facts as to this policy are admitted (CHA br. 10-12) - i.e., if the community was opposed to a proposed site, CHA did not submit that site to the City Council. (Rose dep. 58-59, 210-11; Hirsch dep. 31-32.) CHA's policy was not to permit a housing project to change the racial makeup of a neighborhood (Our br. 27), not to use public housing as a "wedge" (Id. 26), and not to force itself upon a hostile neighborhood. (Id. 27.)
- (2) CHA invariably encountered community opposition to family projects in white areas. For example, when CHA contacted every alderman in the city with respect to family housing, the only "yes" answers were from areas which were Negro or

*Notwithstanding these three uncontradicted facts CHA says, "there is no evidence that this former [proximity] rule had anything to do with race ..." (CHA br. 30.)

changing from white to Negro. (Rose dep. 76-77.)

- (3) CHA staff did not seek to overcome community opposition to family units in white areas of the City, though they did for elderly units to which the proximity rule applied (Rose dep. 74-75); CHA did not "find" sites where it expected to encounter resistance. (Kreinberg dep. 19.)*

* * * *

The foregoing is hardly more than a sample of the wealth of uncontradicted evidence in the record. For the convenience of the Court we are attaching as an appendix to this brief extensive excerpts from the lengthy testimony of CHA's current Executive Director (Humphrey) and his immediate predecessor (Rose). This appendix makes it abundantly clear not only that the facts given above fairly reflect the record, but that much additional testimony could be cited to the same effect. If, however, the record were to be reduced to five "controlling facts," we think they should be these:

*Notwithstanding the uncontradicted facts stated above CHA asserts "there is no evidence whatever that CHA ever failed to look for sites or refused to propose any sites simply because there was apparent community or neighborhood opposition based on racial antagonism." (CHA br. 31.)

1. CHA's community opposition policy antedated the City Council's power of site approval. The policy was not to permit public housing to change the racial make-up of a neighborhood, not to use it as a [racial] "wedge," and not to force it upon a hostile neighborhood.
2. CHA implemented its community opposition policy by excluding Negroes from its four white area projects - later, by limiting Negro occupancy in them to a tiny percentage of total occupancy while "guiding" Negro applicants away from expressing preferences for those projects.
3. CHA recognized that the City Council's power of site approval, when first acquired, was utilized to keep Negroes out of white neighborhoods, and continuously thereafter CHA recognized that the City Council desired to use its power for that purpose.
4. CHA cooperated with and implemented this desire of the City Council by not "finding" sites in white neighborhoods and by the Kean-Murphy deal for pre-clearance, the twice-as-many-as-needed policy and the proximity rule.
5. As a consequence of the foregoing, over 98% of the 21,010 CHA family apartments since 1950 (over 99% of the 10,256 apartments since the Kean-Murphy deal) have been located in Negro neighborhoods, notwithstanding the fact that numerous sites in white neighborhoods have met all of CHA's racially neutral criteria.

One is tempted to observe that the prophecy of the Welfare Council CHA Advisory Committee - "the existing pattern of segregation will be perpetuated" (Our br. 2) - was a sure thing.

The underlying facts are not in dispute. Witnesses have not contradicted one another or denied making statements attributed to them. Even CHA's brief does not point to any disagreement as to underlying facts but only argues their legal significance. The question is whether, as a matter of law, the uncontradicted facts do or do not amount to a showing that CHA has acted unconstitutionally. To that question we now turn.

II. THE LAW.

This Court has already ruled that plaintiffs have the right to have sites selected "without regard to the racial composition of either the surrounding neighborhood or of the projects themselves" and that

"What is at issue here is ... whether the site selection policy of the CHA has been and is being administered without regard to considerations of race." 265 F.Supp. 582, 583.

Given the uncontradicted facts in this record it seems inconceivable that CHA could seriously argue that its sites

have been selected without regard to considerations of race. In fact, CHA's brief is characterized by a studied avoidance of the issue posed by the Court. Its approach is to divert attention from that issue by the technique of listing four so-called "propositions" (A) to (D), and of ascribing those propositions to us. (CHA br. 14-15.) Then it attacks the propositions with arguments many of which are not even relevant to the issue of whether considerations of race have infected CHA's site selection policy. We will first comment on these four propositions and CHA's arguments thereunder, and then discuss the principles and authorities which clearly govern this case.

A. CHA's Four "Propositions."

Proposition (A) - That CHA is under some sort of legal duty to carry out its programs so as to further racial desegregation of Chicago. (CHA br. 14, 15-17.)

We do not contend that CHA is under a duty to further racial desegregation of Chicago. (Typically, CHA gives no supporting reference for ascribing this proposition to us.) We do contend, and this Court has held, that CHA is under the duty to administer its housing program, and in particular its site selection policy, without regard to considerations of race; and we contend that CHA has violated that duty. Nor

"... does it follow from the absence of a duty to achieve racial balance that a [school] Board may deliberately select sites to achieve racial segregation." United States v. School District 151 of Cook County, Illinois, ____ F.2d ____ (7th Cir. 1968), p.10 of the Court's opinion.

Under proposition (A) CHA also argues that we are really presenting a de facto segregation case (CHA br. 15-16), and that our reliance on school cases, which are "sui generis," is misplaced. (Id. 17.) As to the de facto argument, we are content to rely on the uncontradicted facts discussed in Part I. They show clearly that this is not a "de facto" case but one in which the site selection policy of CHA has been and is being administered with regard to the consideration of keeping Negroes out of white neighborhoods.*

*Cf. the Thompson case, oft-cited by CHA, where the Court said: "Plaintiff contends that public housing located in any area which is predominantly Negro, of itself, constitutes de facto segregation, ..." 251 F.Supp. 121, 124. We do not contend and have not argued that the location of any particular site or group of sites in a Negro neighborhood constitutes unconstitutional segregation. Unlike Thompson, where the evidence was confined to one group of sites chosen in a single year, the evidence here shows over 15 years of locating projects almost exclusively in Negro neighborhoods even though numerous white neighborhood sites were available. In Thompson the evidence "affirmatively established" that racial considerations were not involved in site selection (251 F.Supp., 123-24), whereas here the evidence affirmatively establishes the contrary.

The short answer to the "sui generis" argument is that this case, like the school cases, is founded upon the Fourteenth Amendment, and the equal protection principles announced in the school cases are therefore applicable here. (If they are not, what principles should govern this case? Does CHA contend that a public housing authority may constitutionally keep Negroes out of white neighborhoods?) Certainly a housing authority is as much a state agency as a school board, and discrimination by the one is prohibited as much as by the other.

CHA is said to operate under a "special" statute, though "special" is not defined. (CHA br. 26.) So do school boards operate under "special" statutes pursuant to which they are organized. CHA refers to the "long history of racial segregation in the public schools" (CHA br. 25) as helping to explain why a segregated faculty or student body may be "highly probative of intentional or purposeful segregation." (CHA br. 26.) There has also been a long history of racial segregation in public housing generally,* and (as the admitted facts in this

* "At the end of World War II, virtually all public housing in America was segregated." U.S. Commission on Civil Rights, Annual Report, 1963, page 160.

See, generally, The Public Housing Administration and Discrimination in Federally Assisted Low-Rent Housing, 64 Mich. L.R. 871 (1966).

"... governmentally supported segregation in public housing appears to have been the result of both discriminatory site selection and discriminatory tenant placement..." (Id. 881.)

case show) in Chicago in particular. By parity of reasoning the fact of a segregated housing system in Chicago - projects located almost exclusively in Negro neighborhoods over a period of more than 15 years even though numerous sites located in white or substantially white neighborhoods met all statutory criteria - should also be highly probative.

The principle of the school cases has been applied to all manner of state-provided facilities and services. See, *Jones v. Mayer Co.*, ____ U.S. ____, 88 S.Ct. 2186, 20 L Ed 2d 1189 (1968), concurring opinion of Mr. Justice Douglas. School cases have been regularly cited and relied upon by the courts in deciding housing cases. See, e.g., this Court's decision at 265 F.Supp. 582; Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 931-32 (2nd Cir. 1968); and Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955). CHA is of course entitled to try to distinguish cases on their facts. But it will not do to wish away a body of law with the airy declaration that school cases are "sui generis."

Proposition (B) - That the City Council and individual aldermen have frustrated CHA's duty to further racial desegregation for reasons of racial animus and community opposition. (CHA br. 14-15, 18-20.)

Since we do not contend that CHA has a duty to further

desegregation, we say nothing about "frustration" of that duty. We do contend that the uncontradicted facts clearly show that CHA was continuously aware of the City Council's desire to keep Negroes out of white neighborhoods (see the first Background Fact), and that it cooperated with and implemented that desire (see the second Background Fact, the Kean-Murphy deal, etc.).

CHA argues that "other than their [plaintiffs'] pointing to the public housing sites that have not received City approval over the years and the sites that have received approval" (CHA br. 18), there is no proof of the City Council's desire to keep Negroes out of white neighborhoods, which is supposed to be something "everyone just knows" (Ibid.); or, if there is such proof, it is all "hearsay." (CHA br. 19.)

The assertion that there is no proof of the City Council's desire to keep Negroes out of white neighborhoods (other than evidence of the Council's site approvals and disapprovals*)

*This evidence alone is substantial. In every CHA program between 1955 and 1965, every single white site was eliminated from the CHA ordinance. (Later in 1965, 30 apartments were approved as parts of two urban renewal plans.) In 1966, after 20 of 22 white sites recommended by the CHA staff had been eliminated from the CHA proposed ordinance, in part at least because of aldermanic opposition (Humphrey Aff. 8-9), the remaining 2 sites were approved. One was in a neighborhood with a sizeable and increasing Negro population, and the other - development of which has since been indefinitely deferred by CHA - was occupied largely by dilapidated Negro shacks. (Humphrey dep. Vol. II, 192.) The foregoing comes mostly from the Humphrey affidavit and is summarized at Our br., 10-12. The significance of statistical evidence such as this is discussed infra.

utterly ignores the record - see some of the record references under the first Background Fact in Part I. As already noted, however, Part I is not exhaustive and the record teems with evidence of that desire, as when Rose and Humphrey testified, as they did many times, that it would be "fruitless" and a waste of time and money to submit sites in white neighborhoods to the City Council.

CHA views this testimony as "hearsay." (CHA br. 19.) It is not. Since the witnesses are CHA's own officials the testimony plainly is not hearsay when offered against CHA.

"[A]nything said by the party-opponent may be used against him as an admission, provided it exhibits the quality of inconsistency with the facts now asserted by him in pleadings or in testimony. (This proviso never needs to be enforced, because no party offers thus his opponent's statement unless it does appear to be inconsistent.) ... [T]he party's testimonial utterances do not pass the gauntlet of the Hearsay rule when they are offered for him (unless they can satisfy some exception to that rule); but ... they do pass the gauntlet when they are offered against him as opponent, because he himself is in that case the only one to invoke the Hearsay rule and because he does not need to cross-examine himself." (IV Wigmore on Evidence, Third Ed., §1048, p.3; emphasis is the author's.)

The first portion of the foregoing statement has been quoted with approval by the Illinois Appellate Court in Woodruff v. Pennsylvania R. Co., 52 Ill. App. 341, 349-50 (1st Dist. 1964).

In Cleary's Handbook of Illinois Evidence, admissions are described as an exception to the hearsay rule:

"Relevant admissions of a party, whether consisting of statement or conduct, are admissible when offered by the opponent, as an exception to the Hearsay Rule. Lack of opportunity to cross-examine is deprived of significance by the incongruity of the party's objecting to his own statement on the ground that he was not subject to cross-examination by himself at the time.

In the nature of things, the statement is usually damaging to the party against whom offered, else it would not be offered. However, the cases lay down no requirement that the statement be against interest, and the theory of the exception is not based thereon. The oft-encountered label 'admissions against interest' is inaccurate and serves only to confuse. ...

Admissions are substantive evidence, as contrasted with mere impeaching statements, and no preliminary foundation need be laid by examining the party concerning his admission. Brown v. Calumet River Ry. Co., 125 Ill. 600, 18 N.E. 283 (1988). ...

Firsthand knowledge of the matter admitted is not required. Susemihl v. Red River Lumber Co., 306 Ill. App. 430, 28 N.E.2d 743 (1940), aff'd, 376 Ill. 138, 33 N.E.2d 211 (1941); Waugh v. Cender, 29 Ill. App.2d 408, 173 N.E.2d 860 (1961)." Cleary, Handbook of Illinois Evidence, Second Ed., §17.11, p.280.

But whether viewed as an exception to the hearsay rule, or as a type of evidence to which the rule does not apply at all,*

*"Evidence of an admission is not objectionable as hearsay; indeed the rule under which such evidence is admitted has been recognized as an exception to the hearsay rule... The view has been taken, however, that an extrajudicial admission is receivable against a party not as an exception to the hearsay rule but as not being within the purpose of the hearsay rule." 31A CJS Evidence, p.698.

it is clear that the testimony to which CHA objects as "hearsay" is admissible.

"Any statement, whether oral or written, made by or attributable to a party to an action, which tends to establish or disprove any material fact in a case is competent evidence against him in such action." Maltby v. Chicago Great Western Ry. Co. 347 Ill. App.441, 458 (2nd Dist. 1952).

"The law holds everyone responsible for what he says to the extent that his sayings may be used as evidence against him of the truth of what he has said." Casey v. Burns, 7 Ill.App. 2d 316, 323-24 (2nd Dist. 1955).

Indeed, the testimony is also admissible on an entirely separate ground, namely, as evidence showing CHA's state of mind or attitude. (VI Wigmore on Evidence, Third Ed., §§1790, 1731.) CHA's belief that the City Council desired to keep Negroes out of white neighborhoods infects its own cooperative actions (the Kean-Murphy deal; the twice-as-many-as-needed policy; proceeding to build on all-white sites) with a discriminatory virus. Accordingly, CHA's belief concerning the City Council's motivation is itself a relevant evidentiary fact as to which the testimony objected to as "hearsay" is plainly admissible.*

*Compare, although not discussing any hearsay objection, School District 151. There the majority of the school board "believed" that a school construction referendum had lost because the voters were against integration. See Finding of Fact Number 21, United States v. School District 151, 286 F.Supp. 786, 794. (Footnote continued on next page.)

Proposition (C) - That even if CHA had done everything possible to carry out its duty, nonetheless it had no right to build on any sites such a City Council would approve. (CHA br. 15, 20-23.)

This is another proposition erroneously ascribed to us.

Proposition (C) assumes the "fulfillment of [CHA's] legal duty." (CHA br. 20.) That duty could not be fulfilled so long as CHA administered its program in violation of its constitutional duty not to discriminate against Negroes.

The apparent purpose of CHA's discussion under proposition (C) is to express its disagreement with our view that even if CHA had vigorously pressed non-segregated site packages upon the City Council, but the Council had over the years consistently eliminated the white sites, then CHA could not constitutionally have built and operated a public housing system on the all-Negro sites which remained. (CHA br. 20-23.) The reason for this disagreement is said to be that our view assumes no "racial 'regard'" in the selection of sites by CHA (Id. 21) and therefore "does not square with ... and is fatal to" (Id. 23) a complaint which alleges discrimination by CHA.

*(Footnote continued from previous page.) Because the board "acquiesced in [that] sentiment" in selecting sites for a new referendum, the board was held to have selected the new sites to preserve racial segregation. United States v. School District 151, ____ F.2d ____ (7th Cir. 1968), at pp. 10-11 of the Court's opinion.

This captious argument hardly merits a response. It amounts to the assertion that even though the site selections be conceded to be discriminatory, and even though that discrimination be known to CHA, so long as CHA itself is assumed to be without racial animus it is free to construct and operate a public housing system on the discriminatorily chosen sites. But it is on an assumption of no racial animus on the part of the Little Rock School Board that Cooper v. Aaron was decided. A paraphrase from that opinion (see the quotation at page 39 of our initial brief) furnishes the precise answer to the CHA argument:

"One may well sympathize with the position of the [CHA] in the face of the frustrating conditions which have confronted it, but, regardless of [CHA's] good faith, the action of other state agencies responsible for those conditions compel us to reject [CHA's] legal position. Had [public housing] been under the direct management of the [City] itself, it could hardly be suggested that those immediately in charge of [it] should be heard to assert their own good faith as a legal excuse for [discriminatory site selection because non-discriminatory selection] was rendered difficult or impossible by the actions of other [City] officials. The situation here is in no different posture because the [defendant is a local housing authority]; from the point of view of the Fourteenth Amendment, [it] stands in this litigation as the agent of the [City]."

See also the observation of the Supreme Court in Burton v.

Wilmington Parking Authority, 365 U.S. 715, 725 (1961):

"It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith."

Also relevant is the following statement from the New Rochelle case:

"When this course of conduct is viewed in its totality, the desire to maintain segregation is clear. This does not necessarily mean that individual members of the Board are segregationists or racists. But it is apparent that they have failed to accept or recognize their moral and legal responsibilities and have chosen instead to yield to pressures of certain groups who wish to avoid an influx of Negro children into the schools in their districts." Taylor v. Board of Education, 191 F.Supp. 181, 195 (1961), aff'd. 294 F.2d 26, cert. den. 368 U.S. 940 (emphasis supplied).

As to the suggestion that our remedy should be to "challenge" the statute (CHA br. 23), it is perfectly clear that it is proper to sue those who administer a discriminatory public program, regardless of the ultimate source of the discrimination. In Orleans Parish (see Our br. 38), the Court said: "It is immaterial whether the 1956 law is held ... to be constitutional or unconstitutional ..." 268 F.2d 78, 80. The Court added:

"[T]his Board is still the only proper party to be enjoined and it 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, 81.

Proposition (D) - That CHA was an active and willing partner with the City Council. (CHA br. 15, 23-39.)

This is the only proposition of the four which is accurately stated although, as noted at the outset, CHA erroneously calls it the "basic issue" in the case. But CHA's argument under this proposition, which largely ignores the record, is a potpourri. First, CHA reargues a "presumption of regularity" with another swipe at the "sui generis" school cases thrown in for good measure, though conceding that this is not a case which should rest "primarily" upon legal presumptions. (CHA br. 24-27.) Then comes another purported discussion of the facts (without a single record reference) leading to the conclusion that "Defendants need no defense." (Id. 27-32.) Finally, there are discussions of the community opposition policy and the City Council defense. (Id. 32-39.)

Since CHA now concedes the case does not turn on presumptions we need not take the Court's time with that argument. But it should be noted in passing that CHA's handling (CHA br. 25-26) of Judge Hoffman's decision in School District 151, since affirmed by the Seventh Circuit, clearly fails to come to grips with what was said there. It is true that Judge Hoffman found discrimination on the part of the school board (just as we believe discrimination will be found on the part

of CHA), but what Judge Hoffman said about a presumption of discrimination arising from certain facts obviously was not based upon his finding of discrimination. The Judge stated quite specifically what facts created the presumption. (See Our br. 33.)*

The remainder of the discussion under CHA's fourth proposition rests on one prop, namely, CHA's assertion that "There is no support ... for Plaintiffs' notion ... that CHA has been involved ... in any deliberate and intentional segregation of public housing in Chicago." (CHA br. 31.) That swept away, the entire CHA conceptual structure tumbles, for all of our cases are sought to be distinguished and our arguments turned aside upon the ground that they involve

*Compare Jones v. Georgia, ____ U.S. ____, 88 S.Ct. 4, 19 L ed 2d 25 (1967), a jury discrimination case in which the Court held discrimination proved solely because of the disparity between the percentage of Negroes on the tax digest (20%) and on the venires (5%). The Court said:

"The Georgia Supreme Court affirmed ... because 'public officers are presumed to have discharged their sworn official duties' ... We hold that the burden upon the State to explain 'the disparity between the percentage of Negroes on the tax digest and those on the venires,' Whitus, supra, 385 U.S. at 552, was not met by the Georgia Supreme Court's reliance on the stated presumptions. [citations omitted.]" 88 S.Ct., 5; 19 L ed 2d, 26-27.

discrimination and, says CHA, none has been proved here.

Indeed, CHA admits,

"It is extremely difficult of course to take issue with the proposition that the courts can afford relief from illegal acts of a local government agency despite the plea that a higher governmental authority has sought to compel such acts." (Id. 35.)

And it adds that if it were proper for the Court to accept the "assumption" that we have proved deliberate discrimination on CHA's part in the location of public housing, then CHA would concede that proposition. (Id. 36.)

Translated, this means that, in spite of what it argues elsewhere in its brief, CHA has really given up the ghost on the City Council defense. The issue, it finally seems to admit, is whether the record proves discrimination by CHA, regardless of the role played by the City Council. The following section shows that the evidence in the record does prove such discrimination.

B. Discrimination by CHA Has Been Proved.

We have already said it seems "inconceivable" that CHA could seriously argue on the record in this case that its site selection policy, in the words of this Court, has been "administered without regard to considerations of race."

265 F.Supp. 582, 583. The CHA argument apparently is that the considerations of race which the record so clearly shows somehow do not amount to "discrimination" under the Fourteenth Amendment. Why they do not is less clear.

Sometimes, but without being explicit, CHA seems to be arguing that there can be no proof of discrimination without proof of subjective racial animus. (CHA br. 8, 12, 20, 32.) This is plainly not the case, as the discussion under CHA's proposition (C), *supra*, has shown. (It is also clear that in a case charging a violation of Fourteenth Amendment rights plaintiffs need not allege or prove any specific intent by defendants to deprive them of such rights. Monroe v. Pape, 365 U.S. 167, 187 (1961).)

At other times CHA seems to argue that even if racial animus need not be shown, discrimination in site selection can only be proved by something like an express admission and cannot be proved by an inference drawn from extrinsic facts. (CHA br. 22.) This too, is clearly wrong, as the following discussion will demonstrate. We will first consider the level of evidence which has sufficed to prove discrimination in a variety of Fourteenth Amendment decisions (deliberately excluding school segregation cases to show that those

cases are not "sui generis"). Then we will show that the evidence here meets and exceeds that level.

(1) The Evidence Required to Prove Discrimination.

In a long line of decisions the Supreme Court has held that discrimination in jury selection may be shown solely by statistical evidence that Negroes have not in fact served on juries, e.g., Hernandez v. Texas, 347 U.S. 475 (1954), or by statistical evidence of less than total exclusion but set against a background of other discriminatory practices, e.g., Avery v. State of Georgia, 345 U.S. 559 (1953). In these cases there is no proof of discrimination or racial animus other than the inference drawn from the statistics alone or from the statistics plus the evidence of other discriminatory practices.

In Hernandez, evidence was offered that although Mexicans constituted a substantial minority of the community's population, none had served on juries for twenty five years. There was no other evidence of discrimination. The Court said:

"Having established the existence of a class, petitioner was then charged with the burden of proving discrimination. To do so, he relied on the pattern of proof established by Norris v. State of Alabama, 294 U.S. 587. In that case, proof that Negroes constituted a substantial segment of the population of the jurisdiction, that some Negroes were qualified

to serve as jurors, and that none had been called for jury service over an extended period of time, was held to constitute prima facie proof of the systematic exclusion of Negroes from jury service. This holding, sometimes called the 'rule of exclusion,' has been applied in other cases, and it is available in supplying proof of discrimination against any delineated class." 347 U.S., 480.

The Court held that the defendants' testimony that there had been no discrimination was insufficient to overcome the statistical evidence and added:

"The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner."
(Id. 482.)

In Avery the statistics were set against the background of a practice which furnished an obvious opportunity for discrimination. Names of persons selected as prospective jurors in Fulton County were printed on tickets, whites on white tickets and Negroes on yellow, and placed in a jury box. Negroes generally did serve on juries in Fulton County, but no Negro was selected for the panel of 60 in question.

"The judge who picked out the tickets ... testified that he did not, nor had he ever, practiced discrimination in any way, in the discharge of that duty. There is no contradictory evidence." 345 U.S., 561.

In explaining its conclusion that discrimination in the selection of the single panel had been established, the Court

said:

"The court below affirmed ... because petitioner had failed to prove some particular act of discrimination by some particular officer responsible for the selection of the jury; and the State now argues that it is petitioner's burden to fill this 'factual vacuum.' We cannot agree. If there is a 'vacuum' it is one which the state must fill, by moving in with sufficient evidence to dispel the prima facie case of discrimination ... The State failed to meet this test." 345 U.S., 562.

In his concurring opinion Justice Frankfurter said that a mechanism such as the colored slips which presented an opportunity for discrimination could not be countenanced when a discriminatory result was reached. He added:

"The stark resulting phenomenon here was that somehow or other, despite the fact that over 5% of the slips were yellow, no Negro got onto the panel of 60 jurors from which Avery's jury was selected. The mind of justice, not merely its eyes, would have to be blind to attribute such an occurrence to mere fortuity." 345 U.S., 564.*

Cases involving abridgment of voting rights also illustrate proof of racial discrimination by statistical evidence set against a backdrop of other discriminatory practices. In Sims v. Baggett, 247 F.Supp. 96 (M.D.Ala. 1965), there was no

*Jones v. Georgia, supra, is a recent jury case which collects a number of the more important jury discrimination cases. See ____ U.S. ____, 88 S.Ct., 5, 19 L ed 2d, 27 (1967).

direct evidence of why the Alabama legislature had in two instances in its reapportionment plan grouped several counties into single multi-representative, multi-county districts. Nonetheless the Court looked to the background of discrimination against Negroes in Alabama and to the statistical facts of Negro residency in the counties in question and concluded that the reason was to prevent the election of Negroes to the Alabama legislature. The Court said:

"With the pattern and practice of discrimination in Alabama as a backdrop, the cavalier treatment accorded predominantly Negro counties in the House plan takes on added meaning. The court is permitted to find the intent of the Legislature from the consistency of inherent probabilities inferred from the record as a whole. We, therefore, hold that the Legislature intentionally aggregated predominantly Negro counties with predominantly white counties for the sole purpose of preventing the election of Negroes to House membership. The plan adopted by the Legislature can have no other effect." 247 F.Supp., 109.

In Smith v. Paris, 257 F.Supp. 901 (M.D.Ala. 1966), a resolution of a county executive committee changed the method of electing persons to the committee in a manner which turned Negro majorities into minorities in certain political areas. There was no direct evidence of the committee's motivation for passing the resolution, but the Court considered the background of discrimination against Negroes in Alabama and

concluded:

"Certainly when viewed against the general background outlined above, and where the manifest consequences and clear effect of the resolution greatly diminish the effectiveness of the Negroes' right to vote, an inference of a discriminatory purpose is compelling. This is the clear teaching of Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125, 5 L ed 2d 110 (1960); Cassell v. State of Texas, 339 U.S. 282, 70 S.Ct. 629, 94 L ed 839 (1950); United States v. State of Alabama, 304 F.2d. 583 (5th Cir. 1962); Sims v. Baggett, 247 F.Supp. 96 (M.D.Ala.1965); and Sellers v. Trussell, 253 F.Supp. 915 (M.D.Ala. 1966) (concurring opinion)." 257 F.Supp., 904.

Gomillion, cited in Smith, involved a complaint attacking as unconstitutional a law which altered the shape of Tuskegee, Alabama, with the effect of disenfranchising Negroes by excluding all but four or five of them from the newly drawn city boundaries while not removing any white residents. Lacking allegations supplying direct evidence of the subjective motivation of the Alabama legislature, the Court nonetheless upheld the complaint and said:

"It is difficult to appreciate what stands in the way of adjudging a statute having this inevitable effect invalid in light of the principles by which this Court must judge, and uniformly has judged, statutes that, howsoever speciously defined, obviously discriminate against colored citizens." 364 U.S., 342.

In another voting rights case the Court observed succinctly:

"In the problem of racial discrimination, statistics often tell much, and Courts listen." State of Alabama v. United States, 304 F.2d 583, 586 (5th Cir. 1962).

Other cases in a variety of factual contexts similarly illustrate the proof of discrimination by inference drawn from extrinsic facts. For example, respecting admittance to a hospital staff, the Court in Cypress v. Newport News General & Nonsectarian Association, 375 F.2d 648, 654-55 (4th Cir. 1967), said:

"The undisputed fact is that nearly 70% of the white physicians in the community but no Negro physicians are on the staff of Riverside Hospital ... This circumstance, coupled with the rejection of two Negro physicians possessing outstanding qualifications by an all-white medical staff voting by secret ballot, and in the absence of any evidence of any non-racial ground for the exclusion, compels the inference that they were barred because of race. This inference is further buttressed by the fact that Riverside concededly takes race into account in other aspects of hospital administration, it being admitted ... that patients are presently assigned to rooms on a discriminatory basis."*

The results in these cases are not surprising. They merely represent applications of the oft-expressed view that the

*Compare the last sentence of this quotation with CHA's suggestion that its policy of keeping Negroes out of white neighborhoods through quotas and "guidance" has no bearing on its accomplishment of the same purpose through site selection. (CHA br. 9.)

Constitution nullifies "sophisticated as well as simple-minded discrimination," Lane v. Wilson, 307 U.S. 268, 275 (1938), and that it prohibits discrimination, "whether accomplished ingeniously or ingenuously," Smith v. State of Texas, 311 U.S. 128, 132 (1940), "no matter how subtle," Hamm v. Virginia State Board of Elections, 230 F.Supp. 156, 157-58 (D.C.Va.1964), and "whatever [its] guise." Cooper v. Aaron, 358 U.S. 1, 17 (1958). They have been reviewed here not only because of CHA's constant repetition of the refrain that "any evidence of any racial animus or other improper purpose on the part of CHA is ... lacking" (CHA br. 12), but also to show the variety of circumstances in which the evidentiary principle of these cases has been applied. The following two sections show that the evidence in this case meets - and well exceeds - the level of evidence which has sufficed in the cases just discussed, and others like them, to prove discrimination.

(2) The Evidence Here: The Statistics of Site
Locations and the Community Opposition Policy.

Apart from all the other evidence, the statistical facts here are overwhelming:

- (a) Since 1950 over 98% of the 21,010 CHA family apartments have been in Negro neighborhoods; since the Kean-Murphy deal in 1955, the figure is over 99% of 10,256 apartments. (Our br. 13.)

- (b) The only exceptions to the foregoing - otherwise each figure would have been 100% - have been an extension of an existing project as to which (both original project and extension) CHA had a Negro quota, and two miniscule projects (a total of 30 apartments) which were each parts of large urban renewal plans. (Our br. 12-13.)
- (c) Numerous sites in white neighborhoods met all statutory criteria for CHA sites. (CHA br. 3.)

It might well be argued that these facts alone meet the standard of proof of, for example, Hernandez and Gomillion. Certainly these facts, too, "bespeak discrimination."

But the Court need not consider that question because here, as in Sims, Smith and Cypress, the statistics are set against the backdrop of admitted discriminatory practices. As we have seen, CHA's policy was "not [to] 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.) That policy was implemented initially by the total exclusion of Negroes from CHA's four white-area projects and later by a quota system. The exclusion and quota policies were supplemented by a procedure - complete with racially coded "In-Category" sheets - for "guiding" Negro applicants into not expressing preferences for the

white-area projects.* Under the authorities cited and discussed above, it is submitted that the statistics of site locations, set against the background of CHA's admitted discriminatory policies and practices, clearly establish, prima facie, a case of deliberate exclusion of Negroes from white neighborhoods.

Perhaps such a prima facie case could be rebutted by a clear and convincing demonstration that some rational and racially neutral governmental policy had led to the placement

*CHA's usual explanation for its community opposition policy is to tie it to the City Council defense - "the 'community opposition defense' merges into what Plaintiffs call the 'City Council defense.'" (CHA br. 32.) But at one point CHA suggests that, "as this Court well knows," there may be community opposition to public housing for reasons unrelated to race. (CHA br. 31.) That such other reasons would for over 15 years be absent only in Negro neighborhoods, and never in white neighborhoods, strongly suggests that they are "nothing more than a sham." Smith v. Paris, 257 F.Supp. 901, 905 (1966). Moreover, if CHA's "respect for community attitudes" (CHA br. 31) had nothing to do with race, how explain a policy of not permitting public housing to change the "racial make-up" of a neighborhood? (Our br. 27); or of not permitting it to be used "as a [racial] wedge"? (Id. 26); and why exclude Negroes from the four white area projects and "guide" them into not expressing preferences for those projects? In any event, even a policy which is ostensibly racially neutral "must give way if the result of its use is a deprivation of constitutional rights." Smith v. Board of Education, 365 F.2d 770, 779 (8th Cir. 1966). "A benign and theoretically neutral principle loses its aura of sanctity when it fails to function neutrally." Labat v. Bennett, 365 F.2d 698, 724 (5th Cir. 1966).

of almost all CHA family apartments in Negro neighborhoods. Suppose, for example, CHA had tried to show that only in Negro neighborhoods could the racially neutral criteria mentioned in CHA's initial brief be satisfied - slum clearance, cost limitations, accessibility, surrounding land uses and municipal planning. (Initial CHA br. 9-10.) Perhaps then the Court might, depending on the strength of the showing, consider the prima facie case rebutted (on the assumption of course that the record contained none of the additional evidence discussed in section (3) below). But the supposition is academic, quite apart from the existence of such additional evidence, because CHA itself affirms that those racially neutral criteria could be - and were - satisfied by numerous sites in white neighborhoods.

"[O]ver the years CHA has ... considered and recommended for City Council approval numerous sites located in white or substantially white neighborhoods ... because the sites met the criteria - e.g., slum clearance, cost limitations, accessibility, surrounding land uses, and zoning and other municipal planning - imposed by law." (CHA br. 3.)

No other racially neutral policy which might explain why virtually all CHA family projects are located in Negro neighborhoods either occurs to us or has been suggested by CHA.

The case here thus differs, quite without reference to

the additional evidence of discrimination discussed in section (3) below, from Bell v. School City of Gary, Indiana, 324 F.2d 209 (7th Cir. 1963). In Bell school district boundaries "were determined without any consideration of race or color" on the basis of a racially neutral neighborhood school plan (324 F.2d., at 213), and this racially neutral policy explained the racial imbalance in certain schools about which the plaintiffs were complaining. Here, lacking such an explanation, we have only the stark fact that CHA's tenants, largely Negro, have for many, many years been placed almost exclusively in Negro neighborhoods though numerous sites in white neighborhoods were available and met all statutory criteria; and that fact is set against the backdrop of CHA's policy not to change the racial makeup of neighborhoods and the discriminatory procedures followed by CHA to implement that policy. We submit that, on the strength of the cases discussed above, these facts, without more, compel an inference of discrimination in site location.*

*One fact alone really suffices to compel the inference. Since CHA admittedly would not permit Negroes to live in projects in white neighborhoods (later, limited their number in such projects to a tiny percentage), how can it even seriously be argued that the racial character of the neighborhoods of new projects, designed to house CHA's largely Negro waiting list, was a matter of complete indifference?

(3) The Evidence Here: CHA's Cooperation with the Known Discriminatory Attitude of the City Council.

But there is much more. Throughout the period covered by the complaint CHA recognized that the City Council desired to keep Negroes out of white neighborhoods. The evidence is substantial, uncontradicted and comes mostly from the mouths of CHA officials. See the first Background Fact. CHA nevertheless cooperated with and implemented this desire of the Council. Apart from the Kean-Murphy deal and the twice-as-many-as-needed policy, some of the evidence of this cooperation and implementation is given under the second Background Fact. Again the record is both full and uncontradicted.

In a way the situation reminds one of Avery v. State of Georgia, supra. As with the colored slips in Avery, here too we have a mechanism which presents an opportunity for discrimination - the Kean-Murphy pre-clearance procedure and the twice-as-many-as-needed policy. But here the results have been far more startling than in Avery. In that case Negroes had generally served on juries in Fulton County and discrimination was alleged only in the selection of a single panel. Here, white sites have not generally been selected and we are talking not about the selection of a single group of sites but

about site selections spanning a period of more than 15 years. More importantly, here we have the testimony of CHA itself as to the desire of the City Council to keep Negroes out of white neighborhoods. It is as if, in Avery, the Judge who picked the names from the jury box had testified that, although he practiced no discrimination, the persons who put the tickets in the box had eliminated all the yellow slips. This is not a fanciful analogy; it is in fact a surprisingly precise analogue to Rose's testimony that although he "looked" for sites all over the City, the City Council left the CHA with only unscattered sites. (Rose dep. 13-14.)

Ostrich-like, CHA tries to explain its cooperation with the City Council as but an agreement "to go 'through channels' in the procedural manner desired by the legislative body - the City Council - having the final say." (CHA br. 28.) But CHA's agreement to go "through channels" is even less defensible than the conduct of the Orleans Parish School Board in Orleans Parish, or of the Little Rock School Board in Cooper v. Aaron. (Our br. 38-39.) In Orleans Parish the school board could argue that it was legally compelled to act as it had and lacked the power to operate differently; and in Cooper the board could argue that as a practical matter - at least if

violence was to be avoided - it had no reasonable alternative. But here, not only did CHA have an alternative but its own general counsel urged that it be adopted. CHA says "of course" it had to conform to "site submission procedures" desired by the City Council (CHA br. 5-6), but even its own lawyer did not agree that "of course" it had to.

No law compelled CHA not to "find" sites where it would encounter resistance. No law compelled CHA to adopt the Kean-Murphy pre-clearance and the twice-as-many-as-needed policies. No law compelled it to delete the sites which did not survive pre-clearance from its formal submissions to the City Council. And no law compelled CHA to build over 98% of its family apartments in Negro neighborhoods. Given CHA's recognition that the City Council desired to keep Negroes out of white neighborhoods, these various affirmative actions and policies of CHA constitute, in and of themselves, deliberate discrimination by CHA. Whatever the compulsion or motivation which led CHA to reject its counsel's advice and go "through channels" (a belief that segregated neighborhoods are socially desirable? or its view of the social and political realities in the City?), Orleans Parish and Cooper show that orders of, or conditions created by, "superior" governmental agencies are

no defense to actions which are in fact discriminatory.

CHA's cooperation with and implementation of the known desire of the City Council to keep Negroes out of white neighborhoods thus takes this case well beyond such decisions as Sims, Smith and Cypress, let alone Hernandez and Gomillion. In cases like Sims, Smith and Cypress there is only the statistical evidence and a backdrop of other discriminatory practices - there is no "direct" evidence of a discriminatory motivation in the current act or practice which is attacked as discriminatory. Here we are not confined to statistical evidence set against the backdrop of other discriminatory practices. We have in addition the testimony of CHA's own officials that a state agency which plays a key role in the site selection process desires to keep Negroes out of white neighborhoods. No one, certainly not the defendants, so testified in Sims or Smith or Cypress or Hernandez or Gomillion or Avery about the motives of the legislature or the jury commissioners or the county committee or the hospital staff, etc., in those and like cases.

The conclusion that there has been discrimination in site selection is supported in this case by an amount and kind of undisputed evidence which is far in excess of the minimum

requirements for proof of governmental discrimination.

C. Some Broader Considerations.

CHA ends its brief with an impassioned plea for public housing and says that its only intention has been to "carry forward Chicago's public housing program in the public interest." (CHA br. 41.) This plea echoes Rose's apology for CHA site locations when, in his testimony before the U.S. Commission on Civil Rights, Rose declared that because the City Council limited CHA's ability to scatter its sites, it was "expeditious" to place Negroes in housing under segregated conditions in order "to get the thing done." (Rose dep. 13-14.)

It is plain that expediency cannot justify carrying out a public program in a manner which violates the equal protection clause of the Fourteenth Amendment. See Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 930 (2nd Cir. 1968), rejecting a similar argument based on the delay in the implementation of urban renewal programs that would result from requiring relocation standards to be met equally for all displacees, non-white as well as white. When Fourteenth Amendment rights are at stake, what is deemed to be "expeditious" is irrelevant.

Moreover, "housing under segregated conditions" was the very timbre of the warning bell sounded by the Kerner

Commission. In explaining its fearful admonition that "The nation is rapidly moving toward two increasingly separate Americas," Report of the National Advisory Commission on Civil Disorders, p.407 (Bantam Books Paperback Edition, 1968), the Commission said that the "most basic" of the underlying forces at work in the nation was "the accelerating segregation of low-income, disadvantaged Negroes within the ghettos of the largest American cities." (Id. 389.) The Commission's Report described those Negro ghettos vividly:

"[I]n the teeming racial ghettos, segregation and poverty have intersected to destroy opportunity and hope and to enforce failure. The ghettos too often mean men and women without jobs, families without men, and schools where children are processed instead of educated, until they return to the street - to crime, to narcotics, to dependency on welfare, and to bitterness and resentment against society in general and white society in particular. ...

As Americans, most Negro citizens carry within themselves two basic aspirations of our society. They seek to share in both the material resources of our system and its intangible benefits - dignity, respect and acceptance. Outside the ghetto many have succeeded in achieving a decent standard of life, and in developing the inner resources which give life meaning and direction. Within the ghetto, however, it is rare that either aspiration is achieved." (Id. 204.)

It would appear that CHA's views about the "public interest" are no sounder than its views about the Constitution.

Nor are the Commission's concerns - and the nation's - beyond the ken of courts. Increasingly the Supreme Court has measured the kind and degree of state activity which triggers the equal protection clause against the herculean proportions of America's racial problem. See Black, The Supreme Court 1966 Term, Foreword; "State Action, Equal Protection, and California Proposition 14," 81 Harvard Law Review 69 (1967.) In Reitman v. Mulkey, 387 U.S. 369 (1967), the Supreme Court discussed a number of cases which illustrated "the range of situations in which discriminatory state action had been identified." (387 U.S., 380.) These cases, the Court said,

"exemplify the necessity for a court to assess the potential impact of official action in determining whether the State has significantly involved itself with invidious discrimination." (Ibid.)

In Reitman the State was held to be involved in housing discrimination because of the potential impact in the private housing market of a constitutional amendment nullifying fair housing laws. Can it be doubted that CHA should be held to be involved in housing discrimination where the actual impact of its operation of a public housing system has been consistently to confine public housing to Negro neighborhoods over a period

of more than 15 years, even though numerous sites in white neighborhoods were available?

With deference, we submit that it simply is not possible at this stage of America's racial and judicial history to conclude that a public housing program may, consistently with the Fourteenth Amendment, be run as Chicago's has been run.

CONCLUSION

We have responded to every CHA argument; and we have shown that the amount of undisputed evidence of discrimination in this case far exceeds that presented in a variety of equal protection cases where discrimination was proved.

There are no disputed facts. Witnesses have not contradicted one another or denied making statements attributed to them. All of CHA's current top officials (Chairman of the Board of Commissioners, Executive Director, Deputy Executive Director and General Counsel), as well as lesser officials, have given evidence. To the extent non-CHA persons have done so their statements stand uncontradicted. However, most of the relevant facts have been testified to by CHA's own

officials.

Indeed, is it an exaggeration to say that CHA has, expressly and publicly and under oath, admitted the ultimate fact in this case - discrimination in site selection? Is this not the precise meaning of Rose's testimony that because the City Council had limited CHA's ability to scatter sites throughout the city it was "expeditious" to place Negroes in housing under segregated conditions "to get the thing done"? (Rose dep. 13-14.)

We urge that on the undisputed facts in this case summary judgment is appropriate and that plaintiffs' motion should be granted.

Respectfully submitted,

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DATED: January 13, 1969

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

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UNITED STATES DISTRICT COURT

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

Plaintiffs,)

v.)

Civil Action

No. 66 C 1459

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

Defendants.)

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for plaintiffs, hereby certifies that on January 13, 1969, he caused to be personally delivered to James T. Otis, one of the attorneys for defendants, at 134 South LaSalle Street, Chicago, Illinois, three copies of the Reply Brief of Plaintiffs in Support of Motion for Summary Judgment in Their Favor in the above captioned cause.

Alexander Polikoff
One of the Attorneys for Plaintiffs

Dated: January 13, 1969

EXCERPTS FROM DEPOSITIONS

of

C. E. HUMPHREY and ALVIN D. ROSE.

GAUTREAUX ET AL v. CHA ET AL

I Excerpts from Deposition of C.E. Humphrey, and from his Affidavit Filed in Support of Defendants' Motion for Summary Judgment.

1. "Based on actual experience in submitting sites to the City Council for approval, CHA staff was aware that as a general rule unless the Alderman of the ward in which a proposed site was located was in favor of the proposed development, the site would not receive city approval." (Affidavit, p.7.)
2. "Of these 9 sites [allegedly in white or substantially white neighborhoods, being 9 of 18 submitted by the CHA to the Department of City Planning as the 1965 program], the Department of City Planning approved all except the site at Western and Flourney. Of the remaining 8 sites, only the site at Franklin and Homan ... was submitted by CHA staff to the CHA Board of Commissioners or the City Council 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." (Affidavit, p.6-7.)
3. "With respect to the other 20 sites (located in white or substantially white neighborhoods) [of 60 in the 1966 program] they were not submitted by CHA staff either to the CHA Board of Commissioners or the City Council because the City's Department of Development and Planning either (a) disapproved the site, (b) recommended deferment or (c) advised of Aldermanic opposition." (Affidavit, p.8-9.)
4. "... people tend to request housing in the areas where they have been living ... [V]ery few whites ... would apply for housing in Negro areas." (Dep. 22)
5. "Q. "Does that also mean in your opinion that projects in Negro areas, located, that is, in predominantly Negro occupied areas, would be or would become largely Negro occupied projects?"
A. "Well, you would assume that."
Q. "Has that been your experience with the Housing

Authority?"

A. "Yes, that is the experience of the Housing Authority." (Dep. 22)

6. Q. "I direct your attention to the next sentence of the report which says that: 'The situation today is that unless there is a reversal of present trends in site selection, the existing pattern of segregation will be perpetuated.' Did you agree with that statement at that time?"

A. "I would assume yes." ...

Q. "Well do you agree now, today, right now, that as of December, 1956, this was an accurate prediction of what would happen on the assumptions stated in the sentence?"

A. "I would say yes." (Dep. 69-71)

7. Q. ... "The question is, do you agree that the following was a correct statement as of December, '56: 'That unless new factors were introduced into the total site selection picture, including through the process of approval by City Council, the results would be that almost inevitably further concentration of large public housing units would be established in Negro areas?' "

A. "Yes. I would say that is true." (Dep. 80-81)

8. Q. "The paragraph also says that the subcommittee was informed that the transitional process - a process of an area becoming predominantly Negro - accelerates when the Negro population of a community reaches 30 to 40 percent, at which point the white population tends to move out. In your opinion is that a correct statement?"

A. "I think so, yes."

Q. "And was it correct as of this time, in your opinion, 1956?"

A. "Yes." (Dep. 82)

9. Q. "Were you present at the discussions with Alderman Murphy, Chairman of the Housing and Planning Committee of the City Council, that are referred to in the first paragraph of this memorandum?" [Ex.6]

A. "Well, I don't recall. I was in several meetings with Alderman Murphy.

Q. "Both you and General Kean?"

A. "Yes. I met with Alderman Murphy several times with General Kean."

Q. "And were those meetings on the subject of site selection?"

A. "Normally, yes."

Q. "What was the occasion for those meetings?" Why were you having them?"

A. "Well, each time that you have sites coming before the City Council for approval, why, it is normal procedure to have a discussion with the chairman of the committee, or tell him what you are coming in for or you are working up an order, say you are working up sites, and you want to get various clearances on them and things like that." (Dep. 91-92)

10. Q. "Would it be fair to say then that this new procedure [Ex.6] was a method for preliminary or preclearance of sites before they were submitted formally in the form of an ordinance to the City Council so that you wouldn't have a repetition of that occasion you described earlier, where the City Council rejected a number of the submitted sites?"

A. "I would assume this is the reason."

Q. "Was that the reason, in fact?"

A. "I have to assume. I don't know what Murphy is thinking about. You know he don't ...

Q. "No, I am talking about your thinking in these meetings with Alderman Murphy. I am not talking about his thinking."

A. "What do you mean, my thinking? Alderman Murphy requested we do it in the City Council, in effect, requested that the Chicago Housing Authority do it in this method [Ex.6]. The Chicago Housing Authority has no alternative but to do it in this method." (Dep. 93-94)

11. Q. "Well, I ask you again then, Mr. Humphrey: Is it fair to say that the purpose of this arrangement, as reflected in this exhibit [Ex.6], so far as the Housing Authority people were concerned, including yourself, was to establish an arrangement for preclearance, preliminary approval of sites, ..."

A. "I would say so, yes."

Q. "... prior to formal submission to the City Council."

A. "Yes." (Dep. 94-95)

12. Q. "But I understand you to say that following those events that you just described a series of meetings was held with Alderman Murphy, with General Kean in attendance, and on one or more occasions yourself as well, for the purpose of developing the preclearance procedure, as we have called it, that is reflected in this memorandum which is Deposition Exhibit 6, for identification."

My question is: Following the agreement with Alderman Murphy on those so-called preclearance procedures were those procedures thereafter followed by the Housing Authority?"

A. "I don't recall ever having a meeting in which four or five aldermen, let's say, would be a committee, and sat around a table like they did the first time we discussed these sites."

The procedure generally that followed after that, which was I assume the way Alderman Murphy set it up, is that normally the Executive Director would meet with Alderman Murphy, and probably I would be with him, and we would show them the group of sites we had picked out and then the alderman would probably say, 'Well, now, will you go see the alderman whose ward this is in,' and to my knowledge, as I say, it was done in that way and not done by ..."

Q. "By a full subcommittee then."

A. "... by putting a list down here and getting a group of people around a table like this."

Q. "When Alderman Murphy said, 'You go see the alderman,' who then went to see the alderman?"

A. "Well, when General Kean was here, usually General Kean and I would go see the alderman."

Q. "Together?"

A. "Yes."

Q. "And after General Kean left then whose responsibility was that?"

A. "Well, then Alvin Rose became the Executive Director and he did this on some occasions and on some occasions I was with him and on some occasions I wasn't with him. There were occasions, I am sure in which I talked to the alderman when he wasn't with me."

Q. "Now, when an alderman turned down a proposed site, did CHA ever nonetheless submit it to the City Council?"

A. "I don't believe so, because I am sure that you know that in the City Council, if the alderman is elected he is supposed to represent the people in his ward, and in the City Council if the alderman says 'I do not want this in my ward,' why, normally he don't have it in his ward, and if we would submit this after he said no, this would mean us spending public monies for something that we were sure we were not going to get approval of, and in addition to that we wouldn't be very popular over at the City Council, I am sure." (Dep. 97-100)

13. Q. "Is that accurate right down to date, Mr. Humphrey? In other words, does the procedure of clearance with aldermen continue in effect ..."

A. "The only difference is that the last time a group of sites was submitted, which was better than a year ago, the discussions with the alderman was held by the Commissioner of Planning and Housing."

Q. "Who is he?"

A. "John Duba."

Q. "Were you present at that discussion?"

A. "No."

Q. "Was anyone from the Housing Authority present at that discussion?"

A. "No. You mean with the alderman?"

Q. "Yes."

A. "No. The only sites he didn't discuss with him is we had a couple of sites in the package which the alderman had requested, and of course I told him that the alderman had specifically requested these sites." (Dep. 100-101)...

Q. "Who from the Chicago Housing Authority met with Mr. Duba with respect to this group of 1966 sites?"

A. "I did." (Dep. 103) ...

Q. "And then he would go talk to the alderman, or did go talk to the alderman, on the basis of that information."

A. "Yes."

Q. "And did he then report back to you?"

A. "Yes, sir, he reported back to me as to which sites that I could include in the draft of an ordinance to be introduced in the City Council." (Dep. 105-106)

14. Q. "Well, I will rephrase the question this way: When you prepared this informational list you have described and gave it to Mr. Duba so that he could use that for the purpose of discussing it with the aldermen, was it the CGA's intention and hope to get all of those sites approved or were more sites than necessary included on the list to give the aldermen some choice?"

A. "Normally when we prepared the sites we pick enough sites that will give us a minimum twice the number of units that we feel that we are going to be able to get under contract with the federal government, because we know from experience that you win a few and you lose a few."

Q. "Is this fact communicated to the alderman; that is that there are twice the number, approximately, that you want?"

A. "Well, usually to the chairman of the committee, if that many gets on the ordinance that is actually submitted to the City Council. But of course, on the other hand, you know when the City Council approves a site, really what they are doing is they are giving it - well, I can't think of the word I want to use.

Mr. Shadur: "Authorization, is that what you are ..."

Witness: (continuing) "Well, it is all or any part of it. In other words, they can approve a site and we may use a site or we may not use a site, or we can use all the site or we can use none of the site, or we can use part of the site. It is an authorization to use any or all of that particular site to be developed with public housing, as required by State law." (Dep. 106-107)

15. Q. "Mr. Humphrey, in discussing the sites to obtain clearance on from the aldermen, in discussing the sites with the aldermen, were other persons ever brought into those discussions, apart from the aldermen?"

A. "Now, how do you mean this? Brought in by whom?"

Q. "Other city officials or agencies, or were these ..."

A. "The normal procedure would be that someone in our place called on the alderman, and chances are he didn't say yes right now. Chances are ninety-nine out of a hundred that he says, well, let me talk to some people and see what the reaction in the neighborhood is, and so on and so forth, and I will let you know in a week or two weeks or something like that.

There have been sites where the aldermen have been in favor of the sites and they have gone out and said, well, we will take a vote on it, 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."

Q. "And then typically the alderman, after two or three weeks, or whatever it was, would communicate back to you or by somebody else at the CHA with the answer, yes or no."

A. "Right." (Dep. 116-117)

16. Q. "Well, then let me ask the question this way: Did you say to Dr. Baron that any number of times you or the CHA had submitted sites outside the Negro areas of the city, or whatever words you used, ... I am not trying to reflect your precise language ... and that those sites had been invariably rejected by the City Council?"

A. "I could have said that, yes. I can't tell you for sure whether I did or not, but I may have said that. It is a true statement, so it would be just like me to say it." (Dep. 130)

17. Q. "Did he [Alderman Despres] ask you why the Housing Authority had selected the particular sites that they were requesting the Council to approve at that time?"

A. "He might have asked that question."

Q. "Did you answer that they had been selected because they were suitable?"

A. "Probably, yes."

Q. "And did he then ask you why the Housing Authority hadn't presented any sites outside the segregated Negro neighborhoods?"

A. "I think he asked that question, yes."

Q. "And did you answer that the reason was you couldn't find any suitable sites outside the Negro neighborhoods?"

A. "I didn't answer it that way at all."

Q. "What answer did you give?"

A. "I answered it to the effect that he knew as well as I as to why we didn't have other sites; that he knew that if the site was approved by the alderman that it was included in the package and if it wasn't approved it wasn't included, and I added to that, incidentally, there are none in the package from your ward."

Q. "Did you say to him that 'You know damn well why there aren't any sites in there outside the Negro areas?' "

A. "Well, I possibly did."

Q. "Well, ..."

A. "You know he said he didn't think I used the word 'damn,' and I said I might have and I might not have, because I use a lot of words that sometimes I don't know I say."

Q. "Apart from the use of the word 'damn,' did you say that he knew very well why there weren't any sites there outside the Negro area?"

A. "Yes, yes."

Q. "And did you also say that he knew that when an alderman nodded his head and said yes that the site went in the package, and if he nodded his head and said no, that the site didn't go in the package?"

A. "That's right."

Q. "And did you also tell Alderman Despres at that time that the CHA didn't believe in spending money developing and presenting sites that the City administration wouldn't approve?"

A. "I probably said that, we have no money to built it, and I am not going to pay for it out of my pocket."

Q. "And did you also say that we don't think, meaning the Housing Authority, - we don't think there is any use in spending money in selecting sites outside the Negro housing area?"

A. "No, I couldn't have made that statement because we have all kinds of sites selected outside of the area." (Dep. 132-35)

18. Q. "Did you say that we don't think there is any use in spending money developing and presenting sites outside the Negro housing area?"

A. "I could have said that once we have a turndown from the alderman that there is no sense in spending money to develop it because we have no money to spend."

Q. "And did you also say at that time that we don't believe in wasting time doing something that is useless and will lead nowhere?"

A. "I could have said that. It sounds just like me."

Q. "Did Alderman Despres compliment you on your frankness at that time?"

A. "Yes, he did. He don't do that very often either." (Dep. 135)

19. Q. "Is it easier to get City Council approval of elderly projects located in white neighborhoods than it is for low income projects located in white neighborhoods?"

A. "Yes." (Dep. 174)

20. A. ... "You see, normally when we go to the City Council for approval, just like at this time here, well, we went in with something that would give roughly four thousand units, why, we would always be asked to submit enough sites so that you are sure you are going to get these, so when we give the City Council a package that has four thousand units in and we only got an allocation for two thousand units, then we figure we are going to get enough out of it to get the number of units that have been allocated to us. That is just what happened in this case." (Dep. 107-108, Vol. II)

21. Q. "And I take it that your normal practice was to put together a package which was substantially larger than your authorization?"

A. "That was partly done - as I recall when I first come with the Authority there had been a program submitted back before my time which was submitted to include the number of units that you had authorized, and you were down on the deadline, the City Council didn't want to approve some sites and it was explained to them that these had to be approved or they would lose the units.

So the City Council in that case approved at least one site - disapproved something, but at least one site that the City Council just up and put in without anybody from the Chicago Housing Authority even looking at the site or anything else, and at that time they said, 'Now, after this when you come in to us for approval on sites you bring some here, so that if we knock some out you can still carry the ball.'

That is what I was informed when I come to the Housing Authority."

Q. "And that was the practice that you have been following since then?"

A. "Right. Unless we go on just one specific thing, which we do once in a while, but if we have any sites to meet some program, we try to go in with twice as many as we actually need." (Dep. 112-13, Vol. II)

22. Q. When the four white sites were knocked out of the 1955 program by the committee, did the Chicago Housing Authority make any attempt during that year to develop and to present alternative sites in white neighborhoods to replace the sites that had been knocked out?"

A. "Well, not to my knowledge. We wouldn't have gone back with a presentation of sites until we had a new allocation from the federal government."

Q. "So at that point with respect to the 1955 sites that had been approved in the Negro neighborhoods, you simply proceeded?"

A. "Right, and then we took from this list of sites that were approved those that would give us the number of units we had approved, and as I mentioned a little bit ago, all of these sites that had been approved were not used."

Q. "But the ones which were approved and were used among the 1955 package were all in substantially Negro neighborhoods, as indicated in Exhibit A to your affidavit?"

A. "Right." (Dep. 114, Vol. II)

23. Q. "Was this again a situation where the committee then proceeded to vote while you were there in the room?"

A. "Right."

Q. "So you saw the white sites once again knocked out by the committee?"

A. (Nodding).

Q. "After the committee took that action in 1956 do you remember any discussions, going back to the Chicago Housing Authority and having any discussions within your own organization about the fact that the white sites had again been eliminated?"

A. "Well, again, my discussions would have only been to say 'We lost this one and this one and this one,' notifying my staff. There isn't a lot to discuss, not really."

Q. "In 1956 the number of units in white neighborhoods that were eliminated were somewhere between 1460 and 1850. Did the Chicago Housing Authority make any attempt in 1956 to submit other sites in white neighborhoods to replace any of those that had been knocked out by the committee?"

A. "Not that I recall, because, again, we had the same condition we had the year before, under a deadline in which we submitted more sites than we had units anyway."

Q. "So you were again left in 1956 with a program of sites in essentially all Negro areas?"

A. "Right."

Q. "And you proceeded then with that group of sites in 1956, I take it, correct?"

A. "Right. Not all the sites. 63rd and South Park was not developed."

Q. "But the ones on the 1956 list that were approved and were developed were in substantially Negro neighborhoods?"

A. "These, yes." (Dep. 119-120, Vol. II)

24. Q. "After the committeemen had acted on the 1958 program you were again left with sites exclusively in Negro neighborhoods, is that correct?"
A. "Very much so."
Q. "Was that fact the topic of any discussion within the CHA following the committee action?"
A. "Not that I recall."
Q. "Was any effort made by the CHA to develop alternative sites in white neighborhoods to replace the sites that had been disapproved in 1958?"
Mr. Hunt: "Are you speaking simply of the year 1958 now?"
Mr. Freed: "Yes, that is right."
Witness: "Not that I recall. We would have had a list here, but again, as I mentioned, we 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." (Dep. 124-25, Vol. II)
25. Q. "Let's move, then, to the 1965 program. Am I correct that between 1958 and 1965 there was only one site for Negro family public housing that was submitted and that was the 346 units at Cermak and State Street?"
A. "That is right." (Dep. 125, Vol. II) ...
Q. "After the consultations with the alderman what was the next procedural step in the site selection process? I am talking now about 1965."
A. "Well, then, the next step then is to prepare the proposed ordinance and submit it to the City Council."
Miss Kula: "The CHA Board."
Witness: "Yes, approved by the CHA Board." (Dep. 148-9, Vol. II) ...
Q. "I take it that there weren't any public hearings prior to the introduction of the resolution into the City Council on March 24, 1965, am I interpreting your affidavit correctly?"
A. "I think that is correct."
Q. "I would like to focus now at the point where CHA staff is presenting the package of sites to the CHA Commission, the Board of Commissioners. I take it that at the point where the staff presented the batch of sites to the Board of Commissioners we were down to - calling your attention to Exhibit E - we were down to the sites that you have

indicated as being in the Negro neighborhoods plus one site in a white neighborhood, that is, the site at Franklin and Homan, was that the package that was submitted by CHA staff to the CHA Board of Commissioners?"

A. "Apparently."

Q. "And with the exception of the Franklin and Homan site, all of the other sites proposed for the white neighborhoods had been dropped out at that point, is that correct?"

A. "They had never been put in."

Q. "Well, they had never been put in -

A. "They had never been put in the ordinance."

Q. " - put in the ordinance?"

A. "Yes."

Q. "They had been put in a list which was being proposed by CHA staff to the Department of City Planning?"

A. "Right."

Q. "And they had been dropped out after having received the clearance or the approval of the Department of City Planning, isn't that right?"

A. "Right." (Dep. 149-51, Vol. II) ...

Q. "I see. At what point, then, in the 1965 process, at what point was the ordinance drafted?"

A. "Well, it had been drafted just before we went to our Board."

Q. "After you had talked with the alderman?"

A. "Right."

Q. "And after the sites that the alderman had indicated opposition to had been withdrawn?"

A. "Right."

Q. "Then you drafted your ordinance, is that correct?"

A. "Right."

Q. "Your proposed ordinance?"

A. "Right."

Q. "And that proposed ordinance was presented to the CHA Board and it was approved by the Board or the submission of that ordinance to the City Counsel was approved by the Board, is that the way it works?"

A. "That is the way it works." (Dep. 152-53, Vol. II) ...

Q. "Do you remember any discussion at the meeting or anyone remarking about the fact that with the Franklin and Homan site deleted there were no sites remaining in white neighborhoods?"

A. "I heard no one say anything like that. There is nothing that indicates whether they are in a white or a Negro neighborhood in the ordinance."

Q. "Were you aware that that was the result at that time?"
A. "Yes, I know where the sites are located." (Dep. 155, Vol. II)

26. Q. "Now, there are some sixty sites, according to your affidavit, on that list [Ex.18 - the 1966 sites] of which 22 sites covering over 50 per cent of the total program were located in white or substantially white neighborhoods. Of those 22 sites apparently only two were included in the draft ordinance, is that correct?"

A. "Yes."

Q. "The 20 sites which were located in white or substantially white neighborhoods that were not included by CHA in the proposed ordinance, were any of those 20 sites discussed with the aldermen involved by anyone from the CHA?"

A. "No, sir."

Q. "I take it that that was a difference in procedure -

A. "Right."

Q. " - from 1965 to 1966. Could you tell us how those 20 sites did get dropped out?"

A. "The communication with the alderman or the neighborhoods, as far as the sites were concerned, were handled by the Director of the Department of Development and Planning."

Q. "Who was that?"

A. "John Duba." (Dep. 159-60, Vol. II) ...

Q. "So as a result of Mr. Duba's phone calls to you and your removing of those sites from the list, at that point the Chicago Housing Authority was down to two sites out of the original 22 sites in white or substantially white neighborhoods, is that correct?"

A. "Right."

Q. "Those two sites, as appears from your affidavit, paragraph 18 on page 8, were Franklin and Albany and 118th and Wood, is that correct?"

A. "That is correct."

Q. "With respect to 118th and Wood, are you familiar with the condition of that site at the time that you submitted it, that is to say, was it vacant or were there houses on it?"

A. "About 60 per cent of the site I would estimate was vacant land and the other 40 per cent had dilapidated housing on it."

Q. "The dilapidated housing, could we refer to that as shacks, almost?"

A. "If you wanted to use those words."

Q. "Do you know whether those shacks or that dilapidated housing was populated by predominantly Negro people?"

A. "It was. There were." (Dep. 189-90, Vol. II) ...

Q. "In any event, the package of 1966 sites, which was ultimately included by the Chicago Housing Authority in the proposed ordinance that was drafted by your staff and submitted to the Mayor for presentation to the City Council included only two sites which you feel were located in white or substantially white neighborhoods, and those two sites were the sites that we have just discussed at Franklin and Albany and at 118th and Wood, is that correct?"

A. "Right." (Dep. 192, Vol. II)

27. Q. ... "Mr. Humphrey, in your memorandum which is Exhibit 23, you indicate as argument No. 2 on page 2 the following:

'By state law the acquisition of property by CHA must have prior approval of the City Council which would no doubt preclude scattering throughout the city.'

Would you explain to us why that is the case?"

A. "It is the same case of what we have been going through all day here. You have to have City Council approval of a building that you are going to buy the same as you do a site."

Q. "And why was it in your judgement in 1960 that that would preclude scattering the sites throughout the city?"

A. "I guess because we just got through going the 1955 and 1956 and some more programs on sites."

Q. "Was the reason actually that you knew the City Council would probably not approve public housing sites in white neighborhoods?"

A. "I said no doubt, there."

Q. "You mean that was no doubt the case?"

A. "Well, I am assuming from what had been going on the last few years that you just couldn't go anywhere in the City of Chicago that you wanted to and acquire a site."

Q. "Particularly in the white neighborhoods, I take it?"

A. "Right."

Q. "Right?"

A. "Right." (Dep. 203-205, Vol. II)

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II Excerpts from deposition of Alvin D. Rose

1. Q. "I am going to ask you a series of questions about whether on this occasion on May 5, 1959, you were asked certain questions and gave these answers. First, Mr. Rose, I will read you the following questions and answers, and then ask you that question. (Reading):
'REVEREND JAMES: I have a question. Mr. Rose, I am interested in this site selection. I am under the impression from what you said that the City Council of Chicago gives its approval for the site; is that true?' "
A. "Wait, wait, I can't pick it up down here."
Q. "Do you see where I am reading?"
A. "Yes, I have got it."
Q. (Continuing reading)
'MR. ROSE: After we select it.
REVEREND JAMES: After you select it?
MR. ROSE: That is right.
REVEREND JAMES: Because of the present location of the existing sites, then, the Council of Chicago is guilty of practicing to a certain degree segregated housing, is that true?
MR. ROSE: You are only agreeing with me.
REVEREND JAMES: 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: That is true.'
"Now, Mr. Rose, I ask you whether on that day in Chicago, were you asked those questions and did you give those answers?"
A. "I am looking at the record here. To my own recollection I must say that I don't remember, but because it is the record, I must say that I gave those answers."
Q. "You have no reason to doubt that you gave those answers at that time, do you?"
A. "No. My only regret is I didn't explain a little further, rather than give such brief answers as the one

where I answer Reverend James by saying, "You are only agreeing with me." I should have elaborated on that a little bit more."

Q. "But the fact is, that so far as you know now, sitting here today, these questions were asked you and you gave those answers, is that correct?"

A. "I am accepting this record here."

Q. "Does that mean that sitting here today you agree that you gave these answers to those questions?"

A. "Yes."

Q. "O.K." (Dep. 8-10)

2. Q. "Now, Mr. Rose, I would like you to turn to page 726 of the record. I now will read to you certain further questions asked you on that occasion, May 5, 1959, and your answers, and then ask you whether those questions were asked and whether you gave those answers. May we go off the record for a moment?

(Discussion off record)

(Reading)

'REVEREND JAMES: I am for better housing. As a minister I am very definitely for good housing, but I don't think it should be done on a segregated basis. That is all I am saying.

MR. ROSE: Well, I agree with you.

REVEREND JAMES: Then we are together.

MR. ROSE: I agree with you, but we have got to get it in where we can get it in the fastest.

REVEREND JAMES: If you agree with the principle that we don't want segregated housing, then certainly there could be some type of machine to set it in motion and eradicate the problem that creates this segregated housing. What do you think can be done to do away with the things that create this segregated picture? What do you think can be instituted to do away with this?

MR. ROSE: To go back to something one of my predecessors said, we are trying to get at the source and that is the symptom you see.

REVEREND JAMES: I don't want to get into a long argument, but we agree basically you don't like segregated housing.'

"I understand now, on a brief off the record discussion, that the questions and answers asked of Mr. Rose on the

occasion of May 5, 1959, that had so far been read into the record here, are by stipulation acknowledged to be substantially accurate and may be admitted into evidence, subject, however, to any objections that may be made at the trial of this cause on grounds other than authenticity, for example relevancy. Is that correct, John?"

MR. HUNT: "That is a very accurate statement."

MR. POLIKOFF: "All right." (Dep. 11-12)

3. Q. "Mr. Rose, I would like you to turn to page 727 now, the last answer you gave was to this question: (Reading)

'REVEREND JAMES: Evidently it is the thinking of the Authority -'

Meaning the Housing Authority (continuing reading)

'- that it is better to place them -'

Meaning Negroes. (Continuing reading)

'- in a better home under segregated conditions and not try to make any efforts to eradicate the -'

And you interrupted saying (continuing reading)

'MR. ROSE: Not better, but is is expeditious right now to get the thing done. If we had a choice, that is one thing.'

I wish to ask you a question about that answer of yours, that point where you said, 'If we had a choice.' Is it correct you meant by 'If we had a choice', that if the Housing Authority was not restricted by the City Council, and were free to choose any sites it wished in the City of Chicago, any site locations it wished?"

A. "That essentially is what I meant, because we have to have the final approval of the City Council."

Q. "It is a fact then, is it not, Mr. Rose, that the Housing Authority has been limited in its ability to scatter sites throughout the city by this requirement of City Council approval?" (Dep. 13-14)...

Q. "Would you like it reread?"

A. "Yes. Would you read it, please?"

(Question read as requested.)

A. "Yes, we all know that." (Dep. 14)

3. Q. "Is it not generally true, however, that at least for the most part the Housing Authority has tailored its sites recommendations to the pattern of City Council action that it knows to exist?"

A. "Well, I don't know whether you know it or not, but it is our practice, before we go into any area, as a courtesy to contact the alderman, and he in turn contacts his constituency, and depending on his reaction and their reactions we have either gone ahead and presented the particular sites or not, because it is a matter of common knowledge, I think, if the people and the alderman don't want public housing in their area, it has no chance of getting through."

Q. "And in such cases, as I understand it, the CHA then would not submit such sites, that is, sites as to which the alderman had expressed disapproval, would not submit such sites to the City Council, is that correct?"

A. "If it was a very strong objection, we would not. If it was a very mild objection, we would either submit it then or at a future date. Sometimes in some cases they have asked us to hold off for a while."

Q. "By 'they' you mean the aldermen?"

A. "Yes."

Q. "And when you would get such a request?"

A. "We would respect it."

Q. "You would respect it. Would you say it is true, Mr. Rose, that aldermen who represent the areas of the city populated largely by whites rather than by non-whites, have generally disapproved the location of low income public housing in their areas?"

A. "Generally true, yes."

Q. "And is this fundamentally the reason why the CHA has not proposed more public housing in such areas of the city?"

A. "We have proposed it."

Q. "I mean proposed in the sense of submitting it to the City Council."

A. "That is generally true. Where we think it would be a waste of time to work up a development plan, and everything else, and get all the other approvals necessary, Federal government particularly, it would be a waste of time and money." (Dep. 15-17)

5. Q. "Now, this may be repetitious, coming back to your testimony here about if we had a choice. Isn't it correct that a major reason for this is that the CHA has felt that it had no choice because of the requirement of the City Council approval, and therefore, so far as formal submissions to the City Council are concerned, it confined those submissions largely to the Negro areas and those immediately

adjacent to Negro areas?"

A. "We confined those submissions to those that we felt would go through. But we looked all over the city, nevertheless."

Q. "And those that you felt would go through, are the ones we talked about, is that correct?"

A. "Yes."

Q. "Namely those in the Negro areas or immediately adjacent to them?"

A. "Yes."

Q. "In other words, I have not tried to confuse you, you said it would be a waste of time to submit the others."

A. "That's right. But I have personally contacted all over the city."

Q. "Well, let me make this clear so that you understand the meaning of my question. I am not now asking you the extent to which prior to submission to the City Council you may have investigated sites in other areas of the city. I am only now confining my question to the sites that reached the stage of formal submission to the City Council."

A. "That's right. But I would like you to know that I personally have looked all over the city in all white areas."

Q. "Indeed, I intend to give you a full opportunity to testify about that very subject, if you would like to. But for the moment, confining again the question only to formal submission, so that we are clear on the record.

It is true, is it not, that the sites submitted since 1960 have been in the Negro areas or immediately adjacent to them for low income housing?"

A. "Family housing."

Q. "Family housing, because of the reason you have described?"

A. "That's right." (Dep. 21-22)

4. Q. "But the discussions with the individual aldermen in whose ward the proposed site was located would come first?"

A. "Came first."

Q. "Before you would even talk with the Federal Government about the site?"

A. "That's right."

Q. "And if the alderman indicated to you that the site would not be acceptable from his point of view, would you automatically then withdraw that from consideration as

part of the package?"

A. "Well, it generally worked like this: We - either I would contact the alderman or Humphrey would contact the alderman and invariably the alderman would say, 'Let me think it over and talk with my people about it.'

And then he would call back maybe two or three days later, or a week later and let us know whether the community wanted any public housing particularly on that site."

Q. "And if his answer was -"

A. "And if the community was against it, we did not submit it. And it would have to come before the City Council ultimately. And I guess you would call it aldermanic courtesy. If the alderman didn't want it, why, it didn't get by the City Council." (Dep. 58-59)

7. Q. "In connection with doing that, you have looked at, and I gather recommended sites in what we will call White areas of the city. You understand that, how we will use that term. I don't have to go through any description.

We are talking about areas in which the principal population or substantially the entire population is White persons."

A. "That's right. But you say we were only going to talk about regular public housing. Most of the looking that I have done was for housing for the elderly. And I am personally responsible for the fact that we have buildings as far north as Ardmore and Broadway. And we had quite a time getting that site.

The Edgewater community was violently opposed to it. We had to - I personally made several trips out to the area and also business people and associations and the clergy, and they finally agreed."

Q. "That is an elderly site that you are referring to?"

A. "That is an elderly site." (Dep. 72-73) ...

Q. "Did you ever take similar action with respect to regular family sites or proposed sites in white areas of the city?"

A. "No."

Q. "Do you know whether any other members of the CHA staff took similar action at any time with respect to proposed regular family sites in White areas of the city?"

A. "Not on family units. Humphrey also had gone out into White areas on housing for the elderly where there was opposition." (Dep. 74-75)

8. Q. "So that going back now to regular family, I gather that much of the testimony that you have given about your own individual looking throughout the city on a scattered basis principally in White areas did not relate to regular family sites but rather to sites for the elderly?"

A. "That is correct. The last - I can only recall very definitely that shortly after I was in office, perhaps a year or two, we had about 3,000 units available. And I personally contacted every alderman in the city. This was family housing. I asked them if they were interested in having some public housing in their ward. Some said, 'Yes' and others said, 'No'." (Dep. 75) ...

Q. "Now, going back to the discussions that you had with the aldermen after you talked with each of them, and you found that some of them said, 'Yes, we would accept regular family public housing in our ward,' and some of them said, 'No, we would not,' what did you do? What steps did you then take?"

A. "Well, where they said, 'Yes,' we went out to look for possible sites."

Q. "In their wards?"

A. "In their wards."

Q. "And where they said, 'No,' you forgot about those wards?"

A. "That's right."

Q. "Would it be fair to say from the fact of where building of regular family housing ultimately took place, that substantially all the yes answers were in what we might call Negro areas?"

A. "Yes, or changing."

Q. "That is, changing from White to Negro?"

A. "That's right." (Dep. 76-77)

9. Q. "Prior to this understanding that you derived from John Duba in the manner that you have indicated that the CHA was not to engage in any clearing with aldermen, so we will now look at the period before that, at the time when you have testified you or Mr. Humphrey would communicate with the alderman."

A. "Always, always."

Q. "In every instance that you had a site which you were considering for inclusion, that would be done before you would go to the Federal Government in connection with that."

A. "Yes, as soon as we had a site we thought desirable, then as a matter of courtesy, we did not move in on that site without contacting the alderman as a duly-elected representative of the people to sound out whether - well, actually, we were sounding out whether the site would get by the City Council or not." (Dep. 81)

10. Q. "... You don't remember just of your own recollection about any specific sites. But you do know that there were instances in which sites proposed by the CHA for inclusion and actually passed then by the Commissioners and brought into the City Council as part of the ordinance were knocked out in subcommittee hearings."

A. "That's right."

Q. "Were those sites which had been previously cleared by the aldermen involved?"

A. "Well, they must have been because that was the practice to clear all sites."

Q. "But you don't recall with respect to those specific sites because you don't know which specific sites are involved; that is, you are assuming that they must have been cleared previously because that was the practice that you followed?"

A. "That's right, and they changed their mind."

I mean, what probably happened, that we 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 and the site was knocked out. That is probably what happened." (Dep. 85-86)

11. Q. "What I am asking you, Mr. Rose, is in connection with the problem of placing sites for regular family housing in these other areas; you ran into opposition in that respect, which was at least partly attributable, I gather, to the nature of public housing residents; isn't that correct?"

MR. HUNT: You are still asking about this meeting, I take it?"

MR. SHADUR: "Yes, that is correct."

WITNESS: "I would have to say only that I presume so. Nobody against the public housing ever mentioned race. They just didn't want public housing."

Q. "But you say you presumed that that was an element involved."

A. "Yes, I must presume that."

Q. "And that is a presumption, which, I gather, you had during the period that you were responsible for this administration of the Public Housing program; that is, this is the feeling which you had and awareness which you had at that period I gather as well."

A. "That is true. You couldn't help it, but the opponents never came out with it." (Dep. 104-05) ...

Q. "Now, you had indicated earlier this morning that you presumed that race questions - that is, the fact that the persons on the Housing Authority waiting list very definitely consisted of Negro persons - was an element in the opposition to public housing which you encountered over the period that you were Executive Director. That is a correct statement of your earlier testimony, isn't it?"

A. "Yes, that is part of the opposition."

Q. "Do you recall any memoranda or other documents within the CHA's staff which dealt with this problem or referred to it in any way?"

A. "No."

Q. "Do you recall any discussions with other members of the Housing Authority's staff which related to this problem and the possibility of dealing with this element of opposition?"

A. "No, I don't recall any discussions. There was nothing to discuss."

Q. "That was also one of the facts of life, I gather."

A. "Yes. We just - if anybody had an idea of how we might overcome it, why, we might have had some discussion. But the staff, all veteran staff over there, and have been in this thing for years, and it had other things to discuss. You don't waste time running around a circle."

Q. "What you are saying is that everybody recognized that this problem existed, but you didn't know any way to solve it."

A. "That's right."

Q. "And you recognized that that was a substantial source of the problem for not being able to get sites approved in the White areas by the aldermen."

A. "Yes, that is part of it."

Q. "Did you ever have any discussions with any of the Commissioners as to the possible means of dealing with this problem - or as to the existence of this as a problem?"

A. "No, I don't recall any discussions because these facts and this condition was just part of our daily life."

We didn't discuss that any more than we discussed how the room was furnished, which we had been sitting in for a long time."

Q. "It was just general public knowledge on everybody's part that this was one of the obstacles that you were confronted with?"

A. "That's right."

Q. "Do you recall discussions over the period that you were Executive Director with public officials including the aldermen, again as to this problem and possible means of overcoming it?"

A. "I probably discussed it with some of the aldermen."

Q. "Do you recall with whom?"

A. "No."

Q. "Do you recall what the nature of that discussion would have been?"

A. "Well, it again wouldn't have been much of a discussion. It would just be a comment as to the problem. You know, just a problem we were kind of getting used to living with."

Q. "Was this in the form of telling them you recognized that that was a problem in getting approval through the City Council?"

A. "That was one of the problems. But there are also others. Some of them were opposed simply because it brings people of a different economic level in.

Even if we could assure them that there wouldn't be any race problem, they still wouldn't want low income families in their neighborhood in many sections of the city. And they believed that, many of them, that public housing depreciates the value of their own property."

Q. "Do you remember that in the public housing response to the West Side Federation there was some reference to the fact that sites outside of the south side and the west side would invariably encounter sufficient objection in the Council to preclude Council approval, and you said that that was consistent with what you, yourself, had spoken with the regional people about, the regional representatives of the Federal Government; that is correct, isn't it?"

A. "Yes, I must have at some time or other in my discussions with the regional people, we must have discussed that."

Q. "Do you recall whether in those discussions you also discussed with them the reasons that you had this invariable opposition - that is, the same kind of reasons

that we have just been talking about?"

A. "I suppose it was part of the conversation. I don't recall."

Q. "The race problem and the economic problem, I suppose?"

A. "Race, the economic and - as far as discussing sites were concerned, it would have been chiefly about - 'Well, if the alderman is agreeable, we can get it. If he isn't why we can't.'

And they, themselves, were well aware of the situation. And the trouble goes all the way back to the first Executive Director who - there was no state law then - giving the City Council the prerogative of approving these sites. And things got so bad and the opposition so great that the City Council was given that prerogative. And since that time, everybody concerned in the field is aware that what the alderman wants, he can have. If he doesn't want it, he doesn't have to take it." (Dep. 142-146)

12. Q. "Now, calling your attention to the sentence in that paragraph [Ex.2, page 6] which reads, 'We are also advised that sites other than in the south or west side, if proposed for regular family housing, invariably encounter sufficient objection in the Council to preclude Council approval.'

Do you recall whether this was a subject which you discussed with any representatives of the Federal Government - that is, the Public Housing Administration - at or about the time that letter was prepared?"

A. "I don't know, but I certainly have discussed this at the regional level in the course of our looking for sites. When we find sites, we have to submit them - of course, as I mentioned the other day - to the local public housing administration people for their approval. And so this subject certainly would have been discussed."

Q. "What you are saying then, I gather, is you are not certain whether you were the specific source of this advice to them, but that this was a subject which you had discussed with them on more than one occasion?"

A. "Yes."

Q. "And that this was the view which you had expressed to them in those discussions?"

A. "Yes, that would be about it." (Dep. 112-13)

13. Q. "Did you discuss at that time any possible ways of overcoming the grounds of opposition to the inclusion of public housing sites in White areas?

A. "No. I don't think there was any discussion on the subject because over the years, the Commissioners have all been on the Board five and ten and fifteen years, and they are perfectly reconciled to the fact that unless the alderman wants public housing, there is no chance of going ahead." (Dep. 137-38)

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Excerpts from deposition of Alvin D. Rose (continued)

14. Q. "Didn't you also have a limit on the maximum number of Negro families that would be admitted to Trumbull Park?"
A. "We limited the number of Negro families only to the extent that we thought they could make the adjustment and the community would accept them."
Q. "Wasn't there a limit of twenty, twenty or approximately twenty to which you held the Negro population in Trumbull Park?"
A. (No response.)
Q. "Maybe I could refresh your recollection."
A. "At that time, at that time - what year was this?"
Q. "The testimony was May 5 of 1959, your testimony."
A. "Okay. That was shortly after I had become Executive Director."
Q. "Well, it was more than a year after, wasn't it? Didn't you become Executive Director in - "
A. "Yes."
Q. " - in the latter part of, I believe, 1957?"
A. "That's right."
Q. "And this is in May of 1959; so it is about a year and a half later."
A. "Yes, that is correct. At that time apparently we were still holding the number of Negro families at the figure - it could have been twenty." (Dep. 158-59)
15. Q. "... Do you recall that you had a meeting shortly after this time in the middle of June, June 16, 1959, to be precise, in your own office at the Chicago Housing Authority at which were present a number of people? That meeting had been called - or had been solicited for the purpose of discussing Trumbull Park, among other things." (D.159
Q. "Now, Mr. Rose, do you recall such a meeting at about that time in your office with Kale Williams?"
A. "Yes, I do."
Q. "Of the American Friends Service Committee and other people as well?"
A. "Yes."

Q. "Trumbull Park was discussed at that meeting, was it not?"

A. "Very likely. They were urging me to increase the number of Negro residents." (Dep. 160-161)

Q. "Do you recall that at that meeting you, Mr. Rose, indicated an intention to at least for the present keep the number of Negro families in Trumbull Park at twenty?"

A. "I'm quite sure I must have indicated to them, in answer to their urging, that we would only increase the number of Negro tenants at Trumbull Park when we felt that we could do so without causing trouble."

A. "Now, that meant, did it not, and isn't it a fact therefore that for whatever reason, including the one you just gave, at that time the number of Negroes was not permitted to increase in Trumbull Park?"

A. "At that time we were holding - holding the number to whatever the number was at that time." (Dep. 161-62)

Q. "Do you remember whether you said at that meeting that you were prepared to admit the worst about CHA forms, namely, that they did designate the race of the applicant and that - "

A. "They have to. We have to keep those statistics for the Federal Government."

Q. "And did you also acknowledge at that meeting that the racial information was used to select or not to select tenants for certain projects?"

A. "I don't think so, because we didn't turn anybody down because of race. In some cases where we were holding to - as in the case of Trumbull, we would accept applications and designation of Trumbull from a Negro family, but they wouldn't get in until - at that time until somebody - a Negro family moved out. We had an elastic quota." (Dep. 173-74)

16. Q. "At this meeting you also discussed, I believe, Mr. Rose, three other projects: Julia Lathrop Homes, Bridgeport Homes and Lawndale Gardens, did you not, as best you could recall it?"

A. "As best I recall, without a doubt those projects were discussed. Because there were also in those projects only a very few Negroes."

Q. "Were there any Negroes at all in Bridgeport at that time?"

A. "There were none." (Dep. 162)

Q. "... That was the case, that the number of Negroes was similarly being held to approximate predetermined maximums in these other projects, these other three I mentioned."

A. "Except Bridgeport. We were trying to integrate Bridgeport but every time we tried, why, there would be some sort of incident out there that caused racial tensions and so we backed off."

Q. "For that reason no Negroes were admitted to Bridgeport at this time, is that the inference?"

A. "That's right."

Q. "Were any Negroes actually moved into Bridgeport? Was that what gave rise to the tension to which you referred?"

A. "No. The tension was caused on three different occasions. Over a period of about a year, as I remember, one was an elderly white man that was attacked by Negroes on an elevated platform."

Q. "In the area of Bridgeport Homes?"

A. "In the general area, yes."

Q. "Not in the project itself?"

A. "No, not in the project. Another case was a little white girl was assaulted by three or four Negro boys, not within the project but on a street bordering on the project. And the third case which caused me to really back off, there was a fire and a number of Negro families were given refuge in a church basement. And the white people gathered around and they had to move the Negroes out of the church. So - "

Q. "These incidents occurred sometime after you became Executive Director?"

A. "Yes."

Q. "And prior to this meeting on June 16, 1959 with Kale Williams and others?"

A. "I don't know whether one of the instances occurred before and two afterwards or two before and one afterwards. But it was along in that area."

Q. "Sometime in the late fifties, maybe spilling over into the early sixties?"

A. "Yes."

Q. "And as a result of these three incidents the Housing Authority chose not to move any Negroes into Bridgeport, is that correct?"

A. "No, we - for the time being we stopped trying."

Q. "Yes."

A. "But we did later - we did finally move a family in."
(Dep. 162-64)

17. Q. "Is it the Authority's present policy, or as recently as you were Executive Director, we won't ask you to speak for any later period than that, to maintain the Negro occupancy in Trumbull Park at approximately a determined level?"

A. "Well, it has been moved up from the figure you mentioned, twenty, through the years. It must be somewhere around 35 now." (Dep. 179-80)

Q. "Thirty-five units in Trumbull Park, approximately, occupied by Negroes?"

A. "Yes. It must be up someplace there."

Q. "Has that been a controlled development, or you may express it how you wish."

A. "Yes. As we felt that the situation warranted it, we have been increasing."

Q. "Is the same thing true - well, let's take them one at a time.

Is the same thing true in Julia Lathrop?"

A. "That's right. That has been moved up and it is also - "

Q. "And also in Lawndale Gardens?"

A. "That's right."

Q. "And also in Bridgeport?"

A. "Well, we have only been able to get one Negro family in there."

Q. "Then we better leave Bridgeport out for purposes of this question. As respects the other two projects, as well as Trumbull Park - "

A. "That's right."

Q. " - whatever the precise figures are, reflect the Authority's policy that you have described?"

A. "An elastic - "

Q. "'Elastic quota,' you called it."

A. "Yes, depending entirely upon conditions."

Q. "And when you say 'depending on conditions,' you mean, I think your earlier expression was, racial tension?"

A. "That's right."

Q. "The racial condition or atmosphere in the area, in the neighborhood in which the project is located, is that correct?"

A. "That's right."

Q. "As I understand it then, speaking about these three projects, Trumbull, Lathrop and Lawndale Gardens, the Authority has made more or less continuously over the last ten years or so, or longer, a judgment about that

condition. And on the basis of that judgment it is decided at what point this elastic quota you have referred to should be fixed."

A. "Yes." (Dep. 180-81)

18. Q. "... Do you recall that any members of the group meeting with you then urged that because of the tension situation to which I referred a moment ago in the areas on the fringe of the ghetto, that the CHA ought to break that segregated pattern and propose sites in quite different white areas of the city?"

A. "I recall generally that they were urging that we go into all white areas, and that we do not build any more public housing in non-white areas."

Q. "Do you recall that you said at that point that you had proposed such sites in the past and had tried to make those proposals as attractive as possible to the local communities in question but that you had had to withdraw such proposals when the local alderman wouldn't support them? Did you say that or something like that?"

A. "Something like that I well may have said."

Q. "Do you recall that someone then said - perhaps Kale Williams himself - that his group and groups like his would like to do a public education job with respect to that problem that you had referred to, but that it was very difficult for them to do such a job if the sites in white areas were not proposed and pushed by the CHA and made thereby a matter of public discussion? Do you recall that or something like that was said?"

A. "That sounds like Kale Williams."

Q. "I take it your answer means that to the best of your recollection something like that might have been said by Kale Williams?"

A. "Very likely was said."

Q. "Do you recall that you responded to that statement of Kale Williams that it would be fruitless and that the Housing Authority - or you personally weren't going to waste time pursuing such a course because it was going to be useless because of the opposition to putting projects in white areas, based on the fact that they would have Negro occupants? Did you say that or something like that in response to Kale Williams?"

A. "Very likely when I was trying to convince Mr. Williams of the facts of life as far as getting sites finally accepted by the whole City Council."

Q. "So your answer to that question then is that very likely you did say something of the sort I just said to you?"

A. "That's correct." (Dep. 185-86)

19. Q. "You are familiar with the term, are you not, 'proximity rule?'"

A. "Yes, very familiar with it."

Q. "Was the proximity rule discussed in connection with this first project at Lathrop?"

A. "No, no, that wasn't discussed until we built the Fisher apartments at Broadway and Ardmore."

Q. "About when was that?"

A. "It must have been four years ago, four or five maybe."

Q. "Was that the next elderly project or were there a number of others?" I will call the Lathrop the first one and the Broadway and Ardmore - "

A. "There was one out south, 49th and Cottage, 4949 Cottage."

Q. "Any others in the interim?"

A. "I don't think so."

Q. "How did the proximity rule discussion in connection with Broadway and Ardmore originate?"

A. "Originated - it was my idea."

Q. "You mean the rule itself was your idea?"

A. "That's right."

Q. "Would you tell me about that?"

A. "Well, it was just that from our experience we knew that elderly people like to remain in the neighborhood where they had their friends, church, relatives and so forth. In many cases they were living with their son-in-law and daughter-in-law. And so the rule was devised to give priority to those people living in the immediate vicinity.

And after we had taken care of those, then we just keep on going right out. It was just a - just a priority."

Q. "Was the rule written down at that time?"

A. "I think so, because we had to decide what - how we'd go out."

Q. "Meaning what area you would cover?"

A. "Yes. Initially we gave the priority to all those living within two blocks. And if that didn't fill the building up, which it didn't, of course, then we'd go out a half a mile until we went all over the City. It

Q. "Well, on some occasion prior to May 5, 1959, you gave a speech to the City Club and you think this statement which appears on 834 might have been made by you in a question and answer period following the speech at that time."

A. "Might have been, yes."

Q. "The statement to which we have been referring to is, 'We do not - ' the 'we' there means the Chicago Housing Authority?"

A. "Yes."

Q. "'We 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.'

I would like to ask you did that continue to be CHA policy during your term of office, your tenure as Executive Director of the Housing Authority?"

A. "Yes. It doesn't mean that we didn't go out and try to get sites. But if the community was opposed and its duly elected representatives were opposed, well, we didn't go in." (Dep. 210-11)

was just to give the people in the immediate area a chance to stay close to where they were living."

Q. "Now, that rule or that proximity rule, I'll call it, helped, didn't it, to get the City Council approval of some of these elderly - helped in getting the City Council approval?" (Dep. 195-96)

Q. "But my question is this: Didn't this proximity rule come up in discussion with aldermen in connection with obtaining City Council approval for the sites for the elderly projects?"

A. "Yes, yes, it helped."

Q. "Would you tell me about that?"

A. "It helped very obviously."

Q. "And the reason it helped, one reason that it helped, I assume, was that if a project was going to be located - like Broadway and Ardmore - in a white neighborhood, you could be reasonably certain by virtue of the proximity rule that it would be occupied largely by whites, correct?"

A. "That was - that is a fair assumption. And also the alderman was looked at much more kindly on it if his people were going to be taken care of." (Dep. 196-97)

20. Q. "I would like to refer you again to the hearings before the United States Commission on Civil Rights, the volume of those hearings that has previously been identified for the record but not marked as an exhibit.

I want to direct your attention to Page 834 of that volume where two sentences appear purporting to represent an expressing of policy on new site selections of the Executive Director of the Chicago Housing Authority, and at that time it was you.

Would you please read the portion to which I have referred near the top of the Page 834 and then tell me whether you remember saying that or something like that on any occasion?"

A. "Yes, I said that."

Q. "Was that at the occasion of your speech before the City Club in Chicago?"

A. "I don't - "

Q. "Or was that some other time?"

A. "That may have been some other time. It certainly wasn't in my speech. It may have been at that meeting in answer to questions and answers after the meeting was over." (Dep. 208-09)

3* (1-5) RP.

THE CHICAGO HOUSING AUTHORITY

May 23, 1955

MEMORANDUM TO THE COMMISSIONERS

SUBJECT: Selection of Sites

I have held discussions with Alderman Murphy, the Chairman of the Housing and Planning Committee of the City Council, concerning a new procedure for the selection of sites for any additional low-income housing that may be required in the future for the City of Chicago.

We have agreed on certain principles from which I have prepared the suggested procedure for selection of sites which is outlined below.

SUGGESTED PROCEDURE FOR SELECTION OF SITES

1. To insure close coordination between the Housing and Planning Committee, and the Chicago Housing Authority, and to provide for the selection of the most satisfactory sites, a procedure for consideration of sites is proposed herein, based on the following assumptions:
 - a. That the City Council will in the future determine that there is a need for additional housing for low-income families in Chicago.
 - b. There are numerous areas in the City which would be benefited by construction of low-rent housing developments.
 - c. That the State Housing Board will approve the use of State funds by CHA to conduct the research and planning required in the site selection process. (Note: Such funds are reimbursable to the State account if and when a contract is entered into with the Public Housing Administration. This has been done in the past.)
 - d. The City Council is the governmental agency which is most vitally interested in the exact location of projects in areas which will best serve the people of the City and assist in the elimination of blighted and slum areas.

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- e. The Housing Authority's primary considerations for site selections are economic and developmental. The Authority's staff cannot fully evaluate various other factors, which must be determined by the City Council.
 - f. Members of the Housing and Planning Committee, and the City Council as a whole, should have as much time as possible to select sites based upon the needs of the City and of individual neighborhoods.
2. It is understood that the Chairman of the Housing and Planning Committee will appoint a sub-committee to work with the Authority in making initial selections of sites for consideration by the full Committee. Such sites to be the ones which will best fulfill the requirements of the City and be feasible for use by the Authority.
 3. It is further understood that this sub-committee will meet on the call of the Chairman with staff members of the Chicago Housing Authority, to establish a list of recommended sites, from which the Commissioners of the Authority can determine those which can be developed under the dollar limitation placed upon it by PHA.
 4. The Chicago Housing Authority staff will continue to investigate possible sites and obtain data for use by the sub-committee in making their determinations.
 5. At each meeting of the sub-committee, the Chief of Planning of CHA will present data obtained by the Authority, concerning sites submitted for consideration:
 - (1) Maps and boundaries.
 - (2) Site characteristics (building conditions, area, density, transportation, employment, schools, shopping, recreation, utilities, land cost, proposed type of construction, etc.)
 6. The Chairman of the Housing and Planning Committee intends to have his sub-committee study the sites submitted by the Commissioners of CHA, and recommend to the full Committee those sites which should be used for future development.

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- a. This will permit Committee members to personally visit such sites as they may desire to examine at first-hand.
 - b. The sub-committee would thus have an opportunity to clear with Aldermen of the Wards in which proposed sites are located, to determine community characteristics and attitudes which should be recognized in site selection.
 - c. The sub-committee would also have sufficient time to solicit advice from any Aldermen in the City Council, to determine additional areas which should be considered for redevelopment.
 - d. The Chief of Planning of CHA will be available to the sub-committee to obtain any additional information they may desire concerning the sites suggested by CHA or by individual Aldermen.
7. When the City Council has certified the need for additional housing under a new program, the Commissioners of the Chicago Housing Authority can select sites from the list recommended by the Housing and Planning Committee of the City Council.
 8. The Executive Director of CHA will obtain informal concurrences from the Housing and Redevelopment Coordinator, the Plan Commission, and the Public Housing Administration, prior to transmitting to the Mayor a proposed ordinance detailing those sites approved by the Commissioners of CHA and the Housing and Planning Committee.

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W. B. Kean
Executive Director