

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
PATRICIA R. HARRIS, etc.,)	
et al.,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable JOHN POWERS CROWLEY, one of the Judges of said Court, in his chambers in the United States Courthouse, Chicago, Illinois, on Tuesday, July 29, 1980, at 11:50 a.m.

PRESENT:

MR. ALEXANDER POLIKOFF
MR. ROBERT VOLLEN
MS. ELIZABETH LASSAR

MR. DON MURRAY
MS. JANE MC GREW
MR. ELMER BINFORD
MR. JOHN JENSEN
MS. JULIE K. HERR
MR. JEFF JAHNS
MS. KATHY RANSFORD
MR. ANDREW MOONEY
MR. HARRY GOTTLIEB
MR. DANIEL COUGHLIN

RAYMOND J. COMEAU, C.S.R.

OFFICIAL REPORTER
UNITED STATES DISTRICT COURT

1 THE COURT: All right, I am sorry to keep you waiting.
2 I just thought it would be better to do it in here than it
3 would be in open court.

4 All right, we have before us a motion by
5 the plaintiff class for an order on HUD to condition its
6 approval of a grant to the Community Development Block Grant
7 to the City of Chicago upon a condition that the City make
8 every effort to comply with the remedial orders of this
9 court. I think I am stating it in very broad terms, but
10 that is essentially what it is.

11 I have received this morning the response
12 of the Department of Housing and Urban Development, and I
13 have to say that I have read it, but I have not had the
14 opportunity to study it and compare it to the motion, really,
15 and also the prior pleadings in the case.

16 I think just for the purposes of some order,
17 I would like to hear from Mr. Polikoff first.

18 MR. POLIKOFF: Thank you, your Honor.

19 I may say that there is another matter before
20 you simply on status --

21 THE COURT: Right.

22 MR. POLIKOFF: -- and we might dispose of that with a
23 sentence or two.

24 THE COURT: All right.

25 MR. POLIKOFF: That other matter, of course, is the

1 ongoing negotiations respecting the consent decree of
2 overall settlement between HUD and the plaintiffs, about
3 which you have previously been advised.

4 THE COURT: Yes.

5 MR. POLIKOFF: I think it is fair to say that progress
6 appears to be being made in those negotiations, not as
7 rapidly as everybody had hoped but, nonetheless, forward
8 movement, and I would suggest that a date for a further
9 status report on that matter be set at some time agreeable
10 to the parties, we haven't discussed this, something like
11 September 30th.

12 THE COURT: All right, you mean that you think in
13 approximately 60 days you will have --

14 MR. POLIKOFF: I am not suggesting that we'd have
15 reached full agreement by that date, but that might well
16 be an appropriate time for us to inform your Honor again
17 as to where we are.

18 THE COURT: All right, we will make it whatever -- I
19 don't have a calendar with me, but whatever the last Friday
20 in September is, all right?

21 How is that?

22 MS. MC GREW: That is very good, your Honor.

23 THE COURT: O.K.

24 MR. POLIKOFF: Your Honor, maybe before we start to
25 talk to the merits, there are a couple of people that you

1 haven't met before --

2 THE COURT: Right.

3 MR. POLIKOFF: -- and you might be introduced.

4 This is Jane McGrew, the General Counsel of
5 HUD.

6 THE COURT: Ms. McGrew, nice to have you here.

7 MR. POLIKOFF: And at the far end of the table, Julie
8 Herr is here, a special assistant.

9 THE COURT: All right.

10 MR. POLIKOFF: There is Andrew Mooney, who is a repre-
11 sentative of the City of Chicago, that I don't believe you
12 have met before.

13 THE COURT: No.

14 MR. POLIKOFF: I am not sure whether you have met
15 Mr. Dan Coughlin of the Chicago Area office, who is a lawyer.

16 I think you have met Elmer Binford, who
17 is the area office director.

18 THE COURT: Yes, I have.

19 MR. POLIKOFF: I think everybody else knows you.

20 Kathy Ransford is an Assistant Corporation
21 Counsel.

22 THE COURT: Yes.

23 All right, so then the further report on
24 status will be on the last Friday in September.

25 MR. POLIKOFF: I turn then to the plaintiff's proposal

1 by all the parties, including the City of Chicago, with
2 respect to the motion, which you denied, and then, again,
3 briefs by all of the parties with respect to the motion to
4 reconsider, which you granted, as I say, nine months ago.

5 Now, since that time, that is in the last
6 nine months, and pursuant to your directive that the parties
7 should get together and submit a joint proposal, we had
8 some meetings with both HUD and the City of Chicago, joint
9 meetings in the beginning.

10 At one point then HUD said it wanted to
11 meet with the City apart from us. What HUD was willing to
12 do in terms of a joint proposal was dependent, in HUD's
13 view, to some extent, at least, on what the City was willing
14 to do.

15 There was a fairly long delay. I am trying
16 to explain partly at least why it has taken a gestation
17 period of nine months from October 22nd to get back to you
18 here today. HUD and the City had some trouble getting
19 together.

20 Finally, we were informed approximately a
21 month ago by HUD that HUD had come to the conclusion that
22 it would not agree to any conditions being imposed at this
23 time on the City's CDBG grant, and that is essentially
24 what our motion to your Honor says as explanation for why
25 we are presenting you with a unilateral proposal instead

1 not be any order entered at all conditioning the City's
2 grant, because of the City's performance, and I am quoting
3 now, "Since the plaintiff's motion was originally filed."

4 And Part B of the brief, which runs from
5 Pages 17 to 20, says that if any order is to be entered,
6 it oughtn't to be an order on HUD to condition the City's
7 grant, but it ought to be an order directly to the City
8 telling the City exactly what to do.

9 On Part C of HUD's brief, which are Pages
10 20 to 25 of the document, address the proposed order that we
11 have submitted on the merits, so to speak.

12 Now I propose to discuss the merits of our
13 order, your Honor, not primarily these questions about
14 whether any order should be entered, which is Part A of
15 HUD's brief, and not whether if an order is entered it
16 ought to be a different kind of order than we have been
17 talking about, namely, an order directly against the City.

18 I don't believe that Parts A and B of the
19 brief are meritorious, and I am going to say about a
20 sentence respecting each one, but basically the procedural
21 points respecting those two parts, in my view, is that if
22 HUD wanted a reconsideration, or on the basis of new facts
23 wanted to move to vacate or modify the order, you know,
24 they should have done it before now. They know how to do
25 it still. At any time in a continuing case of this sort

1 City is inappropriate in time and I don't intend to say
2 anything further about that.

3 As to the other argument in the brief,
4 Part A, the argument that the City's performance has so
5 improved that HUD no longer believes that -- if it ever
6 did -- that the imposition of conditions are administratively
7 justified, I just want to say succinctly the following:

8 First of all, what HUD would do administra-
9 tively if there were no Gautreaux case is not really the
10 issue. As you know, the Supreme Court in this very case
11 has said, and I am quoting from Page 37 of 402 U.S., the
12 same quotation that appeared in our reply memorandum
13 respecting our motion, that "Since HUD has been found --"
14 I am paraphrasing rather than quoting -- Since HUD has been
15 found to have violated the Constitution, the violation is
16 a predicate for the entry of a remedial order against HUD
17 and, indeed, imposed a duty on the District Court to
18 grant appropriate relief.

19 Then the Court goes on to say, "Our prior
20 decisions counsel that when you have a constitutional viola-
21 tion, all reasonable methods be available to formulate an
22 effective remedy."

23 The question is whether the conditioning
24 order is a reasonable method to remedy a constitutional
25 violation, not whether apart from the Gautreaux case HUD

1 would have administratively have determined to do this to
2 the City of Chicago.

3 The Court goes on to say that, "Every effort
4 should be made to employ those methods to achieve the
5 greatest possible degree of relief."

6 So as to Part A of the HUD brief, it pro-
7 ceeds from an erroneous legal pemise, in our view, your
8 Honor.

9 I intended to say, but I think I am not
10 going to, that even apart from that erroneous legal premise,
11 we take serious issue with the information given by HUD
12 with respect to the justification for the administrative
13 decision they would have reached apart from Gautreaux in
14 this case. I think I am not going to give you that detail,
15 although if we get into it later on in the discussion
16 this morning I will be happy to go back.

17 In our view HUD uses the wrong standard in
18 terms of its own regulations which speak to the amount of
19 actual performance in terms of supplying units, they
20 don't talk about that, they talk only about something
21 called firm financial commitments, ignoring their regula-
22 tion on actual production of units.

23 The actual performance figures I think are
24 misleadingly stated in HUD's brief. In the categories of
25 most relevance to the plaintiffs, as your Honor knows, that

1 means in the general public housing area, the non-minority
2 impacted areas of the City, and with respect to large
3 families, although HUD concedes explicitly in its brief
4 that improved performance by the City in that category is
5 necessary, when they argue that the City's performance is
6 good, they don't take account of that category of non-
7 performance that they conceded in the text of their brief,
8 so their figures give a sort of a misleading impression.

9 But I am simply going to content myself,
10 in the interest of brevity, I know the kind of morning you
11 must have had, but I am ready to get into that detail if
12 it becomes appropriate, content myself with saying that
13 Part A of HUD's brief essentially proceeds from an inappro-
14 priate foundation, namely, what HUD would in its discretion
15 decide to do administratively apart from Gautreaux. As
16 the quotation from the Supreme Court indicates, that is
17 not any longer the criterion for what the Court should do
18 in this case. Whatever HUD might have done apart from
19 Gautreaux, we have a Gautreaux decision that finds a
20 constitutional violation, and the criterion is every
21 reasonable method to be employed to achieve the greatest
22 possible degree of relief, and this, I think it is past
23 argument now, is clearly a reasonable method. HUD used it
24 in other cases and uses it still.

25 That leads me to the final portion of what

1 I want to say this morning, namely, a brief explanation
2 of the order, again eschewing a lot of detail, but with a
3 willingness, I am sure your Honor realizes, to get back
4 into the detail to the extent it is appropriate during the
5 course of the conversation here this morning.

6 THE COURT: What about getting a little bit into the
7 detail as to the specific number of units?

8 MR. POLIKOFF: That are proposed there?

9 THE COURT: That are proposed.

10 MR. POLIKOFF: I intend to mention both of those.

11 I may say, your Honor, that although HUD's
12 brief arrived at what I guess I referred to as the eleventh
13 hour, in fact, we had known that HUD was going to be filing
14 a document.

15 THE COURT: Yes.

16 MR. POLIKOFF: They made every effort to get it to
17 us as quickly as it was available, in fact, it was delivered
18 to us personally early this morning, and apart from the
19 document as legal argument, the numbers have been discussed
20 at great length over the long distance telephone this past
21 week between HUD and ourselves, and I think it is fair to
22 say that subject to the necessity for verification in a
23 couple of instances where there wasn't time for one side or
24 the other to deal with some figures that the other side
25 thought was relevant, we have an understanding that the

1 figures, both the figures in HUD's document and in our
2 motion, are agreed to either as accurate representations
3 of what they purport to be, or in the case where they repre-
4 sent computations, the method of computing has been explained
5 and understood over the telephone. So far as I am aware,
6 therefore, we should have no factual disputes.

7 We may well have -- I know that we do have
8 differences of interpretation and different views of the
9 significance of facts, but I know of not even one fact that
10 is in dispute.

11 THE COURT: All right.

12 MR. POLIKOFF: If that is wrong, I am sure that I will
13 be corrected.

14 Well, the approach of the order, your Honor,
15 is to state requirements for the City, there are basically
16 four of them, and I will tell you about the numbers in a
17 moment, they are in Paragraph II or Section II, Subsections
18 A, B, C, and D, of the order, to state those requirements,
19 and then to provide for two reports to your Honor from
20 HUD with respect to the City's compliance with those.
21 The first one is about six months from now and the second
22 one is about a year from now.

23 The first report, the interim report, is
24 in Section 3 of the order, Pages 9 and 10, and the final
25 report, due approximately a year from now, is in Section 4

1 of the order at Pages 10 to 11.

2 In all three reports HUD is to advise you
3 respecting the City's progress in complying, its progress
4 on an interim basis in the first report and its progress
5 now on a completed basis in the second report. It is to
6 give you the detail as to the basis for its judgments or
7 conclusions, and it is to include any recommendations that
8 it may wish to advance to you in the final order -- in the
9 final report for action to be taken by the Court, if any,
10 and the order then provides that on motion of any party
11 approximately a year hence, July 15th, you will enter such
12 further order under the then circumstances and the then
13 information as you deem just and equitable.

14 The framework of the order therefore, your
15 Honor, is to set performance requirements for the next
16 year, to have HUD monitor the City's performance and
17 report to the Court, and then whatever further action is
18 to be taken depends upon presentations then made to your
19 Honor.

20 This is, I may say, a withdrawal or a
21 retreat of some sort from another form of condition that
22 could have been imposed and one that we have submitted to
23 you earlier by example, that is to now state what the
24 consequences of nonperformance would be by providing
25 specifically for withholdings of moneys in the future in

1 specified amounts on specified dates. That might well be,
2 in our view, a justifiable approach.

3 We felt, however, in light of HUD's unwill-
4 ingness to agree to the formulation of a joint approach,
5 that this more modest and careful approach to the exercise
6 or the conditions of power was justified under all these
7 circumstances.

8 Now, the performance requirements which
9 your Honor asked about, and which I will finally turn to,
10 we view as being simple, precise, and it won't surprise
11 you to know, eminently reasonable.

12 First, we set forth a list of powers that
13 the City possesses. Those are set forth in Subsection D
14 of Section 1 on Pages 2 to 6 of the order.

15 Your Honor should be advised that virtually
16 all of those powers, there are one or two exceptions,
17 virtually all of those powers are not something the plain-
18 tiffs dreamed up, they come directly out of HUD's regula-
19 tions, HUD's own regulations.

20 So we have simply listed what the City and
21 HUD both already know, the powers the City possesses. Then
22 we have said that the Court should tell HUD to tell the
23 City to use all of those powers as necessary to achieve
24 the four performance conditions.

25 Now, the first of those conditions is to

1 help CHA to the extent that CHA asks to be helped.

2 HUD objects in its brief that that condition
3 is a bad idea, because what if the CHA should ask something
4 unreasonable? Would the City then be bound to do it?

5 You know, the answer obviously is no.
6 Reasonableness is to be read into the order, but more than
7 that, if the City has any doubt at any point, they have
8 merely to raise a question with your Honor for advice, or
9 more likely, to work it out with counsel on the other side.

10 Second through fourth conditions, the second,
11 third and fourth conditions, relate to the City's own
12 numbers, coming out of the City's own housing assistance
13 plan, approved by HUD in the case of the first of these
14 three conditions, namely, for the years 2 through 4, CD
15 years two through four, approved by HUD for year five,
16 which is the second condition, and not yet approved by HUD
17 for year six, and we recognize that if HUD should not
18 approve the figures the City has submitted but should
19 different figures be arrived at, the order would then at
20 that point have to be modified to change those figures.

21 But the structure is that you take the
22 first three years of the City's performance, the years
23 that are over, and you say, now, these were the City's
24 own goals -- except we haven't even gone that far. What
25 we have done in the second of the four conditions is to

1 take what HUD calls the firm financial commitments that the
2 City actually received, the defined term, meaning a certain
3 stage of the regulatory process having been reached, the
4 term HUD uses to in part measure performance, and say only
5 as to the firm financial commitments received in those
6 prior years, the year that ended last September, September
7 30th, 1979, only with respect to those are we imposing
8 performance requirements, but those performance requirements
9 are imposed in the key categories for the plaintiff, that is,
10 the general public housing area neighborhoods, the family,
11 and especially the large family components. So we pull
12 those out only, not impose other requirements on the City,
13 but only in the categories relevant to the plaintiffs,
14 and we have said with respect to those categories, the
15 City shall achieve on-site construction, commencement of
16 on-site construction. When? By next July 15th, 1981,
17 not today.

2 18 In terms of HUD's requirements, that is
19 giving the City more time to perform than it would have
20 under HUD's regulations, because the performance time is
21 normally measured during a two-year period. We are talking
22 about the three years from ending September 30th, 1979.
23 Next July 15th would pick up, for the most part, units
24 that receive firm financial commitments during the early part
25 of that three-year period, or the middle part. In any

1 event, we would have, for most of the units we are talking
2 about, more than HUD normally allows for the performance.

3 It is true that HUD's regulations don't
4 precisely measure the date by which performance should be
5 described as having been achieved by commencement of con-
6 struction, as we do in this condition, but, goodness knows,
7 it is time now for some real precision, and the payoff is
8 construction, and HUD has got a new regulation that recog-
9 nizes that and actually says that you have got to look not
10 just at firm financial commitments, but you have got to
11 look at the movement of those commitments to construction.

12 So we think that is very reasonable,
13 especially in light of another provision of the order,
14 proposed order, which makes it clear that anything beyond
15 the City's control is something the City won't be held
16 responsible for.

17 In HUD's report to your Honor, both the
18 interim report and the final -- well, just in the final
19 report, in the interim report it can say anything it wants,
20 they are specifically directed to tell you the extent to
21 which, if there hasn't been complete compliance, the
22 failure to comply is attributable to anything beyond the
23 City's control, and obviously, if something is beyond the
24 City's control, they are not going to be held to it. That
25 is not the intent of the order.

1 The final two conditions, then, the ones for
2 the fifth and sixth years, the categories are the same,
3 large family and family units in the general public housing
4 area. Again, the figures come right out of the City's
5 own housing assistance plan. The one exception to saying
6 that the figures come right out of the City's housing
7 assistance plan is that we have broken the large family
8 category into four-bedroom apartments and three and smaller
9 bedroom apartments. There has been some confusion about
10 the categories -- about the large family category in
11 HUD's own regulations which have recently been clarified
12 by a new regulation, so that a family that has six or more
13 people in it is to be split in half. Sometimes the six-
14 person family can fit into a three-bedroom apartment and
15 sometimes they can't. I think under HUD's new regulations
16 you split those in half. We have counted, for large families,
17 half the six-person families and then seven, eight, nine
18 and ten, on up, and using CHA's own statistics as to what
19 portion of their people are in the large family category,
20 half the six-person families and the larger, we have come
21 up with a percentage figure that has been explained to HUD,
22 which derives a four-bedroom and larger component for the
23 large family category. That is the only respect in which
24 we haven't used the City's own figures in developing the
25 performance criteria.

1 With respect to the last two performance
2 requirements, instead of on-site construction being achieved
3 by next July 15th, we have taken an earlier stage, approvals
4 of one sort or another that are required during the process-
5 ing stage. HUD objects in its brief that those go beyond
6 HUD's regulations. They may well. It goes back to the
7 point that I made earlier, the criterion here is not what
8 HUD would do administratively apart from Gautreaux, but
9 what is reasonable under the circumstances, and if the
10 achievement of these performance goals turns out to have
11 been impossible because they were beyond the City's power,
12 nobody is going to be hurt.

13 In short, your Honor, and, finally, the
14 crux here of this proposed order is to identify agreed-upon
15 powers that the City possesses and to assure, to the extent
16 we are able, that the City in fact uses those powers to
17 achieve reasonable goals.

18 If the City fails to use those powers to
19 achieve reasonable goals and HUD so reports to your Honor,
20 or we persuade you, even over HUD's differing views, that
21 that is the case, the order provides that you would then
22 be able to take, of course, whatever action you deem appro-
23 priate under the circumstances. The City will, however,
24 be on notice. There will be a lien, pendent litigation,
25 if you will, they will be on notice now, that come next

1 July, if they haven't met these goals, for reasons that
2 are in their control, namely, they failed to exercise law-
3 ful powers they possessed, they are going to be in trouble.

4 THE COURT: All right.

5 MR. POLIKOFF: That is it, your Honor.

6 THE COURT: O.K.

7 MS. MC GREW: Your Honor, I apologize for bringing
8 with me some germs from Washington.

9 THE COURT: All right.

10 MS. MC GREW: I will do my best.

11 It seems to me that the gist of Mr. Polikoff's
12 statement with regard to the first two portions of our
13 brief is simply that it is too late to take into account
14 conditions that have changed in the last two years since
15 he initially filed his motion.

16 It seems to me also that that argument is
17 somewhat inconsistent with the facts that Mr. Polikoff has
18 himself, and very sensibly, I think, changed his approach
19 to the conditioning and has devised new standards that
20 seemingly take into account the fact that the City has
21 made tremendous progress in the last two years in terms
22 of delivery of housing, which is, after all, what we are
23 talking about here.

24 I want to emphasize that we are not arguing
25 that the Court is limited by our administrative remedies,

1 but only that the violation that you are trying to
2 remedy, that is the failure to provide adequate housing
3 opportunities, should be the standard by which you measure
4 the relief, and in this case we feel that the standard,
5 the administrative standard in terms of housing performance,
6 and the Court's standard, do tend to coalesce, at least in
7 part, because plaintiffs have held up the HAP as the
8 standard for judging the adequacy of performance.

9 Now, conditioning is a very serious remedy,
10 because in spite of the fact that Mr. Polikoff has reframed
11 the order, ultimately the City stands to lose its block
12 grant funds if it fails to meet the criteria or meet the
13 standards that you set out in the proposed order.

14 We feel that that form of remedy is not
15 commensurate with the kind of violation that has occurred,
16 and ignores the substantial progress that has been made.

17 THE COURT: What do you suggest is the remedy?

18 MS. MC GREW: Jumping to that, your Honor, I can
19 address --

20 THE COURT: You know, if we are going to say that
21 this is too severe, tell me what --

22 MS. MC GREW: I would think we can deal, to some
23 extent, with the order that Mr. Polikoff has proposed by
24 requiring HUD to submit the reports, but not subjecting
25 the City to the possible loss of funds for failure to do

1 things which, as I am prepared to show you, have nothing
2 to do with the performance standards that are being held
3 out.

4 Specifically, if you look at the kinds of
5 powers that Mr. Polikoff has itemized, it is true that they
6 fall within the power of the City to perform, but they are
7 not related to the situation which we now have in front of
8 us, and I think for that we have to look at the status of
9 the City's performance. Specifically, turning to his order,
10 he has divided the performance into three categories, the
11 one being the delivery of housing units, or production of
12 housing units with respect to the three-year goal, that is
13 '76 through '79, then the production of units with respect
14 to the year five goal, the current year, and then the
15 production of units with respect to the next year.

3 16 Now, I can report to you that as to the
17 last -- the total number of units that are scheduled for
18 production as the last three years' goals, and these numbers,
19 again, correspond to those which Mr. Polikoff has presented,
20 we have 115 under construction, 238 a HAP agreement has
21 been executed, and 116 the final proposal has been received.

22 Now, based on that, there is nothing that
23 he has recommended as being within the City's power that
24 will affect the performance or the actual progress of those
25 units towards construction in the next year. In fact, at

1 this stage of the proposals, it is all a matter between HUD
2 and the developers. To be sure, things could come up in
3 the next year that would delay performance, some of which
4 conceivably could be some things that the City could deal
5 with, in which case we would be prepared to go to the City
6 and say, we need you to do this particular thing, but we
7 do not anticipate it. These units are quite far along and
8 we fully expect to meet the performance standard that Mr.
9 Polikoff has laid out, and we would be prepared to report
10 to you in January. But while I don't ordinarily wish to
11 lay the agency's head on the chopping block, I would have
12 to say that this is not the City's responsibility at this
13 time. The provision of additional sites or tax-exempt bonds
14 or any of the other things enumerated will not affect the
15 performance as to the last three years' goals.

16 I can give you similar figures with respect to
17 the substantial rehab portion of the motion and say to you
18 again that what the City -- what is proposed for the City
19 to do is not related to what needs to be done in the next
20 year.

21 Let me turn then also to the goals for
22 1980, the housing units that are referred to in Subpart C
23 of Mr. Polikoff's brief. First, I want to point out a
24 very key thing about the numbers here. While we are in
25 agreement as to the numbers presented, the numbers for

1 1980 are the HAP goals. The HAP goals are not the same
2 as the number of units which have been allocated to the
3 City; in other words, the goals are significantly greater,
4 many more units than the amount of money that the Congress
5 has provided to HUD and which we have allocated to the
6 City to build, that is, specifically, there are 540 units
7 allocated to the City for the year five, or what corresponds
8 to year five, whereas Mr. Polikoff calls in his order for
9 1,035 units of Section 8 new construction, the GPHA. He
10 has taken that correctly as 60 percent of the goal in the
11 HAP, but the goal is not something that can conceivably
12 be achieved this year, simply because there were not the
13 resources provided. So at the very outset, the numbers
14 set forth here are simply impossible to perform on.

15 Secondly, I would like to point out that
16 we have already received for those 540 units proposals to
17 build 5000 units. We have in the area office narrowed that
18 down to 2700 units, which appear to be feasible projects.
19 Those still have to be narrowed down further. Of those
20 units over 1200 are proposed to be built in the general
21 area. That means even if we built everything in the general
22 area, we would still have twice as many proposals as we can
23 possibly build, as we have money to build.

24 Again, there is nothing that the City has
25 to do to change this fact or to improve their performance

1 or to make it possible for any of those things to happen.
2 I would have to argue again that the remedy that is pro-
3 posed is simply not relevant to what is to be done.

4 We would be prepared to report to your
5 Honor in January and again in July the progress that has
6 been made on these units, and we hope that they will move
7 rapidly toward the execution of a -- toward approval of
8 the preliminary proposals and ultimately toward execution
9 of the HAP contract. Under our regulations, it would
10 ordinarily take two years to go to a firm financial commit-
11 ment, and we see no reason at this time that the developers
12 and HUD will not be able to achieve that target.

13 We are prepared to report to you if there
14 seems to be problems that the City can use its powers to
15 deal with. We would be the first to recommend them, and
16 we don't want to be back here every year explaining why
17 we failed.

18 The similar problem in fact is even a more
19 serious problem with respect to the sixth year goals that
20 are laid out on Pages 8 and 9 of Mr. Polikoff's brief.
21 We don't even know how many units we have for the City of
22 Chicago yet. We will have to advise the City, as we would
23 ordinarily at the beginning of every fiscal year, how many
24 units there are. We will put out notices for proposals,
25 and we expect that given the performance or the response,

1 rather, of this past year, that we will continue to see a
2 great deal of action in both the general and limited areas.

3 There is no need at this time, and I think
4 it would be inappropriate to presume that there is something
5 that the City has failed to do in connection with an offer-
6 ing of housing units that has not yet even been made. Judg-
7 ing from their performance so far, we have nothing to ask
8 them that they have not done that we think would be condu-
9 cive to the production of more housing.

10 I would like to add that this is not unrelated
11 in our minds to the efforts we are making to resolve this
12 case. We do recognize that the failure to produce large
13 family units is a serious problem. It is a serious problem
14 in every part of the country and it is a serious problem
15 because it is a financial problem. It is very difficult
16 to make those units viable financially, and I think you
17 see the evidence here as you see it in San Francisco, in
18 Washington and New York.

19 We agree that there is a real need to
20 come up with some better approach, some stimulus or incen-
21 tive to provide for those units, and that is one of the
22 major elements of discussion that we have in connection
23 with the settlement.

24 I would ask your Honor not to order something
25 at this point when we are trying to work out a more reasoned

1 and we hope effective approach that is responsive to the
2 kinds of problems that are faced in building that. By set-
3 ting a goal for the City and enforcing a target, you are
4 not going to overcome those problems. We feel that we
5 can do it and we have a basis for doing it in the settlement
6 negotiations, and I truly hope that by the end of this
7 calendar year we will come to you with a proposal that
8 will accomplish that. In the meantime, we would propose
9 to provide what reports on the progress that has been made
10 as we can.

11 The other area where there is a legitimate
12 concern is the CHA's performance. Again, I would have to
13 argue that the provision of this form of remedy, that is
14 the imposition of a condition on the City's block grant,
15 is inappropriate. In fact, this year the City has entered
16 into an agreement with the CHA, which they are now working
17 the details out on, to provide for sites for sub rehab,
18 and we truly expect that the CHA is going to demonstrate
19 much more effective performance given your Honor's recent
20 order to them and the threat that is hanging over them.
21 That is a very significant changed condition from the time
22 that this order was -- this motion was initially filed,
23 and we think that if this Court, as it did, determined
24 that it was inappropriate to impose so severe a remedy on
25 the CHA itself as a receivership for its own performance,

1 then it seems to me it can be no more appropriate to impose
2 upon the City a condition that relates to the CHA's --

3 THE COURT: I don't think I determined that it was
4 inappropriate to impose that type of relief upon the CHA.
5 I just said that I denied the motion without prejudice.

6 MS. MC GREW: That is right.

7 THE COURT: If you want to, you know, make an analogy
8 to the criminal law, it would be called "deferred prosecu-
9 tion."

10 You know, I haven't lived with this case
11 as Judge Austin did for many years. I have seen it from
12 the few years that I have lived with it, and I have seen
13 no progress by the CHA. The plaintiffs say it is deliberate.
14 The plaintiffs may well be right. CHA says it is not
15 deliberate, and so I finally just said to the CHA, "All
16 right, you have six months to prove to me that it is not
17 deliberate."

18 So what is so wrong about saying to the
19 City, "City, use your lawful powers to help the CHA"?

20 As I see the motion, it is not saying to the
21 City, "City, if you use your lawful powers to help the
22 CHA, and the CHA doesn't do anything with them, you are
23 not going to be penalized, City." The only way that City
24 is going to be penalized is if the City doesn't use its
25 powers to help. They can help, but their help doesn't have

1 to be received or implemented. They have no control over
2 that.

3 MS. MC GREW: That is correct, your Honor, but the
4 gist of the order that I have addressed is Section 8 units
5 which, of course, have nothing to do with the CHA.

6 THE COURT: Right.

7 MS. MC GREW: And that is our main concern. If in
8 fact you feel it would aid in the CHA's delivery of its
9 commitment to direct the City to use its lawful powers,
10 I could not argue that that was not -- wouldn't be useful
11 or inappropriate and I wouldn't presume to.

12 What I am saying is that that should not
13 be the basis for imposing a condition on the City which
14 primarily has as its focus the delivery of units which are
15 well on their way and which do not relate to the exercise
16 of their lawful powers that have been enumerated here.

17 THE COURT: O.K. I interrupted you.

18 MS. MC GREW: I am satisfied to leave it at that, your
19 Honor, at this point, and I have not addressed specifically
20 the questions of the performance. I think they are laid
21 out in our brief. I do think that it is worth noting that
22 we did not fail to come to an agreement simply because the
23 City said they would not, we came to this approach because
24 we determined that the conditions had changed and that the
25 performance was such that we did not feel that conditioning

1 was the remedy that we could agree was appropriate in
2 light of the efforts and the results that we had seen so
3 far.

4 THE COURT: All right, what about the City?

5 MS. RANSFORD: For the record, my name is Kathleen
6 Ransford, Assistant Corporation Counsel.

7 As you know, Judge, I am not the principal
8 attorney in this case, it is Mr. Neal.

9 THE COURT: Yes, right.

10 MS. RANSFORD: And Mr. Neal is unavailable at the
11 moment, he is out of town. He left, however, before we
12 received Plaintiff's notice of filing the motion and
13 draft order this past Friday.

14 THE COURT: When is he going to return?

15 MS. RANSFORD: He will return a week from today.

16 THE COURT: All right.

17 MS. RANSFORD: So basically, Judge, I am not prepared
18 to argue point for point the merits of the plaintiff's
19 proposed order. We would like an opportunity to submit a
20 written brief to address what we feel are some very important
21 issues that touch the City very directly, as general counsel
22 pointed out, and perhaps -- HUD is a party, and maybe the
23 City's status as a party is somewhat unclear, but we are
24 talking about the City's grant and what are delineated as
25 the City's powers and performance by the City, so we very

1 much would like an opportunity to respond to the issues that
2 have been raised. Specifically, we would like to talk about
3 it in a written brief, which we would like a little time to
4 file. What is the City's role in the production of sub-
5 sidized housing? I think perhaps it hasn't been discussed.

6 THE COURT: How much time after Mr. Neal returns would
7 you want?

8 MS. RANSFORD: Well, I would like about 30 days from
9 today. That would be about 21 days from the time that
10 Mr. Neal returns.

11 THE COURT: Mr. Polikoff?

12 MR. POLIKOFF: Are you addressing the timing question?

13 THE COURT: Yes. I think the City should be given an
14 opportunity to respond and I think that under the circum-
15 stances it may place an unfair burden upon the Assistant
16 Corporation Counsel here without Mr. Neal's input and
17 experience.

18 MR. POLIKOFF: Sure. I would like your Honor to know
19 that I did call Mr. Neal before while he was in town and
20 told him what we were going to be doing, and he directed
21 me as to who to have the papers served upon.

22 THE COURT: Sure.

23 MR. POLIKOFF: There is no emergency, your Honor,
24 that I can point to. As long as we have an assurance, and
25 I think there should be no problem, that HUD will not be

1 taking action on the City's sixth year applications --

2 THE COURT: You don't do that until the 30th of
3 September anyway, do you?

4 MS. MC GREW: That is correct, your Honor.

5 MR. POLIKOFF: In fact, it can and has been in the
6 past done earlier than the very last day. I think last
7 year it was done September 14th or something like that.

8 MS. MC GREW: We certainly would not act when your
9 Honor had under advisement a motion of this nature.

10 THE COURT: All right, that is all I need on that.

11 MS. MC GREW: It is very difficult as we get closer
12 to the year-end, then, your Honor, to reach the decisions
13 and to act on the papers, and we would hope for an early
14 decision in that regard.

15 THE COURT: I understand.

16 Who has a calendar?

17 MR. POLIKOFF: I have one that goes to 1984, your
18 Honor.

19 THE COURT: Well, we don't need one that goes that
20 far, Mr. Polikoff.

21 All right, today is the 29th of July.

22 You want until the 19th of August, that
23 is three weeks, that is 21 days from today?

24 MS. RANSFORD: I would like 30 days from today.

25 THE COURT: Thirty days? I am sorry.

1 MS. RANSFORD: Which would give Mr. Neal three weeks
2 from the time he returns.

3 THE COURT: O.K., that brings us to the 29th of August.
4 The date for the status hearing that I have just given you
5 a date for is the 26th of September.

6 After the 29th, Mr. Polikoff, would you want
7 to respond? Would you reserve an opportunity to respond?

8 MR. POLIKOFF: Yes, I would, your Honor.

9 THE COURT: All right, and that would be --

10 MR. POLIKOFF: I notice that that is the Labor Day
11 weekend.

12 THE COURT: That is the Labor Day weekend.

13 MR. POLIKOFF: And I might possibly be away and not
14 return until Tuesday, September 2nd, so if we could have --

15 THE COURT: All right, do you want to make it the
16 12th?

17 MR. POLIKOFF: That would be fine.

18 THE COURT: All right, I just want to be able -- you
19 are not going to have anything further to say?

20 MS. MC GREW: I doubt that, but I would always want
21 to consider whatever is submitted.

22 THE COURT: Well, consider whatever is submitted -- if
23 I have all the papers by the 12th, I will rule on the 26th.

24 MS. MC GREW: Oh, certainly nothing after the 12th,
25 your Honor.

1 THE COURT: O.K.

2 MS. HERR: Your Honor, the 12th is a Jewish holiday.
3 Could we possibly put it off until Monday?

4 THE COURT: Absolutely. As far as filing.

5 MS. HERR: No, I am talking about the 12th of September,
6 could we put the hearing off to --

7 THE COURT: No, I did not set it -- if filing on
8 the 12th creates -- that is Rosh Hashanah -- if filing on
9 the 12th creates any problem for anyone, we will make it
10 the next Monday.

11 MS. MC GREW: Your Honor, if I may?

12 THE COURT: Yes.

13 MS. MC GREW: The --

14 THE COURT: No, let's get that clear.

15 MS. MC GREW: It is not a problem for us.

16 MS. HERR: O.K., no problem with filing.

17 THE COURT: It is the second day of Rosh Hashanah,
18 the 12th, so do you want to make it for the Monday morning,
19 file it on the 15th?

20 MS. POLIKOFF: It doesn't make any difference in
21 terms of the time scheduling, that would be preferable.

22 THE COURT: Well, I am certainly going to give you
23 that consideration.

24 MR. POLIKOFF: That would be Monday the 15th?

25 THE COURT: Monday, the 15th for any reply due.

1 MR. POLIKOFF: That will make it a prayerful brief,
2 your Honor.

3 THE COURT: I understand. Then I will have two full
4 weeks, in any event, so it is not going to make any differ-
5 ence whether --

6 MR. JENSEN: Your Honor, when did you say you would
7 be ruling by?

8 THE COURT: I will rule on the 26th of September,
9 which is the date I have set for status.

10 MS. MC GREW: Your Honor, could I ask that that be
11 the 25th, a Thursday, instead of the 26th?

12 THE COURT: Absolutely, if that fits in with your
13 schedule. Actually it is better. Fridays usually are
14 very --

15 MR. POLIKOFF: Would that be the status report then?

16 THE COURT: Status report and ruling date on the 25th.

17 MS. RANSFORD: Judge, there was some discussion,
18 Mr. Neal thought it might be helpful for the Court to
19 perhaps hear some testimony from people who are out in
20 the field of developing housing in terms of what types of --
21 I don't know if we have to raise that now, but perhaps if
22 the Court would like, we could have an opportunity to present
23 some testimony of people who are developers as to what types
24 of assistance would help them. I am not sure if we can
25 set that up now or maybe we can --

1 THE COURT: I don't want to set any evidentiary
2 hearings unless it becomes apparent that we are going to
3 need them.

4 Why don't you, in your written submission,
5 in a way, set forth an offer of proof as to what you think
6 the evidence would show and then why I should hear it,
7 and then if Mr. Polikoff, in his response, wants to comment
8 on it, and I don't mean to take it that that is going to
9 be by virtue of affidavit or anything else, it is just
10 going to be kind of a general schematic diagram of what
11 type of evidence you think that I should hear and why I
12 should hear it, and then Mr. Polikoff, in his response, can
13 either say, "Judge, you should hear this type of evidence
14 because there are questions we want to ask, or it would
15 be irrelevant," and then I will have to make the decision
16 as to whether I should hear the testimony or not. All right.

17 Yes?

4 18 MS. RANSFORD: May I make one more request?
19 Apparently HUD and the plaintiffs have been conferring as
20 to the numbers in the brief. Our technicians at the City
21 were a little bit confused as to where the numbers came
22 from. I was wondering if you could furnish some kind of
23 background as to how these numbers were arrived at, because
24 then our response could be more specific, otherwise we will
25 be speaking in general terms.

1 the 18th.

2 MS. MC GREW: Thank you, your Honor.

3 THE COURT: And we will get it resolved.

4 Yes, what about the --

5 MR. JAHNS: Jeffrey Jahns on behalf of the Illinois
6 Housing and Development Authority.

7 THE COURT: Right.

8 MR. JAHNS: IHDA is mentioned in the proposed order,
9 and I think in ways which I think inadvertently are against
10 the Authority's interests, but in my preliminary discus-
11 sions with counsel for the plaintiffs, I think our problems
12 can be ameliorated, but I would like to reserve the oppor-
13 tunity, if there is a problem, to put them in by the 15th.

14 THE COURT: You file your objections to the order by
15 the 29th of August. I don't have to have anything further
16 from HUD. They have got their objections plus your presen-
17 tation today, Mr. Polikoff, and I will then see you all on
18 the 18th and we will use the 18th also for a report on
19 status on the settlement discussions. There is no sense in
20 you coming out on the 18th and then coming back a week
21 later.

22 So I hope by shortening that date we are
23 not making it an unmeaningful report on status.

24 MR. POLIKOFF: Does your Honor want to hear any brief
25 responsive observations to --

1 THE COURT: I would, Mr. Polikoff.

2 MR. POLIKOFF: I will take about three minutes, no
3 longer.

4 With respect to the point about the unavail-
5 ability of resources, that falls squarely within the
6 language of the order, the proposed order, beyond the City's
7 control.

8 THE COURT: Yes.

9 MR. POLIKOFF: I indicated that the numbers might
10 have to be changed when the year six plan of the City gets
11 finally approved by HUD, and that goes to part of what
12 Ms. McGrew said.

13 With respect to year five, which she said
14 we proposed a much larger figure for performance than the
15 allocation so far has been made, the reason for that, your
16 Honor, is historically and, indeed, in this particular
17 year there have been some rumors, at least, about a
18 supplemental allocation.

19 THE COURT: Yes.

20 MR. POLIKOFF: There have been supplemental allocations
21 in previous years and there may or may not be supplemental
22 allocations in this year. We didn't want to cut back on the
23 goal figures until the year was over, and it won't be over
24 until September 30. It falls in the same category of a
25 change in the numbers if the resources aren't there.

1 THE COURT: If the Congress doesn't provide the
2 money, Congress doesn't provide the money.

3 MR. POLIKOFF: With respect to the second -- and this
4 is the only other point I want to comment on -- the second
5 point that Ms. McGrew made, namely, that the lawful powers
6 stated in the proposed order are not related to the things
7 yet to be done to bring these pipeline units, I will call
8 them, to completion, we simply have, I think, a clear differ-
9 ence of opinion on that, which will have to be elucidated
10 in the briefs.

11 THE COURT: Yes.

12 MR. POLIKOFF: I want to point out that the figures,
13 if I understood her, Ms. McGrew was referring to, was the
14 firm financial commitment figure and not any status or
15 construction figure. Some of the figures that we have
16 agreed upon are of this sort, your Honor, in new construc-
17 tion, in the large family category. Although there have
18 been firm financial commitments through July of 1980 amount-
19 ing to 232 units relating to a HAP goal of 2,051 units,
20 zero of those apartments are under lease as of a few days
21 ago when these figures were confirmed by telephone with
22 HUD, and only 32 of them are under construction.

23 I could give other illustrations. Those
24 performance figures that Ms. McGrew was talking about I
25 believe were not the categorical performance figures.

1 Although she did mention in one instance the general public
2 housing area, she did not deal with the status of construc-
3 tion, she did not deal with those units under lease, and
4 if you look through this list of lawful powers that the
5 City has, and as you know, as I think one knows as a matter
6 of not only judicial notice but common sense as well, that
7 there is many a slip between a proposed project which has
8 received some regulatory approval and the actual commencement
9 of on-site construction, I don't understand how it could
10 be said that activities listed here are, all of them,
11 irrelevant. For example, payment of the costs of pre-
12 construction activities, I will content myself with that
13 one example: You can have regulatory approval, you can
14 have a change in the financial circumstances in the world
15 at large, the ability to use CDBG money of the City to pay
16 pre-construction costs might make all the difference in
17 the world between a paper project and one where the spades
18 actually begin to turn the earth.

19 Now, if that is a matter on which we are
20 really in disagreement as to the relevance of a power like
21 that to movement of a paper-approved project to actual
22 construction, we will presumably deal with that in the
23 papers that your Honor has authorized us to file.

24 THE COURT: O.K.

25 MR. POLIKOFF: That is all I have.

1 THE COURT: All right, I will see you all then on
2 the 18th of September.

3 MR. POLIKOFF: Thank you, your Honor.

4 MS. MC GREW: Thank you, your Honor.

5 (WHICH were all the proceedings had and taken
6 in the above-entitled cause on the day and
7 date aforesaid.)

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