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

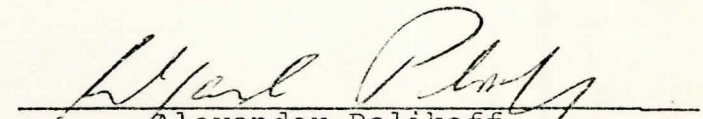
DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1460
	)	
GEORGE W. ROMNEY,	)	
	)	
Defendant.	)	

MOTION FOR FURTHER RELIEF

Now come plaintiffs by their attorneys and move the Court for the entry of an order, in the form submitted herewith, directing the parties to attempt to formulate a comprehensive plan to remedy the past effects of unconstitutional site selection in the Chicago public housing system, and, if the parties cannot agree, directing each party to submit a form of proposed judgment order.

In support of this motion plaintiffs submit herewith a memorandum.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

November 24, 1971

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IN THE UNITED STATES DISTRICT COURT
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EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
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v.	)	No. 66 C 1460
	)	
GEORGE W. ROMNEY,	)	
	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF MOTION
FOR FURTHER RELIEF

This memorandum is submitted in support of plaintiffs' motion for further relief of even date herewith.

THE FACTS

The relevant facts may be succinctly stated:

1. On February 10, 1969, this Court rendered its opinion in the companion case, Gautreaux et al. v. Chicago Housing Authority, et al., No. 66 C 1459, finding de jure segregation in the administration of the public housing system in Chicago.

2. Notwithstanding orders thereafter entered in the companion case on July 1, 1969, July 20, 1970 and March 1, 1971, recognizing that any remedy for the effects of such segregation requires the provision of new public housing, no such new housing has yet been provided and no such remedy has therefore been afforded to the plaintiff class.

3. On September 10, 1971, the Court of Appeals for the Seventh Circuit determined that the defendant in this case was equally responsible with the Chicago Housing Authority for the segregated public housing system in Chicago. The Court held that the Department of Housing and Urban Development ("HUD"), through its Secretary, "violated the Due Process Clause of the Fifth Amendment [citations omitted] and also violated Section 601 of the Civil Rights Act of 1964 [citations omitted]." Slip opinion, p.15.

4. While noting that "our holding should not be construed as granting a broad license for interference with the programs and actions of an already beleagured federal agency," Slip opinion, p.15, the Court of Appeals explicitly left for the determination of this Court what relief, if any, should be granted against HUD. In this connection, the Court said:

> "[T]he extent of possible equitable relief is extremely important, but is not before this Court on this present appeal." (Slip opinion, p.4.)
>
> "[A] determination of just what type of equitable remedy might be appropriate in cases of this sort is a question best left initially to the sound discretion of the District Court. [citations omitted] Even though to the writer of this opinion it might appear that extensive relief would not be necessary, we do not, in any way, wish to anticipate the District Court on an issue properly for its decision." (Ibid.)
>
> "Plaintiffs have contended that such 'other and further relief' might include a more vigorous utilization of the several different

types of housing programs which HUD administers in the form of a decree aimed at '... remedying the continuing effects of the discrimination of the past.'[9] Such a decree arguably would represent an equitable remedy going beyond the scope of relief made available through the companion case and, it is contended, might facilitate the overall desired goal of desegregating the public housing sites around Chicago metropolitan area. We express no view on whether such requested relief is either necessary or appropriate. However, as long as a decree utilizing certain HUD programs still remains a possible form of relief not already available through the other case, this Court cannot deem the controversy moot.

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[9]For example, we are advised that 'Section 236 Housing' is a low income housing program designed to increase the flow of such housing by favorable interest assistance payments to the mortgage lender. Unlike the public housing programs now before us, local governmental approval is not required for such housing to be constructed. See also: 'Section 235' and 'Section 231' housing programs." (Ibid at 7-8.)

"[A]t the present time, plaintiffs are in the anomalous position of having the full force of the federal judicial power at their command to enforce proven rights against CHA, yet having to rely solely on the voluntary promises of a party whose role is equally important, whose decisions pertaining to this matter may prove to be among the best means of insuring full compliance with the 'aims and objectives' of the CHA decree, but who never has been a party to that case or bound by its terms." (Ibid. at 9.)

5. On November 11, 1971, summary judgment against HUD was granted by this Court pursuant to the mandate of the Court of Appeals, but this Court specifically reserved for future consideration plaintiffs' request for an order directing HUD to prepare a proposed plan for relief.

THE LAW

The following principles are relevant to the Court's consideration of the plaintiffs' motion for further relief.

I. THE COURT HAS THE DUTY TO RENDER A DECREE WHICH WILL SO FAR AS POSSIBLE ELIMINATE THE DISCRIMINATORY EFFECTS OF THE PAST

It is a truism that the Court has the duty in constitutional litigation of this sort to exercise the powers of a court of equity to render a decree which will so far as possible eliminate the discriminatory effects of the past.

> "[T]he Court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past ..." Louisiana v. United States, 380 U.S. 145, 154 (1965).

See also, U.S. v. School District 151 of Cook County, Illinois, 432 F.2d 1145, 1151 (7th Cir. 1970).

II. ADEQUATE RELIEF HAS NOT BEEN PROVIDED IN THE COMPANION CASE

It is clear, as noted above, that adequate relief has not been provided in the companion case to remedy the discriminatory effects of the segregated housing system in Chicago. Therefore orders entered in the companion case afford no reason for not granting relief - the first effective relief - in this case. In two places in its September 10 opinion, the Court of Appeals specifically invited consideration of granting affirmative relief in this case, notwithstanding orders previously entered in the companion case:

> "[A]t the present time, plaintiffs are in the anomalous position of having the full force of the federal judicial power at their command to enforce proven rights against CHA, yet having to rely solely on the voluntary promises of a party whose role is equally important, whose decisions pertaining to this matter may prove to be among the best means of insuring full compliance with the 'aims and objectives' of the CHA decree ..." (Slip opinion, p.9, emphasis added.)

And, discussing plaintiffs' contention that a ruling against HUD might appropriately include "a more vigorous utilization of the several different types of housing programs which HUD administers," the Court of Appeals also said that "a decree utilizing HUD programs still remains a possible form of relief not already available through the other case ...". Slip opinion, pp. 7-8.

It is thus plain that the Court of Appeals has not foreclosed, but has specifically left open, the question of whether this Court should provide relief "beyond the scope of relief made available through the companion case." Since no relief at all respecting the obligation to remedy the effects of the past (as distinguished from prohibiting continued discrimination in the future) has yet been obtained in the companion case, it is clear that the question of providing such relief in this case must be considered by the Court.

III. ADEQUATE RELIEF FOR THE EFFECTS OF THE PAST DISCRIMINATION CANNOT BE PROVIDED IN THE COMPANION CASE

All of the parties to both cases have agreed and stated many times that full relief to remedy the effects of the past discrimination cannot be provided solely within the companion case. Over 30,000 segregated living units constitute the legacy of the past. Neither such a number, nor any significant part of such a number, can be provided within a reasonable time, if at all, within the territorial boundary of the City of Chicago. Thus, it is a certainty that a plan of metropolitan scope will be needed. Such a plan should obviously be provided in this case, where the jurisdiction of the defendant is metropolitan-wide, rather than in the companion case where it is not.*

IV. HUD HAS THE BURDEN OF COMING FORWARD WITH A SPECIFIC PLAN FOR ADEQUATE RELIEF

The law is clear that the party responsible for discrimination has the duty to come forward with a plan which promises meaningful and immediate progress to correct the effects of past discrimination. In United States v. School District 151

*Where necessary to provide full relief from the effects of past discrimination, courts have directed the preparation of metropolitan-wide plans. See, for example, the order entered in Bradley v. Milliken, Civil Action No. 35257, District Court, Eastern District of Michigan, Southern Division, on November 5, 1971: "It is further ordered that the State defendants submit a metropolitan plan of desegregation within 120 days." (p.2.)

of Cook County, Ill., 286 F.Supp. 786, 798-99 (N.D. Ill. 1968), this Court said:

> "The defendants' present constitutional obligation is to take all appropriate affirmative steps to correct the effects of their racially discriminatory policies and practices ..."

Affirming, the Court of Appeals for the Seventh Circuit said:

> "Defendants have the burden ... of presenting a plan which 'promises meaningful and immediate progress toward disestablishing' the existing unconstitutional discrimination. Green v. County School Board, 391 U.S. at 439, 88 S.Ct. at 1695, Northcross v. Board of Education, 333 F.2d 661 (6th Cir. 1964)." 404 F.2d 1125, 1135 (7th Cir. 1968).

In the Green case, cited by the Court of Appeals for the Seventh Circuit, the Supreme Court said:

> "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." 391 U.S. at 439, emphasis is the Court's.

Numerous other cases have similarly imposed upon responsible governmental bodies the burden of coming forward with a plan to remedy the effects of their past discrimination. See, for example, Hawkins v. Town of Shaw, 437 F.2d 1286, 1293 (5th Cir. 1971).

Thus it is appropriate to place upon HUD the duty to come forward with a specific plan to remedy the effects of its past discrimination that promises realistically to work and to work now. The fact that HUD is a federal agency rather than a local school board does not change or diminish that duty. We do not have one rule for dealing with the effects of discrimination practiced by state agencies, and a different rule (exonerating defendants from their burden of correction) for dealing with discrimination practiced by federal agencies. This is illustrated most dramatically, of course, by the five school segregation cases decided in 1954 and frequently referred to as Brown I, followed by a decision the following year, known as Brown II, providing relief in each case. Four of the cases involved discrimination by state agencies and one by a federal agency, yet the court decreed relief to correct the effects of past discrimination in each of the five cases. Brown v. Board of Education (Brown II), 349 U.S. 294 (1955). In remanding the cases to the district courts to take such proceedings and enter such orders and decrees as were necessary, the Supreme Court said:

> "[T]he courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling ... They will also consider the adequacy of any plans the defendants may propose ..." 349 U.S. at 300-01.

Moreover, HUD has had imposed upon it by Congress specific duties which almost seem as if they were written for a case such

*HUD itself has of course been subjected to various remedial orders (see, e.g., Shannon v. HUD, 396 F.2d 809 (3rd Cir. 1970); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2nd Cir. 1968), as have other federal agencies such as the Department of State (Aptheker v. Secretary of State, 378 U.S. 500 (1964)), the Department of the Treasury (Green v. Kennedy, 309 F.Supp. 1127 (D.D.C. 1970), the Environmental Protection Agency (Environmental Defense Fund v. Ruckelhaus, No. 23,813 (D.C. Cir. Jan. 7, 1971), the Federal Power Commission (Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (3rd Cir. 1965)), the Department of Agriculture, (Environmental Defense Fund, Inc. v. Hardin, 428 F.2d 1093 (D.C. Cir. 1970)), and the Atomic Energy Commission (Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, ___ F.2d ___ (D.C. Cir. 1971).)

as this one. In Section 808(d) of the Housing and Urban Development Act of 1968 Congress directed:

> "(d) The Secretary of Housing and Urban Development shall -
>
> (1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;
>
> (2) publish and disseminate reports, recommendations, and information derived from such studies;
>
> (3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;
>
> ...
>
> (5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter." 42 U.S.C.A. §3608(d).

Such duties are almost precisely those which are now requested to be performed by HUD, related to the specific circumstances of this case. Thus, in the preparation of a plan such as has been requested in plaintiffs' motion, HUD is merely being asked to study "the nature and extent of discriminatory housing practices" in the Chicago metropolitan area, to supply to the Court "reports, recommendations and information" derived from such a study, to "cooperate with and render technical assistance to [a] Federal [agency] which [is] formulating or carrying on programs to prevent or eliminate discriminatory

housing practices," namely this Court, and to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further [fair housing] policies ...", that is, by eliminating the discriminatory effects of its own past discrimination.

Thus, the order which plaintiffs now seek is hardly more than an order to HUD to do what Congress has already ordered it to do, here, however, with specific reference to a particular situation in which HUD has been adjudicated to have contributed to a discriminatory housing situation which HUD itself now has a legal duty to remedy.

CONCLUSION

Plaintiffs are not at this point asking for an affirmative order providing specific relief. They are merely asking the Court to consider the question that the Court of Appeals has directed it to consider - what further relief against HUD is appropriate.

The Court cannot adequately explore that question without hearing from both parties, including HUD.*

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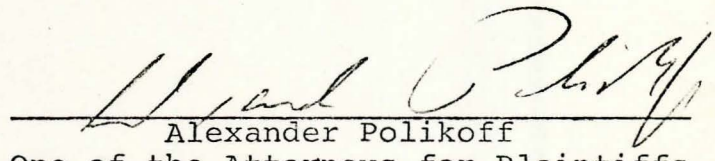
* "That these formal doctrines of administrative law do not preclude federal jurisdiction does not mean, however, that a federal court must deprive itself of the benefit of the expertise of the federal agency that is primarily concerned with these problems." Rosado v. Wyman, 397 U.S. 397, 406 (1970).

There can be no doubt, we assume, that if the Court were to make an affirmative request to HUD to supply it with the studies, recommendations, and technical assistance called for by Section 808(d), HUD would respond voluntarily. Here, where the Court has the duty to provide full relief from HUD's past discrimination, and where HUD has the duty to come forward with a plan to remedy that discrimination, HUD can and should be required to aid the Court in its task by producing a plan for the Court's consideration.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

November 24, 1971

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641-5570

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Plaintiffs,	)	
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v.	)	No. 66 C 1460
	)	
GEORGE W. ROMNEY,	)	
	)	
Defendant.	)	

ORDER

This matter coming on to be heard pursuant to plaintiffs' motion for further relief, and the Court having considered the opinion of the Court of Appeals for the Seventh Circuit of September 10, 1971 in this cause and the mandate issued pursuant thereto, and this Court's order herein of November 11, 1971, and the Court having heard the presentations of the parties and being fully advised,

It is hereby ordered:

1. The parties shall attempt to formulate a comprehensive plan to remedy the past effects of unconstitutional site selection procedures in the public housing system in the City of Chicago and present the same to the Court within sixty days from the date hereof;

2. If the parties cannot agree, each party shall file with the Court a proposed judgment order embodying a comprehensive plan to remedy the past effects of such unconstitutional site

selection procedures within ninety days from the date hereof; and

3. In the preparation of such plan or plans, the parties are requested to provide the Court with as broad a range of alternatives as seem to the parties feasible as a partial or complete remedy for such past effects, including, if the parties deem it necessary or appropriate to provide full relief, alternatives which are not confined in their scope to the geographic boundary of the City of Chicago.

ENTER:

_____

Judge

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v.	)	66 C 1460
	)	
GEORGE W. ROMNEY,	)	
	)	
Defendant.	)	

NOTICE OF MOTION

To: James Murray, Esq.
Assistant United States Attorney
219 S. Dearborn Street
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on November 24, 1971, at the opening of court or as soon thereafter as counsel may be heard, I will appear before Judge Richard B. Austin in the courtroom usually occupied by him in the United States Courthouse, 219 S. Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there present plaintiffs' motion for further relief and memorandum in support thereof, copies of which are hereby served upon you.

Alexander Polikoff

Alexander Polikoff
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

CERTIFICATE OF SERVICE

Alexander Polikoff, one of the attorneys for plaintiffs, hereby certifies that he has caused to be delivered copies of plaintiffs notice of motion and motion to the above-named individual and at the address stated above on the 23rd day of November, 1971.

Alexander Polikoff

November 23, 1971