

# METROPOLITAN PUBLIC HOUSING DESEGREGATION REMEDIES: CHICAGO'S PRIVATIZATION PROGRAM

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### I. INTRODUCTION

Public housing has come to symbolize the complex web of seemingly intractable problems facing urban America at the end of the twentieth century. Even though public housing remains viable and indeed coveted in some places, all too much of it fits the public image of the program — of violent, drug-infested, partially abandoned, large scale high-rise concentrations in the inner cities of major metropolitan areas. The dilemmas of persistent poverty and racism seem to come together in these dangerous and deteriorating places that once offered hope for those passing through them. Now they testify to the country's failure to address its fundamental problems.

At the same time, advocates of change from various points on the political spectrum use the state of public housing and the inner city as support for their proposed policies and programs. Proponents of privatization point to the public housing program as evidence of government's inherent incapacities, and the need to turn to the private market to provide services and address social problems, including housing for low-income people.

Advocates of "choice" initiatives — both in housing and schools — break into two camps. Some stress the market, like their privatization colleagues, as a way of making more opportunities available, including those for poor people. Others believe that even governmental structures would be more responsive if their consumers had a greater chance to select their facilities and services.

Supporters of metropolitan solutions to urban problems point to public housing as exemplifying the concentration of poor people in inner cities, and argue that policies and programs should facilitate their moving to the suburbs. Similarly, integrationists see concentrations of racial minorities, mostly Blacks, in public housing, and press for housing integration initiatives.

Of course, there are many combinations and permutations of these positions and other sides to each of them, as well. Some do not trust the private market to respond to the needs of poor people and racial minorities. Others argue that choice strategies redound to the benefit of the middle-class and only make matters worse for poor people, who are disproportionately minority. Many emphasize empowerment strategies and rebuilding poor and minority communities, using unrecognized and untapped capacities of people there, including public housing residents.

In 1966, while policy-makers, activists, and scholars debated these questions, a woman named Dorothy Gautreaux, a tenant activist in public housing in Chicago, agreed to let her name be used in two class action lawsuits challenging racial policies and practices of the Chicago Housing Authority and the United States Department of Housing and Urban Development, respectively. Without knowing where such a lawsuit might lead, she took the risk of personal retribution that publicly resisting her "landlord" could entail. Dorothy Gautreaux's untimely death prevented her from witnessing even the initial decision in the case. It is not clear how she would have viewed the remedial measures adopted; but her courage in confronting the institutions that broke the promise of decent housing was evident.

The case that bears Dorothy Gautreaux's name continued more than a quarter of a century later. In the process, it provided an opportunity to test some of the approaches advanced to address the problems of race and poverty.

In the first *Gautreaux* case, decided in 1969, the federal district court found that the Chicago Housing Authority (CHA) had discriminated in selecting sites for public housing and assigning tenants on a racially segregated basis. The court ordered CHA to provide additional public housing, on a small-scale, "scattered site" basis, primarily in predominantly white areas of the city.<sup>1</sup> That remedy was still proceeding, albeit with "all deliberate speed" and with several court-ordered modifications, more than two decades later.

In the meantime, the other *Gautreaux* case, which was against HUD — the federal agency that funded CHA's discriminatory program — moved along a separate and distinct track. In 1976, the Supreme Court decided the HUD case, the first major Supreme Court decision addressing racial discrimination in public housing.

The HUD case then began its own remedial saga, which contrasted sharply with CHA's. Instead of focusing on building and

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1. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969), *enforcing* 296 F. Supp. 907 (N.D. Ill. 1969).

rehabilitating public housing in Chicago, the HUD remedy was a metropolitan-wide initiative that facilitated plaintiff class families moving into existing and newly constructed private rental housing throughout the six-county region. It emphasized relocating families in predominantly white areas of the suburbs.

Fifteen years later, about 4,500 public housing-eligible families had entered the private rental market through the HUD remedy, called the Gautreaux program. More than half of these families moved to the suburbs, mostly to predominantly white middle-class communities. That was more than four times the approximately 1,000 families housed in over 20 years through the remedy in the CHA case — CHA's "scattered site" program of construction and rehabilitation of small apartment buildings within the city. Yet the Gautreaux program itself was modest in scale, especially compared to the more than 40,000 plaintiff class families entitled to relief in the case.<sup>2</sup>

The Gautreaux program's experience provides a case study of both the potential and the limitations of this metropolitan, market-oriented integration strategy.<sup>3</sup> The program is the largest and longest-running housing integration initiative in the history of the country. Because of its focus on families moving to predominantly white middle-class suburbs, the Gautreaux program also involved the rare combination of economic and racial integration.

This article examines the opportunities, as well as the constraints, encountered in this experiment in metropolitanization and privatization as an approach to providing housing for low-income Black families. The combination of extending the program throughout the region and using the private housing market — both existing housing and new construction — expanded opportunities for racial and economic integration. Yet this approach encountered significant constraints that limited the scale of the program.

In spite of some initial uncertainty about whether low-income Blacks would be willing to move to predominantly white communities

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2. The Gautreaux program began as a one-year experiment, by agreement of the parties, with a goal of assisting 400 families to move during that year. By the end of the year, approximately 170 families had moved. Leonard S. Rubinowitz & Katie Kenny, Report on the Gautreaux Demonstration Program Year I 5 (1978) (unpublished, on file with author at Northwestern University School of Law). After the parties continued the program informally for several more years, the district court institutionalized it through a consent decree in 1981. HUD agreed to provide funding for 7,100 families. *Gautreaux v. Landrieu*, 523 F. Supp. 665, 674 (N.D. Ill. 1981). A decade later, the program had not reached the 7,100 total.

3. As with case studies generally, caution is appropriate in considering the generalizability of the experience.

a long distance from where they lived, families' interest in the Gautreaux program burgeoned and remained at a high level. The opportunity to move out of deteriorating communities and to secure rent subsidies attracted large numbers of plaintiff class families.

However, even with the six-county region's housing market theoretically available, there were serious constraints on the supply side. Program administrators and families worked diligently and creatively to gain access to rental housing, particularly in predominantly white middle-class suburbs. Their efforts produced a steady, but modest supply of housing for the program; but the private market did not respond in a way that came close to meeting the demand.

Thus, using the region's private housing market to achieve racial and economic integration provided opportunities previously unavailable for assisting low-income Black families from public housing; but substantial constraints arose from the same source. The private market's supply of housing for the program remained the limiting factor. It was likely to continue to be the major constraint as long as the program emphasized low-income Black families moving to predominantly white, middle-class communities.

This article begins with a brief discussion of the CHA case — the violation, the remedy, and the severe implementation problems — to provide background on the litigation and a basis of comparison with the HUD case and the Gautreaux program. It then turns to the HUD case, including the dialogue between the lower courts about the violation and remedy, the landmark Supreme Court opinion in 1976, and the development of the Gautreaux program after the Court's decision. The main focus of the article is on the implementation of the Gautreaux program — the opportunities and constraints that characterized its first decade and a half. That discussion demonstrates why families' interest in the program grew and sustained itself at a high level, and why the supply of housing available to those families did not. The conclusion considers future prospects for such initiatives, based on the Chicago experience.

## II. THE CHA CASE

The immediate origins of the *Gautreaux* case lay in the post-War boom in the construction of public housing in Chicago and other cities.<sup>4</sup> In the Housing Act of 1949, Congress substantially increased

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4. DEVEREUX BOWLY, JR., *THE POORHOUSE: SUBSIDIZED HOUSING IN CHICAGO, 1895-1976* (1978); MARTIN MEYERSON AND EDWARD C. BANFIELD, *POLITICS, PLANNING*

the funding for the public housing program that it had created more than a decade earlier, in the depths of the Great Depression.<sup>5</sup> The Chicago Housing Authority (CHA) carried out a major expansion of its program in the 1950's and early 1960's by building a number of large scale, high-rise developments.<sup>6</sup> In 1966, a CHA tenant named Dorothy Gautreaux lent her name to a class action lawsuit claiming that CHA administered its program on a racially segregated basis. The plaintiffs also sued the U.S. Department of Housing and Urban Development (HUD) for funding and approving the discriminatory aspects of Chicago's program.<sup>7</sup>

No state or local law in Chicago required or explicitly permitted operation of the public housing program on a racially segregated basis. Nor did the CHA adopt a formal policy of segregation. The legal structure of segregation that pervaded school systems and other aspects of public life in the South during that period, and was struck down in *Brown v. Board of Education*<sup>8</sup> and subsequent cases, was not present in the *Gautreaux* case. Instead, the *Gautreaux* plaintiffs challenged CHA's informal, covert policies and practices that allegedly had both the intent and effect of producing a racially segregated public housing system in Chicago. At the time, the Supreme Court had not ruled in any case involving this northern pattern — actions by local officials in pursuit of segregation, without a formal mandate in state or local law.<sup>9</sup>

Although the district court had to operate in somewhat uncharted territory, it concluded that CHA discriminated intentionally and

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AND THE PUBLIC INTEREST: THE CASE OF PUBLIC HOUSING IN CHICAGO (1955).

The earlier origins of the case date back to the segregation and other forms of discrimination in housing against Blacks in the two great migrations of Blacks from the South to Chicago and other northern cities. ARNOLD R. HIRSCH, *MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO, 1940-1960* (1983). See also JAMES R. GROSSMAN, *LAND OF HOPE* (1989); NICHOLAS LEMANN, *THE PROMISED LAND* (1991); ALLAN H. SPEAR, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO, 1890-1920* (1967).

5. 42 U.S.C. § 1452(b) (1987). See generally Lisa J. LaPlace, *The Legality of Integration Maintaining Quotas: Fair Housing or Forced Housing?*, 55 *BROOK. L. REV.* 197, 205 (1989).

6. BOWLY, *supra* note 4; HIRSCH, *supra* note 4; MEYERSON AND BANFIELD, *supra* note 4.

7. *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969).

8. *Brown v. Board. of Educ.*, 347 U.S. 483, 493-94 (1954).

9. The Supreme Court first ventured into that territory in the Denver school case, which it decided several years after the district court in Chicago ruled on CHA's actions. *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973).

systematically both in selecting sites for public housing and in assigning tenants to developments.<sup>10</sup> CHA built most of its public housing in Black neighborhoods. Moreover, it used racially segregated waiting lists, and assigned mostly white tenants to the few developments in white areas.<sup>11</sup>

The court's remedial order left the existing public housing relatively intact, and focused on requiring the CHA to provide additional housing on a desegregated basis.<sup>12</sup> The court defined desegregation by specifying two types of areas based on their racial composition and mandating proportions of remedial housing to be located within each of them. The "limited area" was those census tracts with thirty percent or more Black populations, or within a mile of such areas.<sup>13</sup> The remainder was the "general area." The first 700 public housing units were to be located in the "general area." After that, three out of four apartments were to be in those predominantly white areas.<sup>14</sup>

In addition, the court required that the housing be provided on a "scattered site" basis. Instead of the concentrations of high-rise complexes that characterized much CHA housing, the remedial housing was to be low-rise, small buildings, located on a variety of sites rather than clustered.<sup>15</sup> The "scattered site" program was to include both new construction and small, privately owned apartment buildings that CHA would purchase, rehabilitate, and own.

The "scattered site" remedy applied primarily to Chicago, where the violation took place, and the plaintiffs lived. However, the court recognized that state law gave CHA the authority to operate outside of the city, under specified circumstances, including the agreement of relevant suburban public officials.<sup>16</sup> Consequently, the court gave CHA the option of providing up to one-third of the housing that was

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10. *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969).

11. *Id.*

12. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736, *enforcing* 296 F. Supp. 907 (N.D. Ill. 1969).

13. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736, 737 (N.D. Ill. 1969).

14. *Id.* at 738.

15. *Id.* at 739.

16. Under Illinois law, housing authorities may operate within the city and within three miles beyond the city boundaries, in unincorporated areas. In addition, a housing authority may operate elsewhere by contract with another housing authority or with a state public body not within the operation of another housing authority. ILL. REV. STAT. ch. 67 1/2, paras. 17(b), 27(c) (1989).

to go into predominantly white areas in such areas in suburban Cook County.<sup>17</sup>

Implementation of the "scattered site" program was virtually non-existent for the next five years.<sup>18</sup> No public housing was built in Chicago during that period. After that, the program proceeded at an extraordinarily slow pace. The obstacles to implementation were numerous and varied. First, local officials, including the CHA itself, the mayor, and the Chicago City Council opposed the program. They used a variety of means to thwart it, including refusals to identify potential sites for public housing or provide necessary approvals for sites that were proposed. Each of these actions — or inactions — necessitated returns to the district court for additional orders, with the inevitable delays involved in hearings and appeals.

In addition to the resistance from public officials, private citizens worked to frustrate implementation. When proposed sites were announced, they lobbied their city council representatives to block them. Also, private builders sometimes purchased proposed sites before CHA gained control of them, and developed them, thus precluding their use for public housing.

A decade after the initial order, the locational formula was changed by agreement of the parties.<sup>19</sup> They eliminated the requirement of the first 700 units going in the "general area," and substituted a one-to-one ratio for the requirement that three-fourths of the apartments go in those areas. This modification reflected both the difficulty of implementing the program in predominantly white areas and the need for additional low-income housing in the Black community. Even with these changes, however, public and private opposition continued to stall the program.

In 1984, with the beginning of the Harold Washington administration, there was finally local political support for the "scattered site" program. However, CHA's inability to administer the program competently continued to hamper it. Finally, in 1987, the district court, out of frustration with the excruciatingly slow pace of relief, acceded to plaintiffs' counsel's third request for the appointment of a receiver to administer the scattered site program and appointed a private developer to implement the new construction and rehabilitation

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17. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. at 739.

18. This account of the implementation process draws heavily on Leonard S. Rubinowitz, *Development of Chicago's Housing Assistance Plan* (1976) (unpublished, on file with author).

19. Alexander Polikoff, *Gautreaux & Institutional Litigation*, 64 CHI.-KENT L. REV. 451, 460 (1988).



elements of the program. Although the receiver accelerated the pace of both new construction and rehabilitation somewhat, HUD and CHA procedural requirements prevented any substantial growth in the program.

The first two decades after the initial court order demonstrated that fulfilling the court's goals was an extraordinarily difficult task. Fewer than 1,000 apartments for the plaintiff class were provided during that time period — both through new construction and rehabilitation. This was an average of less than 50 apartments per year, as compared to the rate of construction in the 1950's and early 1960's of over a thousand apartments a year.<sup>20</sup>

### III. THE OTHER GAUTREUX CASE: HUD AND METROPOLITAN RELIEF

The companion case against HUD took quite a different course from the CHA case. While the CHA litigation proceeded to a decision on liability and the court's adoption of a remedy, the court stayed the HUD case.<sup>21</sup> When the plaintiffs sought to revitalize it in the early 1970's, the district court's posture was quite different than it had been in the CHA case — both on questions of liability and remedy. However, the court of appeals and the Supreme Court had a broader view of the role HUD played in CHA's discriminatory history, and its potential remedial responsibilities.

#### A. THE ROAD TO THE SUPREME COURT: VIOLATION AND REMEDY

The HUD case went back and forth between the district court and the court of appeals before it reached the Supreme Court. The lower court dialogue operated on several levels. Both at the violation and remedial stages, these courts considered separation of powers questions — the extent to which federal courts should intervene in the administration of a federal agency's functions. But for present purposes, the more significant encounters were between contrasting conceptions of the nature and causes of, and solutions to, problems of race, poverty, and housing in American cities.

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20. See generally *Id.* at 452, 459-60. All of the apartments were located in the city, because suburban officials had rejected CHA's requests to build public housing beyond the city limits. Although the majority of these buildings were in predominantly white areas, a portion of this housing was in predominantly Black areas, pursuant to the racial formulas the court had adopted. For previous rate, see *BOWLY*, *supra* note 4, at 111-12.

21. *Hills v. Gautreaux*, 425 U.S. 284, 287 (1976); *Gautreaux v. Romney*, 448 F.2d 731, 733 (7th Cir. 1971).

The federal courts' decisions highlighted the tension between the goals of providing as much housing as possible for low-income people and bringing about racial integration through publicly funded housing programs. Although those objectives may be compatible in theory, the urban historical, political, and social context suggests the difficulty of reconciling them, in practice. Also implicit in the courts' debate is a clash between individualistic and communitarian conceptions, between ideologies and policies based on protecting individual rights, and those valuing and attending to the collective concerns of low-income Black urban communities.

The courts also struggled with the closely related question of whether central cities and their suburban rings are to be considered separable in addressing entrenched problems of race and poverty. One approach conceives of political boundaries as social boundaries — that city limits define and confine the problem, and therefore they constrain the solutions — at least the judicially imposed ones — geographically. A competing conception views metropolitan areas as integrally inter-related — that fundamental problems and solutions play themselves out on a regional canvas, so courts must do so, as well.

In addition to its theoretical implications, the dialogue between the district court and the court of appeals foreshadowed the feasibility questions that emerged at the implementation stage of the HUD case. Thus, their struggle with the issues of whether and where there was to be a federally initiated remedy serves as a useful introduction to a consideration of the possibilities for implementing such relief.

The district court found that HUD was not liable for CHA's discriminatory site selection and tenant assignment practices.<sup>22</sup> The opinion portrayed the federal agency as facing a dilemma. It tried vigorously, but unsuccessfully, to get CHA to operate on a non-discriminatory basis. Failing to accomplish that purpose, the agency had to continue funding the discriminatory program or deprive low-income families of much needed housing. HUD opted for the former, and the court found that decision to be within the agency's discretion.<sup>23</sup>

The court of appeals reversed, citing the extensive federal role not only in funding CHA's program, but in approving the discriminatory site selection and tenant assignment policies and practices.<sup>24</sup>

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22. *Gautreaux v. Romney*, 363 F. Supp. 690 (N.D. Ill. 1973).

23. *Id.*

24. *Gautreaux v. Romney*, 448 F.2d at 739-40.

The court found HUD liable because it was fully implicated in the local agency's conduct, and remanded the case to the district court for determination of appropriate relief.<sup>25</sup>

At the remedial stage, plaintiffs' counsel proposed that the court order HUD to provide metropolitan-wide relief rather than limiting the remedy to the City of Chicago.<sup>26</sup> HUD, on the other hand, proposed an order that would require it to use its "best efforts" to assist CHA in providing relief within the city.<sup>27</sup> Plaintiffs' counsel argued that it was necessary to reach out into the suburbs to provide relief for the more than 40,000 plaintiff class families, and the district court had the power to do so because the plaintiffs were entitled to full relief.<sup>28</sup> Moreover, a metropolitan-wide approach would have educational, employment and other benefits for class members.<sup>29</sup>

The district judge was not moved by these arguments, finding that any relief beyond the City of Chicago would be "improper" because the violation took place within the city and the plaintiff class members were all city residents.<sup>30</sup> Since the judge ruled on a motion asking him to consider metropolitan-wide relief, his decision addressed the abstract principle rather than any specific proposed metropolitan plan.<sup>31</sup>

Once again, the Seventh Circuit Court of Appeals reversed, holding that the district court's remedial power was not limited to the

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25. Note that the Seventh Circuit suggested that deference was appropriate, and a simple "best efforts" order might suffice. It was ironic that the Seventh Circuit took a different stand when the district court's remedial order reached the court of appeals. *Gautreaux v. Romney*, 448 F.2d at 740-41; *Gautreaux v. Romney* 363 F. Supp. 690 (N.D. Ill. 1973).

26. *Gautreaux v. Romney*, 363 F. Supp. at 690-91.

27. This proposal was consistent with the July 1969 order to CHA to use its "best efforts" to increase public housing opportunities as rapidly as possible. *Hills v. Gautreaux*, 425 U.S. 284, 290 n.8 (1976).

28. Memoranda in Support of Plaintiffs' Outline of Proposed Final Order Embodying Comprehensive Plan for Relief; Memorandum #2 - The Additional Dwelling Units to be Provided Should be Located Throughout a Defined Metropolitan Area (July 3, 1972).

29. *Id.*

30. *Gautreaux v. Romney*, 363 F. Supp. at 691. Judge Austin strenuously objected to considering "a metropolitan plan for relief against political entities which have previously had nothing to do with this lawsuit." *Id.*

31. However, parts of Judge Austin's opinion also suggested a ruling on the merits of the proposed metropolitan remedy. For example, Judge Austin stated that "[t]he factual basis for [the plaintiffs'] 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 . . . ." *Id.* Judge Austin found such a basis insufficient to impose relief extending beyond the city limits. *Id.*

City of Chicago.<sup>32</sup> After a rehearing, the court of appeals again concluded that metropolitan-wide relief was permissible, and remanded the case, with a somewhat ambiguous mandate, to the district court "for additional evidence and for further consideration of the issue of metropolitan area relief. . . ."<sup>33</sup>

While the district court's refusal to consider metropolitan-wide relief was on appeal, the Supreme Court addressed the question of the appropriate geographical scope of relief in a school desegregation case. Two years before the *Gautreaux* case reached the Supreme Court, the Court decided *Milliken v. Bradley*, involving a proposed metropolitan-wide remedy for school segregation in the Detroit public schools. The lower courts concluded that both local and state officials had discriminated against Black children in the Detroit schools.<sup>34</sup> They had also determined that an inter-district remedy that included suburban districts was necessary to desegregate the predominantly Black Detroit schools.<sup>35</sup>

In *Milliken v. Bradley*, the Supreme Court reversed the lower courts' decisions on the scope of the remedy. Desegregation measures could not extend beyond the central city, because the violation of the Black children's rights and the effects of that violation were limited to the City of Detroit.<sup>36</sup> Proof of an "interdistrict violation or effect" was necessary to enable the court to adopt an order requiring suburban school districts to participate in the remedy.<sup>37</sup> Otherwise, an interdistrict remedy would violate the Court's limitation on the judicial power, that the "scope of the remedy is determined by the nature and extent of the violation."<sup>38</sup> Although the Court's opinion did not preclude the possibility of metropolitan-wide remedies in school desegregation cases, it rejected that approach in this case, and imposed a heavy burden of justification for district courts contemplating interdistrict remedies in school desegregation cases.<sup>39</sup>

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32. *Gautreaux v. Chicago Housing Authority*, 503 F.2d 930, 934-36 (7th Cir. 1974).

33. *Id.* at 940.

34. *Bradley v. Milliken*, 338 F. Supp. 582 (E.D. Mich. 1971); *Bradley v. Milliken*, 484 F.2d 215 (6th Cir. 1973).

35. *Bradley v. Milliken*, 338 F. Supp. at 592-93; *Bradley v. Milliken*, 484 F.2d at 242. The lower courts had not adopted a specific remedy, but they had determined that the decree would encompass 53 suburban school districts in addition to the Detroit public schools.

36. *Milliken v. Bradley*, 418 U.S. 717, 752 (1974).

37. *Id.* at 744-45.

38. *Id.* at 744 (citing *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 16 (1971)).

39. Several lower courts adopted inter-district school desegregation remedies

The Seventh Circuit in *Gautreaux* attempted to distinguish the public housing situation, in general, and the Chicago facts, in particular, from the Detroit school desegregation situation in *Milliken*.<sup>40</sup> It cited evidence of racially segregated public housing patterns in suburban Cook County, and it also concluded that CHA's practices may have triggered "white flight" and the resulting segregation.<sup>41</sup>

#### B. THE SUPREME COURT DECISION

As the ultimate legal arbiter in the case, the Supreme Court's decision established the remedial parameters. It not only determined the permissible geographical scope of relief; but it also provided instructions to the district court that defined and limited the forms the remedy could take. In so doing, the Court provided both opportunities — the possibility of implementing relief on a metropolitan-wide basis, using recently enacted housing subsidy programs that relied heavily on the private market — and constraints — the protection of federal and local autonomy in ways that could significantly limit the effectiveness of the relief.

At the same time, the Court addressed only generally and briefly the meaning of "desegregation" — the racial aspect of relief. It left open questions such as the extent to which plaintiff class families could receive subsidies to live wherever they wanted, regardless of the racial composition of the area, or whether the remedy would be designed to produce racial integration, through low-income Black families moving into predominantly white areas. The subsequent resolution of those questions, which the Supreme Court left in the

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after the *Milliken v. Bradley* decision, after concluding that an inter-district violation or effect had been demonstrated. *Newburg Area Council, Inc. v. Board. of Educ.*, 510 F.2d 1358 (6th Cir. 1974), *cert. denied*, 421 U.S. 931 (1975); *Evans v. Buchanan*, 555 F.2d 373 (3rd Cir. 1977), *cert. denied*, 434 U.S. 880 (1977); *Liddell v. Missouri*, 731 F.2d 1294 (8th Cir. 1984), *cert. denied*, *Leggett v. Liddell*, 469 U.S. 816 (1984). The Supreme Court did not review any of these cases, thus letting the lower courts' inter-district remedies stand.

40. *Gautreaux v. Chicago Housing Authority*, 503 F.2d 930, 934-36 (7th Cir. 1974). The appellate court clearly held that local political subdivisions did not foreclose the district court's remedial power. In fact, the court stated that until *Milliken v. Bradley*, "the law was clear that political subdivisions of the states may be readily bridged when necessary to vindicate federal constitutional rights." 503 F.2d at 934. The court also stated that *Milliken* did not change this principle, but instead only established an equitable limitation of remedies, based on practicality concerns of imposing inter-district remedies. *Id.* at 935-36. Thus, the court saw its task as deciding what degree of housing desegregation was practical. *Id.* at 936.

41. *Gautreaux v. Chicago Housing Authority*, 503 F.2d at 938-39.

hands of the lower courts and the parties, had a crucial impact on the implementation possibilities.

The Supreme Court decided *Gautreaux* against the backdrop of the *Milliken* case. The Court's legal analysis focused almost exclusively on *Milliken*.<sup>42</sup> The Court rejected the Seventh Circuit's *Gautreaux* findings of interdistrict segregation and effects that would have put the case squarely within *Milliken*'s conditions for permitting areawide relief. Nevertheless, the Court unanimously affirmed the appellate court's conclusion that, unlike in *Milliken*, the district court had the authority to adopt a metropolitan-wide housing remedy.<sup>43</sup>

The Court linked permitting metropolitan relief and the privatization of federal housing programs. In the Court's scenarios, the possibilities of designing and implementing relief beyond the City of Chicago depended largely on utilizing the private housing market — especially new construction — through a rent subsidy program Congress enacted in 1974.<sup>44</sup> The Court also gave general guidance but no precise indication about what racial desegregation might mean in a metropolitan context. It noted that HUD operated under several Civil Rights and related statutes, and that the agency's compliance with its own legal mandates would ensure consistency with any racial requirements that the district court might impose.

At the same time that it considered the practical possibilities for metropolitan relief, the Supreme Court did not mandate it. The Court concluded only that the district court had the discretion to proceed in this direction if it deemed it appropriate.<sup>45</sup> However, the Court's discussion of these interrelated questions — the geographical scope of relief, the privatization focus, and the meaning of desegregation — was to have a crucial impact on what came after the Court's decision.

### 1. *Metropolitan-wide Relief*

The metropolitan question was the only one the Supreme Court actually decided. And the Court concluded only that there could be

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42. *Hills v. Gautreaux*, 425 U.S. 284, 292-306 (1976). The Court's opinion focused as much on the pragmatic question of operating housing programs on a metropolitan-wide basis as on legal analysis. See *infra* pages 605-11.

43. The vote was 8-0. Justice Stevens had sat on the Seventh Circuit while the *Gautreaux* case was pending, and did not participate in the Supreme Court's decision. Justice Marshall, along with Justices Brennan and White — three of the four dissenters in *Milliken* — concurred briefly to reiterate their disagreement with *Milliken* as having unduly limited the courts' remedial powers in desegregation cases. *Hills v. Gautreaux*, 425 U.S. at 306-07.

44. *Hills v. Gautreaux*, 425 U.S. at 303-05 (citing 42 U.S.C. §§ 5301-18 (Supp. IV 1970)); 42 U.S.C. §§ 1437-1437s (Supp. IV 1970).

45. *Hills v. Gautreaux*, 425 U.S. at 306.

such relief, not that there should be. Since there was no specific order before the Court, it did not need to decide on the appropriateness of particular remedial arrangements, such as desegregation goals and strategies, or the role of public and private entities in implementing relief. Nevertheless, Justice Stewart's opinion for a unanimous Court discussed these matters and spelled out metropolitan remedial possibilities in some detail.<sup>46</sup> He did so, presumably, in order to demonstrate the existence of metropolitan remedial options which would not run afoul of the *Milliken* limitations.

In affirming the possibility of a metropolitan-wide remedy, the Supreme Court reiterated that it had not established a *per se* rule in *Milliken*, which would preclude relief from extending beyond the geographical locale where the violation occurred.<sup>47</sup> The Court focused on two distinctions from the school desegregation context. First, HUD was the defendant in this branch of *Gautreaux*, and the agency's own definition of the appropriate geographical area for the operation of its programs recognized that "[t]he relevant geographic area for purposes of the respondents' housing options is the Chicago housing market, not the Chicago city limits."<sup>48</sup> HUD had developed the concept of a "housing market area" as the geographic area within which housing units are in competition with each other for homeseekers.<sup>49</sup> The point of reference for housing market areas was the private housing market, so these areas extended beyond central cities into the

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46. See *supra* note 27; *Hills v. Gautreaux*, 425 U.S. at 301-06.

47. *Hills v. Gautreaux*, 425 U.S. at 292-93, 296.

48. *Id.* at 299. See Leonard S. Rubinowitz & Roger J. Dennis, *School Desegregation Versus Public Housing Desegregation: The Local School District and the Metropolitan Housing District*, 10 URB. L. ANN. 145 (1975), for an extended discussion of the ways in which HUD administered its programs on an areawide or metropolitan basis.

In *Milliken*, the plaintiffs had established state liability. Although the State of Michigan's educational programs are not limited by the boundaries of Detroit, the Court did not accept the state's involvement as a basis for permitting relief beyond the city limits. The Court noted instead that local school districts constituted the traditional administrative units for carrying out school programs, and that the state of Michigan respected those boundaries. *Milliken v. Bradley*, 418 U.S. 717, 742-47 (1974).

The Court also noted that CHA had statutory authority to operate outside of the city, so its jurisdiction was not limited to Chicago. *Hills v. Gautreaux*, 425 U.S. at 298. The district court had made the same point in its 1969 order. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969). The Supreme Court did not pursue this point, presumably because HUD was the relevant defendant for this aspect of the case. *Hills v. Gautreaux*, 425 U.S. at 298-99.

49. *Hills v. Gautreaux*, 425 U.S. at 299.

suburbs where households also searched for housing.<sup>50</sup> Chicago's housing market area encompassed the six-county metropolitan area. So the court could order HUD to implement its programs to provide relief throughout that area.

More importantly, the Court concluded that it was possible to design a remedial order encompassing the suburbs that did not exceed the limitations the Court had articulated in *Milliken*. HUD had argued that any metropolitan housing remedy would violate *Milliken's* strictures and exceed the district court's power.<sup>51</sup> The Court concluded instead that it was feasible to design remedies against HUD that did not interfere with the powers of suburban local governments and housing authorities that had not been implicated in any wrongdoing.<sup>52</sup> So a metropolitan-wide remedy would be consistent with the Supreme Court's previously established principle that remedies could not extend beyond the violation.<sup>53</sup>

In support of its conclusion, the Court discussed ways an order would need to be limited to avoid intruding impermissibly on the powers of suburban governmental entities. The legal authority of suburban governments and public housing agencies to control housing development remained intact.<sup>54</sup> For example, under the traditional public housing program, the initiative rested with local officials to apply for federal funds. So the trial court could not require suburban officials to initiate public housing proposals that would accommodate Chicago residents.<sup>55</sup>

Moreover, local zoning and other land use controls would not be affected by any metropolitan-wide remedy.<sup>56</sup> As discussed below, the Court focused on construction of subsidized housing by private developers as a likely remedial vehicle.<sup>57</sup> Those developers would be subject to the usual local regulations. In short, the possibility of

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50. *Id.*

51. HUD claimed at oral argument "that court-ordered metropolitan relief in this case, no matter how gently it's gone about, no matter how it's framed, is bound to require HUD to ignore the safeguards of local autonomy and local political processes . . . ." *Hills v. Gautreaux*, 425 U.S. at 300. Much of the subsequent discussion in the opinion was designed to demonstrate that sufficiently "gentle" remedial possibilities existed that remained within the bounds of the judicial power.

52. *Hills v. Gautreaux*, 425 U.S. at 301.

53. *Milliken v. Bradley*, 418 U.S. 717, 744 (1974); *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 16 (1971).

54. *Hills v. Gautreaux*, 425 U.S. at 303.

55. *Id.*

56. *Id.* at 305; see discussion *infra* pp. 607-09.

57. See *infra* notes 69-74 and accompanying text.



shaping remedies that operated in the suburbs without coercing suburban officials was a crucial distinction from the *Milliken* scenario, where the remedy seemed to the majority of the Court to be destined to restructure dozens of suburban school districts against their will.<sup>58</sup>

Having concluded that it was legal for the remedy to extend beyond the central city, the Court's opinion left it to the district court to decide whether it was appropriate to do so in light of the facts of the case.<sup>59</sup> The Court did not discuss explicitly whether it was "necessary and appropriate" in this case to fashion a metropolitan-wide remedy. It sent the case back to the district court to determine the geographical scope and content of the relief.<sup>60</sup> However, the Court noted the extended difficulties the district court had encountered in overseeing relief in Chicago — a possible hint that relief beyond the city might be appropriate — as part of an effective remedy for the plaintiff class.<sup>61</sup> Moreover, the Court's extended discussion of possible metropolitan remedies indicated that the district court should give the metropolitan option serious consideration.

## 2. Privatization

In discussing the possibilities for metropolitan-wide relief, the Supreme Court began with a consideration of the federal subsidized housing programs that would be the remedial vehicles.<sup>62</sup> It discussed briefly the potential role of public housing, the program in which the violation had taken place; but the Court emphasized the important changes that had taken place in federal housing programs since the *Gautreaux* case had been decided in 1969. Congress had enacted the Section 8 rent subsidy program in 1974, and it had reallocated funds dramatically away from the traditional public housing program implicated in *Gautreaux*, and into the Section 8 program.<sup>63</sup>

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58. *Hills v. Gautreaux*, 425 U.S. at 296 (discussing *Milliken*, 418 U.S. at 771-75).

59. *Hills v. Gautreaux*, 425 U.S. at 305.

60. *Id.*

61. *Id.* at 289 n.8.

The appellate court's determination that a remedy extending beyond the city limits was both "necessary and equitable" rested in part on the agreement of the parties and the expert witnesses that "the metropolitan area is a single relevant locality for low rent housing purposes and that a city only remedy will not work."

*Id.* at 292 (citing *Gautreaux v. Chicago Housing Authority*, 503 F.2d 930, 936-37 (7th Cir. 1974) (also discussing "white flight")).

62. *Hills v. Gautreaux*, 425 U.S. at 303.

63. *Id.*; 42 U.S.C. § 1437 (1978).

The Section 8 program was a move toward privatization of federal housing subsidies. It provided rent subsidies for lower-income families to live in private housing.<sup>64</sup> Owners of newly constructed, rehabilitated, or existing housing received monthly payments on behalf of lower-income tenants.<sup>65</sup> Federal rent subsidies paid the difference between the market rent for the apartments and a specified percentage of tenants' income.<sup>66</sup>

The Supreme Court's opinion envisioned Section 8 — particularly the new construction component — as the central vehicle for any suburban initiatives the district court might undertake.<sup>67</sup> The Court observed that the Section 8 program both enlarged HUD's role in "the creation of housing opportunities" and "largely replaced the older federal low-income housing programs."<sup>68</sup> Consequently, Section 8 became the focal point of the Court's discussion.

The Court's discussion of hypothetical Section 8 remedies dealt almost exclusively with new construction.<sup>69</sup> The opinion scarcely mentioned the rehabilitation and existing housing components of the program. The Court was not explicit about why it examined only one aspect of the program, to the exclusion of the other two, especially in light of its view that the Section 8 program was the key to any possible metropolitan relief. One possibility is the Court continued the theme of the original remedy in the CHA case — the scattered site program, which featured new construction, particularly at the outset.<sup>70</sup>

The opinion's emphasis on distinguishing *Milliken* provides another possible explanation for this single focus, while also raising additional questions about the lack of attention to Section 8's existing

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64. 42 U.S.C. § 1437f(a) (1978).

65. 42 U.S.C. § 1437f(b)(1) (1978).

66. 42 U.S.C. § 1437f(c)(3) provides that the monthly assistance payment is the difference between the maximum monthly rental provided for in the contract and the rent the family must pay under 42 U.S.C. § 1437a(2). 42 U.S.C. § 1437a(a) states that a family will pay the greater of: (1) 30 percent of the family's monthly adjusted income, (2) 10 percent of the family's monthly income, or (3) the portion of other welfare assistance designated to meet the family's housing costs. 42 U.S.C. § 1437a(a) (Supp. 1991).

67. *Hills v. Gautreaux*, 425 U.S. at 303.

68. *Id.*

69. Sometimes, the Court's focus was explicitly on new construction. *Hills v. Gautreaux*, 425 U.S. at 304. At other points in the opinion, new construction is clearly assumed. *Id.*

70. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969).

housing element. On the one hand, new construction posed the greatest threat to the *Milliken* non-coercion requirement. New developments were subject to a whole panoply of local land use and other regulations of residential construction. So new construction triggered the most local government involvement and the greatest risk of coercion of local entities in pursuit of relief. Focusing on new construction enabled the Court to indicate that localities would retain their regulatory powers, thus demonstrating the possibility of relief that would not cross the *Milliken* line of coercing suburban public bodies not implicated in the violation.

On the other hand, if the Court's goal was to show the availability of metropolitan remedies that could order actions by HUD and leave local governments alone, developing hypothetical scenarios using Section 8's existing housing component would have been a more effective way to make the point. The existing housing approach does not necessitate involvement by local bodies. Local governments need not approve the program, because the housing already exists and tenants deal with private landlords. Public housing authorities may administer the contracts with private housing owners if they choose to do so; but the federal statute provides for HUD to carry out these responsibilities itself if a public housing authority does not wish to participate.<sup>71</sup> In short, the Section 8 existing housing program provided a non-coercive remedial option that the Court overlooked.

The Court's willingness to permit metropolitan remedies, in combination with its emphasis on private construction of Section 8 housing, made its discussion of local land use and other regulatory controls particularly important. The discussion of local authority was in the opinion, initially, because of the focus on metropolitan relief; but it took on special significance because the Court's hypothetical scenarios stressed Section 8 new construction. Although it was apparently dicta, since there need be no metropolitan relief whatsoever, the Court stressed that a metropolitan order would not "displace the rights and powers accorded local government entities under . . . existing land-use laws."<sup>72</sup> The Court's deference to local control meant that suburban communities' exercise of their regulatory authority could have a crucial impact on the implementation of the new construction approach the Court envisioned.

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71. 42 U.S.C. § 1437f(b) (Supp. 1991).

72. *Hills v. Gautreaux*, 425 U.S. 284, 305-06 (1975). The Court also indicated that local governments' powers under federal or state housing statutes would remain unaffected.

As in other metropolitan areas, many Chicago suburbs had policies and practices characterized by critics and some state courts in other parts of the country as "exclusionary zoning."<sup>73</sup> Under the Supreme Court's guidelines, even if the district court extended relief beyond the city limits, suburban communities apparently could continue to prohibit or limit apartment construction, specify minimum lot sizes, or take other measures that could impede or prevent construction of Section 8 developments providing housing for the plaintiff class.<sup>74</sup>

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73. For discussions of exclusionary zoning and remedies, see Terry D. Morgan, *Exclusionary Zoning: Remedies Under Oregon's Land Use Planning Program*, 14 ENVTL. L.J. 779 (1984); J. Gregory Richards, *Zoning for Direct Social Control*, 1982 DUKE L.J. 761; Linda Wintner, *An Argument for an Antitrust Attack on Exclusionary Zoning*, 50 BROOK. L. REV. 1035 (1984). For cases addressing exclusionary zoning, see *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975) (low and moderate income housing); *Simmons v. Royal Oak*, 196 N.W.2d 811 (Mich. Ct. App. 1972) (exclusion of multiple dwellings); *Girsh Appeal*, 263 A.2d 395 (Pa. 1970) (exclusion of multiple dwellings).

74. The import of the Court's discussion of land use controls is not entirely clear, however. First, it is arguably dicta, since it concerns a hypothetical state of affairs if the district court, on remand, determined that metropolitan relief was appropriate in this case. Moreover, the Court did not preclude the possibility of a specific and limited set-aside order in a particular instance where a local zoning ordinance or administrative decision prevented the construction of housing proposed as part of the remedy in the case. In fact, the Court referred in its opinion to a similar set-aside order the district court had issued a few years earlier in the CHA case, mandating that CHA proceed with development in spite of the lack of City Council approval of proposals pursuant to its state statutory mandate. The district court had set aside the operation of the state statute for purposes of this case only, without considering its constitutionality, because its operation impeded constitutionally mandated relief. The Seventh Circuit affirmed. *Gautreaux v. Chicago Housing Authority*, 436 F.2d 306 (7th Cir. 1970).

The Supreme Court's *Jenkins* decision, in 1990, created still more uncertainty about the possibility of a narrow set-aside of local regulatory authority in a post-Gautreaux remedy. *Missouri v. Jenkins*, 495 U.S. 33 (1990). In *Jenkins*, the Court affirmed the set-aside of a presumptively constitutional state property tax ceiling in order to permit a local school district to raise sufficient revenues to fund the desegregation program the district court had ordered after finding the district guilty of *de jure* segregation. In *Jenkins*, the defendant school district was to proceed as if the state limit did not exist, just as in the earlier chapter of the *Gautreaux* saga, the defendant CHA was to go ahead with construction without the state mandated City Council approval. In a hypothetical metropolitan Section 8 scenario, a set-aside would be on behalf of a private developer rather than the public housing agency, a distinction that simply adds to the uncertainty about the implications of the *Gautreaux* Court's deference to suburban governments.

### 3. *Desegregation*

When the Supreme Court turned to the question of desegregation, it followed the same approach it used in discussing the kinds of housing programs that might be used for remedial purposes. It illustrated, rather than mandated, possible directions the district court might go. The Court turned to statutory and administrative provisions relevant to site selection, as part of its effort to demonstrate that a metropolitan remedy could proceed within the existing programmatic and legal framework.<sup>75</sup> The Court concluded that from a desegregation standpoint, a metropolitan-wide order could simply require HUD to do what it was already authorized or required to do under relevant civil rights statutes — Title VI of the 1964 Civil Rights Act and the Fair Housing Act of 1968 — and their implementing regulations.<sup>76</sup> The Fair Housing Act even required that HUD administer its programs affirmatively to further fair housing.<sup>77</sup> The Court was deferential to the agency in suggesting that an order might simply require it to meet its statutory obligations or to exercise its administrative discretion in particular ways.<sup>78</sup>

With its emphasis on new construction — particularly through the Section 8 program — the Court's consideration of desegregation

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75. *Hills v. Gautreaux*, 425 U.S. at 301-05.

76. *Id.* at 301, 302; 42 U.S.C. § 2000d (1981); 42 U.S.C. § 3601 (1968); 24 C.F.R. § 200.710 (1981). As the Court noted, Title VI, which prohibits racial discrimination in federally funded programs, is the statute that the court of appeals found HUD had violated. *Hills v. Gautreaux*, 425 U.S. at 301 n.17.

42 U.S.C. § 5301 (1974). As the Court noted, the federal Fair Housing Act post-dated the violations in the *Gautreaux* case; but it would guide HUD's actions in any prospective relief in the case.

The *Gautreaux* case and other civil rights litigation had influenced HUD's regulations in this regard. George Lefcoe, *From Capitol Hill: The Impact of Civil Rights Litigation on HUD Policy*, 4 *URB. LAW.* 112, 114-16 (1972); David O. Maxwell, *HUD's Project Selection Criteria — A Cure for "Impermissible Color Blindness?"* 48 *NOTRE DAME L. REV.* 92, 100-01 (1972).

77. *Hills v. Gautreaux*, 425 U.S. 284, 302-03; 42 U.S.C. § 3601 (1968); see Leonard S. Rubinowitz & Elizabeth Trosman, *Affirmative Action and the American Dream: Implementing Fair Housing Policies in Federal Homeownership Programs*, 74 *Nw. U. L. REV.* 491 (1979), for an extended discussion of the ambiguities and complexities in interpreting this "affirmative mandate."

78. Although the tone was deferential, HUD might well have viewed the prospect of the court requiring it to exercise its discretion in some ways and not others as particularly intrusive. See *infra* note 87 and accompanying text (discussing why the parties negotiated rather than continuing to litigate, as the Supreme Court envisioned).

focused on site selection. The Court pointed to HUD regulations and site selection criteria for new construction as sources of relevant policy in this area.<sup>79</sup> Those provisions emphasized funding developments that would expand housing opportunities outside areas of minority concentration.<sup>80</sup> Significantly, the Court's broad brush approach to site selection did not preclude the kind of hybrid approach adopted in the CHA case, which balanced integration and other goals by requiring that some "remedial" housing developments go in largely white areas and permitting others in predominantly Black areas.<sup>81</sup>

The Court did not discuss the locational implications of remedies that used the Section 8 existing housing program, because its focus was on new construction. Existing housing strategies provided an opportunity for families to make locational decisions, rather than public or private developers.<sup>82</sup>

The Court touched on one other locational matter, however. It referred to the 1974 Housing and Community Development Act, in

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79. *Hills v. Gautreaux*, 425 U.S. at 302; HUD Evaluation of Rent Supplement Projects and Low-Rent Housing Assistance Applications, 37 Fed. Reg. 203 (1973).

80. Ironically, the Court emphasized regulations that applied to the traditional public housing program, while its programmatic discussion focused on Section 8 as having largely replaced public housing. *Hills v. Gautreaux*, 425 U.S. at 302-05.

The Court did not interpret these provisions or discuss HUD's interpretation or implementation of them, except to refer to a study showing that the interpretations varied among HUD field offices. *Hills v. Gautreaux*, 425 U.S. at 302 n.18 (citing DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, IMPLEMENTATION OF HUD PROJECT SELECTION CRITERIA FOR SUBSIDIZED HOUSING: AN EVALUATION 116-18 (Dec. 1972)).

81. The Court had described, without comment, the original remedy, which permitted part of the new construction to go into the "limited housing area." *Hills v. Gautreaux*, 425 U.S. at 288; *See also supra* pp. 595-96 (discussing the hybrid approach in the original order and the court permitting more housing in predominantly Black areas in a subsequent order modifying the 1969 decree).

HUD regulations also did not preclude providing subsidized housing in predominantly Black neighborhoods, except under specified circumstances. Arguably, however, the regulations the Court cited are strongly integrationist and biased against Black area construction, if taken literally; but the Court cited a study that found HUD field offices varied substantially in interpreting and applying the regulations. *See* 24 C.F.R. § 200-710 (1975). The Court also cited language in statutes and regulations about "choice," an ambiguous term that could also suggest the possibility of housing in predominantly Black areas.

*See also infra* pp. 613-15 (discussion of the consent decree). The district court's opinion noted that the court had never precluded providing housing in Black areas as part of the relief in the case.

82. *See infra* pp. 616-17. For a discussion of alternative interpretations of the Fair Housing Act's "affirmative mandate," as applied to existing housing, see Rubinowitz & Trosman, *supra* note 77, at 533-65.

which Congress sought to promote greater choice of housing opportunities for lower-income people and to “avoid undue concentration of assisted persons in areas containing a high proportion of lower-income persons.”<sup>83</sup> Although the *Gautreaux* claims had always been about racial discrimination, in citing the 1974 statute, the Court implicitly recognized that the case had economic class implications as well as racial ones because the plaintiff class consisted entirely of low-income families.<sup>84</sup> Economic integration emerged as an increasingly important aspect of the remedy after the Supreme Court’s decision. In light of the demographics of suburbia, metropolitan-wide racial desegregation would also lead to economic integration. The Supreme Court’s reference to the 1974 Act foreshadowed that eventuality.<sup>85</sup>

With its remand, the Supreme Court left the district judge with a good deal of discretion — not only on the threshold question about whether there was to be a metropolitan-wide remedy, but also on what the content of any remedy adopted the court. At the same time, the Court placed significant limitations on the district court’s remedial powers.<sup>86</sup> Its remedial framework established the initial opportunities and constraints that would ultimately affect the implementation of relief.

### C. NEGOTIATING AN AGREEMENT: THE INVENTION AND EVOLUTION OF THE GAUTREUX PROGRAM

Supreme Court decisions are often both endings and beginnings. The Court’s 1976 *Gautreaux* decision concluded a legal struggle to determine whether the remedy could extend beyond the borders of the City of Chicago. In answering in the affirmative, the Court’s decision planted a seed that developed into a housing program for low-income Black families to move throughout the Chicago metropolitan area.

However, the remedial program did not come about according to the Supreme Court’s script — a remand for additional hearings, leading to the district court’s determination about the scope and content of relief. Instead, lawyers for the plaintiff class and HUD arrived at an informal short-term agreement to experiment with a

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83. *Hills v. Gautreaux*, 425 U.S. 284, 304 (1975) (quoting 24 C.F.R. § 880.203(b)).

84. The Court did not make explicit that the provision it cited was not about race, nor did it explain why it viewed the HCDA as relevant to a racial desegregation remedy. See *Hills v. Gautreaux*, 425 U.S. at 302-04.

85. See *infra* note 144 and accompanying text.

86. See *supra* pp. 604-05.

metropolitan approach to relief.<sup>87</sup> In the process of negotiation, they also engaged in social invention — using existing federal housing programs, exploiting the latitude and avoiding the constraints in the Supreme Court opinion, and learning from the frustrations with the scattered site program — to create a region-wide program designed to create housing opportunities at a much faster pace than in the past.<sup>88</sup>

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87. Plaintiffs' counsel did not want to repeat the experience of the CHA case, with lengthy and extensive litigation and little housing to show for it. Their willingness to negotiate was a reflection of the frustration with a decade of hearings, opinions, orders, and appeals, which had produced only token relief in the city. *See supra* notes 18-20 and accompanying text (discussing CHA remedy and implementation). An informal agreement process presented the possibility of providing relief more quickly than in the scattered site program.

It appeared ironic that HUD negotiated even a temporary remedial settlement, in light of its aggressive and persistent opposition to the plaintiffs' counsel's remedial proposals. After all, HUD had taken the case all the way to the Supreme Court to prevent even the consideration of a metropolitan-wide order. *See supra* notes 22-41 and accompanying text (discussing the path to the Supreme Court). However, part of HUD's motivation all along presumably was to preserve its administrative prerogatives, rather than having the federal court impose additional restraints on the agency's subsidized housing programs. Negotiating an agreement reduced the chances of further judicial intrusion, both in this case and others around the country where a judicially-imposed Chicago metropolitan-wide order might serve as a precedent.

Moreover, HUD shared an interest with plaintiffs' counsel in bringing about housing opportunities rather than perpetuating time-consuming and costly litigation. Providing housing could not only ensure relief for plaintiff class members; it would also ultimately end the litigation against HUD and remove the specter of judicial intervention. As noted, *supra* notes 48-50 and accompanying text, HUD policy was also consistent with a metropolitan-wide approach.

For both parties' counsel, reaching an agreement avoided the uncertainty about the scope and nature of relief the court might adopt. In the absence of precedents on what circumstances would make metropolitan relief "necessary and appropriate," and with little guidance from the Supreme Court on that point, the parties had little basis for predicting what the district court would do on remand. *See supra* notes 46-60 and accompanying text.

Finally, both parties preserved their option to litigate further. The agreement was temporary and the initiatives experimental. Either party was free to return to court if it was dissatisfied with the way things worked out under the agreement. Agreement Between Plaintiffs and HUD Concerning Implementation of the Gautreaux Supreme Court Decision, [4 Current Developments] Hous. & Dev. Rep. (BNA), at 40 (June 7, 1976) [hereinafter Letter of Agreement].

88. The Gautreaux Assisted Housing Program — or Gautreaux program, was the result of a relatively brief series of meetings. Alexander Polikoff, chief counsel for the plaintiffs, Kale Williams, Executive Director of the Leadership Council for Metropolitan Open Communities, and Irving Gerick, Director of the Illinois Housing Development Authority, developed the broad outlines of the program. Polikoff then



The centerpiece of their agreement was a one-year "demonstration" program to assist plaintiff class families to move into existing private rental housing throughout the six-county Chicago metropolitan area.<sup>89</sup> This created a second remedial track in the case, separate and distinct from the scattered site public housing program in Chicago. The goal of the new, metropolitan-wide initiative was to use Section 8 rent subsidy funds to facilitate the relocation on a dispersed basis of 400 families, into existing private housing, primarily in predominantly white areas of the region.<sup>90</sup> HUD was to contract with the Leadership Council for Metropolitan Open Communities, a private, non-profit fair housing agency, to bring together families and landlords to participate in the program.<sup>91</sup>

For the next several years, the parties continued to chart a remedial course by informal agreements. In 1981, the district court adopted a consent decree the parties proposed, based on the metropolitan-wide program developed in 1976.<sup>92</sup>

### 1. *Metropolitan-Wide Scope of the Program*

With the 1976 agreement, the geographical area within which families could secure housing to vindicate their constitutional rights suddenly expanded dramatically.<sup>93</sup> Even so, the metropolitan focus was initially temporary and tentative.<sup>94</sup> The parties explicitly took no position on their ultimate views regarding metropolitan-wide relief. Instead, the demonstration program would enable them to explore the question so that they and the court could address it on a more informed basis, on a later day.<sup>95</sup> Finally, the district court formally

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refined the program in meetings with Robert Elliott, General Counsel of HUD. Interview with Kale Williams, Leadership Council for Metropolitan Open Communities, in Chicago, Ill. (Mar. 10, 1992). [hereinafter Kale Williams Interview, 3/10/92].

89. Letter of Agreement, *supra* note 87, at 40. The agreement also provided for HUD to encourage developers involved in construction or rehabilitation of HUD-assisted housing in the region to "make special efforts to house" plaintiff class families. *Id.* at 40.

90. *Id.*

91. *Id.*

92. See *Gautreaux v. Landrieu*, 523 F. Supp. 665, 672-83, *aff'd*, *Gautreaux v. Pierce*, 690 F.2d 616, 638 (7th Cir. 1982).

93. The area included the suburban portions of Cook County and five additional counties.

94. *Gautreaux v. Landrieu*, 523 F. Supp. at 668.

95. Letter of Agreement, *supra* note 87, at 40. Presumably, in part because of the tentative and exploratory nature of the regional approach, the agreement con-

adopted the metropolitan approach in its 1981 consent decree, determining "that metropolitan area relief is necessary under the circumstances of this case."<sup>96</sup> The court referred to the extraordinary delays in the scattered site program in the city, resulting in only token relief in more than a decade and the need for broader measures to ensure needed relief in the foreseeable future.<sup>97</sup>

The consent decree also quantified HUD's ultimate remedial responsibility. The agency's obligation was to assist 7,100 additional plaintiff class families to relocate, consistent with the provisions of the decree.<sup>98</sup>

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tained no rationale for extending the program beyond the city limits. The decision to do so reflected instead the results of the negotiation. For plaintiffs' counsel, securing an agreement to make the program metropolitan-wide was the threshold matter. Without such an agreement, plaintiffs' counsel would have followed the course the Supreme Court envisioned, returning to court to seek an order covering the suburbs.

Although HUD strenuously objected to judicial imposition of a metropolitan-wide order, HUD policies were consistent with a metropolitan-wide housing strategy. The agency administered many of its programs on that basis. See *supra* notes 40-61 and accompanying text. The Housing and Community Development Act of 1974 reinforced that view. *Hills v. Gautreaux*, 425 U.S. 284, 302-05 (1975). And HUD's civil rights policies had evolved in that direction, as well. *Lefcoe*, *supra* note 76, at 114-16.

The tentative nature of the metropolitan agreement also facilitated HUD's agreement. If the program had failed, HUD would have been able to oppose such an approach in court, based on empirical evidence supporting its position.

Plaintiffs agreed not to seek a metropolitan-wide order from the court for at least nine months. Letter of Agreement, *supra* note 87, at 41. Subsequently, two additional temporary agreements extended the metropolitan-wide program into 1981.

96. *Gautreaux v. Landrieu*, 523 F. Supp. at 674.

97. *Id.* at 666-68, 671-72. Still, there remained no systematic judicial articulation of the basis for a metropolitan-wide remedy in the case. With the Seventh Circuit's affirmance of the consent decree without requiring further explanation of the rationale, it appeared that metropolitanization was a fixture of relief — even if it had not been fully explained by the courts. *Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982).

98. *Gautreaux v. Landrieu*, 523 F. Supp. at 674. The court of appeals affirmed the consent decree. The consent decree was challenged on various grounds by three groups: (1) the Illinois Housing Development Authority; (2) neighborhood organizations; and (3) individual class members. *Id.* at 669.

The court of appeals pragmatically noted that "[a]s the essence of settlement is compromise, a consent decree is never a totally satisfactory victory on all issues for all parties." *Gautreaux v. Pierce*, 690 F.2d at 637.

The 7,100 figure was arrived at through negotiations between counsel for plaintiffs and HUD. It does not purport to bear a precise relationship to the violation, especially since the HUD initiatives were only a portion of the relief in the case.

## 2. *A Move Toward Privatization*

The parties followed the Supreme Court's lead in emphasizing the private market and relegating the public housing program to a minor role. Their agreement mentioned the public housing program only as a possibility they might explore separately from the central initiatives.<sup>99</sup> So the public housing program, where the violation occurred, was to play little or no role in HUD fulfilling its remedial obligations. This approach was in contrast to the original scattered site public housing remedy in the CHA case.<sup>100</sup>

The parties had several reasons for de-emphasizing public housing. As the Supreme Court acknowledged, Congress began in the mid-1970's to phase out funding for new public housing, in favor of the more market-oriented Section 8 program.<sup>101</sup> Also, earlier experience in the *Gautreaux* case suggested that suburban officials would not voluntarily seek federal funds for public housing that would include Chicago residents.<sup>102</sup> Public housing agencies in Chicago's suburbs had built little housing for families over the years.<sup>103</sup> What they had built had been for suburban residents and was located mostly in predominantly Black neighborhoods.<sup>104</sup> Consequently, the Supreme Court's reaffirmation of local autonomy discouraged efforts to use the public housing program beyond the city limits. Finally, the experience with the scattered site program did not bode well for using public housing as a remedial vehicle.<sup>105</sup> Section 8, with its emphasis on the private market, seemed more promising than public housing, if only by default after seven years of minuscule amounts of public housing production.

Although both the Supreme Court opinion and the parties' agreement largely ignored public housing and focused instead on the Section 8 rent subsidy program and increased use of the private

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99. Letter of Agreement, *supra* note 87, at 40.

100. *See supra* pp. 594-95. As discussed *supra*, at page 596, however, the CHA remedy was also partially privatized, with the appointment of a private receiver, in 1987. Also, CHA contracted out management of scattered site housing to private real estate firms and non-profit entities, starting in 1984. With those changes, scattered site housing ownership remained public; but construction, rehabilitation, and management had all shifted into private hands.

101. *See supra* note 63 and accompanying text.

102. Elizabeth Warren, Center for Urban Policy, Loyola University Chicago, Urban Insight Series, No. 8, Subsidized Housing in the Chicago Suburbs 3-18 (1981).

103. *Id.*

104. Plaintiffs' Exhibit 11, as cited in *Gautreaux v. Chicago Housing Authority*, 503 F.2d 930, 937 (1974); Warren, *supra* note 102.

105. *See supra* notes 18-20 and accompanying text.

housing market, the metropolitan-wide program spelled out in the 1976 agreement differed sharply from the hypothetical remedies that the Supreme Court had discussed.<sup>106</sup> The Supreme Court focused almost exclusively on Section 8 new construction. In contrast, the parties' demonstration program emphasized the Section 8 existing housing program, which the Supreme Court barely mentioned.<sup>107</sup> The parties' approach included only a subsidiary role for Section 8 new construction.<sup>108</sup>

The parties focused on existing housing for several reasons. First, the Section 8 program provided a vehicle for providing low-income households access to the existing stock. And the experience with the scattered site program revealed the severe obstacles involved in new construction, in addition to the problems in relying on the public housing agency for implementation.<sup>109</sup>

The 1969 order mandated that CHA add to the supply of housing as rapidly as possible. Throughout the CHA case, the emphasis remained on new construction and rehabilitation, which may have influenced the Supreme Court's vision of metropolitan remedial approaches.<sup>110</sup>

Moreover, the Supreme Court's discussion of Section 8 new construction reduced the appeal of that route, by emphasizing that local land use controls would continue to prevail.<sup>111</sup> Exclusionary zoning and related policies and practices were widespread in Chicago's suburbs.<sup>112</sup> Challenging local barriers in predominantly white, middle-class suburbs in federal or state court remained costly and time-

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106. See *supra* notes 51-86 and accompanying text.

107. Letter of Agreement, *supra* note 87, at 40. See also Rubinowitz & Kenny, *supra* note 2, at 3-1. When the federal district court formally adopted the program through a consent decree in 1981, the consent decree characterized it as a program in "existing housing throughout the Chicago metropolitan area." *Gautreaux v. Landrieu*, 523 F. Supp. 665, 668 (7th Cir. 1982).

108. Letter of Agreement, *supra* note 87, at 40. The Letter of Agreement stated that HUD *may* advertise for roughly 1,500 Section 8 new construction units. However, this approach was optional and only addressed briefly after the existing housing approach. The consent decree formalized the set-aside approach. *Gautreaux v. Landrieu*, 523 F. Supp. at 677.

109. See *supra* notes 18-20 and accompanying text.

110. See *supra* notes 13-17 and accompanying text.

111. See *supra* notes 52-56 and accompanying text.

112. See Leonard S. Rubinowitz & Scott Young, *Exclusionary Land Use Controls in Illinois* (1983) (on file with the author). See generally LEONARD S. RUBINOWITZ, *LOW-INCOME HOUSING: SUBURBAN STRATEGIES* 27-44 (1974); Lawrence Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 *STAN. L. REV.* 767 (1969).

consuming, with uncertain results.<sup>113</sup> Consequently, the Court's reaffirmation of the role of these regulatory schemes made new construction more problematic than if there had been an opportunity to set aside local land use controls in the interest of implementing relief.<sup>114</sup> Even if judicial set asides had been available, the possibility of having to return to court would have made the new construction approach relatively unappealing.

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113. The litigation over exclusionary zoning in Arlington Heights, Illinois is one example. This litigation took approximately seven years (1974-1980) before the parties agreed on an alternative development site. See *Metropolitan Housing Dev. Corp. v. Arlington Heights*, 616 F.2d 1006 (7th Cir. 1980). The Arlington Heights litigation was still pending when the Letter of Agreement was negotiated. A year later, the Supreme Court upheld the village's zoning, which excluded a proposed subsidized, racially mixed development, against an equal protection challenge, because the plaintiffs had not shown intentional racial discrimination by the village. *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977).

On remand, the Seventh Circuit indicated that the village might have violated Title VIII of the 1968 Civil Rights Act — the Federal Fair Housing Act — because of the racially disparate impact of its zoning decision. *Metropolitan Housing Dev. Corp. v. Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977). The court remanded the case to the district court for a decision on this question. *Metropolitan Housing Dev. Corp. v. Arlington Heights*, 469 F. Supp. 836 (N.D. Ill. 1979). The parties negotiated a settlement by agreeing on an alternative site for the development, which was completed in 1980. See *Metropolitan Housing Dev. Corp. v. Arlington Heights*, 616 F.2d 1006 (7th Cir. 1980).

The plaintiff in that case was the Metropolitan Housing Development Corporation (MHDC), which was affiliated with the Leadership Council for Metropolitan Open Communities, a key actor in the development of the Letter of Agreement. See *supra* note 88.

In other parts of the country, exclusionary zoning litigation has also been time-consuming and costly. See *Southern Burlington County NAACP v. Mount Laurel*, 336 A.2d 713 (N.J. 1975). Even where courts have struck down local controls and imposed affirmative obligations, as in New Jersey, there has been little housing construction for low and moderate-income people as a result. See Martha Lamar et al., *Mount Laurel at Work: Affordable Housing in New Jersey: 1983-1988*, 41 RUTGERS L. REV. 1197 (1989); Richard Briffault, *Our Localism: Part I — The Structure of Local Government Law*, 90 COLUM L. REV. 1, 52 (1990); John Edward Cribbet, *Concepts in Transition: The Search for a New Definition of Property*, 1986 U. IND. L. REV. 1, 33-34 (1986); A. Dan Tarlock, *Remedying the Irremediable: The Lessons of Gautreaux*, 64 CHI-KENT L. REV. 573, 581 (1988).

114. See *supra* pp. 604-05. At the same time, the new construction option was not ignored in the Letter of Agreement. Letter of Agreement, *supra* note 87, at 40. Subsidized housing had been built in a number of Chicago's suburbs, thus suggesting that new construction options had some potential. Warren, *supra* note 102, at 22. That experience supported the inclusion of a new construction provision in the Letter of Agreement.

Further, the normal delays in planning and building multi-family housing meant that any new construction strategy would take several years to begin to bear fruit. In a case fraught with extensive delays throughout its history, the parties shared an interest in speeding up the process of providing housing. Gaining access to the existing stock became a key to the agreement.

The “demonstration” program that was the centerpiece of the parties’ 1976 agreement — later called the Gautreaux Assisted Housing program or simply the Gautreaux program — was designed to tap the private housing market.<sup>115</sup> The program was a hybrid, with the private housing market, government, and a private, non-profit entity intimately involved. HUD had two key responsibilities — providing rent subsidies on behalf of plaintiff class families pursuant to Section 8 regulations, and funding the administration of the program by the Leadership Council for Metropolitan Open Communities.<sup>116</sup>

Although the program was far from an example of pure privatization, the role of private landlords was crucial. Plaintiff class families were to move into existing private housing throughout the Chicago metropolitan area.<sup>117</sup> Local public housing authorities also participated in the program. The Chicago Housing Authority and several of its suburban counterparts assumed traditional roles under the existing housing component of Section 8, such as inspecting apartments and forwarding monthly rent checks to landlords.<sup>118</sup>

The Leadership Council’s role was also key. Through a contract with HUD, it served as a matchmaker, or broker, bringing together families interested in participating and landlords willing to accept them.<sup>119</sup> The parties assumed that such an intermediary was necessary to make the market function effectively in this new and uncharted situation. Families had to be found, screened, counseled, and prepared for moves that might be near or far. Landlords had to be educated about the program, and persuaded to participate in it. Leaving it to the vagaries of the marketplace would not suffice.

Finally, the move toward privatization included a new construction component. HUD was to encourage private developers it assisted

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115. Letter of Agreement, *supra* note 87, at 40. The description of the Gautreaux program occupied almost half of the letter and was the central focus of discussions among lawyers and other participants in the planning process.

116. *Id.*; Rubinowitz & Kenny, *supra* note 2, at 11-13.

117. Letter of Agreement, *supra* note 87, at 40.

118. Rubinowitz & Kenny, *supra* note 2, at 59-72, 111-15.

119. The Leadership Council was to “locate, counsel and assist members of the plaintiff class to find existing units, and locate owners of housing willing to participate in the demonstration program.” Letter of Agreement, *supra* note 87, at 40.

in the Chicago metropolitan area to accept plaintiff class families as tenants.<sup>120</sup> In 1977, HUD agreed to require those developers to set aside a percentage of their apartments for these families.<sup>121</sup> When builders proposed developments and secured federal assistance and local zoning and construction approvals, they might also participate in the remedial process; but new construction was more supplementary than central to the parties' metropolitan strategy.<sup>122</sup>

#### IV. IMPLEMENTING THE GAUTREUX PROGRAM: OPPORTUNITIES AND CONSTRAINTS

In the first fifteen years of the Gautreaux program, 4,500 participating low-income Black families relocated in private housing throughout the Chicago metropolitan area.<sup>123</sup> The majority of them moved into about 115 predominantly white middle-class suburbs, providing a degree of racial and economic integration in those communities.<sup>124</sup> The rest of the families moved into more integrated and predominantly Black areas, largely within the City of Chicago.<sup>125</sup>

The scale of the Gautreaux program far exceeded that of the other remedy in the case, the scattered site public housing program.<sup>126</sup> Even though it began seven years later, by the early 1990's, the Gautreaux program had housed more than four times as many plaintiff class families as the scattered site initiative.

Structural differences between these two remedies help to explain their contrasting outcomes; but those differences also suggest the constraints that limited the scale of the Gautreaux program. First, the scattered site program operated entirely within the City of Chicago, while the Gautreaux program also encompassed the suburbs through-

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120. *Id.*

121. Letter from Ruth T. Prokop, then General Counsel of HUD, to Alexander Polikoff (July 29, 1977).

122. This discussion includes two different meanings for the term "set-aside." The first refers to a court setting aside a statute or ordinance, rendering it temporarily or partially inoperative, for remedial purposes. The other refers to developers reserving apartments for members of the plaintiff class. The two uses relate to each other, because the Letter of Agreement envisioned developers reserving apartments for plaintiff class families. In theory, such developers might have been able to build if the court set aside a local zoning ordinance where the community's zoning scheme excluded the proposed development.

123. Kale Williams Interview, 3/10/92, *supra* note 88.

124. *Id.*

125. *Id.*

126. *See supra* pp. 596-97.

out the six-county area.<sup>127</sup> Moreover, the scattered site program was a public housing program, administered for its first two decades by the Chicago Housing Authority, while the Gautreaux program utilized the private housing market through the Section 8 rent subsidy program, and a non-profit fair housing organization administered the program.<sup>128</sup> Perhaps equally important, the Gautreaux program emphasized placing people in existing housing, while the scattered site remedy concentrated on constructing new housing and rehabilitating substandard housing.

Using existing private rental housing throughout the metropolitan area enabled the Gautreaux program to far outpace its city counterpart. Significantly, it enabled the program to avoid the community resistance that stymied the scattered site program.

However, the private housing market in predominantly white areas of the suburbs and the city also acted as the most serious constraint on the scale of the program. Families' interest in participating greatly exceeded the amount of housing available to them through the Gautreaux program. The existing supply did not fully match the needs of plaintiff class families, especially for larger families. Moreover, market forces and HUD regulations put much rental housing beyond the financial reach of the program. Most importantly, landlord participation was voluntary, and many landlords and property managers accepted very few families through the program, or declined to participate at all.

As a result, the program proceeded at a steady, but modest pace. Its emphasis on low-income Black families moving into predominantly white, middle-class communities meant that the program was unable to make a breakthrough in the amount of housing available and the number of families assisted.

#### A. THE DEMAND: FAMILIES' INTEREST IN THE PROGRAM

At first, the Gautreaux program elicited skepticism as well as interest.<sup>129</sup> Some of those who contacted the Leadership Council replied to the agency's suggestion that they move to the suburbs with

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127. See *supra* note 20.

128. See *supra* p. 596.

129. The Leadership Council began to notify public housing tenants and people on the waiting list by mail late in 1976. Of the 19,693 letters originally mailed by the Leadership Council, there were 2,733 responses. In addition, 3,588 were returned undelivered from the Post Office. The rate of such returns was much higher for families on the waiting list than those actually in CHA developments, as the list contained many old addresses. Rubinowitz & Kenny, *supra* note 2, at 9-10.



“Are you crazy?”<sup>130</sup> They had lived their whole lives in the inner city and could not envision moving to suburbs they had never even heard of.<sup>131</sup>

Moreover, relatively few people knew about the program in its early stages.<sup>132</sup> The Leadership Council played the primary formal role in informing potential participants about the program. The Council’s original notification system, sending postcards to selected eligible families, largely failed to reach those families.<sup>133</sup>

130. Mary A. Davis, Associate Director, Leadership Council for Metropolitan Open Communities, Presentation at the Chicago Area Fair Housing Alliance Seminar (June 24, 1992) [hereinafter Mary Davis at Gautreaux Seminar].

Anthony Downs, a noted urban analyst then based in Chicago, advocated adoption of public policies that would facilitate the movement of low-income families to middle-class suburban communities; but he expressed doubts about families’ willingness to make those moves — willingness that was crucial in any voluntary initiative like the Gautreaux program:

Ironically, one of the most difficult parts of developing effective economic integration will be motivating central-city low-and moderate-income households to move into suburban neighborhoods. Most residents of crisis ghetto areas will not hesitate to move elsewhere if they have a chance. But some will be reluctant to leave central cities. Many black households in particular will want to remain in or near large all-black areas rather than move into largely white neighborhoods.

ANTHONY DOWNS, *OPENING UP THE SUBURBS: AN URBAN STRATEGY FOR AMERICA* 136-37 (1973). This book remains the most extensive exposition of the rationale for, and means of, opening the suburbs to low-income people from the cities. The Gautreaux program represents one of the few initiatives that has attempted to put Downs’ strategies to work. See also RUBINOWITZ, *supra* note 112.

131. Mary Davis at Gautreaux Seminar, *supra* note 130. Moreover, a 1979 HUD study of the program found substantial reluctance to move to the suburbs. Only 12 percent of eligible families who did not participate in the program desired to live in the suburbs.

As of 1979, 22,655 families were notified, with 6,484 responding. Of the 3,190 invited to a briefing session after they had expressed interest (the Leadership Council invited only those who did not want placement in Chicago), 1,823, or 57 percent, actually attended. KATHLEEN A. PEROFF ET AL., U.S. DEP’T. OF HOUS. AND URB. DEV., *GAUTREUX HOUSING DEMONSTRATION: AN EVALUATION OF ITS IMPACT ON PARTICIPATING HOUSEHOLDS* 34-36 (1979) [hereinafter PEROFF ET AL.]. The study found that “many families were not interested initially or, if interested, lost interest when they attended briefing sessions on the demonstration or visited housing sites in the suburbs.” *Id.* at 8.

132. Interview with Kale Williams, Director, Leadership Council for Metropolitan Open Communities, in Chicago, Ill. (Feb. 24, 1992) [hereinafter, Kale Williams Interview, 2/24/92].

133. Rubinowitz & Kenny, *supra* note 2, at 50-51. Many of the postcards never arrived at their intended destination; those that did may have seemed to the recipients like junk mail to be thrown away unread. *Id.*

That situation changed quickly. Many people learned about the program as a result of the Leadership Council's continuing outreach efforts; but informal networks of families, friends, and acquaintances soon became a crucial source of information.<sup>134</sup>

Although families' initial response to the Gautreaux program was relatively modest, interest burgeoned quickly and remained high. By the early 1980s, the Leadership Council had dropped its formal notification procedure because of the increased numbers of families applying on their own.<sup>135</sup> The agency began an annual in-person registration process at its downtown office, but in 1985, it abandoned this increasingly unwieldy process in favor of a one-day-a-year telephone lottery system.<sup>136</sup> In cooperation with the Leadership Council,

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134. The 1979 HUD study found that 43 percent of all Gautreaux families said that their source of information about the program was either a friend or a relative. PEROFF ET AL., *supra* note 131, at 123. One woman even mentioned hearing about the program from a telephone operator:

I called the operator and asked her if she could give me the number of a place where I could find an apartment in the suburbs that was low subsidized, and she gave me the Leadership number. She went on to say that she lived in Schaumburg and when she first moved out there she lived under Section 8. I didn't know what she meant exactly but she told me to go down there and bring everything I needed and told me good luck.

James Rosenbaum et al., *Transcripts from Research for Low-Income Black Children in White Suburban Schools* (1986) [hereinafter *Research*].

135. Mary A. Davis, *The Gautreaux Assisted Housing Program 2* (May 7, 1991) (unpublished, on file with author) [hereinafter, *Mary Davis Paper*]; Kale Williams Interview 2/24/92, *supra* note 132.

136. The Leadership Council estimated that 2,000 families would be a reasonable annual workload, without having an extended waiting list. About one fifth of those families actually moved each year. In the first years of the registration process, it took several days of registration to reach the 2,000 figure. In 1984, thousands of people arrived at the Leadership Council's office on the specified day, filled the elevators and corridors to the building, and blocked the streets outside. The Council canceled the registration that day at the request of the Chicago Police, who felt that they could not control the crowd. Kale Williams Interview 2/24/92, *supra* note 132. Not all of the crowd was necessarily part of the demand for Gautreaux: at the time, a Leadership Council staff member commented that some people in line were not sure what they were waiting for. Some thought there were jobs at the end of the line.

The incident was on the front page of the *Chicago Defender*. Juanita Bratcher, *Multitude Drawn to HUD Offer*, *CHICAGO DEFENDER*, Jan. 24, 1984, at 1,4. See also, Cynthia-Val Jones, *Outline 'Dramatic' Need for Housing*, *CHICAGO DEFENDER*, Jan. 26, 1984, at 3. After that, the Leadership Council set up a bank of twenty telephones each year, with staff and volunteers as operators. The Council announced the number and procedures in advance, through mailings to everyone who had called the agency about the program during the year, and radio and newspaper announce-

local newspapers published a story about the program each year shortly before the sign-up day.<sup>137</sup> These stories described the program and announced the date and method of contacting the Leadership Council.<sup>138</sup>

By the early 1990s, the telephone company estimated that at least 10,000 calls were made to the Leadership Council on registration day.<sup>139</sup> It is not possible to determine how many different callers tried to get through, but by that time any initial doubts about the demand for the program had long since been resolved.<sup>140</sup>

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ments. Mary Davis Paper, *supra* note 135, at 2-3.

This situation was in stark contrast to the experience of Parma, Ohio, a suburb of Cleveland. A federal judge ruled in 1980 that Parma had deliberately excluded Blacks from settling there, and ordered the city to take steps, including advertising for minorities, to remedy the situation. By 1988 only three Black families had responded, with only 57 phone calls made to even inquire about housing for minorities in Parma. Isabel Wilkerson, *Integration Proves Elusive in an Ohio Suburb*, N.Y. TIMES, Oct. 30, 1988, sec. 1, at 1; *Suburb Runs Ads for Minorities, but Few Respond*, N.Y. TIMES, Sept. 26, 1988, sec. 1, at 21. The two situations were not directly comparable: Parma involved one particular city, as opposed to the several counties involved in Gautreaux. Also, while the suburbs were part of the remedy in Gautreaux, they were not specifically cited as the problem, as was the City of Parma. See Jeff Potts, *The Gautreaux Program: Factors Affecting Scale and Replicability* (unpublished, on file with author).

137. Henry Locke, *12,000 Expected to Enter Section 8 Housing Lottery*, CHICAGO DEFENDER, Jan. 6, 1988, at 3.

138. Kale Williams Interview, 2/24/92, *supra* note 132. At one point, the Leadership Council even invited reporters to observe the telephone lottery in operation and report on it. This was in response to suspicion on the part of those who called and were unable to get through that the telephone lottery was a fraud: that the Leadership Council was not really answering the phone and was picking favorite families to get into the program. Media presence and the participation of recognizable people, such as Vincent Lane, the head of CHA, and Alexander Polikoff, the Gautreaux plaintiffs' lawyer, helped alleviate some of those suspicions. *Id.*; see also Michael Gillis, *Tenants Dial CHA Escape Line: 2000 Win Places on Waiting Lists*, CHI. SUN-TIMES, Jan. 14, 1989, at 4.

139. Mary Davis Paper, *supra* note 135, at 3.

140. The Leadership Council stopped when it registered 2,000 families each year. Presumably, this understated the overall demand for the program. On the other hand, many of the people who made contact through the telephone lottery did not follow through and thus dropped out of the process. Kale Williams Interview, 2/24/92, *supra* note 132.

Although the demand for this program grew and stayed high, it did not interest all members of the plaintiff class. As Mary Davis, Associate Director of the Leadership Council has said: "although consumer demand for participation in the Gautreaux Program remains high, there is presumably a point at which all families interested in this kind of move will have been served." Mary Davis Paper, *supra* note 135, at 7.

Families' interest in the Gautreaux program resulted from several factors. Many applied because they wanted to move. They believed that the benefits of relocating would outweigh the costs — whether they moved to the predominantly white suburbs the program emphasized, or to mostly Black, integrated, or white areas within the city, which the program also facilitated.<sup>141</sup>

Moreover, the program's housing subsidies served as a powerful draw for eligible families, especially those living in private housing and paying a high percentage of their income for rent. Low-income families had increasing needs for rental assistance, and other sources of these subsidies were drying up. Finally, other program elements acted as incentives to apply, such as counselling for families and the active recruiting of landlords, both of which reduced families' housing search costs.

At the same time, not all eligible families sought to participate in the Gautreaux program. A desire to remain in their community in the city and concerns about encountering racism in predominantly white areas led some families to forego applying.<sup>142</sup>

### 1. *Benefits and Costs of Relocating*

The Gautreaux program focused on facilitating residential racial integration as its response to the Court's finding of racial discrimination. In an ideal world, families' decisions on whether to participate in the program would have rested entirely on their preferences as to the racial composition of the areas in which they lived. However, plaintiff class families faced choices that were not "free" in that sense, but were "tainted" in two countervailing respects. First, the potential for harassment and other forms of racial discrimination loomed as a deterrent to moving to predominantly white areas.<sup>143</sup>

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141. The possible destinations varied at different times, depending on housing and certificate availability in the city and suburbs, respectively. Kale Williams Interview, 3/10/92, *supra* note 88.

The original Letter of Agreement between HUD and counsel for the plaintiffs permitted up to 25 percent of all placements to be in the City of Chicago or in suburban areas of the Chicago metropolitan area with more than a 30 percent Black population. Letter of Agreement, *supra* note 87, at 40.

142. There are no precise figures on those interested or not interested in the program. Although it is likely that both groups were substantial, the number of families' interested far exceeded the amount of housing available through the program. *See infra* pp. 645-68.

143. In 1968, the Supreme Court had rejected a "freedom of choice" plan as a remedy for school segregation, suggesting that a discriminatory environment inter-

Those risks pressed families to avoid the Gautreaux program to the extent that it meant moving to predominantly white areas.

Other pressures tainted families' choices in favor of the program, largely because the options of staying put and relocating involved places that were separate but surely not equal. Housing, schools, and other conditions of life differed dramatically in middle-class suburbs from the inner city. Private housing within the city that was available through the program also offered a better living environment than

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ferred with Black children's choices. *Green v. County Sch. Bd.*, 391 U.S. 430 (1968); see Paul Gewirtz, *Choice in the Transition: School Desegregation and the Corrective Ideal*, 86 COLUM. L. REV. 728 (1986).

Families contemplating registration for the Gautreaux program faced similar considerations to those Gewirtz discussed in the school desegregation context. The choices faced by the New Kent County school children were "tainted" by discrimination, according to Gewirtz, in four distinct ways. First, they chose among restricted options: discrimination had defined and limited the range of choices, serving to channel Blacks and whites towards particular places. Certain schools, in this case, had established racial identities stemming from their already segregated student populations, faculty, alumni, and even from their names. Second, choices were tainted by "actual or feared duress from those hostile to desegregation." *Id.* at 744. Prior *de jure* segregation had encouraged attitudes in whites that might lead to threats or more active forms of retaliation against those Blacks choosing to attend white schools. Such actions, or fear of them, might serve to coerce Blacks into "choosing" the Black school.

Third, those making choices had themselves been shaped by prior discrimination, possibly skewing their attitudes, tastes and preferences. Whites thus refused to attend formerly Black schools because they did not belong there; Black children desirous of a less segregated education bore the burden of dislocation. Also, discrimination may have affected the beliefs and preferences of Blacks, causing them to "have internalized the perspective of the discriminator that they are unworthy" or to "adapt to the unavailability of certain options by concluding that they do not really want them." *Id.* at 746. Gewirtz notes that while chosen separation may also reflect pride and a commitment to group self-determination, the "general phenomenon" of attitudes distorted by discrimination should be considered in evaluating choice remedies to discrimination. *Id.* at 747.

Fourth, and finally, choices were tainted by prior segregation through the limited information Blacks and whites had about each other and about integration. Choosing the segregated school was self-perpetuating. Also, the choices themselves were made from unknown options: "[a] person cannot select the racial mix he prefers because that option can exist only if other people make as yet unmade choices in a certain way." *Id.* at 748-49. There is likely to be a "ripple effect of inhibition:" choices are interdependent, and if some are tainted in any of the ways described, then others will be affected, and tainted as well. *Id.* at 749.

See also James E. Liebman, *Voice Not Choice*, 101 YALE L.J. 259, 291-92 (1991) (reviewing JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS AND AMERICA'S SCHOOLS* (1990)), for a further discussion of the role of school choice in permitting racial segregation.

many plaintiff class families' neighborhoods.<sup>144</sup> In that context, choices to apply for the program might have little to do with a desire to live in a racially integrated setting.

Families moving through the Gautreaux program emphasized their desire to "escape" their surroundings.<sup>145</sup> Chicago's inner city — like many others — was in decline, both absolutely and relative to other parts of the metropolitan area.<sup>146</sup> Many public housing complexes, in particular, had deteriorated dramatically.<sup>147</sup> A significant

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144. Privatization could have increased demand because of the negative image of CHA housing and the relative attraction of living in private housing. Alex Kotlowitz described the relief of one boy whose family had managed to move with a Section 8 certificate (for which they had waited 10 years) from Henry Horner Homes, a public housing complex, to private housing, one mile south of the complex: "In those first few months, he knelt at his bedside before he went to sleep and prayed that God would not make him move back to Horner." ALEX KOTLOWITZ, *THERE ARE NO CHILDREN HERE: THE STORY OF TWO BOYS GROWING UP IN THE OTHER AMERICA* 100 (1991).

145. Unless otherwise indicated, the following findings and quotes about families' motivations are based on interviews with women whose families moved to the suburbs during the first five years of the Gautreaux program. These findings are reported in James E. Rosenbaum et al., *Low-Income Black Children in White Suburban Schools* (Feb. 1986) (unpublished report, on file with the Center for Urban Affairs and Policy Research, Northwestern University) [hereinafter CUAPR 1986], and will be the subject of a forthcoming book by Leonard S. Rubinowitz et al.

146. William Julius Wilson points out that "of the . . . twelve community areas with poverty rates in the 20 percent range in 1980, only five had been poverty areas in 1970 . . . . Whereas only five community areas in Chicago had an unemployment rate of at least 15 percent in 1970, by 1980 twenty-five community areas did, and of these, ten (all predominantly Black and all high-to-extreme community poverty areas) had rates of at least 20 percent unemployment." WILLIAM J. WILSON, *THE TRULY DISADVANTAGED* 50 (1987). GREGORY D. SQUIRES, ET AL., *RACE, CLASS, AND THE RESPONSE TO URBAN DECLINE* 96 (1987).

While in the City of Chicago the real income of families (adjusted for inflation) dropped by 10.1 percent between 1969 and 1979, it rose in the suburbs: suburban Cook County rose the most, 13.8 percent, followed by Kane County, with 7.2 percent. SQUIRES ET AL., *supra*, at 41. Between 1960 and 1980, Chicago experienced a decrease in the number of middle and upper income families of over 30 percent; suburban Cook County, however, had an increase of more than 30 percent of families in those categories, and the five other counties of the Chicago SMSA saw a 67 percent growth in the number of middle income families and a 124 percent increase in the number of upper income families. *Id.* at 42.

See also THE AMERICAN MILLSTONE (James D. Squires ed., 1986); KOTLOWITZ, *supra* note 144, at 5; HAROLD M. MAYER & RICHARD C. WADE, *CHICAGO: GROWTH OF A METROPOLIS* (1969); SYLVESTER MONROE & PETER GOLDMAN, *BROTHERS* (1988).

147. Some of the CHA high rises had reached the point of deterioration where sections were vacant and boarded up. Tenants in those complexes experienced some

step up and a desired place to live when they had been built in the 1950's and early 1960's, CHA developments had become for many residents places to escape by whatever means possible.<sup>148</sup> The primary

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of the worst conditions and the greatest motivations to find a way to move out.

In 1980, public housing complexes in Chicago contained 10 of the country's most concentrated areas of poverty. A four-block area of Robert Taylor Homes was the poorest community in the country; this segment's population of 5,681 had a per capita income of only \$1,339 (the per capita income of Chicago was \$6,993, while that of the country as a whole was \$7,200; the country's second wealthiest neighborhood, the "Gold Coast" north of the Chicago Loop, had a per capita income of \$27,000) SQUIRES ET AL., *supra* note 146, at 94.

Other accounts confirm the dramatic deterioration in the conditions of life in Chicago's public housing developments from the 1950's and 1960's to the 1970's and 1980's. See also MONROE AND GOLDMAN, *supra* note 146; LEMANN, *supra* note 4, at 295-96; Don Terry, *Dynamite or Condo: Fears Haunt Cabrini Green*, CHICAGO DEFENDER, July 5, 1980, at 1; Henry Locke, *Slayings Spark Citizen's Protest*, CHICAGO DEFENDER, July 30, 1985, at 1; Marsha A. Dada, *Complaints Rage at ABLA: 18 Vacant Apartments a Menace to Residents*, CHICAGO DEFENDER, July 28, 1986, at 17; Marsha A. Dada, *CHA Neglect Linked to Infant Mortality Rate*, CHICAGO DEFENDER, Aug. 11, 1986, at 17.

148. Some women were particularly painfully aware of the deterioration, because they had moved into these developments when they were new and offered hope for a better life. LaJoe Rivers, whose family's story Alex Kotlowitz chronicled in *There are No Children Here*, moved into the Henry Horner Homes in 1956, the first tenants at 1920 West Washington. To them the new buildings were "dazzling." KOTLOWITZ, *supra* note 144, at 19. She and the other residents of Horner took advantage of the myriad of services and programs available. By the time LaJoe Rivers was trying to raise her children these things had changed dramatically:

There were no banks, only currency exchanges, which charged customers up to \$8.00 for every welfare check cashed. There were no public libraries, movie theaters, skating rinks, or bowling alleys to entertain the neighborhood's children. For the infirm, there were two neighborhood clinics, the Mary Thompson Hospital and the Miles Square Health Center, both of which teetered on the edge of bankruptcy and would close by the end of 1989. Yet the death rate of newborn babies exceeded infant mortality rates in a number of Third World countries, including Chile, Costa Rica, Cuba, and Turkey. And there was no rehabilitation center, though drug abuse was rampant.

KOTLOWITZ, *supra* note 144, at 12.

Kotlowitz also pointed to the lack of trust and community he observed in Henry Horner Homes. Alex Kotlowitz, Speech at the Legal Assistance Foundation of Chicago Annual Luncheon, Chicago, Ill. (June 9, 1992).

LaJoe Rivers attempted to register for the Gautreaux program in 1991, but was unable to get through during the telephone lottery. She and her family moved out of the Henry Horner Homes public housing complex into private housing in a more desirable Black neighborhood on Chicago's West Side. Author's conversation with Alex Kotlowitz, Chicago, Ill. (Oct. 29, 1991). See also MONROE AND GOLDMAN, *supra* note 146, at 22-23; LEMANN, *supra* note 4, at 106-07.

concerns that motivated women to leave the inner city were their families' safety, their children's schooling and social relations, and their own job opportunities.<sup>149</sup>

Empirical research provides some direct reports of families' motives for moving. In addition, much of the support for the conclusions about the importance of these concerns comes from women reporting their post-move experiences, especially in the suburbs.<sup>150</sup> The benefits and costs that they perceived after the fact did not necessarily coincide with their motives for moving in the first place. However, a relationship existed between motives for moving and post-move experiences, at least among families that stayed in the suburbs.

Moreover, word of mouth about those experiences generated much of the demand over time.<sup>151</sup> Thus, it seems likely that later

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149. Many people had little hope of conditions improving where they lived. They had witnessed the decline over the years, and saw little evidence that their public housing complexes or other inner city neighborhoods were going to be rebuilt — physically, socially, economically, or institutionally. Thus, they saw good reasons to leave, if they could. See ALBERT O. HIRSCHMAN, *EXIT VOICE AND LOYALTY* (1990).

Hirschman argues that people react to situations of decline in firms, organizations, or states, in one of two ways: the exit option, in which people respond by leaving the situation; and the voice option, in which people stay and express their dissatisfaction or protest in some way to whoever has authority, or whoever will listen. Under a situation of perfect competition, the firm involved will be forced to, in some way, arrest the decline in order to survive. *Id.* at 4. Hirschman notes, however, that public agencies (he uses the example of public schools) are insensitive to exit: they are not directly dependent on consumer generated resources for survival, and thus are less likely to respond to consumer loss. The use of "voice" in such situations might be more effective, but it is those who care most about the declining quality of the "product," who might be "the most active, reliable, and creative agents of voice," who are most likely to leave. *Id.* at 46-47. In the case of public schools, alternatives — private schools, moving to the suburbs — exist for those with both the resources and the quality-consciousness to do so. When such options exist, such consumers are likely to act on them. *Id.* at 51.

In the case of the Gautreaux program and public housing residents, voice was exercised by the original plaintiffs against the public agency. However, the remedies in the case sought desegregation through providing additional housing opportunities for plaintiff class families, and did not address the overall conditions of public housing in Chicago. The result was that other families faced with a situation of decline now had the resources, through the Gautreaux program, to exercise the exit option; those who sought to enter the Gautreaux program, chose, as Hirschman would have predicted, to do so.

150. Researchers at Northwestern University's Center for Urban Affairs and Policy Research have conducted a series of studies of the experiences of participants in the Gautreaux program. See *infra* pp. 629-39 for a discussion of the findings.

151. In addition, local newspapers occasionally did feature stories about families' experiences in the program. See, e.g., Alan Douglas, *CHA Rent Subsidy Helping*



applicants' motivations for applying to the program reflected the

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*Families Find Decent Housing*, CHI. DAILY NEWS, May 25, 1976, at 25; *Project Dwellers Eye the Suburbs*, CHI. SUN-TIMES, August 24, 1977, at 20. These stories generally portrayed the experiences as quite positive, as seen through the eyes of participating families.

The Leadership Council assured families of confidentiality about their participation in the program, in order to protect them from harassment. However, at least one or two families seemed willing to "testify" about their experience publicly. Marc Fisher, *Giving Ghetto Children A Chance in the Suburbs*, WASH. POST, June 11, 1988, at A1, A8-10; Robert Reinhold, *U.S. Backed Chicago Test Offers Suburban Life to Ghetto Blacks*, N.Y. TIMES, May 22, 1978, at A1; William Schmidt, *Some Chicagoans are Moved out of Projects Into a Future*, N.Y. TIMES, Feb. 3, 1989, at A1.

On May 1, 1991, at its annual Law Day Dinner, BPI commemorated the 25th anniversary of the Gautreaux litigation. Among the speakers was a woman who had moved through the program to Evanston, a northern suburb, and who spoke very positively of the difference the move had made for her family. (author's observation).

Also, two very positive feature pieces about families' suburban experiences in the program appeared in Chicago Magazine. Barbara Garland, *Cabrini Green to Willow Creek*, CHI. MAG., June 1977, at 169-70 [hereinafter Garland]; Barbara Garland Polikoff, *A Ticket Out of Misery: How 1600 Families Escape the Projects to the Suburbs*, CHI. MAG., Jan. 1987, at 97-99. However, Chicago Magazine's readership is quite affluent, so these articles probably had little direct impact on families' knowledge of, and interest in, the Gautreaux program.

The Chicago papers reported the results of research on families' experience in the program, done at Northwestern University's Center for Urban Affairs and Policy Research. Jean Latz Griffin, *Black Pupils Chalk up Success in Suburbs*, CHI. TRIB., Dec. 16, 1985, at 1; "And Lessons from Suburbia" (editorial) CHI. TRIB., Dec. 22, 1985, at sec. 3, p. 12; *How they Broke the Welfare Cycle* (editorial), CHI. TRIB., May 9, 1990, sec. 1, at 20; William Braden, *Children from Projects Thrive in Suburbs - Study*, CHI. SUN-TIMES, Oct. 9, 1991, at 1.

The research of Sharman Stein, *Welfare Mothers Find Suburbs Spell Jobs*, CHI. TRIB., April 25, 1990, at A1-A2, found that the experiences of families who moved to the suburbs through the program, and stayed there, were generally positive. CUAPR 1986, *supra* note 145; James E. Rosenbaum et al., *White Suburban Schools' Responses to Low-Income Black Children: Sources of Successes and Problems*, THE URBAN REVIEW, Spring 1988, at 28 [hereinafter *Responses*]; James E. Rosenbaum et al., *Low-Income Black Children in White Suburban Schools: A Study of School and Student Responses*, 56 J. OF NEGRO EDUC. 35 (1987); James E. Rosenbaum et al., *Social Integration of Low-Income Black Adults in Middle-Class White Suburbs*, 38 SOCIAL PROBLEMS 448 (1991); James E. Rosenbaum & Susan J. Popkin, *Employment and Earnings of Low-Income Blacks Who Move to Middle-Class Suburbs*, in THE URBAN UNDERCLASS 342 (Christopher Jencks & Paul Peterson eds., 1991) [hereinafter Rosenbaum and Popkin].

HUD's 1979 study also showed a significant degree of satisfaction among families who had moved through the program. PEROFF ET AL., *supra* note 131, at 13.

The periodic newspaper reports on this research may also have stimulated interest

experiences of earlier movers — increased safety, better schools, a reduced risk for the children of destructive social relationships like gang membership, and more job opportunities. The dominant theme overall was that the women in these mostly single-parent families made these moves largely for the sake of their children.

The search for a safe place to live motivated many Gautreaux program applicants. Danger dominated life in the inner city.<sup>152</sup> People lived in constant fear of crime, with the associated stress and other psychological tolls.<sup>153</sup> As one Gautreaux participant, Dianne Cotton, put it: "I would be afraid all of the time in the city. Every time you went out you'd have to be looking over your shoulder. This is not some time. This is all the time. Looking over your shoulder."<sup>154</sup>

Another, Rebecca Owens, said: "I never felt safe even inside my home. I was often afraid in the daytime. I lived on the 13th floor and had safety problems with the elevator. Because of the danger in

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in participating in the program. Kale Williams Interview, 2/24/92, *supra* note 132.

There was a quite substantial migration of Blacks to the Chicago suburbs during this period, independent of the Gautreaux program. Although much of it was to areas where a Black presence was already well established, that larger migration may have been known to some plaintiff class families and may have made the moves seem more feasible and less extraordinary.

From 1970 to 1980, the number of Blacks in the suburban areas of the Chicago SMSA climbed by 102,526, an increase of 80 percent. John F. Kain, *Housing Market Discrimination and Black Suburbanization in the 1980's*, in *DIVIDED NEIGHBORHOODS: CHANGING PATTERNS OF RACIAL SEGREGATION* 68, 84-88 (Gary A. Tobin, ed., 1987). Out of 122 Cook County suburban communities, only six, however, were more than 18.2 percent Black in 1980, and only 17 had as many as 10.2 percent Black households; 91 were less than 2.4 percent Black and 71 were less than 1 percent Black. *Id.* at 77. See, e.g., *SQUIRES ET AL.*, *supra* note 146, at 118-21; James Fuerst, *A Housing 'Remedy' We Can Drop . . .*, *CHI. TRIB.*, Apr. 18, 1989, at A19.

152. Over three-fourths of the women who moved to the suburbs through the Gautreaux program found the following areas in their old neighborhoods dangerous during the day and night: the streets within a block of their homes, the park nearest their home, the area near their child's school after school; the elevators and stairways in their buildings, and public transportation. About half thought the area near their child's school at recess and being at home were dangerous. Leonard S. Rubinowitz et al., (forthcoming) (manuscript, chapter on safety, on file with author at Northwestern University School of Law).

153. *Id.* at 12. A 1990 Community Mental Health Council study in Chicago found that almost 40 percent of 1,000 high school and elementary students surveyed had witnessed a shooting, more than one-third had witnessed a stabbing, and 25 percent had seen a murder. *JAMES GARBARINO et al., NO PLACE TO BE A CHILD: GROWING UP IN A WAR ZONE* 136 (1991).

154. Rubinowitz, et al., *supra* note 152, at 12.

the projects, I was often afraid for myself and my children."<sup>155</sup>

Gangs and drugs were a constant in their community.<sup>156</sup> One Gautreaux participant, Lenore Sowell, said:

We lived in a bad area, Children were getting shot all around there . . . . We were between two different gangs, one on one side, one on the other. My windows got shot in several times, we had to sleep on the floor. At night you had to put your mattress on the floor because bullets would be coming through the windows . . . . It was like Vietnam.<sup>157</sup>

The deterioration of inner city schools also motivated families to move. The 1979 HUD study of the Gautreaux program found that 34 percent of participants judged good schools to be the most important factor in their decision to move.<sup>158</sup> Women knew that their children were falling behind, and that their chances in life declined while they stayed in those schools.

Suburban schools had higher standards than those in the inner city.<sup>159</sup> Later applicants probably had a better sense of the disparities between the city and suburban schools, thanks to the reports they received from families who had moved earlier.<sup>160</sup> Not only had they found higher standards, but teachers provided greater assistance to students in the suburbs. At the same time, students encountered racial discrimination in the suburban schools. For many families, the benefits of higher quality schools outweighed the risks of racial harrassment. Over the long term, students from the Gautreaux program in the suburbs did better than those in the city — in attendance at four

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155. *Id.* Families also limited their daily activities significantly to avoid the crimes and violence in their environment. *Id.* at 16.

156. See also Jorge Casuso, *High Hopes*, CHI. TRIB. MAG., July 22, 1990, at 12 [hereinafter Casuso], on Vincent Lane, Director of the Chicago Housing Authority and the first two years of his tenure. Lane gained nationwide recognition for conducting "sweeps" of 21 of the CHA's 128 high rise buildings: faced with escalating gang warfare in the Rockwell Garden development, Lane began the sweeps there by conducting a massive, unit-by-unit security inspection with the police and then erecting a concrete lobby, issuing tenant identification cards and posting 24 hour security. *Id.* at 15-16. Unfortunately, gang members simply shifted their activity to nearby buildings. *Id.* at 16.

157. CUAPR, *supra* note 145, at 76.

158. PEROFF, ET AL., *supra* note 131, at 105.

159. Responses, *supra* note 156, at 28.

160. At the same time, some early movers thought the city schools were adequate until they discovered how far behind their children were when they started school in the suburbs. Responses, *supra* note 156, at 31-32.

year colleges and in going to other kinds of colleges as well.<sup>161</sup>

Women also wanted to get their children away from the temptations of joining a gang and from the gangs' pressure to recruit them.<sup>162</sup> One woman in the Gautreaux program, Lucretia Fletcher, recalled that gangs tried to recruit her son through pressure and harassment: "I used to meet my son at the bus stop every day because there was a bunch of teenage boys who would use guns and knives and everything to get him to join."<sup>163</sup>

Some women remarked on the difference in their children's friends after they moved to the suburbs.<sup>164</sup> Michelle Holman said:

His friends are better here than in the city. They're not really bad kids, so they won't get him in trouble. He's around kids

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161. James E. Rosenbaum & Julie E. Kaufman, *Low Income Black Youth in White Suburban Schools: Long Term Educational Outcomes* 7 (Apr. 3-7, 1991) (unpublished paper presented at the Ann. Meetings of AERA, Chicago, Ill., on file with author).

162. Several mothers commented: "Most of the time the teachers would tell him (her son Russell) to run home. He was afraid of the gangs. When they ask you to run with them and you don't want to, they pick with you. They would take your cap and gloves, money, anything else they wanted, and beat you." Rubinowitz et al., *supra* note 152, at 8 (Alesa Butler).

The kids had problems at the other schools, you know, the gangs, it was kind of hard for them to resist that. That's why I moved out, for the two boys, I found out that it would be much better. When I lived on 79th street in the city, a kid mugged my kid right in the yard. They began to get scared, when they would come home, there were kids like that standing around and would grab them, at that time he was about 14 years old. At school they would have little cliques, wanted them to join gangs. A lot of time they would come home afraid, so I started thinking about finding a better place for them and I did.

*Id.* at 21 (Margaret Jones).

Veronica Bolden said, "And when I decided to move, it wasn't a hard decision for me. It was a point of you want them to learn something other than smoking reefers, breaking bottles, and writing in hallways — stay home. If you want to offer him something more — move, what can you lose, you know." Research, *supra* note 134. See also CUAPR 1986, *supra* note 145, at 73-74.

Chicago preschool teachers in Head Start and day care programs reported observing children as young as three years old playing "gang bangers," taking turns as shooting victims, mourners and preachers at funerals. Their artwork displayed gang symbols and gang warfare and arrests. GARBARINO, ET AL., *supra* note 153, at 139.

163. CUAPR 1986, *supra* note 145, at 76.

164. Women who moved to the suburbs said that in the city 27.4 percent of their children's friends were good influences, while 69.3 percent of their suburban friends were good influences. CUAPR 1986, *supra* note 145, at 98-99.

who like to do things in school, or go to movies, not gang-banging type kids. He was very upset about gangs in the city, about how they were always trying to get someone to join.<sup>165</sup>

For the women themselves, the suburbs offered better job possibilities. As in other areas of the country, Chicago experienced a large scale suburbanization of jobs in the last several decades.<sup>166</sup> Many of these jobs were within the skill levels of lower-income people.<sup>167</sup> Thus, moves to the suburbs through the Gautreaux program could provide access to jobs by enabling families to live near them. In fact, women who moved to the suburbs through the program were 13 percent more likely to have a job after the move than program participants who relocated within the city.<sup>168</sup>

Thus, predominantly middle-class suburbs offered opportunities unavailable in the inner city.<sup>169</sup> These relatively affluent communities offered greater safety,<sup>170</sup> better schools, potentially more positive

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165. *Id.* at 99.

166. Chicago had 68 percent of the region's jobs in 1960, but only 46.6 percent in 1981. Between 1972 and 1981, Chicago lost 123,504 jobs (9 percent of the city's jobs), while the suburban portions of the six-county region gained 286,698 jobs, an increase of 26 percent. LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES, THE DECENTRALIZATION OF JOBS, HOUSING SEGREGATION AND MINORITY UNEMPLOYMENT IN THE CHICAGO METROPOLITAN AREA 3 (1983). A follow-up study showed that by 1989, the suburban portion of the region's job market had grown to 59.5 percent; Chicago had lost an additional 10,461 jobs, and the suburbs had added 427,952 jobs, with the largest growth in suburban Cook County and DuPage County. LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES, JOBS, HOUSING, AND RACE IN THE CHICAGO METROPOLITAN AREA: A GEOGRAPHIC IMBALANCE 11 (1991) [hereinafter LEADERSHIP COUNCIL (1991)].

167. DuPage County and Northwest Cook County made gains in the manufacturing sector. LEADERSHIP COUNCIL (1991), *supra* note 166, at 3. Overall, according to the Northeastern Illinois Planning Commission, the Chicago suburbs gained more than 133,000 lower-income jobs. *Id.* at 4.

168. Rosenbaum & Popkin, *supra* note 151, at 348. Also, 46 percent of suburban movers who were never employed before going to the suburbs found work there; while 30 percent of participants who stayed within the city who had not worked before found work after their move. *Id.* The greater number of job opportunities in the suburbs was the most important factor in easing their search for work. *Id.*

The grown children of families in the suburbs were also more likely than city movers to be employed full-time, if they were not in college, and to have better pay and job benefits. James Rosenbaum & Julie Kaufman, Educational and Occupational Achievements of Low-Income Black Youth in White Schools, 12-13 (August 1991) (unpublished paper given at the Ann. Meeting of the Am. Sociological Ass'n, on file with author).

169. PEROFF ET AL., *supra* note 131, at 104; Garland, *supra* note 151, at 132-33.

170. Rubinowitz et al., *supra* note 152, at 24; CUAPR 1986, *supra* note 145, at

social relationships for children, and increased job opportunities.<sup>171</sup>

Although relatively unimportant to them, some families viewed the opportunity for racial integration as an additional draw, beyond the economic integration factors.<sup>172</sup> Some women wanted their children to be exposed to different kinds of people, because they would have to live and work in a predominantly white society when they grew up.<sup>173</sup>

On the other hand, the Gautreaux program's relocation requirement, especially with its emphasis on predominantly white areas and the suburbs, made the costs of the program outweigh its benefits for some eligible families. Some families did not want to live among white people, especially in almost all-white settings.<sup>174</sup> Even families

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73-74. See Wilhelmina A. Leigh & James D. McGhee, *A Minority Perspective on Residential Racial Integration*, in HOUSING DESEGREGATION AND FEDERAL POLICY 31-42 (John M. Goering ed. 1986). The authors argue that Blacks will seek to live in racially integrated neighborhoods when such a move would provide better housing, high levels of amenities, lower crime rates, and better municipal services. *Id.* at 34; see also, Joe T. Darden, *Choosing Neighbors and Neighborhoods: The Role of Race in Housing Preference*, in DIVIDED NEIGHBORHOODS 15, 26-27 (Gary Tobin, ed. 1987).

171. CUAPR 1986, *supra* note 145, at 19-58; PEROFF ET AL., *supra* note 131, at 104.

172. CUAPR 1986, *supra* note 145, at 93-94; PEROFF ET AL., *supra* note 131, at 105; see also Robert A. Slayton, *An Accepted Member of the Community*, in FAIR HOUSING IN METROPOLITAN CHICAGO: PERSPECTIVES AFTER TWO DECADES, REPORT TO THE CHICAGO FAIR HOUSING ALLIANCE (1986). Few families in this study of those making "nontraditional" moves — across area racial boundaries in the Chicago suburbs — listed integration as being a factor in their decision to move; "One thing that many of these families were not looking for in a new location was integration. The interviews revealed that most of the families chose their home for some reason other than the intentional desire to make an integrated move." *Id.* at 244.

173. Racial factors seem to have been a much stronger factor in limiting demand for the Gautreaux program than in attracting people to it. See *infra* pp. 634-640.

174. There was also literature from other places that cast doubt on Blacks' willingness to move to mostly white areas. See T.F. PETIGREW, NATIONAL ACADEMY OF SCIENCES, ATTITUDES ON RACE AND HOUSING: A SOCIAL-PSYCHOLOGICAL VIEW (1973).

Some, though not all, of the more recent survey literature on the housing preferences of Blacks supports the claim that Blacks might be reluctant to move to areas in which whites predominate. One major study of 743 white households and 400 Black households in the Detroit area found that 62% of the Blacks interviewed would not be willing to move into an all-white area; the large majority of these respondents, about 90% of them, related this preference to the belief that whites would not welcome them, not to a desire to live among Blacks per se. Reynolds Farley et al., *Chocolate City, Vanilla Suburbs: Will the Trend Toward Racially Separate Communities Continue?*, 7 SOC. SCI. RES. 319, 331 (1978); see also Darden, *supra* note 170, at 15; HOUSING VOUCHERS FOR THE POOR: LESSONS FROM A NATIONAL

willing to leave their community had concerns about the risks of moving into predominantly white areas.<sup>175</sup> They feared encountering

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EXPERIMENT 123 (R. Struyk & M. Bendick eds., 1981); PAUL B. FISCHER, THE STEPHEN H. WILDER FOUNDATION, IS HOUSING MOBILITY AN EFFECTIVE ANTI-POVERTY STRATEGY?: AN EXAMINATION OF THE CINCINNATI EXPERIENCE 5 (1991); Reynolds Farley et al., *Barriers to Racial Integration of Neighborhoods: The Detroit Case*, ANNALS AM. ACAD. POL. & SOC. SCI., Jan., 1979, at 197-213; Michael H. Schill, *Deconcentrating the Inner City Poor*, CHI.-KENT L. REV. (forthcoming 1992) (manuscript at 32-34, on file with author); D. Garth Taylor, *Housing, Neighborhoods and Race Relations: Recent Survey Evidence*, ANNALS AM. ACAD. POL. & SOC. SCI., Jan., 1979, at 26-40.

Surveys of Blacks in Chicago and elsewhere have indicated an interest in living in integrated communities if they were about half white and half Black. A 1978 HUD survey found that 57 percent of all Blacks and 15 percent of all whites would prefer a fifty-fifty white/minority ratio. U.S. Dep't of Hous. and Urb. Dev., *The 1978 HUD Survey on the Quality of Community Life: A Data Book 298-99* (1978); see also Leigh and McGee, *supra* note 170; Darden, *supra* note 170. Very few such communities existed in Chicago. Moreover, moves to places with more than thirty percent Black population did not meet the Gautreaux program's integration goals.

175. The Chicago metropolitan area remains one of the most racially segregated in the country. On a residential segregation index scale — measuring the percentage of either racial group that would need to move from one census tract to another in order to eliminate segregation if the population size of each tract was fixed (if all Blacks lived in one area and all whites in another, the index would be 100) — Chicago measured 91 in 1970 and 88 in 1980. Reynolds Farley, *Residential Segregation Among Blacks*, in THE URBAN UNDERCLASS 274, 276-79 (Christopher Jencks & Paul Peterson, eds., 1991); see also SQUIRES ET AL., *supra* note 146, at 106; Pierre de Vise, *Chicago, First In Residential Segregation in 1970*, in INTEGRATED EDUCATION, 1971, VOL. IX no. 6 (both of these sources place Chicago as the most segregated city of its size; Farley includes smaller cities as well). According to a Leadership Council study, in the City of Chicago, 80 percent of the census tracts had white or Black populations of over 90 percent. Of the 258 municipalities that make up the six county area surrounding the City, 177 had less than 1 percent Black population. Kale Williams, *The Dual Housing Market in the Chicago Metropolitan Area*, in HOUSING: CHICAGO STYLE 38, 39 (Ill. Advisory Comm. to the U.S. Comm'n. on Civil Rights, 1982).

The Gautreaux program's integrationist goals led to an emphasis on moves to predominantly white suburbs. Substantial numbers of Blacks lived in Chicago's suburbs, mostly in predominantly Black and substantially racially mixed inner ring communities west and south of the city. SQUIRES ET AL., *supra* note 146, at 123. According to the 1980 Census, of the 1,427,400 Blacks in the Chicago SMSA, 230,236 were not in the city of Chicago. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, CHARACTERISTICS OF THE POPULATION, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS: ILLINOIS 1980 CENSUS 27, 31 [hereinafter BUREAU OF THE CENSUS]. By 1980, almost two-fifths of those Black suburbanites lived in majority Black suburbs. James W. Fossett & Gary Orfield, *Market Failure and Federal Policy: Low Income Housing in Chicago 1970-1983*, in DIVIDED NEIGHBORHOODS: CHANGING PATTERNS OF RACIAL SEGREGATION 158, 175-76 (Gary Tobin, ed., 1987) [hereinafter Fossett & Orfield]. The program largely excluded those areas as possible destinations.

racial discrimination and the loss of their children's racial and cultural identity.<sup>176</sup> The women especially felt a sense of social isolation because of the absence of Black women and men.

Black families moving into predominantly white areas of Chicago or the suburbs risked hostile reactions, including physical violence, damage to property, and other forms of harassment.<sup>177</sup> Those risks

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176. Kama West, a woman who moved to the suburbs, said: "Sometimes I feel he's losing his Black identity. When that happens I take him to the city so that he can reacquaint himself with his Blackness. He tells jokes about Black people sometimes." Another, Eva Bethel, reported about her son:

What I'm really trying to say is that his image of how he's supposed to be is influenced by his school being 90% white. He talks like a little white suburban child . . . . He's patterned himself after them so he'll fit in . . . . It's not bad. His diction is good. But I don't think that . . . I think that he's missing what you get when you go to a South Side school. Because there is definitely a culture there that is rich.

Research, *supra* note 134.

The likelihood that suburban schools would not attend adequately to Black history and culture added to these concerns. CUAPR 1986, *supra* note 145, at 22-23.

Some theorists of cultural identity formation share these women's concerns. See Earnest D. Washington, *A Componential Theory of Culture and Its Implications for African-American Identity*, 24 EQUITY AND EXCELLENCE 24 (1988). Washington argues that too much difference between the culture of the community from which a student comes and that of the school which he or she attends may have a deleterious effect on the child's development. See also GENEVA GAY, EXPRESSIVELY BLACK (1987).

177. See WILLIAM M. TUTTLE, JR., RACE RIOT (1970), about the 1919 race riot triggered by a Black venturing onto a "white" beach; ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO 1940-1960 (1983), which discusses Blacks moving in to public housing. See also ALAN B. ANDERSON & GEORGE C. PICKERING, CONFRONTING THE COLOR LINE: THE BROKEN PROMISE OF THE CIVIL RIGHTS MOVEMENT IN CHICAGO (1986); DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING JR. AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (1988), about the open housing demonstrations led by Martin Luther King, Jr. in 1966 and the cancellation of the proposed march into Cicero — because of the likelihood of violence.

In 1970, in Murray Park, a home occupied by Blacks on a mostly white block was shot at and pelted with bricks. BRIAN J.L. BERRY, THE OPEN HOUSING QUESTION: RACE AND HOUSING IN CHICAGO, 1966-1976 198 (1979). A year later four homes in the same community into which Black families were moving were destroyed by fire; in one case, a two gallon gas can was found forty feet away. *Id.*

Resistance to Blacks moving in to white Chicago neighborhoods persisted: In the spring of 1984, a Black family renting a house in a white neighborhood on the Southeast Side was forced to move after its garage was burned and windows were repeatedly broken. Later that same year in another white neighborhood, a Black couple and their small son escaped unharmed from their newly rented apartment where they had been under siege for six hours, as neighborhood residents hurled rocks at their home. SQUIRES ET AL., *supra* note 146, at 102. Stories about similar



continued to exist as families considered such moves through the Gautreaux program. Both their perceptions and the realities of the racial climate probably deterred many families from applying, especially in the program's early days.

As Black families moved to predominantly white areas through the program, they did not experience their worst fears of racial violence and constant harassment. But some families encountered racist reactions in the suburbs, including threats of physical injuries to their families and property, and more frequently verbal harassment and ostracism.<sup>178</sup> In the early studies, the women reported a range of experiences, from being called names — “Hey, nigger!” — to being run off the road, to incidents of harassment by the police. Word of mouth about these negative incidents and experiences may help to explain why some families did not apply to the program.

Some friends and families of those who planned to move to predominantly white communities raised these objections to discourage them from doing so.<sup>179</sup> For example, fifteen years into the program, a landlord in Cicero, a notoriously racially exclusionary suburb, agreed to accept a family through the program. The family ultimately decided not to make the move, on the advice of friends and family members concerned about the racial hostility they would encounter there.<sup>180</sup>

For other families, staying in the Black community represented an ideological, political, social, or personal commitment to maintain-

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racial incidents also appeared in Chicago's Black newspaper, the Chicago Defender. See Sandra Crocket, *Racists hit 13 Homes in 85*, CHICAGO DEFENDER, Jan. 23, 1986, at 3; Charles A. Davis, *Open Housing: A Nightmare*, CHICAGO DEFENDER, May 10, 1984, at 17; Lawrence Muhammed, *Harass Family in Calumet Park*, CHICAGO DEFENDER, Sept. 10, 1977, at 1; see also Jessica Seigel, *Racial Attack on bus Driver Called Isolated Suburb Incident*, CHI. TRIB., May 24, 1990, at 9.

Data on the residential preferences of Blacks also suggests that such preferences were strongly influenced by the perceived reactions of whites to the presence of Blacks: those who preferred racially mixed areas stated that they did so for reasons of racial harmony, while those who preferred all Black areas stated a desire to avoid interracial problems. Darden, *supra* note 170, at 25.

178. Claire Monroe stated that the police “will just stop you on general principles,” and recounted a string of incidents including one in which she was strip searched three times and thrown in jail for the night for passing a school bus. Rubinowitz et al., *supra* note 152, at 51-54; CUAPR 1986, *supra* note 145, at 94-96.

179. Some family and friends warned participants about potential violence or discrimination: “immediately there would be cross burnings and lynchings” (Suzanne Franklin) or “the water would be cut off and I wouldn't have any water” (Hazel Tucker). Research, *supra* note 134.

180. Kale Williams Interview 3/10/92 *supra* note 88.

ing or rebuilding the Black community and its institutions.<sup>181</sup> Some objected to the Gautreaux program as ideologically and politically inconsistent with the need to address the problems of the inner city. Leaders and citizens criticized the program as draining off resources, attention, commitment, and people from the Black community's extremely pressing needs.<sup>182</sup> Others opted out of the program for

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181. Earlier, Stokely Carmichael and Charles V. Hamilton criticized integration: "The fact is," they argued, "that integration, as traditionally articulated, would abolish the black community. The fact is that what must be abolished is not the black community, but the dependent colonial status that has been inflicted upon it . . . . The racial and cultural personality of the black community must be preserved and that community must win its freedom while preserving its cultural integrity." STOKELY CARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 55 (1967); see also John O. Calmore, *Fair Housing vs. Fair Housing: The Problems with Providing Increased Housing Opportunities Through Spatial Deconcentration*, 14 *CLEARINGHOUSE REV.* 7 (1980). Calmore argued that forcing deconcentration of minorities was, in effect, victim blaming — forcing the minority poor to sever social and political ties to their communities in order to find decent housing, because those communities had been neglected. *Id.* at 17.

Michael Tein argues that Gautreaux and similar post-Gautreaux remedies engage in "forced dispersal" that implies a view of "valid community as white-over-black" and "solidifies an already-entrenched racial hierarchy." Michael Tein, *The Devaluation of Nonwhite Community in Remedies for Housing Discrimination*, 140 *U. PA. L. REV.* 1463, 1502 (1992).

182. Dr. Conrad W. Worrill criticized "the plan by the white power structure of Chicago to systematically force large numbers of black people out of what is called the inner city," particularly citing Downs' *Opening Up the Suburbs* — "white social science methodology at its finest" — claiming that his real agenda was "the dispersion of black people from the city and the creation of black enclaves throughout suburbia, so that whites can maintain racial dominance in both the city and the suburbs." Decrying a history of forced migrations, Worrill asked, "why should we again be maneuvered from the land that we occupy?" Conrad W. Worrill, *The Threat of Black Removal*, *CHICAGO DEFENDER*, Oct. 3, 1984, at 13. William Simpson argued:

Even if studies show that the most propitious way to "move up" is to leave the inner-city for the suburbs, doing so under the auspices of white-run programs that operate from a viewpoint that discourages African-Americans living next door to each other is a concession to interminable subordination of black people . . . . The immigration away from any community leaves little foundation of the kinds of individuals needed to sustain the viability of the territory left behind. Just as important a question is that of blacks' immigrating to "promised lands" as pawns of manipulative "scattering" plans run by whites who have displayed scorn for the inclination of black people (as all people) to want to live with their "own kind."

William Simpson, *A Blueprint for 'Black Flight'?*, *CHI. TRIB.*, Nov. 5, 1991, sec. 1, at 19.

personal reasons, such as wanting to remain involved in a church or other institutions integral to their lives.<sup>183</sup>

Some families had invested themselves in revitalizing their communities. Some families had become active in improving the conditions of their public housing complexes, through tenant management initiatives begun in some CHA complexes in the 1980's.<sup>184</sup> Other public housing tenants organized advocacy groups to press for improved conditions.<sup>185</sup>

Families living in other parts of the inner city also committed themselves to staying and rebuilding their neighborhoods. They tried

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183. Iris Jones, one of the first clients in the program, changed her mind about moving while she was en route to her new apartment. The development was in DuPage County, about twenty-five miles from the city. DuPage County was one of the country's most affluent counties, and only 1.2 percent of the county's entire population was Black. Iris Jones got stuck in a rush hour traffic jam, which led her to reconsider the move because she was heavily involved in her church and had anticipated at least weekly trips to the city for that purpose. See Rubinowitz & Kenny, *supra* note 2, at 105-06; see also, Lisa Golf & Mark Miller, *DuPage the Arrogant*, CRAIN'S CHI. BUS., April 28, 1990, at 19; Jacqueline Heard, *Blacks find DuPage Success has a High Price*, CHI. TRIB., Apr. 22, 1990, sec. 2, at 1.

Another woman indicated her desire to remain in the Black community: "I wouldn't want to leave and go to the suburbs. The suburbs is fine but I like it on the west side of Chicago where I live and reside. I have a lot of things in common. We have good transportation, we have good communication . . ." *The Gautreaux Decision and its Effect on Subsidized Housing: Hearing Before A Subcomm. on Government Operations of the House of Representatives, 95th Cong., 2d Sess. (1978)* (testimony of Francis Lee, Lawndale resident).

184. See LYNDA GOROV, "COME SEE WHAT I'M SAYIN'" COMMUNITY RENEWAL SOCIETY OCCASIONAL PAPERS, July 1989, at 1, on Bertha Gilkey's work on tenant management in Chicago; Gilkey had helped turn around the Cochran Gardens development in St. Louis through tenant control, and spoke of a commitment to help others do the same: "Public housing is not a project to public housing tenants. It is a home, a neighborhood, a community. We feel the same about our home as you do." *Id.* at 6.

In 1986, tenant management began at Chicago's LeClaire Courts housing development. Juanita Bratcher, *CHA Tenants Tout Resident Management Plan*, CHICAGO DEFENDER, Mar. 1, 1986, at 10; see also, J.S. Fuerst, *Note on Policy: Tenant Management in Low-Rent Public Housing*, SOCIAL SERVICE REVIEW, June 1988, at 337.

Some of these activists may have been ambivalent about the Gautreaux program. Their efforts to improve conditions did not foreclose the possibility of leaving, however.

185. One such organization filed suit against the CHA, claiming that the conditions in their public housing complex did not meet minimum standards required by law. *Henry Horner Mothers Guild v. Chicago Hous. Auth.*, No. 91-C-3316 (N.D. Ill. filed Nov. 19, 1991).

to secure increased public funding for housing construction and rehabilitation in their neighborhoods, as well as Section 8 rent certificates for use in the Black community.<sup>186</sup>

Thus, the mobility aspect of the Gautreaux program meant different things to different members of the plaintiff class. For large numbers of families, it was a vehicle for moving to what they hoped would be a better life — especially for their children. For others, the program held little appeal, because it required leaving homes and communities which they cared about, and risking racial hostility in the process.

## 2. *Housing Subsidies*

In addition to its mobility feature, the Gautreaux program offered low-income people desperately needed housing subsidies.<sup>187</sup> Consequently, the rent subsidies themselves became an increasingly powerful draw to the program for plaintiff class families, especially those living in private, unsubsidized housing. Participation in the program ensured that families could receive rent subsidies for at least five years, as long as they stayed in the program and were not evicted.<sup>188</sup>

During the program's first fifteen years, low-income families' need for housing subsidies increased very significantly, at the same time that the general availability of those subsidies declined dramati-

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186. At a 1981 hearing regarding the consent decree between the plaintiffs and HUD, residents of Black neighborhoods spoke out against the Gautreaux program's remedy, preferring instead that housing be developed in their neighborhoods. Others stated that they did not want to move to the suburbs, where they knew no one and access to needed services and transportation was extremely difficult. Testimony of Jerome Butler, representing six plaintiff class members objecting to the consent decree, Jan. 19, 1981, at 109, of the consent decree Fair Hearing transcripts (arguing that discrimination remedy should not make plaintiff class members choose between remaining in the communities they cared about and relocating to qualify for subsidized housing).

Testimony of Georgia E. Day, Lawndale resident, Jan. 19, 1981, at 23 of Fair Hearing transcripts, stating "I want to be where I am known and I am somebody, and I have somebody around me that I can call on."

Testimony of Marie Henderson, 30 year Lawndale resident, Jan. 19, 1981, at 26 of Fair Hearing transcripts. (She stated she feared that people would be forced to move; people had lived in Lawndale all of their lives and didn't want to leave. She argued that housing should be built in Lawndale.). The Court approved the consent decree, *Gautreaux v. Landrieu*, 523 F. Supp. 665 (N.D. Ill. 1981).

187. Many families in CHA's regular Section 8 program had opted for "in place" subsidies, rather than moving. This suggests that subsidies rather than relocation was important for many low-income families.

188. Continuation of subsidies beyond that time was highly likely but not certain.

cally.<sup>189</sup> Increasing numbers of low-income Chicagoans paid a very high percentage of their income for rent — far more than the 30 percent generally considered the maximum appropriate — leaving little for other necessary expenditures.<sup>190</sup> Renters faced an increasing double bind: their income declined at the same time that rents increased — thus expanding the gap between the cost of decent housing and their ability to pay for it.<sup>191</sup> The decline in the value of welfare benefits in real dollars was an important factor in their reduced income, particularly in Illinois.<sup>192</sup> A dwindling supply of affordable housing for low-income people brought rent increases in the remaining stock.<sup>193</sup> At the same time, the 1980's witnessed a dramatic cutback

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189. In 1975, there were 157,100 low cost units in the Chicago metropolitan area but 231,900 low-income renters. By 1987, there were only 150,900 low cost units, but there were 299,900 low-income renters. The shortage of affordable rental units thus went from 75,000 in 1975 to 149,000 in 1987, almost doubling. MARK SHEFT, CENTER ON BUDGET AND POLICY PRIORITIES, CHICAGO, ILLINOIS: A PLACE TO CALL HOME. THE CRISIS IN HOUSING FOR THE POOR XIV (1991).

190. The Department of Housing and Urban Development considers an affordable unit to be one costing 30 percent of household income. *Id.* at 15.

In 1987, one quarter of all renters in the City of Chicago — 26 percent — paid at least 50 percent of their income for housing. A 1991 study reports that poor renters in the Chicago metropolitan area were actually worse off than the nation on average: in 1987, 65 percent of poor renters nationwide spent 50 percent of their incomes in housing, while the figure was 69 percent for poor renters in the Chicago SMSA. *Id.* at 8.

The rent burden in Chicago was particularly high for poor Black households: on average, poor Black households were paying almost 80 percent of their income for housing in 1983. Fossett & Orfield, *supra* note 175, at 170-71.

191. SHEFT, *supra* note 189, at 18-19. Between 1975 and 1987, the median income for all renter households in the Chicago area fell 17 percent, adjusting for inflation, going from \$21,252 to \$17,723; housing costs of the typical renter household, however, increased by 14 percent (also adjusting for inflation) from \$379 per month to \$432 per month. *Id.* at 19.

192. *Id.* at 35-37. The largest possible AFDC benefit, the primary source of public assistance for plaintiff class members, for a Chicago area family of three with no other income went down by 54 percent between 1970 and 1991 (adjusting for inflation). By 1991, the fair market rent for a two-bedroom apartment in the Chicago metropolitan area was approximately 75 percent higher than the maximum AFDC grant for a family of three. *Id.* at 36.

193. Fossett & Orfield, *supra* note 175, at 171-72. A substantial percentage of Chicago's low-income housing was also physically substandard: In 1987, 20 percent of the units occupied by poor renters had moderate or severe physical problems. SHEFT, *supra* note 189, at 41. While only 11 percent of all households in the Chicago area, poor households occupied "42% of the units with evidence of rats; 40% of the units with severe physical problems; 34% of the units with exposed electrical wiring; 33% of the units with holes in the floor; 28% of the units with open cracks in the

in federal housing programs, the primary source of housing subsidy funds.<sup>194</sup>

The so-called housing-renter income gap led many low-income families to seek housing subsidies wherever they could. But there were few such avenues available. CHA's waiting list for public housing complexes was thousands of families and many years long.<sup>195</sup> Similarly, CHA's regular Section 8 program was vastly over-subscribed.<sup>196</sup> The Section 8 waiting list was so long that CHA periodically stopped taking applications for extended periods of time.<sup>197</sup>

Thus, the Gautreaux program was the last best hope for many low-income families in search of assistance in meeting housing costs. The telephone lottery system produced a new waiting list and another shot at subsidies each year. Those who got through could begin their housing search within weeks or months, rather than the years they might have to wait if they were fortunate enough to get on a waiting list for another program.<sup>198</sup> Consequently, many families were willing to relocate wherever the program specified, in order to get the housing subsidies it provided.<sup>199</sup>

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interior walls; 26% of the units with broken plaster." *Id.* at 43.

The loss of housing stock, primarily through demolition, exceeded the additions through housing programs. This produced a net loss of low-income units. *Id.* at 17-18. At the same time, middle-class migration to the suburbs slowed, thus slowing the filtering process by which most low-income people secure their housing. Fossett & Orfield, *supra* note 175, at 165. Countering that trend however, was a decrease in the number of low-income and Black people migrating from the South, thus relieving some pressure from the demand side of the equation. *Id.* at 162.

194. From fiscal year 1977 to fiscal year 1980, federal government commitments for rental assistance through the Department of Housing and Urban Development averaged 290,000 new low-income households per year. From fiscal years 1981 to 1991, however, HUD commitments averaged only 78,000 additional low-income households per year, a decrease of almost 75 percent in new assistance per year on average. SHEFT, *supra* note 189, at 21-22.

195. In some CHA complexes, there were abandoned apartments and boarded up floors, because of the danger and deterioration. By 1988, when Vincent Lane took over as Director of the Chicago Housing Authority, about one sixth of the CHA's 40,840 apartments were vacant. Casuso, *supra* note 156, at 15. By 1989, vacancies increased by 1,103, to a total of 7,321 vacancies. *Id.* at 16. The lengthy waiting lists were for units considered habitable. *Id.* at 22-25; *see also*, KOTLOWITZ, *supra* note 144, at 127.

196. SHEFT, *supra* note 189, at 23.

197. In 1985, the Chicago Housing Authority closed the waiting list for privately owned subsidized rental housing because they were receiving 5,000 new applicants per day; as of 1991, it was still closed. *Id.*

198. Mary Davis Paper, *supra* note 135, at 3.

199. Not all plaintiff class families were eligible for these subsidies. Some may

### 3. *Other Programmatic Incentives*

In addition to the forces favoring families' relocating and their need for housing subsidies, the Gautreaux program included other incentives for families to participate. The Leadership Council assisted families both before and after their moves in ways that added to the program's appeal.

First, the Leadership Council reduced families' housing search. Housing searches were very costly, in time and money, for low-income Blacks.<sup>200</sup> Many households had little experience in the housing search process. Racial discrimination often made the process longer and more costly for them.<sup>201</sup>

Searching in outlying areas of the city and in the suburbs, as the Gautreaux program emphasized, added substantially to the already high search costs. Very few plaintiff class families were familiar with the areas involved or had easy ways of finding out about them. They were not likely to have spent time there — especially in farther out

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have increased their income beyond the ceiling for Section 8 subsidies, thus making them ineligible for the Gautreaux program. Others may have already been receiving Section 8 subsidies, since all of the families eligible for the Gautreaux program were also eligible for CHA's regular Section 8 program.

200. Francis J. Cronin & David W. Rasmussen, *Mobility, in HOUSING VOUCHERS FOR THE POOR: LESSONS FROM A NATIONAL EXPERIMENT* 107, 127-28 (Raymond J. Struyk and Marc Bendick, Jr. eds., 1981). Added search costs faced families in the Gautreaux program because of both their income and their race. Low-income renters generally had difficulty knowing where to search, transportation problems in getting to places that might be of interest, discrimination experienced or expected, and difficulty finding housing meeting quality requirements of subsidy programs. Glen Weisbrod & Avis Vidal, *Housing Search Barriers for Low-Income Renters*, 16 *URB. AFF. Q.* 465 (1981) (study of the Housing Allowance Demand Experiment, which had similar housing quality requirements to those in the Gautreaux program).

Research suggests that housing searches for Blacks are more time-consuming and costly than for whites, at least for home purchases. Robert Lake, studying housing search experiences of Black and white homebuyers, found qualitative and quantitative differences which raised Blacks search costs. Blacks' searches required more time prior to active search "to assess options, consider alternatives, collect information and overcome hesitations. Black households in the sample similarly spent significantly more time in active search, again accumulating greater costs of time and effort and foregone benefits." ROBERT W. LAKE, *THE NEW SUBURBANITES: RACE AND HOUSING IN THE SUBURBS* 172 (1981). Lake concluded that Blacks' more costly search was due to a combination of overt discrimination and Blacks' adaptation to avoid discrimination.

201. John Yinger, *The Racial Dimension of Urban Housing Markets in the 1980's*, in *DIVIDED NEIGHBORHOODS: CHANGING PATTERNS OF RACIAL SEGREGATION* 43, 46-47 (Gary A. Tobin ed., 1987). Cronin & Rasmussen, *supra* note 200, at 127-28.

suburbs — or to have informal networks of family and friends who lived there.<sup>202</sup>

Many participating families probably would not have applied if they had not had access to the Leadership Council's counselling. The program provided information about available rental housing and the communities in which it was located, and counselors often accompanied families to those sites. As the program evolved, the Leadership Council increasingly emphasized training families in how to undertake housing searches on their own, providing them with information they needed to look for rental units in unfamiliar suburban and city areas. These efforts reduced families' housing search costs significantly, as well as their risk of failing to find a place in the allotted time.<sup>203</sup>

In addition, the Leadership Council provided families with information they needed after their moves.<sup>204</sup> This included referrals to services and facilities in the new communities and assistance in resolving matters with landlords. In addition, Leadership Council staff tried to develop an informal information and support network among families living near each other in the suburbs.<sup>205</sup> The availability of support services reduced the risks associated with moving, thereby encouraging greater participation.

In addition to the concrete incentives the Gautreaux program provided, families moved in part because relocating in search of a better life reflected an American ethos.<sup>206</sup> More importantly, migration was a basic element of the Black experience in this country, from the

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202. Garland, *supra* note 151, at 132.

203. The Leadership Council followed its group briefing sessions about the program with individual counselling of clients. Kale Williams Interview, 2/24/92, *supra* note 132.

204. After a family moved into its apartment, their assigned counselor was available to assist them with questions or concerns for 90 days after the move. After that, the Council's Supportive Services Program provided further assistance, such as a directory of community services, including child care and medical facilities. The Council also held monthly meetings to help families considering moving again look for new housing. Mary Davis Paper, *supra* note 135, at 4.

205. Mary Davis at Gautreaux Seminar, *supra* note 130.

206. HIRSCHMAN, *supra* note 149, at 108-13. Hirschman noted that the American idea of success and social mobility — from the country's origins to the movement west to the continuing immigration of the present era — depended on the ability to exercise the "exit option" and thereby leave a bad situation for a better one: "Success is in fact symbolized and consecrated by a succession of physical moves out of the poor quarters in which [a person] was brought up into ever better neighborhoods." *Id.* at 109. Such relocation was for Americans a "paradigm of problem-solving." *Id.* at 107.



Underground Railroad<sup>207</sup> through the two “Great Migrations” of the twentieth century, when hundreds of thousands of southern Blacks migrated to the urban centers of the North.<sup>208</sup>

The high level of demand for the Gautreaux program was born largely out of desperation with the conditions of life in poverty and the potential for improving those conditions by participating in the program. The growing interest in the program told a story of the horrendous situation of Chicago’s poor — the dangerous and deteriorating environment of the inner city and the great need for housing subsidies. An intense desire for a better life, especially for their children, led many families to try to register for the Gautreaux program. Increasing awareness of other families’ experiences led still more people to conclude that it was an option worth pursuing.<sup>209</sup>

#### B. THE SUPPLY: HOUSING AVAILABLE TO THE PROGRAM

The high level of interest in the Gautreaux program among plaintiff class families shifted the challenge to the task of securing housing for them.<sup>210</sup> Including the suburbs in the program vastly expanded the housing potentially available to the program, compared to a city-only initiative. The Chicago metropolitan area encompassed over 250 suburban communities that were potential sources of housing for the Gautreaux

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207. In the perennial struggle as outsiders, Blacks were used to being “strangers in a strange land.” SARAH H. BRADFORD, *HARRIET: THE MOSES OF HER PEOPLE* 31-32 (reprint 1981) (1886).

208. SPEAR, *supra* note 4; LEMANN, *supra* note 4; GROSSMAN, *supra* note 4.

209. There is no way of knowing precisely what tipped the balance for individual families, or in the aggregate. The demand grew dramatically in this program, but that is not necessarily the case elsewhere. Efforts to attract Blacks to the Cleveland suburb of Parma brought very few inquiries, for example. *See supra* note 136.

210. In addition to his concern about whether low-income families would be willing to move to the suburbs, Anthony Downs argued that significant obstacles stood in the way of providing housing for low-income households in the suburbs. Downs believed that the cost of suburban housing and community resistance would make acquiring housing for low-income people difficult. DOWNS, *supra* note 130, at 63-80. As with families’ hypothesized reluctance to move, he identified strategies and incentives designed to overcome resistance to opening up suburban housing. *Id.* at 132-35, 144. Downs envisioned providing thousands of housing units in suburban areas through builders setting aside part of their developments for low-income families. *Id.* at 112-13. Downs emphasized new construction, consistently with the thrust of most federal subsidy programs then in existence. However, he also advocated using a housing allowance to subsidize rents in existing housing, borrowing from the housing allowance experiment the government carried out in the early 1970s.

program. Using the private housing market — both the existing stock<sup>211</sup> and new construction<sup>212</sup> — also increased dramatically the housing to draw on, compared to relying exclusively on the public housing program where the case originated.<sup>213</sup>

The Leadership Council's task was to gain access to as much of this housing as possible for plaintiff class families, within the limitations of available rent subsidy funds. That required soliciting the participation of landlords and property managers throughout the metropolitan area, especially in middle-class, predominantly white suburbs.

The Leadership Council's strategy took into account the relatively bifurcated structure of Chicago's real estate industry — with a small number of very large firms and many small ones.<sup>214</sup> The Council

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211. Some housing experts had long argued that federal policy should assist low-income families to secure existing housing, rather than subsidizing new construction, with the additional costs involved. *E.g.*, IRVING WELFELD, *WHERE WE LIVE* 225-232 (1988); Irving Welfeld & Joseph Carmel, *A New Wave Housing Program: Respecting the Intelligence of the Poor*, 6 *URB. LAW. AND POL'Y* 293 (1984); Irving Welfeld, *American Housing Policy: Perverse Programs by Prudent People*, *THE PUB. INTEREST*, Summer, 1977, at 128.

Private housing constituted most of the housing potentially available at any point in time, including both existing housing and new construction. Even when federally subsidized construction peaked, in the 1970's, it represented a minority of the housing construction during that time.

In 1970, subsidized new housing construction accounted for 29.3 percent of all new housing units started that year. In 1971, subsidized new construction represented 21.2 percent of all new housing starts, and in 1972, 16.3 percent. George Sternlieb & David Listokin, *A Review of National Housing Policy*, in *HOUSING AMERICA'S POOR* 14, 29 (Peter D. Salins, ed., 1987).

212. Letter of Agreement, *supra* note 87, at 40; Letter from Ruth T. Prokop, then General Counsel of HUD, to Alexander Polikoff (July 29, 1977).

That strategy replicated the arrangements worked out on a voluntary basis with the Illinois Housing Development Authority (IHDA) even before the inception of the Gautreaux program. IHDA conditioned its financial assistance to developers on their setting aside a percentage of their apartments for members of the Gautreaux plaintiff class. Rubinowitz & Kenny, *supra* note 2, at 7.

213. Suburban public housing was not part of this program, presumably because of the Supreme Court's admonition that suburban governmental entities were exempt from coercive remedial measures because they were not implicated in the violation. *See supra* p. 604.

However, public housing represented a very small percentage of the suburban housing supply. In 1980, there were only 4,943 public housing units in the Chicago suburbs out of a total of 1,328,858 housing units. Thus, the exclusion of suburban public housing was not very significant. Warren, *supra* note 102, at 26.

214. Kale Williams Interview, 2/24/92, *supra* note 132; Interview with a Real Estate expert, in Chicago, Ill. (Mar. 9, 1992) [hereinafter Interview with Real Estate

began by meeting with top officials of major management firms to inform them of the existence of the new program and to encourage their participation in it.<sup>215</sup> Few firms committed themselves to any significant level of involvement in the program, in spite of ongoing efforts to recruit them.

Fifteen years after the program began, the Council tried another systematic initiative to enlist the industry giants, this time sub-contracting with a real estate management firm for the purpose.<sup>216</sup> The strategy of the second effort was to involve peers of the industry leaders, who might have more credibility with professionals in the field than a social agency like the Leadership Council.<sup>217</sup> However, this approach also produced modest results.<sup>218</sup>

In between those two initiatives, the Leadership Council contacted large numbers of large and small owners and property managers to solicit their participation in the program.<sup>219</sup> Also, the Council increasingly emphasized families' taking greater responsibility for their own search.<sup>220</sup> These efforts began to bear fruit, but did not gain access to dramatically increased amounts of housing for the program.<sup>221</sup>

Thus, while the demand for the Gautreaux program soared, the amount of housing available to it did not. Although housing became available at a level that permitted the Gautreaux program to proceed

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Expert]. For example, one firm managed over 23,000 rental units in the Chicago area.

215. Rubinowitz & Kenny, *supra* note 2, at 36-39.

216. In 1991, the Leadership Council sub-contracted with Kirchoff Meadows Management Corporation to, *inter alia*, "[c]ontact directors of major rental property companies and other owners and managers of rental properties to explain the Gautreaux Assisted Housing Program and encourage participation." Sub-Contract between Leadership Council for Metropolitan Open Communities and Kirchoff Meadows Management Corporation, §2. [hereinafter Kirchoff Meadows Sub-Contract].

217. Kale Williams Interview, 2/24/92, *supra* note 132. This second effort included a series of meetings with high level officials of major management firms to give them in-depth briefings about the program.

218. *Id.*

219. *Id.*; Rubinowitz & Kenny, *supra* note 2, at 37-38.

220. Recently those at the Leadership Council have come to believe that hundreds of families searching in the market can more effectively find housing than a few counselors. While in the beginning, uncertainty about the program may have meant that participants lacked the confidence to do searches, information about the good experiences of previous families has given participants the energy and knowledge to conduct searches. At least one family persuaded an on-site manager to accept them, while the Leadership Council had not been able to persuade top management to join the program. Kale Williams Interview, 2/24/92, *supra* note 132.

221. *Id.*

at a steady pace, no breakthrough occurred as had happened with families' interest in the program. The parties' intentionally modest goal of 400 moves for the program's initial year remained beyond the program's annual reach during its first fifteen years. In fact, while shortages of funding limit most housing subsidy programs, the Gautreaux program did not even use all of its relatively modest allocation of Section 8 funds. The shortage of housing accessible to the program persisted as the primary limiting factor.

That shortage was not attributable to the kind of organized community resistance that thwarted the scattered site program. Neither local officials nor citizens' groups played a significant role in the implementation of the Gautreaux program. Nevertheless, the obstacles to gaining access to substantial amounts of housing turned out to be formidable, especially in the suburbs. First, important mismatches existed between the region's housing supply and the program's goals and needs. Moreover, affordability problems prevented using a great deal of otherwise appropriate housing. Most importantly, however, large numbers of landlords with affordable housing in predominantly white areas declined to participate in the Gautreaux program, thereby denying access to plaintiff class families. While metropolitanization and privatization expanded the housing possibilities, the program's racial integration goals limited the housing actually accessible.

### 1. *Community Response*

In contrast to the experience with the scattered site program, the Gautreaux program elicited little community response. Local officials and community groups played little role either in support of, or in opposition to, the program. Most of the limited organized response took place in integrated communities concerned about concentrations of Black families and possible resegregation.<sup>222</sup>

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222. In Bolingbrook, a racially mixed suburb southwest of Chicago, community residents objected to what they perceived as a concentration of families moving into the community through the Gautreaux program. The Leadership Council reassured the community that relatively few families were moving there through the program, and that their policy was to disperse families throughout the region. Kale Williams Interview 3/10/92, *supra* note 88.

Also, the Oak Park Housing Center, in a racially mixed community on Chicago's western border, objected to a placement of a family in an integrated building in that suburb. Once again, the Leadership Council resolved the matter without a significant confrontation. *Id.*

Resegregation of neighborhoods and communities occurred in many Chicago neighborhoods and some southern and western suburbs. See BERRY, *supra* note 177, at 255-57; CAROL GOODWIN, *THE OAK PARK STRATEGY* (1979); Richard H. Sander,

Several factors seemed to account for the lack of community resistance to the Gautreaux program of the kind experienced in its Chicago counterpart. First, the Section 8 program had a very limited formal role for public officials, unlike the public housing program.<sup>223</sup> Suburban city councils did not have to apply for or even approve the use of Section 8 subsidies in their communities.

Second, the Leadership Council worked for several years through the Regional Housing Coalition with a group of suburban mayors, promoting affordable housing in the suburbs. Several of those mayors sent a letter to other mayors in the region explaining the Gautreaux program, reassuring them that families would be dispersed, and urging their support for it.<sup>224</sup> Both these efforts may have muted possible opposition to the program.

Perhaps more importantly, the Gautreaux program had very little visibility. The scale of the program was modest. Participants, as the mayors had indicated, were widely scattered across many communities — far more scattered than in the scattered site program in the city. Families moved to privately owned rental housing, their participation kept confidential from all but their landlords.<sup>225</sup> No construction took place specifically for this program, and no public announcements preceded families' moves to a community, unlike in the scattered site program. Finally, middle-class communities a long distance from Black areas had little reason to anticipate significant Black in-migration across the physical and economic distance from the inner city. A much larger program would probably have elicited substantial resistance; but absent overt community response, the private housing market determined the program's fate.

## 2. *Supply: The Existing Housing Stock and New Construction*

During the period of the public housing "boom" of the late 1950s and 1960s, private suburban apartment construction "boomed"

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*Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 Nw. U. L. Rev. 874 (1988). In a number of suburbs, local officials and community activists have organized "integration maintenance" activities to keep their communities racially mixed and prevent resegregation. See Alexander Polikoff, *Sustainable Integration or Inevitable Resegregation: The Troubling Question*, in HOUSING DESEGREGATION AND FEDERAL POLICY 43 (John M. Goering, ed. 1986); John Schrag & Jorge Casuso, *A Delicate Balance: "Open" Suburbs Fight to Avoid Racial "Tipping,"* THE CHI. REPORTER, Dec. 1985, at 1.

223. See *supra* p. 596.

224. Letter from Jack Pahl, Chairman, Mayors' Steering Committee to All Mayors, Village Presidents and County Board Presidents in the Chicago Region (Aug. 10, 1976) (on file with author).

225. See DOWNS, *supra* note 130, at 134-35.

in the Chicago area as well as nationally.<sup>226</sup> The homogeneity of the single-family home suburbs made way for more diverse development patterns, opening many suburbs to renters as well as home owners.<sup>227</sup> Rental accommodations ranging from two-flats to large-scale developments accompanied by substantial recreational and community facilities dotted the suburban landscape.<sup>228</sup> As a result, substantial numbers of rental units were potentially available in Chicago's suburbs to families in the Gautreaux program.<sup>229</sup> In fact, developers had already built subsidized rental housing in a number of those communities.<sup>230</sup>

However, much of the vast rental housing supply in the Chicago metropolitan area did not fit the needs of the Gautreaux program. The focus on moves to predominantly white areas substantially reduced the portion of the region's housing potentially available to the program. It de-emphasized, but did not exclude entirely, the very large portions of the city and the smaller parts of the suburbs where many Blacks lived.<sup>231</sup> In so doing, it avoided many areas where housing

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226. Richard F. Babcock & Fred P. Bosselman, *Suburban Zoning and the Apartment Boom*, 111 U. PA. L. REV. 1040 (1963). 29.8 percent of all dwelling units (8,919 out of 29,914) constructed in Chicago suburban areas in 1961 were multi-family. *Id.* at 1051 (citing U.S. BUREAU OF THE CENSUS, DEPT. OF COMMERCE, CONSTRUCTION REPORTS, BUILDING PERMITS TABLES 1-2 (C40 ser., No. 38, July 1962)). Even more permits (11,371) for multi-family dwellings were issued in 1962 for the Chicago suburbs. *Id.* at 1052 (citing Bell Savings and Loan Ass'n, Survey of New Building, Chicago Metropolitan Area (Jan. 15, 1963)).

227. MAYER & WADE, *supra* note 146, at 416-24.

228. *Id.*

229. *Id.*

230. Between 1970 and 1980, the number of subsidized units (including new construction and rehabilitation under a number of programs and Section 8 existing housing) increased by over 24,000 in the Chicago suburbs. Warren, *supra* note 102, at 19.

231. The Leadership Council tried to avoid contributing to what it considered to be concentrations of Black families. Independently of the Gautreaux program, the Leadership Council worked closely with suburban officials and organizations seeking to maintain racial integration in communities where it existed and to avoid resegregation. To that end, the Leadership Council imposed moratoria on Gautreaux placements in certain suburbs or parts of them. Kale Williams Interview, 3/10/92, *supra* note 88; Mary Davis, Associate Director of the Leadership Council, Presentation Given at the Housing Desegregation Remedies Conference (Feb. 1, 1992) [hereinafter, Mary Davis at the Desegregation Conference]. The Leadership Council informed registrants about these locational restrictions through brochures and briefing sessions.

The Seventh Circuit held that integration maintenance efforts by one Chicago area fair housing organization through an affirmative marketing plan did not violate

would have been readily available to the program.<sup>232</sup> Much of the housing in areas where significant numbers of Black families lived was more affordable, and many landlords there accepted Section 8 tenants.<sup>233</sup>

The Gautreaux program's dispersal policy meant that even within predominantly white areas, some portions of communities, neighborhoods, developments, and buildings were off limits to the program, or the number of families permitted to move to those locations was very limited.<sup>234</sup> Program designers and administrators excluded from the program much of the region's housing that would have been most readily accessible to these families, in order to achieve and maintain racial integration and prevent what they deemed to be an undue concentration of Black families.<sup>235</sup>

The necessary reliance on rental housing excluded housing available for purchase only, such as most condominiums and almost all single-family homes. That amounted to a great deal of the region's housing, including entire communities or sections of them with only housing for purchase.<sup>236</sup>

In addition, the private rental stock contained few accommodations for large families.<sup>237</sup> Many plaintiff class families required three, four, or five bedrooms; but few such apartments were available, especially in the suburbs.<sup>238</sup> While some owners of single-family homes did rent their houses to families in the Gautreaux program, the market

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the Fair Housing Act. *South-Suburban Hous. Ctr. v. Board. of Realtors*, 935 F.2d 868 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 971 (1992).

232. *See supra* note 151.

233. Many landlords in the regular, non-Gautreaux, Section 8 programs in the region were in predominantly Black or integrated areas. Warren, *supra* note 102, at 29-31.

234. Kale Williams Interview, 3/10/92, *supra* note 88.

235. *Id.*; Mary Davis at Gautreaux Seminar, *supra* note 130. The original agreement provided tentative goals for general distribution of families among the six counties of the Chicago Metropolitan area and stated an intention to locate families "in a dispersed fashion" within each county. Letter of Agreement, *supra* note 87, at 40. The Leadership Council's contracts with HUD for the administration of the program specified that it would take steps to prevent concentration of participating families.

236. Kale Williams identified lack of rental housing stock as one of several reasons why families did not move to certain communities. Kale Williams Interview, 3/10/92, *supra* note 88.

237. PEROFF ET AL., *supra* note 131, at 46-47.

238. Rubinowitz & Kenny, *supra* note 2, at 91-92, 103; Kale Williams Interview, 2/24/92, *supra* note 132; Mary Davis at Desegregation Conference, *supra* note 231.

in general could not accommodate larger families seeking to participate.<sup>239</sup>

HUD required rental housing developers it assisted to set aside a percentage of their apartments for Gautreaux families.<sup>240</sup> During the late 1970s and early 1980s, these set-asides served as an important source of housing for the program.<sup>241</sup> However, during the 1980s, the federal government cut the funding for those construction programs drastically.<sup>242</sup> Consequently, by the early 1990s, set-asides for the Gautreaux program provided only a trickle of apartments.<sup>243</sup>

### 3. *Affordability: Market Rents and Section 8 Subsidies*

Although the Gautreaux program relied on the private housing market, low-income families' gaining access to that housing required public subsidies. Without the Section 8 rent subsidies, most of the rental housing in predominantly white areas was beyond the means of plaintiff class families.<sup>244</sup> Consistent with Section 8 requirements, the Gautreaux program used only housing with actual rents within federally established ceilings — or "fair market rents." The combination of relatively high rents in much of the region's private housing and HUD's administration of the Section 8's "fair market rent" provisions limited substantially the housing potentially available to

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239. Kale Williams Interview, 3/10/92, *supra* note 88; PEROFF ET AL., *supra* note 131, at 46-47. Historically, the private market served large, low-income Black families least well. For a time after World War II, the public housing program filled this gap reasonably well. Lawrence M. Friedman, *Public Housing and the Poor: An Overview*, in *THE LAW OF THE POOR* 318 (Jacobus tenBroek, ed., 1966). The Gautreaux program, with its privatization approach, also had its greatest difficulty accommodating large families.

240. *Gautreaux v. Landrieu*, 523 F. Supp. at 677. Even when federal funding was available, suburban land use controls limited places where developers could build HUD-assisted housing. ADVISORY COMM'N. ON REGULATORY BARRIERS TO AFFORDABLE HOUS., U.S. DEPT. OF HOUS. AND URBAN DEV., NOT IN MY BACK YARD 2-1 to 2-14 (1991) [hereinafter ADVISORY COMM'N ON REGULATORY BARRIERS TO AFFORDABLE HOUS.].

241. *See infra* pp. 666-68.

242. Starts of subsidized new construction units peaked in 1971 at 441,000, then slowed during the mid-seventies, but increased again by the late seventies (237,000 starts in 1979). However, funding cuts beginning in 1981 caused a rapid decline of subsidized housing production, resulting in only 70,000 starts in 1985. Sternlieb & Listokin, *supra* note 211, at 29.

243. Kale Williams Interview, 3/10/92, *supra* note 88.

244. SQUIRES ET AL., *supra* note 146, at 106; PEROFF ET AL., *supra* note 131, at 43-47.



the Gautreaux program at various times and in various parts of the metropolitan area.<sup>245</sup>

Market forces and land use controls largely determined rents in private housing — both the existing stock and new construction. Developers traditionally built rental housing for relatively affluent tenants, and landlords attempted to attract those kinds of households to their buildings. The private market did not serve low-income tenants well, which was part of the reason Congress created the public housing program in the 1930s and other subsidy programs in the half century since then.<sup>246</sup> At the same time, local land use controls added substantially to the cost of housing — because of both substantive and procedural requirements.<sup>247</sup> The Supreme Court in *Gautreaux* indicated that the lower courts would not interfere with the operation of those local prerogatives,<sup>248</sup> so the remedial program accepted market rents for new construction as well as existing housing as a given.<sup>249</sup>

Although the suburban rental supply was substantial and growing when the Gautreaux program came along, much of the housing was too expensive to be available to the program. Sections of communities or entire communities remained beyond the financial reach of the program. While the suburbs' heterogeneity meant that some rents were relatively modest, much of the stock presented affordability problems.

The amount of housing affordable to the program depended not only on the actual rents, but also on HUD's "fair market rents."<sup>250</sup>

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245. One Chicago real estate expert identified fair market rents as the Gautreaux program's major constraint. Interview with a Real Estate Expert, *supra* note 214.

246. See Friedman, *supra* note 239, on the history of public housing and the effort not to compete with the private housing market.

247. ADVISORY COMM'N ON REGULATORY BARRIERS TO AFFORDABLE HOUS., *supra* note 240, at 2-1 to 2-14; Barbara Baran, *Illinois Annexation Agreements — Are We Behind the Times?*, 12 N. ILL. U. L. REV. 727 (1992).

Suburban governments played an important but subtle role in affecting the supply of housing affordable to the Gautreaux program. Zoning and other regulatory devices influenced the type and amount of housing, e.g., multi-family v. single-family, numbers of bedrooms permitted, and amenities required. Local policies and practices thus shaped the housing supply that was potentially available for the Gautreaux program.

248. See *supra* p. 604.

249. In 1991, a HUD Commission addressed the shortage of affordable housing and urged the removal of regulatory barriers that unduly increased the cost of new housing. ADVISORY COMM'N ON REGULATORY BARRIERS TO AFFORDABLE HOUS., *supra* note 240, at 6-1 to 6-5. Changes of that kind would reduce the cost of housing and increase the amount of housing within fair market rents, unless HUD reduced fair market rents accordingly.

250. 42 U.S.C. § 1437f(c)(1) (1988).

The fair market rent concept represented a Congressional compromise between providing low-income families access to decent housing in the private market and keeping the subsidy costs per family reasonable.<sup>251</sup> Keeping subsidy costs per family down enabled HUD to spread these scarce resources across a larger number of eligible families.<sup>252</sup> Also, Congress did not want poor people to have better accommodations than middle-class households.<sup>253</sup> Consequently, applying fair market rents inevitably excluded a substantial portion of the area's pool of rental units from the Gautreaux program.

However, HUD exercised its discretion in administering fair market rents in several ways that further reduced the rental units within the Gautreaux program's financial reach. HUD sometimes established fair market rent levels that did not accurately reflect private market rents.<sup>254</sup> The agency also moved slowly in making changes that reflected increases in market rents, as well as permitting use of higher "exception" rent levels under certain circumstances.<sup>255</sup> When HUD made needed changes in fair market rents, more apartments became available and the numbers of moves increased.<sup>256</sup>

In addition, fair market rents often did not adequately reflect the widely varying market conditions in different parts of the Chicago region.<sup>257</sup> This particularly impeded moves to more affluent areas of the region where actual rents often exceeded HUD's fair market rents, such as DuPage County and northwest Cook County.<sup>258</sup> HUD's delays or failure to make sub-regional adjustments significantly hampered use of the program in those areas.<sup>259</sup> Once again, when HUD made

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251. BARRY JACOBS ET AL., GUIDE TO FEDERAL HOUSING PROGRAMS 27-28 (1982).

252. ALLEN HAYS, THE FEDERAL GOVERNMENT AND URBAN HOUSING, 140-41 (1985).

253. Doing so would raise equity questions as well as having possible political implications, potentially undermining support for the program. *Id.* at 159-60, 167-71.

254. Mary Davis Paper, *supra* note 135, at 7; Interview with Real Estate Expert, *supra* note 214; Kale Williams Interview, 2/24/92, *supra* note 132.

255. Congress provided for such exceptions in 42 U.S.C. § 1437f(c)(1) (1988); 24 C.F.R. § 882.106 (1991).

256. Mary Davis Paper, *supra* note 135, at 7; Kale Williams Interview, 2/24/92, *supra* note 132.

257. HUD can establish sub-regional fair market rents to reflect differing market rents within regions. 42 U.S.C. § 1437f(c)(1) (1988); 24 C.F.R. § 888.113 (1991).

258. By the early 1990s, HUD permitted higher ceilings for northwest Cook County, thus facilitating expanded access there; but the DuPage County fair market rents remained problematic and few families moved there. Kale Williams Interview, 2/24/92, *supra* note 132; Mary Davis at Gautreaux Seminar, *supra* note 130.

259. Also, DuPage County's own Section 8 program absorbed most of the rental

sub-regional adjustments, as in the rapidly developing northwest Cook County, additional housing became available to the program, and more families moved there.

#### 4. *Accessibility: Landlord Participation*

Increasing fair market rents did not ensure that landlords whose housing had become affordable to the program would participate in it.<sup>260</sup> Implementing the Gautreaux program depended on the willingness of housing owners and property managers in predominantly white, middle-class areas to accept participating families as tenants. Developers and building owners receiving other HUD assistance were obligated to participate through the "set-aside" arrangements the parties negotiated.<sup>261</sup> But the vast majority of landlords had the choice of whether to become involved in the Gautreaux program.

Those landlords' decisions depended on their assessment of the benefits and costs of renting to plaintiff class families, being involved in the Section 8 program, and working with the Leadership Council as it administered the Gautreaux program. Overall, large numbers of landlords either declined to participate at all, or they accepted a very small number of tenants through the program. Assessments of landlords' motivations must necessarily be tentative, in light of the complexities of the context and the absence of systematic data on this sensitive subject.<sup>262</sup>

##### a. The Tenants

Most landlords in predominantly white outlying areas were accustomed to having white middle-class families, often with two par-

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units that were within the fair market rents. The county's housing authority did not request an increase in fair market rents, as HUD's procedures called for, so HUD took no action in this regard. Kale Williams Interview, 2/24/92, *supra* note 132.

260. In fact, landlords with higher rents might have been less likely to accept low-income families than those whose units were already within the fair market rents, because of the wide disparities between the incomes of their market rate tenants and those of Gautreaux participants.

261. *See supra* p. 619.

262. It is impossible to determine the precise mixture of factors motivating landlords' decisions. Many possible explanations existed, with various combinations and interactions among them. Conclusions about motivations must be very tentative, because of the limited amount of direct evidence and reliance instead on impressions from program administrators and participants, assessments by real estate experts, general data on Chicago area housing discrimination by race, income, and family size, and inferences from the normal operation of the housing market.

ents, as tenants. Participating in the Gautreaux program meant accepting low-income Blacks from Chicago, mostly single-parent families who lived in public housing — a drastic departure from their customary practice. Any one of these characteristics would have been sufficient to deter many landlords. Cumulatively, they provided large numbers of landlords a rationale for saying no to the Gautreaux program — even if they rarely articulated those reasons.<sup>263</sup> The tenants' attributes were probably the decisive factor for many landlords who opted out of the Gautreaux program.<sup>264</sup>

Race was almost certainly a consideration in many landlords' decisions about whether to participate in the Gautreaux program.<sup>265</sup> With rare exceptions, landlords and their management staff did not acknowledge any racially discriminatory motivation.<sup>266</sup> However, the Chicago area's documented patterns of housing discrimination and racial segregation suggested that the overt incidents constituted only the tip of the iceberg.<sup>267</sup> Many landlords probably avoided the Gautreaux program at least in part because the prospective tenants were Black, even though doing so violated federal and state law and local ordinances in many communities.<sup>268</sup>

However, it was difficult to determine when racial motivations operated, especially because of the existence of other plausible explanations for landlords opting out of the Gautreaux program.<sup>269</sup> For

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263. Interview with Real Estate Expert, *supra* note 214.

264. One real estate expert reported that some landlords avoided the Section 8 program entirely because they feared that participating in the Section 8 program might require them to accept tenants through the Gautreaux program. Kale Williams Interview, 3/10/92, *supra* note 88; Interview with Real Estate Expert, *supra* note 214.

265. Kale Williams Interview, 3/10/92, *supra* note 88; Interview with Real Estate Expert, *supra* note 214.

266. Several management staff persons expressed their reluctance to accept Black tenants. See Rubinowitz & Kenny, *supra* note 2, at 94.

267. See MARGERY AUSTIN TURNER ET AL., U.S. DEPT. OF HOUS. AND URB. DEV., HOUSING DISCRIMINATION STUDY: SYNTHESIS (1991); Williams, *supra* note 175; Fossett & Orfield, *supra* note 175, at 173-77.

268. 42 U.S.C. § 1982 (1988); Federal Fair Housing Act (Title VIII) 42 U.S.C. § 3604 (1988); Illinois Human Rights Act, ILL. REV. STAT. ch. 68, para. 3-102 (1991); Chicago, Ill., Municipal Code § 5-8-020 (1990).

269. Discrimination may have been so subtle that Leadership Council staff or plaintiff class families were not even aware of it. See note 271 *infra* for a discussion of the difficulties even trained testers can have in determining whether they were receiving different treatment because of their race. The Leadership Council's legal action program had been discovering and challenging racial discrimination in housing since the late 1960s. BERRY, *supra* note 177; Kale Williams Interview, 2/24/

example, some may have avoided the Gautreaux program because it required involving themselves with the Section 8 program.<sup>270</sup> At the same time, those justifications could easily serve as a pretext for racial discrimination.<sup>271</sup> With so many factors besides race potentially at work, motives were often mixed and difficult to separate out, conceptually and practically.<sup>272</sup> Moreover, landlords did not have to provide

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92, *supra* note 132. The Council relied heavily on "testing" and "audits" to discover racial discrimination — sending comparable Black and white "homeseekers" to the same developments or real estate offices, to determine whether they received different treatment that they could attribute to racial discrimination. At the same time, the Leadership Council worked cooperatively with the real estate industry to educate its members about their responsibilities under fair housing laws. That dual role always required the agency to walk a tightrope, explaining to industry members that they simply served as lawyers for clients in discrimination cases.

The Council's dual role was particularly problematic in the context of the Gautreaux program, because the program depended so heavily on landlords' voluntary participation. Any Leadership Council investigation or lawsuit related to the Gautreaux program could have endangered carefully cultivated relationships with that landlord, and risked alienating others as well. One major landlord expressed reluctance to participate in the program while a discrimination lawsuit was pending, where the Leadership Council was counsel for the plaintiff. That landlord ultimately agreed to participate; but its level of participation may have been affected by the dilemma of maintaining both cooperative and adversarial relationships simultaneously. On the other hand, the Leadership Council cited an example of a management firm agreeing to accept a specific number of families through the Gautreaux program as part of a settlement of a case against it. Kale Williams Interview, 2/24/92, *supra* note 132.

270. See *supra* notes 287-97 and accompanying text. On the other hand, willingness to participate in the Section 8 program, but not the Gautreaux program, might have indicated racial animus.

Moreover, a number of courts have concluded that violation of the Federal Fair Housing Act can occur based on discriminatory effect or impact, without racial motivation. In the context of the Gautreaux program, refusal to accept tenants through the Gautreaux program excluded a group that was exclusively Black. Any decision to accept Section 8 tenants but not Gautreaux families probably had a substantial disparate impact. See Frederic S. Schwartz, *The Disparate Impact Theory of Discrimination in Employment and Housing: The Limits of Analogy*, 59 UMKC L. REV. 815 (1991).

271. Even those who are experienced at detecting racial discrimination cannot always discern the subtle forms of discrimination. Two of the Leadership Council's professional "testers" — one Black and one white — participated in an experiment in cooperation with the network television show "Prime Time." They went to St. Louis for two weeks, and each went to the same places — employment agencies, apartment buildings, car dealers, stores, etc. The show videotaped their experiences with hidden cameras and found greater differences in treatment than either of them would have realized without the graphic comparison provided by the television cameras. *Prime Time: True Colors* (ABC television broadcast, Sept. 26, 1991).

272. For example, some landlords might have accepted middle-class Black

any explanation at all for not participating, because the program was entirely voluntary.<sup>273</sup>

The combination of families' being Black and coming from the inner city — especially public housing — tapped into many landlords' stereotypes.<sup>274</sup> They stigmatized those families and feared that gangs, drugs, and violence would accompany them.

At the same time that the Leadership Council, its sub-contractor, and participating families were spreading the word about the Gautreaux program, the media and informal networks spread information about it.<sup>275</sup> The media reports that informed families about the program probably reached landlords as well, while some landlords may also have seen the coverage of the program in elite magazines.<sup>276</sup>

As more families moved, additional information about those experiences became available. This was important because of the lack of experience in the United States with racial and economic integration.<sup>277</sup> Landlords received varying reports about those experiences from different sources. The Leadership Council and the media reported quite positive experiences. However, landlords' informal networks conveyed less positive and more critical information about the program. As a result, many landlords remained skeptical about the Gautreaux program.<sup>278</sup>

"Horror stories" about suburban landlords' experiences with Gautreaux tenants — such as damage to the apartments and non-payment of rent — added to these concerns, although it is not clear how much landlords' grapevines may have embellished these inci-

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tenants, but would not rent to low-income Black families. Or they might have accepted low-income whites but not low-income Blacks — especially families from public housing. The latter would have been illegal, but very difficult to detect through testing, because neither low-income Blacks or whites could afford housing the Gautreaux program used unless they had Section 8 certificates, which might only be available to the Black families participating in the Gautreaux program.

273. Landlords sometimes agreed to take only one or two families through the program. Their motivation for this limitation might have been racial; but that would have been even more difficult to prove in light of their accepting one or more Black tenants.

274. Kale Williams Interview, 2/24/92, *supra* note 132; Interview with Real Estate Expert, *supra* note 214; Mary Davis at Desegregation Conference, *supra* note 231.

275. See *supra* pp. 622-23.

276. See *supra* note 151.

277. Irving Welfeld, *The Courts and Desegregated Housing: The Meaning (if any) of the Gautreaux Case*, THE PUBLIC INTEREST 123, 128-29 (Fall, 1976).

278. Interview with Real Estate Expert, *supra* note 214.

dents.<sup>279</sup> These stories may have had an impact out of proportion to their frequency or severity because they reinforced many landlords' preconceptions about inner city Black families.

In addition to race, class, and place of origin, family composition was probably a factor in landlords' decisions — the presence of children and the absence of fathers. Most of the participants in the Gautreaux program were single-parent families, composed of a woman and her children.<sup>280</sup>

Landlords' resistance to Gautreaux families based on their race, place of origin, family composition, income, or some constellation of these characteristics may have been a matter of personal taste or based on economic considerations. The financial considerations could have included concerns about direct costs, such as damage to apartments or non-payment of rent.<sup>281</sup>

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279. No systematic comparison exists of landlords' experiences with tenants from the Gautreaux program and non-Gautreaux households. Informal networks may have badly distorted the incidents in the Gautreaux program, and may have even mistakenly attributed problems to families in the program. In light of many landlords' preconceptions, this risk was particularly serious. However, since the program was voluntary, landlords had little incentive to obtain systematic information about other landlords' experiences with families in the Gautreaux program. To convey positive experiences and to counter any distortions that might circulate among landlords, the Leadership Council requested satisfied participating landlords to spread the word about their experience.

280. One study found that 58 percent of families with children experienced discrimination while searching for housing in Chicago in spite of federal and state laws prohibiting such discrimination. The study was limited to the city, but such discrimination probably existed in the suburbs as well, especially when the families were single-parent, low-income Black ones. LAWYERS' COMM. FOR BETTER HOUS., LEADERSHIP COUNCIL FOR METRO. OPEN COMMUNITIES & METRO. TENANTS ORG., NO CHILDREN ALLOWED: A REPORT OF THE OBSTACLES FACED BY RENTERS WITH CHILDREN IN THE CHICAGO RENTAL HOUSING MARKET 18 (1991); Illinois Human Rights Act, ILL. REV. STAT. ch. 68, para. 3-102 (1991); Federal Fair Housing Act (Title VIII) 42 U.S.C. § 3604 (1988).

281. Even though tenants would have been liable for repair costs beyond normal wear and tear, landlords wanted to avoid the disputes that might occur about responsibility. Moreover, landlords were concerned that low-income tenants might not have the resources to pay for repairs for which they were liable.

One study revealed that landlords believe that maintaining Section 8 rental units is more expensive than typical market rental units, either because of the strict and continuous enforcement of quality standards or because Section 8 tenants more often damage the units. If the fair market rents do not appear to compensate for these increased costs (real or perceived), many landlords will not participate in Section 8. Michael A. Quinn, *Financial Tradeoffs and Landlord Participation in the Section 8 Rental Assistance Program*, AM. PLANNING ASS'N J., Winter 1986, at 33, 38-41.

Landlords may also have been concerned about the impact of the presence of these families on other tenants — both present and prospective. For example, landlords might have been concerned about middle-class white tenants' biases, or clashes of cultures and lifestyle between Gautreaux families and market-rate tenants — such as different choices in type and volume of music, cars or other sounds and sights that might risk retention of middle-income tenants or endanger the development's marketability.<sup>282</sup>

A typical landlord response was that Gautreaux families were "nothing but trouble."<sup>283</sup> That reaction summed up many landlords' personal preferences as well as their assessment of the practical implications of renting to families in the Gautreaux program. In considering the potential impact of Gautreaux families on marketability, landlords tried to discern and reflect community attitudes.<sup>284</sup> Residents of many predominantly white suburban communities objected to Black families moving in, especially from the inner city of Chicago.<sup>285</sup> An extreme example of this phenomenon was that in a few notoriously racially exclusionary communities, no landlords agreed to participate in the Gautreaux program.<sup>286</sup>

[iw2] Those landlords in middle-class white suburbs who were interested in the Section 8 program probably preferred tenants from the suburbs, who were more likely to be white, two-parent families with somewhat higher income than the families in the Gautreaux program.<sup>287</sup> Suburban Section 8 residents and families in the Gautreaux program competed for the same housing. In addition to greater landlord receptivity to them, suburbanites had an advantage in the

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282. Part of what suburban landlords offered prospective tenants may have been homogeneity — other tenants who were like them in lifestyle and social class.

283. Interview with Real Estate Expert #2, Chicago, Ill. (Apr. 9, 1992).

284. This led many landlords to participate initially on a very limited basis, accepting a family or two in a large development. This provided an opportunity to observe the impact of the tenants' presence. Rubinowitz & Kenny, *supra* note 2, at 92-93.

285. See *supra* pp. 634-37.

286. For example, in Cicero, a virtually all-white working class suburb bordering on Chicago of more than 60,000 people, it took fifteen years before the first landlord agreed to accept a family through the program. Kale Williams Interview, 3/10/92, *supra* note 88. See *supra* page 637 for discussion of why the family did not make this move.

287. For example, most Section 8 applicants from DuPage County were able to secure housing there, while few families in the Gautreaux program succeeded in their searches in that area. Mary Davis at Gautreaux Seminar, *supra* note 130; Kale Williams Interview, 2/24/92, *supra* note 132.



search process because of their greater familiarity with the housing market in their area.<sup>288</sup>

#### b. The Section 8 Program

In addition to deciding whether they wanted to rent to families like those in the Gautreaux program, landlords had to decide whether the benefits outweighed the costs of participating in the Section 8 program. Section 8 subsidies provided landlords a major portion of the rent each month — the part of the market rent that exceeded the tenant's share. The program also provided the possibility of a stable stream of revenue. HUD guaranteed funding for five year terms, with the likelihood of two term extensions.<sup>289</sup> If the landlord and tenant renewed their lease through the funded period, the subsidy would be available for up to fifteen years.<sup>290</sup>

Like other so-called privatization efforts, the public sector retained a significant role in the Section 8 program. Along with the financial benefits, the Section 8 program imposed substantive and procedural requirements on landlords. For example, dwelling units had to meet federal quality standards.<sup>291</sup> In addition, in 1987, Congress prohibited landlords who accepted any Section 8 tenants from discriminating against other Section 8 applicants.<sup>292</sup> Many landlords viewed this provision as intruding inappropriately on their discretion in selecting tenants.<sup>293</sup> Suburban landlords expressed concerns that if

288. Mary Davis at Gautreaux Seminar, *supra* note 130.

289. 42 U.S.C. § 1437f(d)(2)(A) (1988); 24 C.F.R. § 882.107 (1991); JACOBS ET AL., *supra* note 251, at 45.

290. JACOBS ET AL., *supra* note 251, at 45. See, e.g., QUINN, *supra* note 281, at 33. The importance of these subsidies to the tenants increased their incentives to maintain good relationships with landlords. That, in turn, made the program more attractive to landlords.

291. 42 U.S.C. § 1437a(b)(1); 24 C.F.R. § 882.109 (1991). This requirement did not generally impose significant costs on landlords in middle-class suburbs, because the market required that they maintain relatively high standards anyway.

292. The statute provides that:

No owner who has entered into a contract for housing assistance payments under this section on behalf of any tenant in a multifamily housing project shall refuse (A) to lease any available unit in any multifamily housing project of such owner that rents for an amount not greater than the fair market rent . . . to a holder of a certificate . . . a proximate cause of which is the status of such prospective tenant as a holder of such certificate . . . .

42 U.S.C. § 1437f(t) (1988).

293. The provision applied to owners of buildings with five units or more. 42 U.S.C. § 1437f(t). Kale Williams Interview, 3/10/92, *supra* note 88; Interview with

they accepted one Section 8 tenant many more such families would follow, and they would not be able to limit access of low-income families.<sup>294</sup> This "floodgates" issue led some landlords to avoid the program. Section 8 requirements also included procedures for landlords to follow. Perhaps most significantly, evictions required adherence to HUD-specified procedures.<sup>295</sup>

In cooperation with HUD, local public housing authorities administered important aspects of the Section 8 program. Landlords had to depend on local housing officials' timely payment of monthly rent subsidies. The delays that some Chicago area landlords experienced in receiving those checks imposed significant burdens on them, particularly on smaller landlords, and further deterred them from participating in the Section 8 program.<sup>296</sup>

Finally, some landlords stayed away from all government programs as a matter of principle — often mixed with practical concerns about bureaucratic complexities inherent in such programs. In spite of extensive federal, state, and local intervention in the housing market, many private owners and managers jealously guarded their private prerogatives and avoided involvement with government whenever possible.<sup>297</sup>

### c. Gautreaux Program Incentives

Faced with owners' and property managers' skepticism, the Gautreaux program included several elements designed to encourage land-

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Real Estate Expert, *supra* note 214.

A district court in New York held that there was a private right of action to enforce this provision. *Glover v. Crestwood Lake Section 1 Holding Corp.*, 746 F. Supp. 301, 308-09 (S.D. N.Y. 1990).

294. Kale Williams Interview, 3/10/92, *supra* note 88; Interview with Real Estate Expert, *supra* note 214. Anthony Downs claimed that middle class families would flee an area if they were not assured that the number of low-income families would be limited. *Downs*, *supra* note 130, at 99.

295. The owner may not evict a Section 8 tenant without filing a court action. 24 C.F.R. § 882.215 (1991). And the owner cannot terminate the tenancy except for serious violation of the terms of the lease, or for violation of the law, or for "other good cause." 42 U.S.C. § 1437f(d)(1)(B)(ii) (1988). HUD regulations provide several examples of reasons that are and are not "good cause." 24 C.F.R. § 882.215 (1991). Within 90 days of any termination, the landlord must submit a written notice to HUD and the tenant, so that HUD can determine the legality of the termination, or take steps to avoid it. 42 U.S.C. § 1437f(c)(9) (1988).

296. Mary Davis at Gautreaux Seminar, *supra* note 130. Chicago landlords complained that CHA often failed to make the first payment until six weeks after the tenant arrived. Kale Williams Interview, 2/24/92, *supra* note 132. However, this did not seem to be as important a factor in landlords' participation decisions as others, especially in the suburbs.

297. Kale Williams Interview, 2/24/92, *supra* note 132.

lord participation, in addition to the Section 8 subsidies. The Leadership Council took steps to reduce landlords' costs and risks. The Council screened applicant families to ensure that they would meet landlords' criteria and standards.<sup>298</sup> It obtained credit checks, made home visits,<sup>299</sup> and required families to get letters of reference.<sup>300</sup> This saved landlords screening costs and reduced the risks of landlords incurring various

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298. The Leadership Council considered its approach a pragmatic one. Landlord participation was purely voluntary. Landlords' concerns about the quality of tenants presented an important obstacle to their involvement in the program. The Leadership Council attempted to respond to those concerns by trying to ensure that tenants would meet landlords' requirements. Doing so provided an additional incentive for participation by saving landlords some of the cost of doing their own regular screening. In fact, Leadership Council staff objected to the use of the term "screening" both because they did not exclude anyone from the program — rather they deferred them for counselling — and because they believed they were simply mirroring what the landlords would have done anyway.

When problems surfaced in the initial screening, the Leadership Council counselled families, in order to resolve these matters and permit them to move later. Mary Davis Paper, *supra* note 135, at 3.

The Leadership Council's screening received a variety of criticisms. Some argued that the Council should not screen at all because it: (1) treated plaintiff class families differently from each other, even though all of them were equally entitled to relief in the case; (2) legitimated landlords' class or cultural biases; (3) legitimated the idea that some families were deserving of these housing opportunities and others were not; and (4) "skimmed" or "creamed," thus artificially improving the chances for success of the program, while at the same time drawing important human resources away from the inner city, where the needs were so great.

On the other hand, Sue Brady, the Director of the Housing Resource Center of Hull House and the manager of much of CHA's scattered site housing, claimed that "screening" was the key to the viability of scattered site public housing in Chicago. She argued that responsible, conscientious tenants were necessary for that program to work. HOUSING THAT WORKS (promotional video produced by Video Services for the Habitat Company 1990); *see also*, Hank DeZutter, Public Housing that Works (1986) (paper prepared for Business and Professional People for the Public Interest, on file with author).

Although the rhetoric about "screening" was different, both the Leadership Council and the Housing Resource Center seemed to point to the standards of acceptable tenants in the private housing market as the appropriate measure. In fact, the Leadership Council's burden in this regard was greater because it had to recruit private landlords into the program on a voluntary basis and ensure that the experience was sufficiently satisfactory that they would remain in the program.

299. The home visits enabled Leadership Council staff to assess families' house-keeping and also to confirm the number of people in the household, to ensure consistency with HUD regulations and landlords' expectations about the size of the family. Rubinowitz & Kenny, *supra* note 2, at 55; Mary Davis Paper, *supra* note 135, at 3. If more people moved into the unit than were listed on the lease, there was a possibility of fraud and eviction.

300. This step exceeded what landlords normally did.

costs associated with problem tenants.<sup>301</sup> The screening procedures persuaded some landlords to participate in the program. Others decided either that this screening was not sufficiently rigorous, or that they simply did not want families from this program as tenants.<sup>302</sup>

In addition to screening families, the Leadership Council also counseled them, individually and in groups, about the nature of the program, the housing search process, landlords' expectations, and their responsibilities as tenants. As the program evolved, the Leadership Council intensified the training in the search process and assigned families more of the responsibility for finding their own housing.<sup>303</sup> As families invested more in the search and gained confidence in their abilities, landlords evaluated them more positively.<sup>304</sup> Consequently, families were increasingly effective in "selling" the program and themselves as prospective tenants to landlords.<sup>305</sup>

As the Leadership Council found that training families to conduct their own search brought more landlords into the program, it requested additional HUD funding for this purpose.<sup>306</sup> Intensive counseling of families not only added to the demand for the program; but, importantly, it increased the amount of housing available to it as well.

As an additional incentive for participation, the Leadership Council assured landlords of confidentiality. The Council would not make public which landlords were involved with the program, or the fact that the program was part of a remedy in a public housing desegregation lawsuit. Other tenants and community residents obviously knew that the landlord had rented to a Black family, but they would not know about the program or the lawsuit.

And the Leadership Council's policy of dispersing families could reassure landlords who were concerned about concentrations of low-income Black families in their developments. Minimizing the visibility

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301. This also reduced the likelihood of major repair costs, eviction procedures, or loss of other tenants because of objections to these tenants.

302. Interview with Real Estate Expert, *supra* note 214.

303. Kale Williams Interview, 2/24/92, *supra* note 132; Mary Davis Paper, *supra* note 135, at 3.

304. Families could also discover and contact far more small landlords than the Leadership Council could do, with its limited staff.

305. Kale Williams Interview, 2/24/92, *supra* note 132; Mary Davis Paper, *supra* note 135, at 3.

306. In 1992, the Leadership Council requested HUD to permit it to add to the counseling staff, because the agency believed that this would produce more housing for the program. Kale Williams Interview, 2/24/92, *supra* note 132; Mary Davis at Gautreaux Seminar, *supra* note 130.

of the program and dispersing families addressed landlords' concerns that accepting Gautreaux families would affect their ability to retain their other tenants and fill future vacancies promptly.

Overall, then, the Leadership Council tried to enlist landlords by reducing their costs and their risks. Screening prospective tenants saved landlords money at the outset, and reduced risks that tenants would cause problems for the landlords later. The dispersal policy minimized the visibility of the program to other tenants and the community, while also reassuring landlords that the Leadership Council would not request that they accept many families.

On the other hand, these strategies revealed the self-limiting nature of the program.<sup>307</sup> Too much visibility could lead to greater community resistance, which could decrease landlords' willingness to participate. This dilemma helped to explain why no breakthrough occurred in the housing available to the program.

With these benefits and costs of participating in the Gautreaux program — the tenants, the Section 8 requirements, and the Leadership Council's incentives — landlords in predominantly white, middle-class communities, found the program most appealing when the rental market was "soft," either generally or in particular areas. Placements went up accordingly. Thus, vacancy rates seemed to be a crucial variable.<sup>308</sup> If developers had overbuilt or there was a decline in the rental housing market and landlords could not attract enough market rate tenants to fill their buildings or developments, Gautreaux families became an attractive additional market and a means of avoiding excessive and extended vacancies.<sup>309</sup>

Some small landlords in predominantly white areas found the program's financial arrangements attractive and accepted Section 8 tenants, including those from the Gautreaux program. And some individual investors purchased single-family homes for the purpose of renting them to Section 8 tenants, thereby providing most of the few opportunities for large families to receive these subsidies.<sup>310</sup>

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307. Mary Davis Paper, *supra* note 135, at 7.

308. *Id.* at 7. In a somewhat analogous situation, a study of private hospitals found the percentage of vacant beds was the major determinant of their decisions whether to perform abortions. Private hospitals — even those with no religious affiliation — tended not to perform abortions, presumably because of their concern about other patients staying away because they objected to the hospital's abortion policy. Kathleen A. Kemp et al., *The Supreme Court and Social Change: The Case of Abortion*, 31 W. POL. Q. 19 (1978); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 195-201 (1991).

309. Kale Williams Interview, 2/24/92, *supra* note 132.

310. Once again, there was an analogy to the abortion context, where the private

Also, several landlords participated in the Gautreaux program because they wanted to enable low-income Black families to move to predominantly white, middle-class communities.<sup>311</sup> In the early stages of the Gautreaux program, the Leadership Council sought out landlords and property managers who shared the program's goals and joined for reasons of principle, as well as for the financial benefits.<sup>312</sup> Some of those landlords tried to persuade others to follow suit.<sup>313</sup> Their success in doing so depended largely on the state of the market at the particular time and in the particular place.

At the same time, most of the large real estate firms indicated reluctance to participate in the Gautreaux program.<sup>314</sup> Marketability concerns loomed large, because of their fear of alienating and losing existing tenants and failing to attract additional tenants.<sup>315</sup>

#### d. Set-Asides

In addition to families gaining access to existing housing through the Gautreaux program, the Section 8 set-asides in HUD-assisted new construction provided another source of housing for the program.<sup>316</sup> Private developers who received HUD assistance were obligated to accept families in the program, unlike landlords of existing housing.

In order to prevent concentration of these families, however, set-asides were limited to a small percentage of a development's apartments.<sup>317</sup> Once again, there was a trade-off between the program's

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market responded to *Roe v. Wade* by the creation of specialized abortion clinics. ROSENBERG, *supra* note 308, at 195-201.

311. Kale Williams Interview, 2/24/92, *supra* note 132.

312. *Id.*

313. Interview with Real Estate Expert, *supra* note 214.

314. Kale Williams Interview, 2/24/92, *supra* note 132; Interview with Real Estate Expert, *supra* note 214.

315. One of the largest management firms in the area agreed to participate in the Gautreaux program in the early days as part of a settlement in a racial discrimination case against it. However, the firm dropped out of the program after the murder of a Black person near one of its developments where a family in the Gautreaux program lived. The family was not implicated in the murder; but the real estate firm's concern about adverse publicity — presumably because the family and the murder victim were both Black — led it to leave the Gautreaux program for a number of years. Kale Williams Interview, 2/24/92, *supra* note 132.

316. The set-aside provisions also applied to other HUD-assisted programs in the region; but the new construction programs provided the bulk of the units under the set-aside provisions.

317. The consent decree limited the set-asides to plaintiff class families to between 6 percent and 12 percent of the units in HUD-assisted developments. *Gautreaux v. Landrieu*, 523 F. Supp. 665, 677 (N.D. Ill. 1981).

racial goals and assisting as many plaintiff class families as possible.

The set-aside requirement did not noticeably deter developers' applications for HUD assistance.<sup>318</sup> Many of these developments were Section 8 projects, so the builders already planned to rent to low-income households. Also, many of these buildings were located in predominantly Black neighborhoods, because the set-aside requirement applied throughout the city and suburbs. So some builders expected to have predominantly Black tenants, even without Gautreaux families.<sup>319</sup>

However, new construction set-asides declined as a way of placing families in the Gautreaux program because of the drastic reductions in appropriations for federal housing programs in the 1980s.<sup>320</sup> By the beginning of the 1990s, very few plaintiff class families were moving into apartments set aside for them in HUD-assisted developments because construction of those projects had virtually come to a halt.<sup>321</sup>

Once again, the availability of housing limited the scale of the Gautreaux program; but this time federal funding was the primary constraint rather than housing owners' willingness to participate in the program. These developers were ready and willing to accept Gautreaux families, largely because they were already committed to the Section 8 program, and many of them built housing in Black and integrated neighborhoods.

The more difficult task remained securing access to housing in predominantly white, middle class communities. That search proceeded with energy and creativity, with the persistent efforts of the

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318. The eventual decline in new developments resulted from cuts in federal funding, not lack of developer interest. Kale Williams Interview, 3/10/92, *supra* note 88.

319. All HUD-assisted housing had the set-aside requirement, even in Black neighborhoods. *Gautreaux v. Landrieu*, 523 F. Supp. at 677; Kale Williams Interview, 3/10/92, *supra* note 88.

Set-asides also applied to existing HUD-assisted housing, such as financially troubled developments in HUD's property management inventory. In these cases, HUD had maximum leverage for implementing set-aside requirements. Moreover, these developments often served low-income families and were located in predominantly Black areas.

320. *See supra* p. 641.

321. Although the appropriations declined dramatically starting in the early 1980's, the "pipeline" continued to produce housing through those programs until late in the decade. At that point, the Gautreaux program felt the full effects of the cutbacks. Consequently, the program began to rely almost entirely on using Section 8 certificates and existing private housing. Kale Williams Interview, 2/24/92, *supra* note 132.

Leadership Council and, especially, the poor Black women in search of a better life for their children.

## V. CONCLUSION

The urban rebellions of 1992 may have reawakened Americans to the pervasive poverty and racism that continued to afflict the country's urban centers — the persisting extraordinary inequalities in wealth, power, and the ability to shape the conditions of life. Strategies to deal with these problems must address the needs of both people and places. Initiatives must focus on the inner cities and the people there, improving the life chances of both, rebuilding those places and providing families realistic choices to stay or go, and the ability to get to jobs — whether in the inner cities or beyond. No single policy or program could possibly suffice. But all strategies potentially compete with each other for political, human and financial resources.

With these dilemmas and caveats in mind, initiatives like the Gautreaux program can play a modest role in addressing the problems besetting our cities. Many inner city families who were offered the possibility of moving to outlying areas of the city and suburbs took it. Although the private housing market in predominantly white areas, especially in the suburbs, responded slowly and with great caution, low-income Black families did choose to move to what for them was a "strange land."<sup>322</sup>

And, in 1991, Congress concluded that the Gautreaux program was sufficiently promising that it ought to be replicated elsewhere on a pilot basis.<sup>323</sup> It appropriated funds for five "Moving to Opportunity" programs around the country, modeled on the Gautreaux program.<sup>324</sup> Congress based eligibility for families' participation on

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322. The phrase is from Harriet Tubman, a "conductor" on the underground railroad: "I had crossed de line of which I had so long been dreaming. I was free; but dere was no one to welcome me to de land of freedom. I was a stranger in a strange land." SARAH H. BRADFORD, *HARRIET: THE MOSES OF HER PEOPLE* 31-32 (reprint 1981) (1886).

323. The Section 8 program was the subsidy vehicle in the "Moving to Opportunity" program, just as in the Gautreaux program. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *FY 1993 BUDGET, EXPANDING THE OPPORTUNITIES FOR EMPOWERMENT: NEW CHOICES FOR RESIDENTS*.

324. The program envisioned HUD designation of five large metropolitan areas to begin placing low-income families in areas outside concentrations of low-income people in 1992. *Id.*



their income, rather than race; but otherwise the approach tracked the Gautreaux program closely.<sup>325</sup>

Such programs could enable poor people, especially people of color, to obtain decent housing in the private market, and to choose among neighborhoods and communities throughout metropolitan areas. Families could assess for themselves the benefits and costs of housing possibilities made available through such programs. They could decide whether to try this approach as a possible route to improved life chances.

These programs, with all their ideological and practical pitfalls, provide some low-income families with choices that begin to approach the housing and community options that middle-class, white families take for granted. But with all of the rhetoric about market-based strategies for solving social problems, in a society where racial and class segregation are deeply ingrained, availability of private housing remains the limiting factor — not the number of low-income families interested in improving their life chances by whatever means possible.

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325. The Gautreaux program focused on race, of course, because of its origins as a remedy in a racial discrimination lawsuit. Congress' "Moving to Opportunity" program focused on low-income households, more broadly, as the Section 8 program did. *Id.*

