IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 74-1048 and 74-1049

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellants,

v.

CHICAGO HOUSING AUTHORITY and JAMES T. LYNN, Successor to George W. Romney, Secretary of the Department of Housing and Urban Development, et al.,

Defendants-Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of Illinois Eastern Division

BRIEF OF PLAINTIFFS-APPELLANTS

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TABLE OF CONTENTS

	Page No.
THE ISSUE PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	10
I. THE DISTRICT COURT HAS THE POWER AND THE DUTY TO GRANT METROPOLITAN AREA RELIEF	12
A. The Remedial Powers of a Federal District Court to Vindicate Federal Constitutional Rights are not Limited by Local Political Boundaries, However Innocently Drawn	12
B. The District Court's Flat Prohibition of Metropolitan Area Relief Was a Breach of the Command that All Reasonable Methods be Available to Formulate an Effective Remedy	26
II. NEITHER DIFFERENCES BETWEEN HOUSING AND EDUCATION NOR "PASSING OFF PROBLEMS ONTO THE SUBURBS" JUSTIFIES THE DISTRICT COURT'S PROHIBITION OF METROPOLITAN AREA RELIEF	42
CONCLUSION	44

TABLE OF AUTHORITIES

Page No.

CASES:

Aaron v. Cooper, 156 F.Supp. 220 (E.D. Ark. 1957) 27

Avery v. Midland, 390 U.S. 474 (1968) 18

Barrick Realty Incorporated v. City of Gary, ___ F.2d ___ (7th Cir., Jan. 24, 1974, No. 73-1279) 35

Bradley v. Milliken, 484 F.2d 215 (6th Cir. 1973) 6, 14, 15 23

Bradley v. School Board of the City of Richmond, 462 F.2d 1058 (4th Cir. 1972), aff'd 412 U.S. 92 (1973) 15

Brown v. Board of Education, 349 U.S. 294 (1955) 13

Cooper v. Aaron, 358 U.S. 1 (1958) 18

Davis v. Board of School Commissioners, 402 U.S. 33 (1971) 10, 14, 26

Evans v. Buchanan, 256 F.2d 688 (3d Cir. 1958), 281 F.2d 385 (3d Cir. 1960) 20

Ex Parte Virginia, 100 U.S. 339 (1880) 17

Franklin v. Quitman County Bd. of Ed., 288 F. Supp. 509 (N.D. Mass. 1968) 20

Gautreaux v. CHA, 296 F.Supp. 907 (N.D. Ill. 1969) 36

Gautreaux v. CHA, 304 F.Supp. 736 (N.D. Ill. 1969) 33, 43

Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971) 3

Gomillion v. Lightfoot, 364 U.S. 339 (1960) .. 14

Gray v. Sanders, 372 U.S. 368 (1963) 14

Page No.

Green v. County School Board, 391 U.S. 430 (1968) 10, 26, 39

Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964) 22, 24, 27

Hall v. St. Helena Parish School Bd., 197 F.Supp. 649 (E.D. La. 1961), aff'd. 287 F.2d 376 (5th Cir. 1961), aff'd per curiam 368 U.S. 515 (1962) 14, 17

Haney v. County Board of Education of Sevier County, 429 F.2d 364 (8th Cir. 1970) 13, 14

Hart v. Community School Board, ___ F.Supp. ___ (E.D.N.Y. No. 72 C 1041, 1/28/74) 19, 38

Hoots v. Commonwealth of Pennsylvania, 359 F.Supp. 807 (W.D. Pa. 1973) 20

Housing Authority of City of Omaha v. United States, 468 F.2d 1 (8th Cir. 1972) 31

Housing Authority of Los Angeles v. City of Los Angeles, 243 P.2d 515 (Cal. 1952) 23

Hunter v. City of Pittsburgh, 207 U.S. 161 (1907) 23

Jenkins v. Township of Morris School District, 279 A.2d 619 (S.Ct. N.J. 1971) 13

Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973) 23

Lee v. Macon County Board of Education, 448 F.2d 746 (5th Cir. 1971) 14

Lindsey v. Normet, 405 U.S. 56 (1972) 42

Louisiana v. United States, 380 U.S. 145 (1965) 10

Lucas v. Forty-fourth General Assembly, 377 U.S. 713 (1964) 14

Mahaley v. Cuyahoga Metropolitan Housing Authority, 355 F.Supp. 1257 (N.D. Ohio 1973) .. 35, 40

Newburg Area Council v. Board of Education of Jefferson County, ___ F.2d ___ (6th Cir. 1973, Nos. 73-1403, 73-1408) 14

Page No.

North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971) 1, 10, 21 27

People v. Hursey, 131 N.E.2d 483 (Ill. 1956) .. 23

Reynolds v. Sims, 377 U.S. 533 (1964) 13

Robinson v. Shelby County Board of Education, 330 F.Supp. 837 (W.D. Tenn. 1971), aff'd. 467 F.2d 1187 (6th Cir. 1972) 27

San Antonia School District v. Rodriguez, ___ U.S. ___, 36 L.Ed.2d 16 (1973) 42

Stout v. United States, 448 F.2d 403 (5th Cir. 1971) 14

Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1 (1971) 1, 14, 10, 21, 27, 32 39

United States v. Board of School Commissioners of Indianapolis, ___ F.Supp. ___ (S.D. Ind. 7/20/73, No. IP 68-C0225) 14

United States v. Board of School Commissioners of Indianapolis, 332 F.Supp. 655 (S.D. Ind. 1971) 32, 34, 35

United States v. Board of School Commissioners of Indianapolis, 474 F.2d 81 (7th Cir. 1973) cert. denied 37 L.Ed.2d 1041 (1973) 10, 18, 38

United States v. Georgia, 466 F.2d 197 (5th Cir. 1972) 27

United States v. Indianola Municipal Separate School District, 410 F.2d 626 (5th cir. 1969) 14

United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972) 14

United States v. State of Texas, 447 F.2d 441 (5th Cir. 1971), affirming orders reported at 321 F.Supp. 1043 and 330 F.Supp. 235 .. .. 14, 18, 20

Page No.

Wright v. Council of the City of Emporia, 407 U.S. 451 (1972) 14

STATUTES:

Ill.Rev.Stats. Ch. 67-1/2, §27c 16

OTHER AUTHORITIES:

President's Special Message on Federal Housing Policy 1973 U.S. Code Cong. and Adm. News, No. 9, pp. 3298, 3304 (October 15, 1973) 41

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THE ISSUE PRESENTED

Whether the District Court contravened "the implicit command of Green v. County School Board, 391 U.S. 430 (1968), that all reasonable methods be available to formulate an effective remedy"* and to achieve "the greatest possible degree of actual desegregation"** when it flatly prohibited any form of metropolitan

*North Carolina State Board of Education v. Swann, 402 U.S. 43, 46 (1971).

**Swann v. Board of Education, 402 U.S. 1, 26 (1971).

area relief as a part of the remedy for de jure public housing segregation.

STATEMENT OF THE CASE

From four previous appeals the Court is already familiar with this case; we will therefore omit a detailed statement of the background apart from the proceedings which lead to the present appeal.*

This fifth appeal grows out of the decision of this Court, reported at 448 F.2d 731, which determined that the Department of Housing and Urban Development (HUD), as well as the Chicago Housing Authority (CHA), was responsible for de jure segregation in a public housing program. The case was remanded to the district court for a determination of the appropriate relief. While expressing no view as to what that relief should be, this Court said:

*See the decisions of this Court and of the district court in the four previous phases of the case as follows: (1) the original judgment order against CHA and an effort to enforce it - 296 F.Supp. 907, 304 F.Supp. 736, 436 F.2d 306, cert. denied, 402 U.S. 922; (2) the determination of HUD's liability - 448 F.2d 731; (3) an unsuccessful effort to enforce HUD's liability in relation to the Chicago Model Cities Program - 332 F.Supp. 366, 457 F.2d 124; and (4) a further enforcement effort respecting the Chicago City Council's veto power over CHA site selection - 342 F.Supp. 827, 480 F.2d 210, cert. denied, ___ U.S. ___. The order now appealed from is reported at 363 F.Supp. 690.

On April 26, 1972, HUD filed a "Response" and a general, "best efforts" judgment order. Under HUD's proposed order (which was ultimately adopted and entered by the district court) HUD would "cooperate"with CHA in CHA's efforts to increase the supply of housing units in accordance with the earlier judgment order against CHA (that is, the order reported at 304 F.Supp. 736). (A. 8.) HUD's proposed order did not include any relief "not confined ... to the geographic boundary of the City of Chicago" or impose any specific affirmative obligations upon HUD beyond its "cooperation." HUD's Response said that its "best thinking" was that the provisions of a Letter of Intent it had signed a year earlier with Mayor Daley and CHA should be carried out and that it would continue to use its best efforts to that end. (A. 9-10.) (However, the objective of the Letter of Intent was merely to make up a relocation housing deficiency of 4300 units which HUD and the City of Chicago had previously determined to exist, not to provide "a comprehensive plan to remedy the past effects" of the CHA/HUD wrongs.*)

*See p.15 of the Letter of Intent, in evidence as Plaintiffs' Exhibit 18 to the hearing of November 27-29, 1972. See also the letter of June 21, 1971 from HUD's Regional Administrator, George Vavoulis, to Mayor Daley, in evidence as Plaintiffs' Exhibit 6 to the hearing of September 21-24, 1971: "[T]he purpose of the Letter of Intention was to set forth a plan of action to provide 4,300 low-income housing units to reduce the serious deficiency in the City's supply of relocation resources for low-income families."

> "[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 [HUD] 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 ..." 448 F.2d at 736-37.

On remand the district court first granted summary judgment against HUD. (A. 3.)* Then, on December 23, 1971, it entered an order calling for the preparation of a "comprehensive plan" to remedy the past effects of the public housing segregation and inviting the parties to include in the plan "alternatives which are not confined in their scope to the geographic boundary of the City of Chicago." In relevant part the December 23, 1971 order reads as follows:

> "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 ...
>
> 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 ...
>
> 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." (A. 6-7.)

*"A." citations are to the Appendix filed herewith.

Following interim filings on April 27 and June 30, 1972, in which they discussed their view of the principle elements required in any comprehensive remedial plan (Record Doc. 283, Attachments 5 and 6), plaintiffs filed their proposed judgment order on September 25, 1972. (A. 14.) For purposes of this appeal the important elements of plaintiffs' proposed order are that, as invited by the district court, it provided a mechanism by which CHA could supply remedial housing in suburban areas as well as within Chicago, and it required HUD to administer its programs affirmatively to carry out the provisions of the order.

On November 27-29, 1972, an evidentiary hearing was held "for the purpose of considering what orders, if any, shall be entered to provide comprehensive relief in this consolidated case ..." (A. 31.)* Plaintiffs introduced evidence showing the need for a metropolitan area remedial plan and the unreliability of HUD's "best efforts" as the basis for any effective plan. (Transcript of Proceedings of November 27-28, 1972, pp. 81-330.) HUD's evidence was limited to the relative paucity of federal subsidy funds then available. (Ibid. 330-367.) CHA offered no evidence at all. (Ibid. 367.) At the conclusion of the hearing the matter was taken under advisement. (Ibid. 474.)

Nine days later, on December 8, 1972, the Court of Appeals

*CHA as well as HUD was by now a party to the proceedings, the separate cases against CHA and HUD having been consolidated on HUD's motion. (Record Docs. 7 and 12.)

for the Sixth Circuit decided Bradley v. Milliken, a case involving the question of whether segregation in the Detroit school district could be remedied effectively by action taken solely within the boundaries of that school district. Concluding that it could not, the district court in Bradley had determined that a remedial plan involving suburban school districts was required. 345 F.Supp. 914. The Sixth Circuit affirmed this determination, holding that to provide an effective remedy the district court had the power to order a remedial plan that involved crossing school district boundary lines.

> "Like the District Judge, we see no validity to an argument which asserts that the constitutional right to equality before the law is hemmed in by the boundaries of a school district." Bradley v. Milliken, 484 F.2d 215, 245 (6th Cir. 1973).*

The Court of Appeals also held, however, that school districts that would be affected by a multi-district plan were necessary parties under Rule 19 of the Federal Rules of Civil Procedure. 484 F.2d at 251-52. Accordingly, while (1) affirming the

*The December 8 opinion of the Sixth Circuit is unreported because on January 16, 1973, the Court granted a rehearing in banc, the effect of which was to vacate the previous opinion and judgment of the Court. See Bradley v. Milliken, 484 F.2d at 218. On June 12, 1973, the full Court of Appeals rendered its decision on rehearing. 484 F.2d 215, cert. granted, ___ U.S. ___ (1973)(oral argument before the Supreme Court on 2/27/74). The opinion of the full Court of Appeals was substantially identical in its language and precisely identical in its holding to the December 8, 1972 opinion of the panel. Plaintiffs so advised Judge Austin by letter and transmitted a copy of the opinion to him. (A. 43.)

the district court's findings that Detroit's schools were de jure segregated and that the cure for that segregation could not be found within Detroit's borders, 484 F.2d at 219, 258, (2) holding that the district court need receive no additional evidence as to those matters, 484 F.2d at 252, and (3) "agreeing with" and "affirm[ing] in part" the district court's ruling that a metropolitan-wide remedy had to be considered, 484 F.2d at 252, 258, the Court of Appeals (4) vacated the latter ruling and a more specific later ruling on the nature of the metropolitan plan, 484 F.2d at 258, and remanded in order that affected school districts could be made parties to the litigation and be given an opportunity to be heard on the issue of what remedial plan should be adopted. 484 F.2d at 251-52.

The Sixth Circuit's Bradley decision called into question one aspect of the procedure then being followed in this case. Applied to the then pending matters before Judge Austin, arguably it meant that although it would be appropriate for Judge Austin to determine that some form of metropolitan area plan was required for comprehensive and effective relief, it would be inappropriate for him to proceed to adopt any particular metropolitan remedial plan without first joining the parties who would be affected by such a plan and affording them an opportunity to be heard concerning its specific provisions.*

*We say "arguably" because unlike a remedial plan embracing adjoining school districts which necessarily involves changing the way in which those districts administer their school systems, plaintiffs' proposed judgment order required only that CHA be directed to provide housing outside as well as inside Chicago. It did not require changing in any way the administration of the housing programs of suburban housing authorities.

Accordingly, on January 29, 1973, plaintiffs filed a motion asking that the Bradley procedure be followed in this case. (A. 33.) The motion requested the district court to defer ruling on the proposed judgment orders submitted by HUD and the plaintiffs and instead to enter a "Bradley-type" order calling for a metropolitan area remedial plan but without considering any of the particulars of any such form of plan until appropriate additional parties were joined. The proposed order called for "a designation of such additional parties, if any, as in the opinion of HUD or CHA, as the case may be, should be joined as additional parties to the action to make the proposed relief effective." (A. 41.)*

*In a memorandum plaintiffs advised Judge Austin that if their motion were granted they would ask leave to join as additional parties the five suburban housing authorities in the Chicago Urbanized Area and the State of Illinois:

> "[I]f the Court rules favorably on the propriety and necessity of considering a metropolitan remedy in this case, plaintiffs will ask leave to join the following five housing authorities, which are all the authorities in the Chicago urbanized area:
>
> Housing Authority of Cook County
> DuPage County Housing Authority
> Lake County Housing Authority
> Waukegan Housing Authority
> North Chicago Housing Authority
>
> In addition, plaintiffs would consider it appropriate to ask leave to join the State of Illinois which has a continuing supervisory authority over all these housing authorities. Ill.Rev.Stats., Ch. 67-1/2, §13." (Record Doc. 301, Appendix to plaintiffs' memorandum, p.i.)

As defined by the Census Bureau an urbanized area consists of a central city or cities of 50,000 or more and surrounding closely settled territory. (1970 Census of Housing, General Housing Characteristics, Illinois, HC(1)-A15, Appendix A, p.2.) A map of the Chicago Urbanized Area is included in the Record as a part of Record Doc. 283, Attachment 6, Memorandum 3.

On September 11, 1973, Judge Austin denied plaintiffs' motion of January 29 and entered the general "best efforts" judgment order previously proposed by HUD. His opinion says that, although metropolitan area relief may have been justified in Bradley, "it is simply unwarranted here because it goes far beyond the issues of this case." (A. 45; 363 F.Supp. 690-91.) Three reasons for that conclusion are given. The first is that, "Unlike education, the right to adequate housing is not constitutionally guaranteed and is a matter for the legislature. Lindsey v. Normet, 405 U.S. 56, 74 (1972)." (A. 45; 363 F.Supp. 691.) Second, the opinion states that metropolitan area relief "would let the principal offender, CHA, avoid the politically distasteful task before it by passing off its problems onto the suburbs." (Ibid.) Finally, the court's opinion says that "the wrongs were committed within the limits of Chicago and solely against residents of the City"; the implication is that unless CHA and HUD had discriminated in the suburbs, or suburban entities had participated in the wrongs committed by CHA and HUD within Chicago, the court was powerless to grant relief that would extend beyond Chicago's boundaries. (Ibid.)

Plaintiffs appealed from so much of the judgment order of September 11 as denied their motion for metropolitan relief. HUD filed a notice of cross appeal from the September 11 order. (Since that order is precisely the one HUD proposed on April 26, 1972, it is not clear why HUD has filed its notice of cross appeal.)

ARGUMENT

In a race discrimination case it is the duty of the district court "to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." Louisiana v. United States, 380 U.S. 145, 154 (1965). There is an "affirmative duty to eliminate all vestiges of the dual system." United States v. Board of School Commissioners of Indianapolis, 474 F.2d 81, 85 (7th Cir. 1973), cert denied, 37 L.Ed.2d 1041 (1973). The objective is to achieve "the greatest possible degree of actual desegregation." Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 26 (1971). To that end the district court "may and should consider the use of all available techniques." Davis v. Board of School Commissioners, 402 U.S. 33, 37 (1971). The "flat" or "absolute prohibition" of any useful technique is clearly improper; it "contravenes the implicit command of Green v. County School Board, 391 U.S. 430 (1968), that all reasonable methods be available to formulate an effective remedy." North Carolina State Board of Education v. Swann, 402 U.S. 43, 46 (1971).

The issue on this appeal is narrow and does not include consideration of any particular metropolitan area remedial plan. The issue is whether the district court breached its remedial duties set forth in the preceding paragraph by entering a decree it virtually conceded would not be effective (see the Transcript of Proceedings of November 28, 1972, pp. 257, 259, 319-20, 324),

while flatly and absolutely prohibiting one of the "reasonable methods ... available to formulate an effective remedy" - a metropolitan area plan - by fixing the geographic boundary of the City of Chicago as the perimeter of possible relief. If that prohibition breached those duties, the case must be remanded with directions to make that remedial method available (after joinder of affected parties).

Two of the three reasons given by the district court for prohibiting metropolitan relief, the absence of a constitutional guarantee of adequate housing and the risk of permitting CHA to avoid a politically distasteful task, may be quickly rejected; they are discussed in Part II of this brief. The third presents the question of the power of the district judge, and if the power exists his duty, to bridge Chicago's boundary lines for federal constitutional remedial purposes where the subordinate state entities in the adjacent areas have not themselves participated in the CHA/HUD wrongs within Chicago and neither CHA nor HUD has committed wrongs within those areas - it apparently having been the district judge's view that, absent wrongdoing of either sort, he lacked the power to adopt a remedial plan that would embrace those geographic areas. The power, and under the circumstances of this case the duty, of the district court to do so is discussed in Part I.

I. THE DISTRICT COURT HAS THE POWER AND THE DUTY TO GRANT METROPOLITAN AREA RELIEF.

The district judge's principal reason for prohibiting metropolitan area relief as a method available to formulate an effective remedy appears to be that he considered such relief to be beyond his equitable powers in the absence of any contention that suburban entities had participated in CHA's discrimination or that CHA and HUD had practiced discrimination in suburban areas. It is also possible (although unlikely in view of what he himself said during the hearing below concerning HUD's "best efforts") that he considered such relief to be unnecessary because he viewed his previous orders, together with the new one he was entering against HUD, as sufficient to discharge his remedial duty. In this Part I we will show in Section A that the district judge has the power to provide metropolitan relief notwithstanding no "suburban wrongs" are involved. In Section B we will show that the need for metropolitan area relief is overwhelmingly clear and that it was therefore the district court's duty to provide it.

A. The Remedial Powers of a Federal District Court to Vindicate Federal Constitutional Rights are not Limited by Local Political Boundaries, However Innocently Drawn.

Local political boundaries are a matter of convenience, not sovereignty, and they may be disregarded for the purpose of vindicating federal constitutional rights. The Supreme Court, lower

federal courts and state courts have all so held. In Reynolds v. Sims, 377 U.S. 533, 575 (1964), the Supreme Court said:

> "Political subdivisions of States-counties, cities, or whatever - never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions."

In Haney v. County Board of Education of Sevier County, Ark., 410 F.2d 920, 924-25 (8th Cir. 1969), the Eighth Circuit Court of Appeals said:

> "State legislative district lines, congressional districts and other state political subdivisions have long ago lost their mastery over the more desired effect of protecting the equal rights of all citizens ... Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights."

And in Jenkins v. Township of Morris School District, 279 A.2d 619, 628 (S.Ct. N.J. 1971), the Supreme Court of New Jersey said:

> "[P]olitical subdivisions of the states whether they be 'counties, cities or whatever' are not 'sovereign entities' and may readily be bridged when necessary to vindicate federal constitutional rights and policies."

The second Brown decision of course expressly recognized that in remedying state-imposed segregation the administrative practicalities that would have to be dealt with included "the revision of school districts" and "school attendance areas." Brown v. Board of Education, 349 U.S. 294, 301 (1955). In one context or another the cases employing the principle are almost

without number.*

Bradley v. Milliken is one of the most recent such decisions. Concluding that the district court had both the power and the duty to ignore local school district boundaries to remedy segregation effectively, the Court said:

> "Like the District Judge, we see no validity to an argument which asserts that the constitutional right to equality before the law is hemmed in by the boundaries of the school district." 484 F.2d at 245.

The Court also stated:

> "[T]his court feels that some plan for desegregation beyond the boundaries of the Detroit School District is both within the equity powers of the District Court and essential to a solution of this problem ... We reject the contention that school district lines are sacrosanct and that the jurisdiction of the District Court to grant equitable relief in the

*See United States v. Scotland Neck City Board of Education, 407 U.S. 484, 489 (1972); Wright v. Council of the City of Emporia, 407 U.S. 451, 470 (1972); Swann v. Board of Education, 402 U.S. 1, 27-29 (1971); Davis v. School Comm'rs of Mobile County, 402 U.S. 33, 37-38 (1971); Lucas v. Forty-fourth General Assembly, 377 U.S. 713, 739 (1964); Gray v. Sanders, 372 U.S. 368, 381 (1963); Gomillion v. Lightfoot, 364 U.S. 339, 344-45 (1960); Newburg Area Council v. Board of Education of Jefferson County, ___ F.2d ___ (6th Cir. 1973, Nos. 73-1403, 73-1408); Lee v. Macon County Board of Education, 448 F.2d 746, 752 (5th Cir. 1971); Stout v. United States, 448 F.2d 403 (5th Cir. 1971); United States v. State of Texas, 447 F.2d 441, 443-44 (5th Cir. 1971), affirming orders reported at 321 F.Supp. 1043 and 330 F.Supp. 235; Haney v. County Board of Education of Sevier County, 429 F.2d 364, 368-69 (8th Cir. 1970); United States v. Indianola Municipal Separate School District, 410 F.2d 626, 630-31 (5th Cir. 1969); United States v. Board of School Commissioners of Indianapolis, ___ F.Supp. ___ (S.D. In. 7/20/73, No. IP 68-C-225); Hall v. St. Helena Parish School Board, 197 F.Supp. 649, 658 (E.D. La. 1961).

present case is limited to the geographical boundaries of Detroit." Id. at 250.

The Court concluded:

> "We therefore conclude that the District Court in the present case is not confined to the boundary lines of Detroit in fashioning equitable relief." Ibid.

A later decision of the Sixth Circuit, Newburg Area Council, supra, is to the same effect respecting three school districts in and near Louisville, Kentucky. So is a recent decision of the federal district court in Indiana, Indianapolis, supra, now pending on appeal before this Court (No. 73-1968), respecting school districts in and near Indianapolis, Indiana.

There is thus ample precedent to support a determination by a court of equity to disregard local boundaries to vindicate federal constitutional rights.* But the case for doing so is

*Bradley v. School Board of the City of Richmond, 462 F.2d 1058 (4th Cir. 1972), aff'd. by an equally divided court, 412 U.S. 92 (1973), is not a holding to the contrary. Unlike this case, in which the court is still striving to achieve a full remedy for the wrongs of the past, Bradley v. Richmond is a case in which the full relief of complete desegregation had already been provided by earlier orders of the district court: "... [W]e think the last vestiges of state-imposed segregation have been wiped out ..." 462 F.2d at 1070. Accordingly, the Court of Appeals said, the purpose of the further order it reversed was to move beyond a remedy for segregation to achieve "racial balance." 462 F.2d at 1060. Such "further intervention" by the district court appears to have been the major reason for reversal:

> "When it became 'clear that state-imposed segregation ... [had] been completely removed,' Green, supra at 439, within the school district of the City of Richmond, as adjudged by the district court, further intervention by the district court was neither necessary nor justifiable." 462 F.2d at 1069.

Here, of course, state-imposed segregation has not yet been remedied; that is what the district court is now trying to accomplish.

(footnote continued on page 16)

particularly strong when the purpose is to remedy segregation in public housing in a central city. As HUD's General Counsel has stated:

> "The provisions in State housing authorities laws which authorize a city housing authority to operate ... in a county or other city with the consent of the governing body concerned,* were included in these laws because it was realized that many cities would have to utilize the areas outside their borders in meeting their low-rent housing needs. It was recognized that the elimination of slums and the provision of decent housing for families of low income in the locality are matters of metropolitan area scope but of primary concern to the central city because the problem and impact are intensified there. In effect, therefore, the State legislatures have determined that the city and its surrounding area comprise a single 'locality' for low-rent housing purposes." (Plaintiffs' Exhibit 13, pp. 3-4, emphasis added.)

And a HUD regulation applicable to public housing states, "[H]ousing market areas often are independent of arbitrary political boundaries ..." (Plaintiffs' Exhibit 16, p.1.)

This power to bridge local political boundary lines to vindicate federal constitutional rights or implement federal constitutional remedies is not a puzzling anomaly in the law but flows directly from a fundamental constitutional principle - that

(footnote continued from page 15)

Bradley v. Richmond was distinguished on precisely this ground in Newburg Area Council, supra, slip opinion, pp. 10-11.

In Bradley v. Milliken and Indianapolis, although not in Newburg, the state was itself found to have committed an "independent" wrong. As the following discussion in the text shows, such a finding is not necessary as a condition to disregarding local boundaries.

*The Illinois law to this effect is Ill.Rev.Stat., Ch. 67-1/2, §27c.

the United States Constitution recognizes no levels of government except federal and state and that the state and its agencies may not avoid their federal constitutional responsibilities by fragmentation of decision-making or "carve-outs" of local governmental units. Hall v. St. Helena Parish School Bd., 197 F.Supp. 649, 658 (E.D. La. 1961), aff'd. 287 F.2d 376 (5th Cir. 1961), aff'd per curiam, 368 U.S. 515 (1962).

A full understanding of that fundamental doctrine is essential to grasping the error in the district court's apparent view that, absent discrimination in or by the suburbs, he was without power to adopt a remedial plan that crossed city-suburban boundary lines. In Ex Parte Virginia, 100 U.S. 339 (1880), speaking of the Reconstruction Amendments, the Supreme Court said:

> "They were intended to be, what they really are, limitations of the power of the States ...
>
> The prohibitions of the 14th Amendment are directed to the States, and they are to a degree restrictions of State power. ... It is said the selection of jurors for her courts and the administration of her laws belong to each State; that they are her rights. This is true in the general. But in exercising her rights, a State cannot disregard the limitations which the Federal Constitution has applied to her power. ... The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government ... denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." 100 U.S. 339, 345-47 (1880)(emphasis added).

In Cooper v. Aaron, 358 U.S. 1, 17 (1958), after quoting some of the foregoing, the Court said:

> "Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action ..."

In Avery v. Midland, 390 U.S. 474, 480 (1968), the Court said:

> "Although the forms and functions of local government and the relationships among the various units are matters of state concern ... actions of local government are the actions of the State."

And in United States v. Texas, 321 F.Supp. 1043, 1056-57 (E.D. Tex. 1970), the court said:

> "The State is obligated to oversee the actions of its agencies to insure against violation of the constitutional rights of individuals."*

The foregoing cases speak principally to the state's responsibility in law for the constitutional violations of its subordinate entities. But this Court has recently observed that the constitutional considerations are the same at the remedial stage of a segregation case as they are at the initial violation stage. United States v. Board of School Commissioners of Indianapolis, supra, 474 F.2d at 83. Accordingly, the state and all of its agencies are as duty bound to assist in providing an

*Supplemental opinion, 330 F.Supp. 235, modified and aff'd, 447 F.2d 441 (5th Cir. 1971), stay denied, 404 U.S. 1206 (Black, J., in Chambers), cert. denied, 404 U.S. 1016 (1971). Accord: Lee v. Macon County Bd. of Educ., 267 F.Supp. 458, 478-79 (M.D. Ala. 1967)(three judge court), aff'd. sub nom. Wallace v. United States, 389 U.S. 215 (1967).

effective remedy for segregation imposed by one of those agencies as they are responsible in law for the constitutional violation in the first instance. In Hart v. Community School Board, ___ F.Supp. ___ (E.D.N.Y., No. 72 C 1041, 1/28/74), the court discussed this consequence of state-imposed segregation at length:

> "In remedying the condition of unconstitutional racial segregation at Mark Twain [school], this court has the power and duty to require not only the School Board to act, but other agencies of the state as well, including the New York City Housing Authority.
>
> The Fourteenth Amendment, by its very terms, speaks to the state. An equal protection claim of racially segregated education is actionable against a school board because the board is, for constitutional purposes, an agency of the state. If the school board is found liable for racial segregation, then the state, as the principal whose agent the school board is, is also necessarily liable. Consequently, in remedying the racial segregation for which the state is liable, this court may require the state, through its other agencies and political subdivisions, to participate and cooperate in remedial action. See, Bradley v. Milliken, Slip Opinion at 44 (6th Cir., 72-1809-14, June 12, 1973), cert. granted, ___ U.S. ___, 42 L.W. 3300 (November 19, 1973)('Under the Constitution of the United States ... the responsibility for providing educational opportunity to all children on constitutional terms is ultimately that of the state. ... That a state's form of government may delegate the power of daily administration of public schools to officials with less than statewide jurisdiction does not dispel the obligation of those who have broader control to use the authority they have consistently with the constitution. In such instances the constitutional obligation toward the individual school children is a shared one.') (emphasis added)." (Slip opinion pp. 124-25.)

Elsewhere the opinion states:

> "Educational, housing and other officials at all levels of government are required by the Constitution to cooperate in promptly eliminating the effects of segregation at Mark Twain Junior High School." (Slip opinion p.4.)

In Franklin v. Quitman County Bd. of Ed., 288 F.Supp. 509, 519 (N.D. Mass. 1968), the Court made the same point:

> "The affirmative obligation to seek means of disestablishing state-imposed segregation must be shared by all agencies, or agents of the state ... who are charged by law with, and who exercise, official public school functions. Neutrality must be forsaken for an active, affirmative interest in carrying out constitutional commands."

And in United States v. Texas, supra, the court said:

> "In many matters involving segregated public schools, it is unnecessary to seek relief against a state agency, since local authorities ordinarily possess the requisite authority to eliminate segregation which is confined within the boundaries of individual school districts. The relief in this case, however, in order to prove effective, will ultimately involve the reorganization of school districts, thus altering the administrative responsibilities of the State and its agencies." 321 F.Supp. at 1058.*

Manifestly there are many valid and important state public policy purposes to be served by the internal political boundaries the state has drawn and by the state's delegation of a wide variety of state powers to cities, counties, districts, and

*See also, Evans v. Buchanan, 256 F.2d 688 (3d Cir. 1958), 281 F.2d 385 (3d Cir. 1960); Hoots v. Commonwealth of Pennsylvania, 359 F.Supp. 807, 821-22 (W.D. Pa. 1973).

municipal corporations of all sorts that exercise delegated state power within them. These purposes are not to be gainsaid - they may weigh heavily with a federal court which must balance a number of considerations, including these, in exercising its equitable powers.* But not one of them can stand as a bar to the enforcement or vindication of federal constitutional rights.

> "[S]tate policy must give way when it operates to hinder vindication of federal constitutional guarantees." Board of Education v. Swann, 402 U.S. 43, 45 (1971).

Black children have a federal constitutional right to attend public schools which have been purged of state-imposed racial segregation. Black public housing tenants have a like right to live in a public housing system from which all vestiges of state-imposed racial segregation have been eliminated, root and branch. The state's duty to perform that purging and elimination, and the federal court's duty to see that it is done, is not circumscribed or limited by the particular form of decentralized governmental framework the state happens to have chosen. The state is free to choose whatever such framework it wishes - subject always to its Fourteenth Amendment obligations to those children and tenants. It may not, by delegation of authority to sub-units,

*In addition, feasibility and practicality are obvious limits on the equitable remedial powers of the court. It is to be emphasized, however, that the district court here did not rule against metropolitan area relief on these grounds, or upon the ground that a metropolitan area remedial plan was not a "reasonable method" under North Carolina v. Swann, supra, but on the apparent ground of his powerlessness.

such as school districts or housing authorities, disable itself from performing those obligations, or disable federal courts from requiring such performance. State administrative or jurisdictional arrangements, however innocent in their inception or unobjectionable in some contexts, must yield to the achievement of federal constitutional remedies.

These principles are admirably summed up in the brief of the Solicitor General of the United States filed in Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964):

> "The fundamental guarantee of equal treatment at the hands of the State cannot be thwarted by the fragmentation of decision making ... [T]he constitutional obligation binds the State itself and it cannot be avoided by delegating to others the power to make the discriminatory decision. So long as the State remains involved, no abdication of authority will avail, even when power is transferred to private hands. Burton v. Wilmington Parking Authority, 365 U.S. 715, 725; Cooper v. Aaron, 358 U.S. 1, 19. Cf. Terry v. Adams, 345 U.S. 461. A fortiori, the State cannot insulate itself from responsibility for a decision which results in invidious discrimination by a surrender in favor of its own political subdivisions. That would be like permitting the principal to escape liability by appointing agents." (O.T. 1963, No. 592, p.20.)

We need only add that were it otherwise, federal courts would be powerless to remedy many federal constitutional wrongs; by innocent delegations of authority to sub-units of government, states would have effectively limited the remedial powers of the federal courts. The United States Constitution would then speak not to two levels of government but to a limitless number of them, down to the lowliest mosquito abatement district. That, of course, is not our system. "We reiterate that school districts

and school boards are instrumentalities of the State." Bradley v. Milliken, 484 F.2d at 250.

So are housing authorities. CHA is a creature of the State of Illinois; it has no powers and could have none except those the state grants to it.* In the exercise of its powers CHA is subject to the general supervision of the State or, at the State's sufferance, to HUD's supervision.

> "The State Housing Board [is vested] with authority to order every housing corporation to do such acts as may be necessary to comply with the provisions of law except to the extent a Federally financed project is supervised or controlled by the Federal government." People v. Hursey, 131 N.E.2d 483, 487 (Ill. 1956).

Even the exception noted in the foregoing passage is a qualified one: "The participation of the federal government in such housing projects is conditioned upon state approval." Joy v. Daniels, 479 F.2d 1236, 1239 (4th Cir. 1973). CHA's geographic area of operation is determined by state law; the state can, at will, enlarge or contract that area either directly or by delegation to other subordinate, state-created entities; etc.** In short, when

*Under Illinois law a housing authority is a "municipal corporation." Ill.Rev.Stats. ch. 67-1/2, §8.

> "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state." Hunter v. City of Pittsburgh, 207 U.S. 161, 169 (1907).

**See Ill.Rev.Stats. ch. 67-1/2, particularly §27c.

> "The City and Housing Authority function as administrative arms of the state in pursuing state concerns and effecting the legislative objectives." Housing Authority of Los Angeles v. City of Los Angeles, 243 P.2d 515 (Cal. 1952).

CHA acts it is, in the contemplation of the U.S. Constitution, Illinois that is acting. When CHA discriminates, Illinois is, in the view of the Constitution, the discriminator. When CHA has a duty to remedy the effects of its discrimination it is, from the perspective of the U.S. Constitution, the State of Illinois and, wherever appropriate, all of its subordinate creatures, that are responsible for the performance of that duty. That duty cannot be avoided by drawing a boundary line between two of the state's subordinate entities and barring passage to the remedial powers of the federal district court because constitutional violations were committed on only one and not both sides of the line.

Thus it is not determinative, as the district court apparently thought, or even relevant, that no wrongs were committed in suburban areas or by suburban entites. In each of Bradley v. Milliken, Newburg Area Council and Indianapolis, supra, school districts which had committed no wrongs were required to participate in remedying the wrongs of other agencies of the state. Regardless of their personal innocence state officials may be ordered to exercise their powers to disestablish state-imposed school segregation. Griffin v. County School Board, 377 U.S. 218, 234 (1964) No principle or authority precludes identical orders in the case of state-imposed housing segregation; the principle of "shared constitutional obligations" requires them.

It is true, of course, that Bradley v. Milliken holds that where subordinate state entities (there suburban school districts)

may sue and be sued under state law, they are to be viewed as necessary parties under Federal Rule 19 and joined as defendants before the adoption and implementation of a plan that would affect them. 484 F.2d at 251-52. But that of course is precisely the procedure suggested below by plaintiffs and rejected by the district judge, apparently on the mistaken "suburban wrong" ground just discussed. Subject only to compliance with that procedure to the extent necessary,* it is clear that the district court possessed the power to cross Chicago's borders to fashion the comprehensive and effective remedial plan he was duty bound to provide. We turn therefore to the question of his duty to do so in the circumstances of this case.

*As noted earlier, plaintiffs acted out of an abundance of caution in suggesting that the Bradley procedure be followed. Their proposed judgment order merely called for authorizing and directing CHA to enlarge its geographic area of operation (something already permitted by Illinois law where agreements to that effect with neighboring housing authorities are made - Ill.Rev.Stat. Ch. 67-1/2, §27c); it did not entail orders "against" any suburban housing authority or other suburban entity, as metropolitan school desegregation orders necessarily run "against" suburban school districts in that the suburban districts are ordered to change their practices. There may therefore have been no non-parties who, in the Bradley sense, were "affected" by plaintiffs' proposed judgment order. Of course, plaintiffs' proposed order was only one of the "range of alternatives" open to the district judge; had he chosen some other alternative of his own, there might clearly have been "affected parties" required to be joined under Bradley.

B. The District Court's Flat Prohibition of Metropolitan Area Relief Was a Breach of the Command that All Reasonable Methods be Available to Formulate an Effective Remedy.

In a number of cases the Supreme Court has discussed aspects of a district court's obligation to proceed toward the goal of the "greatest possible degree of actual desegregation." In Green, rejecting a "freedom of choice" plan because it failed to provide "meaningful assurance of prompt and effective disestablishment of a dual system," 391 U.S. at 438, the Court said:

> "The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation ... It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward dis-establishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of any alternatives which may be shown as feasible and more promising in their effectiveness." 391 U.S. at 439.

In Davis, rejecting a decree that treated sections of Mobile, Alabama, divided by a major highway, as isolated from each other for remedial purposes, the Court said:

> "Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and non-contiguous attendance zones ..." 402 U.S.at 37.

In North Carolina the Court spoke of "the implicit command

of Green v. County School Board, 391 U.S. 430 (1968), that all reasonable methods be available to formulate an effective remedy." 402 U.S. at 46.

In Swann the Court said:

> "The remedy for ... segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some: but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems." 402 U.S. at 28.

In many school desegregation actions new parties have been joined long after the prior adjudication and orders among existing parties. See, e.g., United States v. Georgia, 466 F.2d 197 (5th Cir. 1972); Robinson v. Shelby County Bd. of Education, 330 F.Supp. 837, 844-45 (W.D. Tenn. 1971), aff'd., 467 F.2d 1187 (6th Cir. 1972). City councils and finance agencies have been added to cases begun years earlier to provide desegregation funding. See, e.g., Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964); Aaron v. Cooper, 156 F.Supp. 220 (E.D. Ark. 1957), aff'd sub nom., Faubus v. United States, 254 F.2d 797 (8th Cir. 1958).

Under these principles the district court here failed to discharge its remedial responsibilities when it adopted a generalized "best efforts" proposal of HUD in which it clearly lacked confidence, while at the same time limiting all relief possibilities to the perimeter of Chicago in the face of uncontradicted evidence and a striking unanimity of the parties

that such a limitation would preclude effective relief.

Green says the obligation of district courts is to "assess the effectiveness of a proposed plan in achieving desegregation." 391 U.S. at 438. Here the district court did assess HUD's best efforts plan and found it utterly lacking. In its Response to the order of December 23, 1971, HUD told Judge Austin that its "best thinking" about a remedial plan was contained in the Letter of Intent signed May 12, 1971, by Mayor Daley, CHA and HUD. (A. 9-10.) HUD said the Letter of Intent proposals were "sound" and that it would use its best efforts to see that they were carried out. (Ibid.)

While disagreeing strongly that the limited Letter of Intent proposals, drawn for an entirely different purpose, constituted a satisfactory remedial plan, plaintiffs sought to show at the hearing below that over a period of 18 months following the signing of the Letter of Intent HUD's best efforts respecting that program had been abysmally inadequate. The district judge acknowledged several times that such a showing would be relevant:

> "THE COURT ...
>
> "I think that I am entitled to know whether the best efforts from another party in this litigation [HUD] means anything more than it did to the other party to the litigation [CHA], to which it meant nothing." (Transcript of Proceedings, p. 253.)
>
> "I think if your best efforts in regard to one program or to several programs is zero, that gives me some kind of way to evaluate what best efforts mean to HUD." (Ibid. p. 257.)

> "The question involved here is have your best efforts been used over the last 18 months, which has produced nothing, and, if so, what may I anticipate in the next 18 months, from your best efforts, the same zero that we got the last 18 months?" (Ibid. p. 259.)

An excruciatingly painful process of extracting information from HUD's Regional Administrator and several subordinates (see Transcript of Proceedings, pp. 217-325) then disclosed not only that HUD's best efforts had been inadequate, but that after 18 months HUD had not even obtained information about the progress of the low income housing programs of the Letter of Intent - such basic information as the number of units made available to low income families, the locations of such units in the General or Limited Public Housing Areas, and the race of the occupants of those units. (Transcript of Proceedings, pp. 319-20, 324.) The examination of HUD's witnesses concluded with a stipulation that no one in HUD knew the answers to those three questions. (Transcript of Proceedings, p. 324.)

Speaking of that stipulation to plaintiffs' counsel the district judge said:

> "I would think that would be pretty good - what you are seeking to prove -" (Ibid.)

As he terminated that session of the hearing, the district judge repeated, "They [HUD] don't know from nothing." (Ibid.) It is plain that the district judge did not find HUD's best efforts proposal to be "an effective remedy."

Green also says that the claim of the plan's proponent (here

HUD) that the plan promises meaningful and immediate progress toward disestablishing state-imposed segregation should be weighed in light of any alternatives that may be shown to be feasible and more promising in their effectiveness. 391 U.S. at 438. If there has been one point of agreement among all parties throughout this case it has been that effective relief requires that housing opportunities be provided in the suburbs as well as within the City. CHA has consistently urged this view:

> "CHA fully agrees that public housing must be metropolitan in nature, and not confined to the City of Chicago. It has so stated on numerous occasions before this court. It has offered testimony to prove that a dispersal program for public housing will not work unless it is operated on a metropolitan basis." (CHA Memorandum, December 21, 1971, p.27, Record Doc. 167, emphasis added.)

HUD has taken a similar position.

> "[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding community. The City and the suburbs together make up what I call the 'real city.' To solve problems of the 'real city', only metropolitan-wide solutions will do." (Statement by Secretary Romney, Appendix A, pp. 15-16, to HUD's Memorandum, December 17, 1971, Record Doc. 283, Attachment 6, Memorandum 2, p.2, emphasis added.)*

*HUD's former Assistant Secretary for Equal Opportunity, Samuel J. Simmons, said:

> "Central cities are losing whites and gaining blacks. In spite of a gradual increase in the number of Blacks and other minorities living in the suburbs, the fact of the white noose around the country's largest cities is a largely unchanged reality. The white trek to the suburbs has continued unabated in the last ten years and in the majority of the large metropolitan areas whites and Blacks still live largely separate lives ... It is impossible to solve central city problems in the central city alone." (Plaintiffs' Exhibit 7, pp. 3-4, emphasis added.)

Indeed, HUD joined with the plaintiffs in making a "joint representation" to Judge Austin that "the parties are of the view that a metropolitan remedy is desirable." (Transcript of Proceedings of February 22, 1972, pp. 4, 6.)* (At one point HUD later appeared to qualify its position by saying "it is by no means clear" that a metropolitan remedy is necessary in this case. HUD Memorandum, p.7, Record Doc. 310. But two pages later HUD reaffirmed that it was not questioning "the desirability of a metropolitan wide plan," but was only raising "various legal objections to the particular plan plaintiffs have proposed ..."

*HUD told Judge Austin that it was "not able to comply literally" with the order that it file a comprehensive remedial plan because the Housing Act vested local agencies, not HUD, with primary responsibility for the administration of housing programs under the Act. (Transcript of Proceedings of February 22, 1972, pp. 6-7. See also, pp. 10-11.) But in Housing Authority of City of Omaha v. United States, 468 F.2d 1 (8th Cir. 1972), the Court said:

> "[W]here HUD determines that local authorities have failed to act or have acted in an inimical way to the objectives of the Act ... the ultimate authority is vested in HUD to set overall policy ... [W]e find nothing in the legislative history which precludes HUD's overall supervision and exercise of power where local authorities have failed to measure up to the objectives of the Act." 468 F.2d at 7-8.

Where, as here, HUD itself has also failed to measure up, its specific remedial responsibility should be all the greater.

Id. p. 9; the emphasis is HUD's.*)

The reason for this unusual measure of agreement among the parties is the "brutal truth" about demographic patterns. U.S. v. Board of School Commissioners of Indianapolis, supra, 332 F.Supp. at 677. The realities of "white flight" to the suburbs and the prospect of "resegregation" cannot be ignored if an effective and realistic desegregation plan is to be devised - if, that is, the "practicalities" of the situation are to be taken into account, as Davis says they must be. See Indianapolis, supra, 332 F.Supp. at 676, 77, 78; Newburg Area Council, supra, slip opinion 6.

In this case uncontradicted testimony showed what would happen if they were ignored.

*There were two legal objections. The first, that since the violation was limited to Chicago so should the remedy be limited, has already been answered in Section A. The second was based on an obvious misreading of Swann v. Board of Education, 402 U.S. 1. HUD quoted the portion of the Swann opinion which observed that, though few communities will remain demographically stable, neither school authorities nor district courts are required to make year-by-year adjustments of racial composition "once the affirmative duty to desegregate has been accomplished ...," and that, absent deliberate attempts to fix or alter demographic patterns to affect racial composition, further intervention by a district court should not be necessary. (HUD Memorandum, pp. 7-8, Record Doc. 310.) HUD argued from this passage that since there is no evidence of attempts to fix or alter demographic patterns to affect the racial composition of the areas where future public housing is to be located under the district court's 1969 judgment order, Swann militated against the entry of plaintiffs' proposed metropolitan area order. (Ibid.)

HUD's argument is belied by the very language it quoted. Swann says further intervention becomes unnecessary "once the affirmative duty to desegregate has been accomplished ..." There are cases without number, including Swann itself, in which further intervention has been mandated where that affirmative duty has not yet been accomplished. Since it has not yet been accomplished here, the Swann passage is obviously inapplicable.

Philip Hauser, a nationally recognized demographer and Director of the Population Research Center at the University of Chicago, testified that assuming a continuance of the rate of changes in black and white census tracts in Chicago during the decade from 1960 to 1970, "well before 2000 every census tract in the City of Chicago would have at least 30 per cent blacks." (Transcript of Proceedings, pp. 88-89.) In other words, within a generation there would be no "General Public Housing Area" left in the City of Chicago in which to build the desegregated public housing ordered by the district court. (The General Public Housing Area is the predominantly white area within which, under the district court's order of July 1, 1969, CHA is to locate three-quarters of its future public housing. 304 F.Supp. 736, 737.)

In so testifying Professor Hauser did not take into account the "buffer zone" around black neighborhoods which is part of the "Limited Public Housing Area" under the July 1969 order. 304 F. Supp. 736, 737. Therefore his testimony overstates the time it will take for the General Public Housing Area in the City to disappear. It may well be that by the year 1990 - about half a generation hence and less time than many school desegregation cases have been extant - there will be no areas of Chicago left within which to provide the plaintiff class the relief to which it is entitled.*

*Between 1960 and 1970 the population of the City of Chicago declined by over 183,000 persons. The decline was made up of a decrease of about 505,000 whites and an increase of about 322,000 blacks. (Transcript of Proceedings, p.89.)

In addition, Professor Hauser testified that providing desegregated housing opportunities in suburban areas,

> "... would automatically tend, in my judgment, to diminish the rate at which there is a white exodus from the city while simultaneously providing some options for blacks to live either within the city or within the suburban areas. In addition, I think there would be what might be thought of as either a leverage effect or a multiplier effect; if it became clear to the white person in the City of Chicago that anywhere he moved within the urbanized area ... that if it became clear that housing for the poor, including blacks, were to be placed in any part of the urbanized area, then I think the perception of the white population would be such as to produce the effect of saying there were no escape hatches and there is no place to flee. I think this would be the effect." (Transcript of Proceedings, pp. 92-93.)

In short, there was uncontroverted testimony that failure to provide suburban housing opportunities would result in the original order being rendered ineffective, as resegregation inexorably occurred, and that a metropolitan area remedy would not only provide desegregated suburban public housing but would also enhance the possibility that the 1969 order could be effective within the City.

Newburg Area Council, supra, slip opinion p.6, and Board of School Commissioners of Indianapolis, supra, 332 F.Supp. at 676, 678-79, among other cases, show that such demographic concerns about "white flight" and "resegregation" are not merely appropriate for consideration by a court concerned with effective desegregation but are absolutely necessary matters to be taken into account

if a desegregation order is to accomplish its purpose.

This court has of course affirmed the Indianapolis order. 474 F.2d 81. In another context this Court also considered the problems of resegregation and white flight, noting:

> "[T]he right to open housing means more than the right to move from an old ghetto to a new ghetto. Rather, the goal of our national housing policy is to "replace the ghettos" with "'truly integrated and balanced living patterns'" for persons of all races. Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 211." Barrick Realty Incorporated v. City of Gary, ___ F.2d ___ (7th Cir., January 24, 1974, No. 73-1279, slip opinion p.5.)

The Barrick opinion also says that it is consistent with the Constitution and federal housing policy to pursue a policy of "discouraging brief integration followed by prompt resegregation." (Ibid.) If that is appropriate policy for a municipality to pursue voluntarily, how much more appropriate a policy is it for a federal court duty-bound to provide effective, realistic desegregation that "in the long haul ... promises realistically to work." Indianapolis, supra, 332 F.Supp. at 678-79.*

*See also, Mahaley v. Cuyahoga Metropolitan Housing Authority, 355 F.Supp. 1257, 1262 (N.D. Ohio 1973), where the court said:

> "In Banks [Banks v. Perk, 341 F.Supp. 1175 (N.D. Ohio 1972)] CMHA and the City of Cleveland were charged with the leadership to integrate housing patterns in Cleveland. This can only be viewed as a temporary solution. CMHA, the City of Cleveland and the municipalities within Cuyahoga County must act together if segregation in racial housing patterns is to be once and forever eliminated." (emphasis added.)

Indeed, the district judge in this very case himself expressed concerns about "Negro migration into and white migration out of the central city":

> "[E]xisting patterns of racial separation must be reversed if there is to be a chance of averting the desperately intensifying division of Whites and Negroes in Chicago. On the basis of present trends of Negro residential concentration and of Negro migration into and White migration out of the central city, the President's Commission on Civil Disorders estimates that Chicago will become 50% Negro by 1984. By 1984 it may be too late to heal racial divisions." (296 F.Supp. 907, 915.)

If those concerns were legitimate in early 1969, and they were, the message to be drawn from the 1970 census figures which became available two years later, as Professor Hauser's testimony shows, is that they are of even more concern today. (See also the statement of HUD's Assistant Secretary Simmons, Record Doc. 283, Attachment 6, Memorandum 2, p.1.)

Other reasons for granting metropolitan area relief, relating to the location of jobs, the segregation of schools and the availability of vacant land, were also advanced below. HUD's Assistant Secretary Simmons, it was pointed out, observed that major economic growth representing many thousands of jobs is taking place in outlying suburban communities.

> "As Whites have left the cities, jobs have left with them. After 1960, three-fifths of all new industrial plants constructed in this country were outside of central cities. In some cases as much as 85% of all new industrial plants located outside central cities were inaccessible to Blacks and other minorities who swelled ghetto populations." (Plaintiffs' Exhibit 9, p.3.)

Of Chicago in particular he said:

> "In the Chicago metropolitan area, for example, there were approximately 550,000 new jobs created in the period between 1959 and 1970. Of these, only 75,000 were in the City of Chicago. In other words nearly 87% of the area's new employment opportunities were suburban, not central city, opportunities." (Id. at p.4, emphasis added.)

A court order that would call for the new housing needed to provide full relief in this case to be located exclusively within the central city of Chicago would thus ignore a vital factor bearing on the location of low income housing - its relationship to job opportunities - that a court of equity should take into account in fashioning the relief to be provided. (HUD regulations respecting the location of public housing require that the relationship of proposed locations to job opportunities be taken into account. Plaintiffs' Exhibit 16, pp. 4, 5.)

Similarly it was pointed out that equity should take into account educational considerations in determining the geographic scope of relief. Children of the plaintiff class attend largely black segregated Chicago schools while most suburban schools remain overwhelmingly white.* Only recently this Court noted that

*The Advisory Commission on Intergovernmental Relations says that "on the educational front, the central cities are falling further behind their suburban neighbors with each passing year," and that "urban children who need education the most are receiving the least." (Fiscal Balance in the American Federal System, Vol. II, Metropolitan Fiscal Disparities, Advisory Commission on Intergovernmental Relations, Washington, D.C., 1967, pp. 5 and 6, Record Doc. 283, Attachment 6, Memorandum 2, p.5.)

residential patterns have a substantial impact on school policy, United States v. Board of School Commissioners of Indianapolis, supra, 474 F.2d at 89, and spoke of the relationship of "patterns of residential discrimination" to school segregation. Id. at 86. In Hart v. Community School Board, supra, the court said:

> "Housing and school patterns feed on each other. The segregated schools discourage middle class whites from moving into the area and the segregated housing patterns lead to segregated schools." (Slip opinion, p.3.)

In addition, it was argued, plaintiffs are entitled to relief as promptly as feasible. Although obsolete commercial and industrial areas within the City afford significant potential for the development of new housing, the reality is that vacant land may be developed far more quickly than improved land. In the Chicago area, 95% of all vacant land is in the suburban areas.*

In the face of all of the foregoing it was hardly accurate for the district judge to state, as he did, that the factual basis for a metropolitan plan was "an opinion of an urbanologist." (A. 46, 363 F.Supp. at 691.) The court's opinion reads at this point as if the plaintiffs had failed to bear a burden of proof that was theirs. In fact, once CHA and HUD were shown to have

*Survey of Vacant Land, City of Chicago, U.S. Govt. Printing Office, 1968, The Report of the President's Commission on Urban Housing, Technical Studies, Vol. II, p.338. (Record Doc. 283, Attachment 6, Memorandum 2, p.6.)

been responsible for de jure segregation, as a matter of law the burden became theirs to come forward with a plan that promised "meaningful and immediate progress toward disestablishing state-imposed segregation." Green, supra, 391 U.S. at 438. When neither did so, it became the duty of the district judge to provide an effective remedy.*

Here, all parties, including the expert housing agencies of state and federal governments, were in agreement that a metropolitan area plan was a desirable component of an effective remedy. Indeed, in his original judgment order the district judge had himself recognized this by authorizing housing units to be provided in suburban Cook County on a voluntary basis. 304 F.Supp. at 739.**

*"In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad powers to fashion a remedy that will assure a unitary school system." Swann, supra, 402 U.S. at 16.

**The voluntary effort was a 100% failure. CHA and the Housing Authority of Cook County (HACC) entered into an agreement for the joint development of public housing in suburban communities, and HUD approved the agreement on June 26, 1972. (CHA Report No. 6, pp. 6-7, Record Doc. 287.) Under an arrangement with CHA, letters were then sent by HACC to 103 mayors and presidents of cities and villages in Cook County. Negative or no responses were received from 98, two others said the matter was being studied (there was no further word from them), and three who indicated a willingness to discuss the matter ultimately declined to proceed further. (Plaintiffs' Exhibit 12.)

Such refusals on the part of suburban municipalities to consider the development of public housing may themselves be actionable. At least one district court has so held. Mahaley v. Cuyahoga Metropolitan Housing Authority, supra, 355 F.Supp. 1257. In a statement remarkably apt to describe the situation here the Mahaley court said:

(footnote continued on page 40)

Thus, when the time finally arrived in this case to provide a "comprehensive plan to remedy the past effects" of the CHA/HUD wrongs, the district court did not employ "all reasonable methods ... available to formulate an effective remedy" to the end of achieving "the greatest possible degree of actual desegregation." Instead he abjured employing a method all parties agreed was desirable (and one which he himself, on an ineffective voluntary basis, had previously authorized) and thereby renounced the only method advanced for trying to deal with a crucial "practicality" of the situation - white flight from the City of Chicago and the consequent resegregation it produces. Yet the alternative the district judge finally chose for his "comprehensive plan" - HUD's generalized best efforts - was one in which it was clear the judge himself had no confidence.

We do not mean to suggest that the district judge has been insensitive to the necessity of assuring comprehensive, effective relief in this case. Three times he has entered supplemental orders as interim steps to that end. The first was affirmed, 436 F.2d 306, the second reversed, 457 F.2d 124, and the third affirmed, 480 F.2d 210. Certiorari as to the third order was only recently denied. ___ U.S. ___. By that denial CHA is

(footnote continued from page 39)

> "In view of the factual showings of the almost all-white character of the suburbs, the high percentage of Negroes in CMHA housing and on CMHA waiting lists, and the need for low income housing both on a community and on a metropolitan basis, the refusals or failures to respond to CMHA's requests to initiate public housing were intended to, and have had the effect of excluding Negroes and perpetuating racial segregation contrary to the national housing policy." 355 F.Supp. at 1263.

finally freed from the fetters of the Chicago City Council's veto power over its selection of sites. Particularly in connection with recent indications that the suspension of federal subsidy funds which has impeded CHA's ability to comply with the district court's earlier orders is about to be lifted, the third supplemental order affords hope that some new housing within the City may soon be provided in accordance with the district court's earlier orders.*

But those hopeful developments relate exclusively to the City. They do not take account at all of resegregation concerns, of the employment, school and vacant land considerations mentioned above, or, above all, of the unanimous views of the parties that a metropolitan area remedial plan is desirable to provide the greatest possible degree of actual desegregation as effectively and quickly as possible. There was no evidence at all presented to the district court that a metropolitan area plan was not a desirable element of that required relief. All the evidence was that it was desirable. On such a record it seems plain that the district court's remedial duties foreclosed it from flatly prohibiting the remedial method of a metropolitan area plan.

*On January 5, 1973, the Administration suspended further funding of new public housing programs. That suspension drastically impaired CHA's ability to comply with the judgment order to produce more housing. Current indications are that the suspension is about to be lifted and that federal funding for public housing programs will once more be available. See the President's special message on Federal Housing Policy, 1973 U.S. Code Cong. and Adm. News., No. 9, pp. 3298, 3304 (October 15, 1973).

II. NEITHER DIFFERENCES BETWEEN HOUSING AND EDUCATION NOR "PASSING OFF PROBLEMS ONTO THE SUBURBS" JUSTIFIES THE DISTRICT COURT'S PROHIBITION OF METROPOLITAN AREA RELIEF.

The statement in the opinion below that, "Unlike education, the right to adequate housing is not constitutionally guaranteed ...", citing Lindsey v. Normet, is puzzlingly inapposite in two respects. First, neither housing nor education is guaranteed by the federal constitution. The absence of a constitutional guarantee of a right to housing thus makes housing "like," not "unlike," education. In Lindsey the Supreme Court held that the assurance of adequate housing is not a constitutionally guaranteed right, 405 U.S. at 74, but in San Antonio School District v. Rodriguez, the Court held that neither is education among the rights protected by the constitution. ___ U.S. ___, 36 L.Ed.2d 16, 44 (1973). Indeed, in Rodriguez the Court explicitly compared education and housing, citing Lindsey and found them indistinguishable from the point of view of constitutional protection. ("How, for instance, is education to be distinguished from the significant personal interests in the basics of decent food and shelter?" 36 L.Ed.2d at 45.)

Secondly, this case is not about any "right to adequate housing." This case, at least this appeal, is about the extent and nature of a court's duty, once de jure segregation has been established, "to render a decree which will so far as possible eliminate the discriminatory effects of the past," Louisiana,

supra, 380 U.S. at 154, and achieve "the greatest possible degree of actual desegregation." Swann, supra, 402 U.S. at 26. That duty, discussed in Part I hereof, does not rest on any constitutional right to housing (a right plaintiffs have not asserted*) nor should the relevance of precedents from school desegregation cases be undermined because of mistaken notions (likewise not advanced by the plaintiffs) concerning any constitutional distinction to be drawn between schools and housing in that regard. In Swann, supra, the Court said, "[A] school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right." 402 U.S. at 15-16.

Similarly, plaintiffs are of course entitled to effective relief whether or not the provision of it would avoid any politically distasteful tasks. In fact, however, metropolitan area relief need not entail any lessening of CHA's obligations within the City, and plaintiffs proposed judgment order expressly so provided. (A. 14.)**

*Plaintiffs do assert that when the only effective way to "eliminate the discriminatory effects of the past" is to provide additional housing, that must be done. The district court is in agreement on that score, for its first decree orders CHA to provide more housing as rapidly as possible. 304 F.Supp. at 741.

**Sensitive to the district court's concern in this regard plaintiffs explained in a separate memorandum how their proposed order did not involve "letting CHA off the hook." (Record Doc. 283, Attachment 7.)

It is clear that neither Lindsey nor the possibility that CHA might be enabled to avoid a politically distasteful task affords any justification for the district court's prohibition of a metropolitan area remedial plan.

CONCLUSION

The narrow focus of this appeal should be borne in mind. We do not argue that every central city school or housing desegregation case must perforce lead a federal district court to cross local political boundary lines to provide effective relief. Nor do we argue on this appeal for any particular remedial plan; that is a matter for the district court to determine in the exercise of its discretion. We do content that crossing local political boundary lines to provide some form of metropolitan area relief is one of the "reasonable methods" that must be available to formulate an "effective remedy," and that on the record made below it was error for the district judge to preclude the use of that method, not because another effective method had been employed (or because a metropolitan plan was not practical) but upon the mistaken ground that he was powerless to cross city-suburban borders in the absence of any "suburban wrongs."

For that error, the order denying plaintiffs' motion for some form of metropolitan remedial plan must be reversed and the case remanded for consideration of the appropriate form of such relief.

Respectfully submitted,

Alexander Polikoff
Milton I. Shadur
Bernard Weisberg
Cecil C. Butler
Robert J. Vollen
Merrill A. Freed
Attorneys for Plaintiffs-Appellants

March 11, 1974

By: 
Alexander Polikoff

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

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 74-1048 and 74-1049

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellants,

v.

CHICAGO HOUSING AUTHORITY and JAMES T. LYNN, Successor to George W. Romney, Secretary of the Department of Housing and Urban Development, et al.,

Defendants-Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of Illinois Eastern Division

NOTICE

To: Patrick W. O'Brien, Esq.
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231 S. La Salle Street
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Anthony J. Steinmeyer
Attorney, Appellate Section
Civil Division
Department of Justice
Washington, D.C. 20530

PLEASE TAKE NOTICE that we have this day filed appellants' brief and appendix with the clerk of the

United States Court of Appeals for the Seventh Circuit, copies of which are attached hereto.

March 11, 1974

Alexander Polikoff
One of the Attorneys for Plaintiffs

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 served a copy of the foregoing Notice and Brief and Appendix referred to therein upon the parties named in the Notice at the addresses there shown, by mailing a copy to them, postage prepaid, this 11th day of March, 1974.

_____

Alexander Polikoff

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 74-1048 and 74-1049

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellants,

v.

CHICAGO HOUSING AUTHORITY and JAMES T. LYNN, Successor to George W. Romney, Secretary of the Department of Housing and Urban Development, et al.,

Defendants-Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of Illinois Eastern Division

APPENDIX

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INDEX

	Page No.
Relevant Docket Entries	1
Excerpt from Order, entered November 11, 1971	3
Plaintiffs' Motion for Further Relief, filed November 24, 1971	5
Order, entered December 23, 1971	6
Excerpt from Response of George Romney, filed April 26, 1972	8
Plaintiffs' Proposed Judgment Order, filed September 25, 1972	14
Order, entered October 12, 1972	31
Plaintiffs' Motion and Proposed Order, filed January 29, 1973	33
Plaintiffs' Letter to Judge Austin, June 20, 1973	43
Memorandum Opinion and Judgment Order, entered September 11, 1973	44

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 74-1048 and 74-1049

DOROTHY GAUTREAUX, ET AL.,

Plaintiffs-Appellants,

v.

CHICAGO HOUSING AUTHORITY and JAMES T. LYNN, Successor to George W. Romney, Secretary of the Department of Housing and Urban Development, et al.,

Defendants-Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of Illinois

APPENDIX

Relevant Docket Entries

11-11-71 - Filed certified copy of order from U.S.C.A. to wit: IT IS ORDERED that the objections to the motion to issue mandate be overruled and that the order of this Court heretofore entered on November 2, 1971, be terminated and the Clerk is authorized and directed to issue the mandate forthwith [pursuant to opinion reported in 448 F.2d 731].

11-11-71 - Enter Order (draft) pending Final Judgment. Austin, J.

* * *

11-24-71 - There being no objection by plaintiffs or by defendants the governments motion to consolidate cases 66 C 1459 and 66 C 1460 is granted. Austin, J.

11-24-71 - Filed Plaintiffs Motion for further relief.

* * *

12-23-71 - Arguments heard - Enter order requiring the parties to attempt to formulate a comprehensive plan, etc. (Draft)

* * *

4-26-72 - Filed Response of George W. Romney, Secretary of the Department of Housing and Urban Development, to Part II of this Court's order of December 23, 1971.

* * *

9-25-72 - Filed Plaintiffs' proposed judgment order and memorandum.

* * *

11-27-72 - Opening statements heard. Plaintiffs' evidence heard in part. Hearing adjourned to November 28, 1972. Austin, J.

11-28-72 - Further evidence heard for plaintiff. Hearing adjourned to November 29, 1972. Austin, J.

11-29-72 - Further evidence heard. Parties rest. Arguments heard and concluded. Advisement. Leave to plaintiff to present proposed findings of fact and conclusions of law in 30 days. Leave to the parties to file any memoranda they desire to file in 30 days. Leave to CHA to file any responses to anything filed by any of the other parties in 5 days after said filing. Austin, J.

* * *

1-29-73 - Filed Plaintiffs' motion to defer ruling on certain proposed final judgment orders, etc., and brief in support thereof.

* * *

9-11-73 - Motion of plaintiffs to consider metropolitan relief is denied and motion to defer ruling on proposed final judgment orders, etc., denied. Plaintiffs' motion for summary judgment on counts I and II of complaint in 66 C 1460 is granted. Enter permanent injunction against defendant George W. Romney, etc., et al.

* * *

11-09-73 - Filed Notice of Appeal by the Plaintiffs.

11-13-73 - Filed Notice of (Cross) Appeal by the U.S. Attorney.

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

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

ORDER

This matter coming on to be heard pursuant to the opinion and order of the United States Court of Appeals for the Seventh Circuit entered on September 10, 1971 in Dorothy Gautreaux, et al., plaintiffs-appellants, v. George W. Romney, defendant-appellee, No. 71-1073; the mandate issued by said Court in connection with such appeal on November 11, 1971; and the motion of plaintiffs for an order pending final judgment; and

The Court being fully advised, and having heard the presentations of the parties, including the proceedings had in this Court pursuant to the motion of plaintiffs, filed on September 17, 1971, under Rule 62(c) of the Rules of Civil Procedure, and having heretofore issued its memorandum opinion and order herein, dated October 1, 1971; and

It appearing to the Court that the entry of the following

order is appropriate pursuant to the opinion, order and mandate of the Court of Appeals hereinabove referred to and this Court's prior proceedings, opinion and order, also hereinabove referred to, and for the purpose of enabling the Court to grant to the plaintiffs the full relief to which they may be entitled in this cause;

IT IS HEREBY ORDERED:

I. Plaintiffs' motion for summary judgment upon Counts I and II of the Complaint is hereby granted. ...

ENTER:

/s/ RBA
JUDGE

November 11, 1971

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

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

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

ENTERED
12/23/71

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
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:

12/23/71

/s/ RBA

Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al., Plaintiffs, v. GEORGE W. ROMNEY and CHICAGO HOUSING AUTHORITY, et al., Defendants.	)	NO. 66 C 1459 NO. 66 C 1460 (consolidated)

RESPONSE OF GEORGE W. ROMNEY, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TO PART II OF THIS COURT'S ORDER OF DECEMBER 23, 1971

Now comes the defendant, George W. Romney, Secretary, United States Department of Housing and Urban Development, and in accord with the Order entered by this court on December 23, 1971, herewith submits a draft order for entry by this court,[1] and in support of said response states as follows:

As this court has been previously advised, the United States Department of Housing and Urban Development (HUD) does not have the legal authority to initiate or develop plans for the implementation of the federally assisted low rent housing programs in the City of Chicago or the Chicago metropolitan area.[2] Development of such plans rests with the specific localities seeking HUD assistance. The President in his Statement on Federal Policies Relative to Equal Housing Opportunity of June 11, 1971,

1/ Draft order is attached as Appendix A of this response and by that reference made a part hereto.

2/ See Memorandum in Opposition to Plaintiffs' Motion to Require Defendant George W. Romney, Secretary of the Department of Housing and Urban Development, to Propose Comprehensive Plans which can be Metropolitan in Scope to Correct the Effects of Past Racial Discrimination, filed in this cause on December 17, 1971 for and on behalf of defendant, George W. Romney.

defined the role of this Department in the operation of Federal Housing and Urban Renewal Programs as follows:

> "The Federal program role -- as the governing statutes made clear -- is essentially one of responding to local or private initiatives, rather than one of imposing its programs on State and local governments.
>
> "In none of HUD's grant programs does the Department act directly. The Department builds no housing, develops no land use plans, clears no slums and constructs no sewers. Instead, HUD provides, within its statutory and regulatory framework, financial assistance to local developers and agencies, both public and private, who build and manage housing, and engage in planning and community development activities.
>
> "The extent to which HUD program activity is dependent on local initiative and execution is frequently overlooked, but is an important element in considering policy issues. Sites for HUD-assisted housing must be selected and acquired by local sponsors -- public or private -- and housing developed on those sites must conform to local zoning and local building codes. Planning performed with HUD assistance is done by State and local governmental bodies. Community development activities -- urban renewal water and sewer, or open space projects, for example -- are initiated and executed by local government."

With this background and legal framework in mind, it is perhaps appropriate once again to direct the court's attention to a proposal made to the Department by the City of Chicago and the Chicago Housing Authority which sets forth various proposals directed toward providing increased housing opportunities for low income Chicago residents. That proposal is embodied in a letter, dated May 12, 1971, signed by Mayor Richard J. Daley, accepted by the Chicago Housing Authority and approved by the Department of Housing and Urban Development. While, perhaps, the May 12th letter cannot be characterized as a plan, it represents the best thinking of

all parties concerned as to a viable approach for solving the critical shortage of low income housing in Chicago. While the City and the Chicago Housing Authority have not fulfilled many of the objectives set forth in the letter, the Department remains of the opinion that the proposals are sound. Nearly one year has elapsed since the May 12th letter and during that time the funding for Chicago's Neighborhood Development Program has been canceled by the Department for lack of progress on relocation feasibility, and funds earmarked in the Model Cities Program for housing have been withheld by reason of orders entered by this court. Thus, further progress on some of the proposals in the May 12th letter will be dependent upon the future availability of federal financial assistance. As set forth in the draft order, however, the Department will continue to use its best efforts in review and approval of housing programs for Chicago which address the needs of low income families and comply with the orders of this court, as well as the governing statutes and HUD regulations.

While the December 23, 1971 Order is addressed specifically to housing problems related to Chicago's low income families, the court should also take cognizance of the programs and policies of this Department which are designed to achieve equal housing opportunities for all people. In further support of this response to approve the proposed judgment order submitted by defendant, George W. Romney, attaches as Appendix B to this response and by that reference made a part hereof, a presentation of HUD programs and actions to augment the supply of low income housing, and to guarantee equal housing opportunities to all families.

WHEREFORE, the defendant, George W. Romney, respectfully requests the court to enter the accompanying draft order.

JAMES R. THOMPSON
United States Attorney

JCM:ft

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al., Plaintiffs, v. GEORGE W. ROMNEY, Secretary of the Department of Housing and Urban Development, et al., Defendants.	)	NO. 66 C 1459 NO. 66 C 1460 (consolidated)

JUDGMENT ORDER

This cause coming on to be heard pursuant to the decision and mandate of the Court of Appeals in this matter (Gautreaux v. Romney, 448 F. 2d 731 (7th Cir. 1971); this court having entered summary judgment on Counts I and II of the complaint herein on November 11, 1971; the Court of Appeals having reversed and remanded the order entered November 11, 1971 by its opinion of March 8, 1972; plaintiffs having filed a motion for rehearing en banc before the Court of Appeals, which motion stays the issuance of the mandate pursuant to the aforementioned opinion of the Court of Appeals; and the court being fully advised in the premises:

A. IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That plaintiffs' motions for summary judgment on Counts I and II of the complaint in Case Number 66 C 1460 be and hereby is granted;

B. IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the defendant, George W. Romney, Secretary of the Department of Housing and Urban Development, his successors, his officers, agents, servants, employees,

APPENDIX A

representatives, and each of them shall use their best efforts to cooperate with CHA in its efforts to increase the supply of dwelling units, in conformity with:

(a) all federal statutes applicable to the low rent housing program;

(b) rules and regulations promulgated by HUD for the administration of said program; and,

(c) the provisions of the Judgment Order entered by this court in the companion case (No. 66 C 1459) on July 1, 1969, as amended, as well as all other final, nonappealable orders entered by this court from time to time in these proceedings;

C. IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the defendant, George W. Romney, Secretary of the Department of Housing and Urban Development, his successors, officers, agents, servants, employees, representatives, and each of them are hereby permanently enjoined and restrained from approving and funding development programs for low rent family public housing in the City of Chicago which are inconsistent with the terms of this Judgment Order.

E N T E R:

_____

J U D G E

DATED: _____

JCM:ft

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	66 C 1460
	)	Consolidated
GEORGE W. ROMNEY, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' PROPOSED JUDGMENT ORDER AND MEMORANDUM

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

September 25, 1972

ALP Copy

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	66 C 1460
	)	Consolidated
GEORGE W. ROMNEY, et al.,	)	
	)	
Defendants.	)	

JUDGMENT ORDER

This matter coming on to be heard pursuant to this Court's order of December 23, 1971, directing certain of the parties to submit proposed final orders for comprehensive relief, and pursuant to the submissions of the parties as so directed, to hearings held with respect thereto, and to prior orders entered and hearings held in these consolidated cases, and the Court being fully informed in the premises, the Court now makes the following findings of fact and reaches the following conclusions of law:

FINDINGS OF FACT

CONCLUSIONS OF LAW

Based on the foregoing findings of fact and conclusions of law, and upon the determination of the Court that the provisions of this judgment order are necessary to remedy the past effects of the unconstitutional site selection and tenant assignment procedures previously employed in the public housing system in Chicago,

IT IS HEREBY ORDERED:

I. For purposes of this judgment order,

A. "HUD" shall mean the defendant, Department of Housing and Urban Development.

B. "CHA" shall mean the defendant, Chicago Housing Authority.

C. "Local Housing Authority" shall mean any public housing agency as defined in 42 U.S.C. §1402(11), including CHA unless otherwise stated.

D. "Dwelling Unit" shall mean an apartment or single family residence within the "Urbanized Area" as hereinafter defined which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through a Local Housing Authority, whether in a structure owned in whole or in part by such Local Housing Authority (whether

or not newly constructed) or to be otherwise made available for occupancy by or through such Local Housing Authority to such a family. "Dwelling Units" include "Leased Dwelling Units" as hereinafter defined.

E. "Leased Dwelling Unit" shall mean a Dwelling Unit in a structure leased or partially leased by a Local Housing Authority from any person, firm or corporation.

F. "Urbanized Area" shall mean those portions of Cook, DuPage and Lake Counties, Illinois, which comprise the Chicago Urbanized Area as such area is defined and determined in the 1970 census of the United States Bureau of the Census.

G. "Limited Public Housing Area" shall mean that part of the Urbanized Area which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within the City of Chicago and within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining part of the Urbanized Area. The terms "non-white" and "white" shall have the meaning given to such terms by the United States Bureau of the Census.

For purposes of this Section G, results of the 1970 census taken by the Bureau of the Census shall presumptively determine the non-white population of census tracts until results of a subsequent such census are officially published; provided, that any party may, on motion, offer evidence as to the non-white population of any census tract for the purpose of rebutting such presumption; and provided further, that Dwelling Units located or proposed to be located in any census tract subsequent to official publication of the results of the last previous such census shall be taken into account in determining the population of such census tract, and for such purpose it shall be assumed that such Dwelling Units will be occupied by non-whites at the rate of two persons per bedroom.

H. "Public Housing Project" shall mean any thirteen or more Dwelling Units which are located (1) in the same structure, (2) on the same lot or parcel of real estate, or (3) on two or more lots or parcels of real estate which are contiguous to one another, or are separated only by streets, alleys, bodies of water, railroad tracks or the like.

II. Following the date of this judgment order neither HUD nor CHA shall authorize, approve, provide funds for or implement any plan or program for Dwelling Units to be located within the Urbanized Area unless such plan or program affirmatively requires that,

A. All Dwelling Units provided for in such plan or program shall be located in conformity with the provisions of Articles III or IV hereof, as the case may be, and

B. The activities to be performed in order to render such Dwelling Units available for occupancy (whether construction, purchase, rehabilitation, leasing or otherwise) shall take place at such times as will result in the location of such Dwelling Units in conformity with the provisions of Articles III or IV hereof, as the case may be.

III. CHA shall continue to use its best efforts to increase the supply of Dwelling Units within the City of Chicago as rapidly as possible in conformity with the provisions of the judgment order of July 1, 1969, entered in this cause, as modified and enforced by subsequent orders also entered in this cause, provided that said order of July 1, 1969, is hereby modified by deleting Section E of Article III therefrom, and shall

continue to take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development. CHA's Tenant Assignment Plan, approved by this Court's order of November 24, 1969, shall continue to be applicable to all Dwelling Units provided under this Article III. HUD shall cooperate with and assist CHA in every feasible way to the end that the supply of Dwelling Units in the City of Chicago may be increased as rapidly as possible in accordance with this Article III.

IV. CHA and HUD shall use their best efforts to the end that Dwelling Units shall be provided within the Urbanized Area outside the City of Chicago equal in number to 50% of the Dwelling Units provided from time to time within the City of Chicago under Article III hereof. Such efforts shall initially be exerted to the end of providing 750 Dwelling Units pursuant to this Article IV, such number of Dwelling Units being a number equal to 50% of CHA's current reservation from HUD for Dwelling Units to be provided within the City of Chicago. Without limiting the foregoing,

A. CHA shall immediately use its best efforts to enter into written agreements with other Local Housing Authorities in the Urbanized Area outside of Chicago pursuant to which such other Local

Housing Authorities will (i) make application to HUD for reservations of some portion or all of such 750 Dwelling Units to be provided in the Urbanized Area outside of Chicago, and seek to enter into appropriate cooperation agreements as provided in 42 U.S.C. §1415(7)(b) or obtain other local approvals as provided in 42 U.S.C. §1421b(a)(2) respecting the same, and (ii) promptly take all such additional steps, including carrying out all necessary planning and development and making appropriate applications for federal financial assistance, as will enable them to obtain and utilize such reservations to increase the supply of Dwelling Units in the Urbanized Area outside of Chicago as rapidly as possible in conformity with the provisions of this Article IV. Without limiting the foregoing, such agreements between CHA and other Local Housing Authorities shall provide that such other Local Housing Authorities shall from time to time apply to this Court for any orders they may deem necessary or desirable to enable them to so increase the supply of Dwelling Units, including without limitation such orders respecting 42 U.S.C. §1415(7)(b) and 42 U.S.C. §1421b(a)(2) as will enable them to so increase the supply of Dwelling Units in

the Urbanized Area outside of Chicago without first obtaining the cooperation agreements or other local approvals provided for under such statutes. Copies of any such agreements between CHA and other Local Housing Auhtorities and of any such applications to HUD, cooperation agreements and local approvals made or given pursuant thereto shall promptly be filed with the Court.

B. To the extent such agreements between CHA and other Local Housing Authorities and such applications respecting such 750 Dwelling Units are not made pursuant to Section A of this Article IV within 180 days from the date of this judgment order, or to the extent thereafter actions are not diligently taken to provide such Dwelling Units as rapidly as possible, CHA shall itself immediately make application to HUD for reservations therefor. Such application shall be separate from and in addition to all other CHA applications to HUD for reservations for Dwelling Units, and shall be identified by CHA as being made pursuant to this Section B of Article IV of this judgment order. Thereafter CHA shall promptly take all such additional steps, including making appropriate

application for federal financial assistance and carrying out all necessary planning and development, as will enable it to obtain and utilize such reservations to increase the supply of Dwelling Units in the Urbanized Area outside of Chicago as rapidly as possible in conformity with the provisions of this Article IV. Without limiting the foregoing CHA shall from time to time apply to this Court for any further orders it may deem necessary or desirable to enable it to so increase the supply of Dwelling Units, including without limitation such orders respecting Ch. 67-1/2 Ill.Rev.Stats. §27(c), 42 U.S.C. §1415(7)(b) and 42 U.S.C. §1421b(a)(2) as will enable CHA to so increase the supply of Dwelling Units in the Urbanized Area outside of Chicago without first obtaining the contracts, cooperation agreements and local approvals provided for, respectively, under such statutes.

C. Dwelling Units provided pursuant to this Article IV shall conform with the following provisions:

(1) The construction of any Dwelling Units in any Limited Public Housing Area outside of Chicago shall not be commenced unless within three

months following such commencement of construction at least 75% of the Dwelling Units on which CHA or another Local Housing Authority shall have commenced or caused to have commenced construction, and shall have continued or completed construction, shall have been located (at the time of commencement of construction thereof) in the General Public Housing Area outside of Chicago.

(2) No leased Dwelling Unit shall be made available for occupancy in the Limited Public Housing Area outside of Chicago (in addition to Leased Dwelling Units in such Area which on the date of this order are already occupied) unless, within three months following such occupancy, at least 75% of the Leased Dwelling Units then occupied are located in the General Public Housing Area outside of Chicago; provided, that such number of Leased Dwelling Units located in the General Public Housing Area outside of Chicago may be less than such 75% to the extent Dwelling Units other than Leased Dwelling

Units have been occupied, or are under construction which is continuing, in the General Public Housing Area outside of Chicago in excess of the 75% minimum requirement of Subsection C(1) of this Article IV.

(3) Neither CHA nor any other Local Housing Authority acting pursuant to this Article IV shall concentrate large numbers of Dwelling Units in or near a single location. Without limiting the foregoing, unless part of a development specifically designed to assist in achieving the purposes hereof as to which the Court by order shall have given its approval,

(a) No Public Housing Project shall contain Dwelling Units designed for occupancy by more than 120 persons, except that if it is impossible for CHA or any other Local Housing Authority acting pursuant to this Article IV to provide within such limitation Dwelling Units which it is otherwise capable of providing, and if it will assist in achieving the

purposes of this judgment order, a Public Housing Project may contain Dwelling Units designed for occupancy by not more than 240 persons.

(b) No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA or any other Local Housing Authority in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract.

(c) No Dwelling Units shall be located in any municipality or in the unincorporated area within any township:

(i) if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA or any other Local Housing

Authority in such municipality or unincorporated area would constitute more than 4% of the total number of apartments and single family residences therein; or

(ii) if, within 180 days from the date of this order, a cooperation agreement pursuant to 42 U.S.C. §1415(7)(b) or local approval pursuant to 42 U.S.C. §1421b(a)(2) is voluntarily entered into or given on behalf of such municipality or unincorporated area that provides for a number of Dwelling Units to be located therein in accordance with the provisions of this Article IV at least equal to 2% of the total number of apartments and single family residences therein, and application is made to HUD by a Local Housing Authority for a reservation for such number of Dwelling Units to be located in such municipality or unincorporated area, and thereafter appropriate actions are diligently taken to provide such Dwelling Units as rapidly as possible.

(d) No Dwelling Units shall be provided above the third story in any structure except for families without children and except Leased Dwelling Units in a structure in which the number of Dwelling Units aggregates no more than 20% of the total number of apartments in such structure.

(e) Such 750 Dwelling Units, and the aggregate of all other Dwelling Units to be provided under this Article IV, shall be located among the urbanized areas of Cook (outside of Chicago), DuPage and Lake Counties in substantially the proportion 6 to 2 to 1.

(4) CHA's Tenant Assignment Plan approved by this Court's order of November 24, 1969 shall be applicable to all Dwelling Units provided under this Article IV, except that "municipality or unincorporated area within any township" shall be substituted for "community area" therein.

V. CHA and HUD shall affirmatively administer their respective responsibilities under state and federal law in every respect (whether or not covered by specific provision of this judgment order) to the end that the supply of Dwelling Units in the

Urbanized Area shall be increased as rapidly as possible in conformity with this judgment order.

VI. On the 15th day of March and September of each calendar year following the date of this judgment order, CHA and HUD shall, respectively, file with the Court and serve upon counsel for the plaintiffs a report of the activities carried out to implement the provisions of this judgment order. Such reports shall be prepared in such manner as to inform the Court as fully as possible concerning the progress being made in, and the existence of any obstacles to, such implementation, and shall include any recommendations for further action as will in the opinion of the reporting party aid in such implementation.

VII. This Order shall be effective from and after the date hereof and shall remain in force and effect until an aggregate of 60,000 Dwelling Units has been provided pursuant to the provisions hereof and of this Court's judgment order of July 1, 1969, entered in this cause.

VIII. This order shall be binding upon HUD and CHA, their officers, agents, servants, employees, attorneys, and their successors, and upon those persons in active concert or participation with them who receive actual notice of this

order by personal service or otherwise.

IX. This Court retains jurisdiction of this matter for all purposes, including enforcement and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information with respect to proposed developments designed to achieve results consistent with this order, material changes in conditions existing at the time of this order, or any other matter.

ENTER:

_____
United States Judge

Dated: _____, 1972

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	66 C 1460
	)	(Consolidated)
GEORGE W. ROMNEY, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter coming on to be heard on plaintiffs motion to continue the hearing in this cause previously scheduled to be held on October 24, 1972, to November 27, 1972, and to specify the subject matter of such hearing, and the Court being fully advised and having heard the presentations of the parties,

IT IS HEREBY ORDERED:

1. The hearing in this cause previously ordered to be held on October 24, 1972, be and the same is hereby continued to November 27, 1972;

2. Said hearing shall be for the purpose of considering what orders, if any, shall be entered to provide comprehensive relief in this consolidated case, and shall include consideration of the proposed judgment orders previously filed in this cause pursuant to this Court's order of December 23, 1971; and

3. Following the conclusion of such hearing all parties desiring to do so shall have 10 days within which to file amended proposed final judgment orders.

ENTER:

/s/ RBA
United States Judge

October 12, 1972

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

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	No. 66 C 1459
v.	)	66 C 1460
CHICAGO HOUSING AUTHORITY, et al., Defendants.	)	(Consolidated)

MOTION

NOW COME plaintiffs, by their attorneys, and move the Court to enter an order,

(1) Deferring ruling on the proposed final judgment orders filed on April 26, 1972, by HUD and on September 25, 1972, by plaintiffs;

(2) Determining that it is necessary and appropriate for the Court to consider a metropolitan plan for relief in this cause; and

(3) Providing for the preparation of such plans by HUD and CHA so that there will be no unnecessary delay in the implementation of the ultimate orders entered by the Court.

A proposed form of such order is attached hereto and a memorandum in support of this motion is tendered herewith.

Respectfully submitted,

Alexander Polikoff
One of the Attorneys for Plaintiffs

January 29, 1973

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

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

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	
v.	)	No. 66 C 1459 66 C 1460 (Consolidated)
CHICAGO HOUSING AUTHORITY, et al., Defendants.	)	

ORDER

This matter coming on to be heard on the proposed judgment order and related documents filed on April 26, 1972, by defendant George W. Romney, Secretary of the Department of Housing and Urban Development ("HUD"); on the proposed judgment order and related documents filed on September 25, 1972, by plaintiffs; on evidence heard in this cause on November 27-29, 1972; and on plaintiffs' motion filed on January 29, 1973, for a ruling on the propriety of considering metropolitan relief; and,

The Court having heard the presentations of the parties, considered the evidence and being fully advised, the Court now makes the following findings of fact, reaches the following conclusions of law, and enters the following orders:

Findings of Fact

1. According to the United States Census ("Census") for 1970, 32.7% of the population of the City of Chicago was Black in that year. (Tr. 85.)

2. According to the 1960 and 1970 Censuses, within the decade from 1960 to 1970 the Black population of the City of Chicago increased by 35% while the White population diminished by 18%. (Tr. 136 of September 28, 1972.)

3. According to the 1950 Census, 13.6% of the population of the City of Chicago was Black in that year. (Tr. 85.)

4. Assuming that the rate of changes in Black and White population, respectively, during the decade from 1960 to 1970 in Chicago continue, by 1984 the population of the City of Chicago will be over 50% Black, by 1990 58% Black, and by the end of the century 70% Black. (Tr. 86.)

5. According to the 1970 Census the student population of the public schools of the City of Chicago was over 56% Black in that year while less than 1/3 of the general population was Black. (Tr. 87.) The proportion of Blacks in the public school population is much greater than the proportion of Blacks in the general population of the City of Chicago because a higher proportion of White families are elderly, childless or have children enrolled in non-public schools. (Tr. 87.)

6. According to Census figures the percent of census

tracts in the City of Chicago having 30% or more Black population was 23.1% in 1960 and 34% in 1970.

7. Assuming that the rate of changes in Black and White population of census tracts, respectively, during the decade from 1960 to 1970 in Chicago continue, by 1990 74% of the census tracts in Chicago will be 30 percent or more Black, and well before 2000 every census tract in Chicago will have at least a 30% Black population. (Tr. 88-89.)

8. Based on such assumptions, there will be no General Public Housing Area (as defined in this Court's judgment order of July 1, 1969) in the City of Chicago at some date well before the year 2000. (Tr. 88-89.)

9. According to the 1970 Census, Blacks comprise about 17% of the population of the Chicago Metropolitan area. (Tr. 95.)

Conclusions of Law

1. The Court has not merely the power but also the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past site selection procedures of CHA and HUD. Louisiana v. United States, 380 U.S. 145, 154 (1965).

2. In this case the Court's duty will not be discharged by a decree which prohibits continued use of discriminatory site selection procedures in the future; the Court has a duty to eliminate the discriminatory effects of the past employment

of such procedures insofar as that is possible.

3. In performing such remedial duty the Court is obligated to take such action as will achieve "the greatest possible degree of desegregation, taking into account the practicalities of the situation," Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 37 (1971), and the Court "may and should consider the use of all available techniques." Davis v. Board of School Comm'rs., 402 U.S. 33, 37 (1971).

4. The scope of the Court's equitable powers to remedy past wrongs is broad, notwithstanding that the necessary remedies may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some. Swann, supra., 402 U.S. at 28.

5. The vitality of these remedial principles is not sapped because granting full relief would take a long time or require further litigation. The Court's duty is to eliminate the past effects of the discriminatory site selection procedures insofar as possible, "root and branch." Green v. County School Board, 391 U.S. 430, 439 (1968).

6. Although the factual situations differ among school, housing, anti-trust and other categories of cases, these constitutional remedial principles apply generally. Relief must be directed to that which is necessary and appropriate in the public interest to "eliminate the effects" of illegal conduct. Ford Motor Co. v. United States, 405 U.S. 562, 573, n. 8 (1972)

(emphasis in original). The Court's duty is to compel wrongdoers to act in a manner that will, so far as practicable, cure the ill-effects of illegal conduct, and such action is not limited to prohibition of the proven means by which the evil was accomplished. United States v. United Gypsum Co., 340 U.S. 76, 88-9 (1950).

7. In the circumstances of this case, particularly the circumstance that the General Public Housing Area in the City of Chicago (as defined in this Court's judgment order of July 1, 1969) will cease to exist at some time well short of the next 27 years, it is not possible for the Court to perform its remedial duty solely within the geographic limits of the City of Chicago. This is one of the "practicalities of the situation" that the Court is obligated to take into account. Swann, supra, 402 U.S. at 37.

8. Under such circumstances, the Court has the power and the duty to consider a metropolitan remedy for relief in this case. Local political boundary lines are matters of convenience, not sovereignty, and the Court has the power to bridge such boundary lines where necessary to perform its duty to remedy the past effects of federal constitutional wrongs. Reynolds v. Simms, 377 U.S. 533, 575 (1964); Haney v. County Board of Education of Sevier County, 410 F.2d 920, 924-25 (8th Cir. 1969); Jenkins v. Township of Morris School District, 279 A.2d 619, 628 (S.Ct. N.J. 1971).

9. The affirmative obligation to seek means of disestablishing state-imposed housing segregation must be shared by all agencies or agents of the state who are charged by law with, and who exercise, official housing functions. Franklin v. Quitman County Bd. of Educ., 288 F.Supp. 509, 519 (N.D. Miss. 1968). Accord: Lee v. Macon County Bd. of Educ., 267 F.Supp. 458, 478-49 (M.D. Ala. 1967)(three judge court), aff'd. sub nom. Wallace v. United States, 389 U.S. 215 (1967); United States v. Texas, 321 F.Supp. 1043, 1056-1057 (E.D. Tex. 1970), 330 F.Supp. 235 (E.D. Tex. 1971), modified and aff'd, 447 F.2d 441 (5th Cir. 1971).

10. The fundamental guarantee of equal treatment at the hands of the State cannot be thwarted by fragmentation of decision making. The United States Constitution recognizes no governing unit except the federal government and the state. Hall v. St. Helena Parish School Bd., 197 F.Supp. 649, 658 (E.D. La. 1961)(three judge court), aff'd, 368 U.S. 515 (1962).

11. The Court is not now called upon to decide whether to order a metropolitan remedy in this case; the Court is only called upon to decide at this time whether it has the power and the duty to consider such a remedy. However, the Court notes that all parties to this case have conceded, at least in principle, that a metropolitan remedy is desirable. (E.g., as to HUD, Tr. 4, 6-7, February 22, 1972; as to CHA, Memorandum of December 21, 1971, p. 27.)

WHEREFORE, IT IS HEREBY ORDERED:

(1) The Court hereby determines that it is necessary and appropriate to consider a metropolitan plan to remedy the past effects of the unconstitutional site selection procedures employed by CHA and approved and funded by HUD.

(2) The Court will keep under advisement the proposed judgment orders of the parties previously filed and will defer a ruling thereon at this time.

(3) Within 45 days from the date hereof HUD and CHA shall, separately or together, file with the Court and serve upon counsel for plaintiffs their recommendations for comprehensive metropolitan-wide relief in this case, including a form of proposed judgment order or orders designed to provide such relief. Such recommendations shall also include a designation of such additional parties, if any, as in the opinion of HUD or CHA, as the case may be, should be joined as additional parties to the action to make the proposed relief effective. In the case of HUD such recommendations shall include such consideration of programs other than the conventional public housing program as in HUD's judgment may appropriately be employed to effect full relief in this case.

(4) The Court is of the opinion that paragraph (1) of the ordering portion of this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from such portion of this

order may materially advance the ultimate termination of this litigation, all as provided in 28 U.S.C. §1292(b).

E N T E R :

JUDGE

BPI
Business and Professional People For the Public Interest

June 20, 1973

The Honorable Richard B. Austin
United States Judge
219 S. Dearborn Street
Chicago, Illinois 60604

Re: Gautreaux v. CHA/HUD, No. 66 C 1459,
66 C 1460 (Consolidated)

Dear Judge Austin:

We should like to advise you that the Bradley v. Milliken case, which is discussed in the memoranda relating to plaintiffs' pending motion of January 29, 1973, in this case, was decided by the full Court of Appeals for the Sixth Circuit last week. We have now obtained a copy of the Bradley slip opinion and enclose it herewith.

The opinion of the full Court of Appeals is substantially identical in its language and precisely identical in its holding to the opinion of the panel of the Sixth Circuit which originally decided the case on appeal. Since the panel's opinion is discussed in the memoranda of the parties on the pending January 29 motion (plaintiffs' memorandum and reply memorandum of January 29, and April 30, respectively, and HUD's memorandum of April 4, 1973), we do not plan to file anything further with respect to the pending motion.

If you desire oral argument, we will of course be happy to comply.

Sincerely yours,

Alexander Polikoff

cc: James Murray
Patrick O'Brien

109 North Dearborn Street, Suite 1001 • Chicago, Illinois 60602 • Telephone: (312) 641-5570

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	NO. 66 C 1459
GEORGE W. ROMNEY, Secretary of	)	NO. 66 C 1460
the Department of Housing and	)	(Consolidated)
Urban Development, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION and JUDGMENT ORDER

The facts of these cases have often been recited and need no repetition here.* This matter comes before me today on plaintiffs' motion (1) to defer my ruling on the proposed final judgment orders submitted by HUD and plaintiffs; (2) to determine that it is necessary to consider a metropolitan plan for relief; and (3) to provide for the preparation of such plans by HUD and CHA. For the reasons stated below, that motion is denied.

Stated simply, this lawsuit attacks racial discrim-

* See Gautreaux v. Chicago Housing Authority, 265 F.Supp. 582 (N.D.Ill. 1967), 296 F.Supp. 907 (N.D.Ill. 1969), 304 F.Supp. 736 (N.D.Ill. 1969, aff'd, 436 F.2d 306 (7th Cir. 1971); Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971); 342 F.Supp. 827, aff'd, Slip Opinion dated May 18, 1973 (7th Cir.).

ination in public housing within the City of Chicago. Both defendants have previously been found liable to plaintiffs because they either fostered or tolerated the unconstitutional implementation of federal housing statutes. And, having already entered an appropriate judgment against CHA, what remains before me is the relief to be obtained from HUD.

Plaintiffs' motion asks me to consider the propriety of metropolitan area relief similar to that granted in Bradley v. Milliken, Slip Opinion Nos. 72-1809 and 72-1814, 42 U.S.L.W. 2022 (6th Cir. 1973), which was a case dealing with racial segregation in the Detroit public school system. But, although such relief may have been justified in Bradley, it is simply unwarranted here because it goes far beyond the issues of this case. Unlike education, the right to adequate housing is not constitutionally guaranteed and is a matter for the legislature. Lindsey v. Normet, 405 U.S. 56, 74 (1972). Of course, once such legislation is enacted into law, it is constitutionally impermissible to administer it in a racially discriminatory manner. Here, for example, the evils of racial discrimination in public housing were fostered

by decisions of the housing authority of the City of Chicago and tolerated by the federal agency which financed such projects.

However, the wrongs were committed within the limits of Chicago and solely against residents of the City. It has never been alleged that CHA and HUD discriminated or fostered racial discrimination in the suburbs and, given the limits of CHA's jurisdiction, such claims could never be proved against the principal offender herein. After years of seemingly interminable litigation, plaintiffs now suggest that I consider a metropolitan plan for relief against political entities which have previously had nothing to do with this lawsuit. The factual basis for their request is an opinion of an urbanologist that by the year 2000 the entire geographic area of the City of Chicago will be within the limited public housing area as defined by the judgment order entered on July 1, 1969. This is simply inadequate to support a request to consider imposing obligations upon those who were and are incapable of discriminatory site selection within the City of Chicago.

Furthermore, plaintiffs should not have to be reminded that no public housing has been built in this City since my order of July 1, 1969 because the municipal

authorities refused to approve sufficient sites for such housing and recently because of a lack of funds. But, now that one of those obstacles has been eliminated by the Seventh Circuit's recent affirmance of my order to build housing in Chicago without City Council approval, plaintiffs have curiously raised an issue that would let the principal offender, CHA, avoid the politically distasteful task before it by passing off its problems onto the suburbs.

Therefore, for the reasons stated above and in defendant HUD's memorandum of March 30, 1973, plaintiffs' motion to consider metropolitan relief is denied. Further,

A. IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That plaintiffs' motion for summary judgment on Counts I and II of the complaint in Case Number 66 C 1460 be and hereby is granted;

B. IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the defendant, George W. Romney, Secretary of the Department of Housing and Urban Development, his successors, his officers, agents, servants, employees, representatives, and each of them shall use their best efforts to cooperate with CHA in its efforts to increase the supply of dwelling units, in conformity with:

(a) all federal statutes applicable to the low

rent housing program;

(b) rules and regulations promulgated by HUD for the administration of said program; and,

(c) the provisions of the Judgment Order entered by this court in the companion case (No. 66 C 1459) on July 1, 1969, as amended, as well as all other final, nonappealable orders entered by this court from time to time in these proceedings;

C. IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the defendant George W. Romney, Secretary of the Department of Housing and Urban Development, his successors, officers, agents, servants, employees, representatives, and each of them are hereby permanently enjoined and restrained from approving and funding development programs for low rent family public housing in the City of Chicago which are inconsistent with the terms of this Judgment Order.

ENTER:

Judge, United States District Court

DATED: September 11, 1973