# Poverty Law -- Constitutional Law -- Selection of Sites for Public Housing

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**Poverty Law—Constitutional Law—Selection of Sites for Public Housing**

Dorothy Gautreaux and other tenants in, and applicants for, public housing in Chicago filed suit against the Chicago Housing Authority and its executive directors[1] for alleged violation of their rights under the fourteenth amendment to the United States Constitution and section 2000d of title 42, United States Code.[2] Their case was based on two theories. First, the plaintiffs alleged an *intentional* violation of the fourteenth amendment and section 2000d by the housing authority through (1) discriminatory tenant assignment procedures within the public housing system and (2) discriminatory selection of sites for public housing projects, both designed to maintain existing patterns of residential separation of the races. The second theory alleged that the housing authority, *regardless of its intentions*, violated plaintiffs' rights under the fourteenth amendment and section 2000d by failing to alleviate residential racial segregation in site selection procedures.[3]

On March 2, 1967, the court, holding that an *affirmative intent to segregate* is necessary to state a cause of action for violation of rights under the fourteenth amendment and section 2000d, dismissed the counts concerning the *unintentional violation* of plaintiffs' rights.[4] But the court noted that if intent to segregate be proved the selection of sites in Negro areas alone would violate plaintiffs' rights. "[P]laintiffs, as present and future users of the system, have the right under the Fourteenth Amendment to have sites selected for public housing projects without regard to the racial composition of either the surrounding neighborhood or of the projects themselves."[5] Based upon depositions and affidavits submitted by both sides, the court, finding an intent by defendants to segregate by race, on February 10, 1969, granted summary judgment for plaintiffs. The court held that the housing authority had violated the plaintiffs' rights not only in discriminatory tenant assignment procedures but also in discriminatory selection of project sites.[6] The court's decree,[7]

[1] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969).

[2] 42 U.S.C. § 2000d (1964): "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

[3] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907, 908 (N.D. Ill. 1969).

[4] Gautreaux v. Chicago Housing Auth., 265 F. Supp. 582, 584 (N.D. Ill. 1967).

[5] *Id.* at 583.

[6] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969).

[7] Gautreaux v. Chicago Housing Auth., Civil No. 66 C 1459 (N.D. Ill. July 1, 1969).

issued on July 1, 1969, ordered the housing authority (1) to cease all discriminatory selection of project sites and (2) to disestablish the segregated public housing system by dispersing all future public housing throughout the city.

Tenant assignment procedures in public housing, by which Negro and white applicants were placed in different projects by race, were one of the main targets of the civil rights movement[8] even before *Brown v. Board of Education*,[9] and were among the first segregation schemes prohibited upon its authority. In *Detroit Housing Authority v. Lewis*,[10] a leading case decided upon the assignment issue, Negroes had been excluded from certain public housing because of race. They sued the housing authority to enjoin the continuation of racially separate housing.[11] The court, extensively citing *Brown*, ordered that housing units be assigned without regard to race.

In *Gautreaux*, the housing authority maintained four housing projects in white neighborhoods in which the tenants were overwhelmingly white. Its fifty other projects were located in Negro areas and the tenants were ninety-nine per cent black.[12] Despite a ninety per cent Negro waiting list for all projects, this racial pattern was established and maintained first by exclusion of, then by a fixed quota for, Negro families in the predominantly white projects; by secret listing of the projects as suitable for white families only; and by discouraging Negroes from expressing an interest in these projects.[13] These facts having been proved, the court had little difficulty in applying the holding in *Detroit Housing Authority v. Lewis*[14] to order an end to further discrimination in tenant assignment procedures.[15]

Before *Gautreaux*, the only case that seems to have directly been concerned with the use of site selection to promote segregation was *Thompson v. Housing Authority*.[16] The court in *Gautreaux* cited

[8] *See* Vann v. Toledo Metro. Housing Auth., 113 F. Supp. 210 (N.D. Ohio 1953); Favors v. Randall, 40 F. Supp. 743 (E.D. Pa. 1941).

[9] 347 U.S. 483 (1954).

[10] 226 F.2d 180 (6th Cir. 1955).

[11] Detroit Housing Auth. v. Lewis, 226 F.2d 180, 181-82 n.2 (6th Cir. 1955).

[12] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907, 910-11 (N.D. Ill. 1969).

[13] Initial Brief for Plaintiffs at 24, Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969).

[14] 226 F.2d 180 (6th Cir. 1955).

[15] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907, 909 (N.D. Ill. 1969).

[16] 251 F. Supp. 121 (S.D. Fla. 1966).

it when dismissing plaintiffs' allegations of unintentional violation of their rights.[17] The selection of sites in Negro areas was alleged in *Thompson* to have diverted eligible low-income white families from the public housing system, thereby furthering segregation. But the court in *Thompson* dismissed the case for failure of the plaintiffs to allege the necessary intent to segregate, and it also questioned whether the selection of Negro sites had in fact caused the low number of white applicants.[18] Other than mentioning *Thompson*, which hardly supports its position, the court in *Gautreaux* gave no authority for holding that public housing sites must be selected without regard to the racial composition of either the surrounding neighborhood or of the projects themselves,[19] and that there is an affirmative duty to integrate by placing the projects in white neighborhoods.

The method of site selection used by the Chicago Housing Authority was prescribed by law[20] and provided for a canvass of the city for future sites, which would be chosen upon considerations of cost, slum clearance, accessibility, surrounding land uses, and municipal planning.[21] Proposed plans for projects for these sites were then developed and submitted to the city council for approval. Following such approval, the housing authority would acquire the land and lease the units, usually with considerable financial aid from the federal government.[22] The intent to discriminate and to segregate was alleged to lie primarily with the city council, with which the housing authority had collaborated and acquiesced by informal presubmission of each site to the alderman in whose constituency the proposed site was located[23] and by the formal submission of proposed sites surviving this veto to the full council to permit further weeding out of sites in white areas without endangering the maximum utilization of Chicago's federal housing aid.[24]

The court found that this method of site selection, in both its formal

[17] Gautreaux v. Chicago Housing Auth., 265 F. Supp. 582, 584 (N.D. Ill. 1967).
[18] Thompson v. Housing Auth., 251 F. Supp. 121, 124 (S.D. Fla. 1966).
[19] Gautreaux v. Chicago Housing Auth., 265 F. Supp. 582, 584 (N.D. Ill. 1967).
[20] ILL. REV. STAT. ch. 67½, §§ 8.1-.3, 8.9-.11, 9 (1955).
[21] Initial Brief for Defendants at 9, 10, Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969).
[22] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907, 914-15 (N.D. Ill. 1969).
[23] Initial Brief for Plaintiffs at 7-8, Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969).
[24] *Id.* at 8-9.

and informal aspects, was based upon racial considerations and in fact was designed to perpetuate racial residential segregation.[25] Moreover, the court decided that the selection of sites for public housing projects in wholly Negro areas discouraged large numbers of eligible low-income white families from applying for public housing.[26] The final decree seems to have been aimed not only at correcting this tendency toward racial segregation in the public housing system but also at instituting an affirmative duty to integrate. The court ordered that, with certain exceptions, the next seven hundred units built, and seventy-five per cent of all units acquired by whatever means thereafter, be located in white areas, defined as United States census tracts having less than thirty per cent non-white residents.[27]

Further the court ordered that,

> "[n]o Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA [Chicago Housing Authority], in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract; . . ."[28]

To prevent the projects from becoming autonomous communities, the court ordered that no project higher than three floors was to be built for occupancy by families with children and no units over that height were to be leased for such occupancy unless they were in structures in which less than twenty per cent of the total units were leased by the housing authority. An absolute maximum occupancy of 240 persons to each project was established.[29] Finally, the court ordered that an extensive publicity campaign be undertaken to inform eligible white families of the

[25] The court found that only one out of fifty-one housing projects sites acquired since 1955 had been in a white neighborhood, that several officials of the housing authority believed that the city council was racially motivated, and that the housing authority gave no indication of the use of non-racial criteria in their decisions. Upon these findings and upon the authority of Jones v. Georgia, 389 U.S. 24 (1967) and Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n, 375 F.2d 648 (4th Cir. 1967), the court held that the city council acted with segregationist motives in which the housing authority participated. Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907, 913 (N.D. Ill. 1969).

[26] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907, 915 (N.D. Ill. 1969).

[27] Gautreaux v. Chicago Housing Auth., Civil No. 66 C 1459, at 4 (N.D. Ill. July 1, 1969).

[28] *Id.* at 6.

[29] *Id.* at 5-6.

new policies in site selection and tenant assignment to entice them into the public housing system.[30]

Clearly, the court's decree goes farther than merely prohibiting further acts of racial discrimination, or requiring the review of previous discriminatory decisions upon relevant non-racial criteria such as accessibility, surrounding land uses, and cost. Instead, the court seems to have held that not only site selection but also other relevant decisions, such as project size, must be made for the purpose of alleviating residential separation by dispersing low income families of both races throughout the city. Although the court provided neither authority nor reasoning to justify either its holding that racial considerations in site selection are unconstitutional or its decree ordering the elimination of residential separation of the races through the dispersion of low-income families in public housing, there are theories growing out of other cases upon which the court's action in *Gautreaux* might be based.

In *Brown v. Board of Education*[31] and other decisions involving segregation in the public schools, the basic concepts of due process, equal protection of the law, and the unequal nature of segregated facilities were formulated. In them is to be found the original thinking justifying the prohibition of racial segregation and a fundamental dichotomy that greatly influences the analysis of the results of *Gautreaux*. The dichotomy is between the theory that there is an affirmative duty to integrate and the concept that there is no such duty.[32]

An affirmative duty to integrate means the duty to use both racial and non-racial criteria for the purpose of eliminating racial imbalance, commensurate with other acceptable goals. The absence of a duty to integrate means that racial discrimination and segregation are constitutionally prohibited and that only non-racial criteria may be used for the purpose of achieving relevant goals, one of which need not, but may, be the correction of racial imbalance. This dichotomy is the result of two conflicting ways that *Brown v. Board of Education*[33] may be interpreted. The interpretation that finds in *Brown* an affirmative duty to integrate may be called the "sociological" view of the equal protection clause of the fourteenth amendment while the "moral" view of the equal protection clause denies any affirmative duty to integrate.[34]

[30] *Id.* at 7.
[31] 347 U.S. 483 (1954).
[32] Note, *Duty to Integrate Public Schools? Some Judicial Responses and a Statute*, 46 B.U.L. REV. 45 (1966).
[33] 347 U.S. 483 (1954).
[34] Note, *Duty to Integrate Public Schools?*, *supra* note 32, at 60.

The "moral" view sees "[s]egregation with the sanction of law"[35] rather than the separation of the races itself, as prohibited by the equal protection clause. This concept of *Brown* is supported and clarified by *Bolling v. Sharpe*,[36] *Brown's* companion decision. *Bolling*, which involved the public schools in the District of Columbia, could not be based upon the equal protection clause of the fourteenth amendment because that provision is not specifically binding upon the federal government. Therefore, the Supreme Court decided it upon the authority of the line of anti-discrimination decisions based upon the concept that racial discrimination by government involves the deprivation of personal rights without due process of law. One case in this line, *Buchanan v. Warley*,[37] held that *different* treatment accorded to any group by the government must be justified by a permissible governmental objective. *Bolling* expanded this decision by holding that the separation of the races is never a permissible governmental objective.[38] This *Buchanan-Bolling* rationale looks upon *discriminatory intent* of the government as the crux of the matter, not the *unequal social situation* proscribed by the "sociological" view.[39]

In *Bell v. School City of Gary*,[40] the "moral" view is most clearly expressed.[41] There considerable racial imbalance in the public schools resulted from patterns of residential separation of the races.[42] Plaintiffs argued that this racial imbalance engendered the same inferior education as legally imposed segregation. Finding that the acts and decisions of the school officials were not racially motivated,[43] the court held that no state act had caused the imbalance or any resulting unequal education and, therefore, no rights of the plaintiffs under the fourteenth amendment had been violated. In other words, the court decided that the correction of racial imbalance that is not the result of any state act is not a constitutionally required goal of the public school system, and there was no affirmative duty to integrate.[44]

Contrary to the "moral" view, the "sociological" view holds that it is the provision of unequal educational opportunity resulting from

[35] Brown v. Board of Educ., 347 U.S. 483, 494 (1954).
[36] 347 U.S. 497 (1954).
[37] 245 U.S. 60 (1916).
[38] 347 U.S. 497, 500 (1954).
[39] Note, *Duty to Integrate Public Schools?*, *supra* note 32, at 60-61.
[40] 324 F.2d 209 (7th Cir. 1963).
[41] Note, *Duty to Integrate Public Schools?*, *supra* note 32, at 60.
[42] Bell v. School City, 324 F.2d 209, 210-11 (7th Cir. 1963).
[43] *Id.* at 213.
[44] *Id.*

the separation of the races in schools that constitutes in itself unequal protection of the laws.[45] *Brown* was decided within the context of the separate but equal doctrine of *Plessy v. Fergusson*,[46] which upheld racial discrimination as permissible so long as equal services were provided for all. In a long line of cases ending in *Brown*,[47] this doctrine was modified by the sociological concept of the inherently *unequal* nature of racially separate education. Upon considerable sociological and psychological evidence,[48] the Supreme Court in *Brown* decided that separation of the races in the public schools serves to deter the development of Negro children. This "sociological" interpretation considers the *unequal condition* of the Negro resulting from the separation of the races to be the objectionable aspect of segregation in any government facility.[49]

The "sociological" view of *Brown* was adopted by federal district courts in Massachusetts and the District of Columbia in *Barksdale v. Springfield School Committee*[50] and *Hobsen v. Hansen*.[51] In *Barksdale*, a situation similar to that in *Bell* had developed. Considerable racial imbalance in the schools, though not as pronounced as in *Bell*, had prompted several Negroes to seek affirmative integration of the system.[52] The arguments were the same as those in *Bell*. In *Hobsen*, the school system for the District of Columbia also maintained many racially imbalanced schools[53] and had developed a track system whereby college-bound students, who were predominantly white, were separated early from the others and given special instruction.[54] In both *Barksdale* and *Hobsen*, such racial imbalance, however caused, was held to be a violation of the plaintiffs' rights under the fourteenth amendment, even though no intent to segregate was proved, and the existing system had never been structured with overt reference to race. The courts ordered the respective school systems to correct the imbalance as much

[45] Note, *Duty to Integrate Public Schools?*, *supra* note 32, at 61-64.
[46] 163 U.S. 537 (1896).
[47] McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950); Sweatt v. Painter, 339 U.S. 629 (1950); Sipuel v. Board of Regents, 332 U.S. 631 (1948); Missouri *ex rel.* Gaines v. Cannada, 305 U.S. 337 (1938).
[48] Brown v. Board of Educ., 347 U.S. 483, 494 n.11 (1954).
[49] Note, *Duty to Integrate Public Schools?*, *supra* 32, at 61-64.
[50] 237 F. Supp. 543 (D. Mass.), *vacated on other grounds*, 348 F.2d 261 (1st Cir. 1965).
[51] 269 F. Supp. 401 (D.D.C. 1967).
[52] Barksdale v. Springfield School Comm., 237 F. Supp. 543, 544-46 (D. Mass. 1965).
[53] Hobsen v. Hansen, 269 F. Supp. 401, 410-12 (D.D.C. 1967).
[54] *Id.* at 451-55.

as possible, commensurate with other relevant educational goals.[55] In other words, the courts found an affirmative duty to integrate.

In *Hobsen*, the court ". . . draws the conclusion that the doctrine of equal educational opportunity—the equal protection clause in its application to public school education—is in its full sweep a component of due process binding on the District under the due process clause of the fifth amendment."[56] This conclusion erased, in the court's view at least, any distinction between the legal foundations of the decisions in *Brown* and *Bolling* and thereby freed the courts in the District of Columbia from any restrictions in applying the reasoning of the "sociological" view of the equal protection clause to the federal government.

In analyzing the three separate opinions by the court in *Gautreaux*, it can be seen that this dichotomy pervades the court's reasoning. In the 1967 opinion,[57] in which the court first noticed the right to have sites selected without regard to race, the court cited *Bell v. School City of Gary*[58] and several other decisions expressing, in general, the "moral" view of discrimination. It used these as authority for holding an affirmative intent to segregate a necessary allegation to state a cause of action under either the fourteenth amendment or title 42 of section 2000d of the United States Code.[59] This view is not contradicted by the opinion of February, 1969,[60] finding the intent to segregate proven. At this point, however, a consistent adherence to the "moral" view would have required no more than ordering the housing authority to refrain from further discrimination and possibly to review past decisions upon relevant non-racial criteria.[61] But the court's decree in July, 1969,[62] ordered that future decisions on site selection and other matters be made upon criteria designed to correct racial imbalance not only within public housing but also within the residential areas of Chicago in general.

The decree may be far more rationally based upon the "sociological"

[55] *Id.* at 514-17; Barksdale v. Springfield School Comm., 237 F. Supp. 543, 546-47 (D. Mass. 1965).
[56] Hobsen v. Hansen, 269 F. Supp. 401, 493 (D.D.C. 1967).
[57] Gautreaux v. Chicago Housing Auth., 265 F. Supp. 582 (N.D. Ill. 1967).
[58] 324 F.2d 209 (7th Cir. 1963).
[59] Gautreaux v. Chicago Housing Auth., 265 F. Supp. 582, 584 (N.D. Ill. 1967).
[60] Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969).
[61] See Bell v. School City, 324 F.2d 209 (7th Cir. 1963).
[62] Gautreaux v. Chicago Housing Auth., Civil No. 66 C 1459 (N.D. Ill. July 1, 1969).

view of *Brown* than upon the "moral" view. In *Brown*, the Supreme Court noted that enforced separation of the races itself caused a sense of inferiority, a sense of being excluded from the rights enjoyed by whites.[63] This sense of inferiority, the court continued, affects the motivation for Negro children to learn and has a tendency to retard their educational and mental development.[64] A sense of inferiority that results from racial segregation six hours a day in the public schools could not differ greatly from the feeling of inferiority which would develop from—indeed, which would be nourished by—segregation twenty-four hours each day in public housing.[65] A child will not notice that no law requires either sort of separation. The sense of exclusion would remain though it be proclaimed that both schools and neighborhood were open to whites.[66] That there is a sense of inferiority induced by racial separation is confirmed by the stigma attached by both communities to any school, public facility, or neighborhood utilized or frequented almost solely by Negroes.[67] Another result of separation of Negroes from whites is that, inasmuch as the white culture is the dominant one, the Negro is thereby excluded from contact with the culture within which he must live.[68] A Negro raised in a racially imbalanced neighborhood is cut off from most forms of white culture. Not only is his school overwhelmingly Negro, but also all the other contacts in his life. He is made unable to cope with the dominant culture, to meet or even to understand its standards.[69] Two cultures come to exist, black and white, between which barriers are perpetuated by stereotypes, misunderstandings, hatreds, and an intensified inability to communicate.

The above reasoning supports a court's decreeing that housing decisions be directed toward the goal of residential integration. Consistent with this reasoning, the decree in *Gautreaux* goes farther than mere correction of the imbalance caused by the selection of wholly Negro sites for public housing projects, by establishing standards for maximum occupancy, height, and density of public housing units. Dispersion of

[63] Brown v. Board of Educ., 347 U.S. 483, 494 (1954).
[64] *Id.*; Hobsen v. Hansen, 269 F. Supp. 401, 420-21 (D.D.C. 1967); Note, *Duty to Integrate Public Schools?*, *supra* note 32, at 60-61.
[65] *Cf.* Brown v. Board of Educ., 347 U.S. 483 (1954); Hobsen v. Hansen, 269 F. Supp. 401, 508 (D.D.C. 1967).
[66] Brown v. Board of Educ., 347 U.S. 483 (1954); Hobsen v. Hansen, 269 F. Supp. 401, 504 n.189 (D.D.C. 1967).
[67] Hobsen v. Hansen, 269 F. Supp. 401, 495, 497, 501 (D.D.C. 1967).
[68] Note, *Duty to Integrate Public Schools?*, *supra* notes 32, at 46-47, 62-63.
[69] Hobsen v. Hansen, 269 F. Supp. 401, 505 (D.D.C. 1967); Note, *Duty to Integrate Public Schools?*, *supra* note 32, at 47.

public housing tenants does not so much cause white families to take public housing as it puts the tenants in contact with white non-tenants, thereby acting broadly to correct the evils of residential separation of the races. The change in the basis of the court's reasoning between the first opinion in March, 1967, and the issuance of the decree in July, 1969, may indicate a change in constitutional theories upon the part of the court; but it does not leave the final decree without sufficient justification. Thus *Gautreaux* raises for the first time the question of whether racial imbalance in public housing is a denial of equal protection of the laws,[70] which the Constitution would require government to seek to correct.

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## Poverty Law—Garnishment—Protection of Debtors' Rights

Garnishment[1] is a remedy of ancient origin and doubtless has served the interests of justice. But as wages have become the predominant form of individual income, a once-valuable remedy has changed into an instrument that too often shelters the unjust and defrauds the unfortunate.

In *Sniadach v. Family Finance Corp.*,[2] the United States Supreme Court attempted to eliminate some of the injustices of garnishment. The Family Finance Corporation had initiated a garnishment proceeding against Mrs. Sniadach, and against her employer as garnishee. Defendant was served with summons and complaint the same day that her employer was served with process. In accordance with Wisconsin law, defendant's employer paid her a subsistence allowance of fifty per cent of her accrued wages and retained the other half pending disposition of the case. De-

[70] In Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969), a Federal district court, upon the authority of Gautreaux v. Chicago Housing Authority, stopped housing project construction in Bogalusa, Louisiana, on sites selected with regard to the racial composition of either the surrounding neighborhood or of the projects themselves.

[1] Garnishment is an action that brings the defendant's property into legal custody either to provide security for a claim that may be established in the future or to satisfy a judgment already rendered for the plaintiff. Beggs v. Fite, 130 Tex. 46, 106 S.W.2d 1039 (1937). Attachment is a similar remedy but it reaches property held by the defendant himself, while garnishment is appropriate for reaching property of the defendant held by a third party. 6 AM. JUR. *Attachment and Garnishment* § 3 (1963). A garnishment proceeding cannot stand alone, but is ancillary to the principal action in which the validity of the plaintiff's claim is determined. *See, e.g.*, N.C. GEN. STAT. § 1-440.1 (1953).

[2] 395 U.S. 337 (1969).