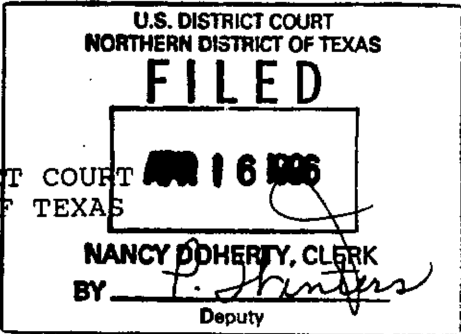


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, ET AL.	§	
	§	
VS.	§	3:85-CV-1210-R
	§	
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPARTMENT OF JUSTICE, ET AL.	§ § §	CLASS ACTION

ENTERED ON DOCKET 4/16 PURSUANT TO F. R. C. P. RULES 58 AND 79a

FINDINGS AND CONCLUSIONS:
VACATION OF THE 1987 CONSENT DECREE

On January 14, 1992, this Court granted the plaintiffs' motion to vacate the 1987 Consent Decree, and the Order Vacating The 1987 Consent Decree was entered on March 30, 1992. These are the findings of fact and conclusions of law that formed the basis for that decision.

A. Compliance With Fifth Circuit Instructions

1. In an appeal taken by HUD, the Fifth Circuit held that if the 1987 Consent Decree "has been frustrated because the parties' respective fiscal obligations were not memorialized in writing, *the decree should be vacated*, renegotiated and, if impasse persists, the cause scheduled for trial." Walker v. HUD, 912 F.2d 819, 827 (5th Cir. 1990).

2. The 1987 Consent Decree contained the following:

> "16. The undertaking and accomplishment of this Decree, including the Plan, shall constitute full and complete settlement of the case as to the class identified herein, with the exception of attorneys fees, expenses and costs...."

1327

3. The "Plan" referred to in paragraph 16 is Exhibit B attached to the 1987 Consent Decree. [Consent Decree ¶ 4]. This "Plan" required, among other actions, DHA to achieve a decent, safe, and sanitary environment for the residents of the West Dallas Housing Project by the following actions:

A. Modernizing approximately 800-900 units for which funding has already been made available by HUD.

B. With respect to the remaining approximately 2,600 dwelling units,

1) demolishing those that are currently vacant;

2) relocating the current occupants outside the West Dallas project or to units modernized pursuant to ¶ 4A of this Plan, supra;

3) as units are vacated by occupant families, demolishing those structures; and

4) preparing the land for redevelopment for uses other than assisted low-income housing.

4. In addition, the 1987 Consent Decree required DHA to prepare and submit for HUD approval a comprehensive plan regarding the West Dallas project. The plan had to include the following elements, among others:

A. Comprehensive modernization of approximately 800-900 units in the modernization area, and

B. Relocation of the residents, demolition of the units located in the clearance areas, and an application for provision of one-for-one replacement units for the units to be demolished under the comprehensive plan.

5. DHA did submit the required comprehensive plan, including a demolition plan, to HUD *and HUD approved this plan*. Walker v. HUD, 912 F.2d 819, 822 (5th Cir. 1990).

6. The Fifth Circuit characterized these agreements in the consent decree as follows:

> "The decree obligated DHA to develop and submit to HUD for approval a comprehensive plan for the revitalization of the West Dallas project. The plan accordingly developed by DHA recommends the modernization of 800-900 units with the $18 million of federal funds previously allocated to DHA in 1983 and the demolition of the remaining 2,600 units over a five-year period. The demolition at West Dallas would be coupled with the issuance of a like number of section 8 certificates and vouchers to replace demolished units and to house displaced families.
>
> The anticipated five-phase demolition schedule, it was hoped, would mimic the pace at which substitute housing was made available to class members...."
>
> "HUD approved DHA's revitalization plan as being in compliance with federal low income housing laws." Walker v. HUD, 912 F.2d at 822.

7. HUD is correct that the 1987 Consent Decree did not memorialize the fiscal obligations needed to provide the additional replacement units or to demolish the West Dallas units. And, the basic ruling of the Fifth Circuit was that the decree did not bind HUD to any additional financial obligations and could not be modified to so bind HUD. Walker v. HUD, 912 F.2d 819, 827 (5th Cir. 1990). As a result, only 1,435 replacement units were furnished and *no units had been demolished when the decree was*

vacated. Id. at 822, 831 n. 17 (replacements equal 100 units of public housing, 1335 Section 8 certificates and vouchers); (Feb. 22, 1994 Cisneros declaration ¶ 8 - no units demolished).

8. HUD is also correct about the effect that this failure to memorialize the fiscal obligations to provide replacement units or demolition had on the full and complete accomplishment of the decree, specifically paragraph 16 quoted above. However, as acknowledged under oath by HUD Secretary Henry G. Cisneros and in the statements in open court by his attorney, *the undertaking and accomplishment of the Decree, including the Plan did not occur.*[1]

9 The Declaration of HUD Secretary Cisneros attached to HUD's February 22, 1994 supplemental motion to alter or amend the order vacating the decree contains this statement:

> "8. Subsequent to the execution of the 1987 consent decree, Congress enacted the "Frost" Amendment (part of the "Frost-Leland" Amendment), which prohibited use of federal funds for demolition of the Lakewest Developments.[2] As a consequence, fulfillment of the 1987 consent decree stalled. Today, over 2600 of the Lakewest Development units stand vacant, boarded up, and badly deteriorated. In 1992 the court vacated the 1987 decree, essentially because the DHA had not demolished any units, and HUD had consequently not provided all the replacement housing units, up to approximately 2600, as the court believed was contemplated by the decree."

---

[1]HUD has also admitted that *the Frost Amendment* was a change in circumstances significant enough to warrant modification of the decree [HUD's Memorandum in Support of Motion to Allow Implementation of the West Dallas Agreement, pages 18-19 citing Rufo v. Inmates of Suffolk Jail, 502 U.S. 367, 116 L Ed 2d 867 (1992)]

[2]*The Lakewest Developments" are the West Dallas Housing Projects.*

10. At the April 8, 1994 hearing, the HUD attorney made the following statement on the issue of whether or not the accomplishment of the decree had been achieved:

> "The Secretary believed, your Honor, that the 1987 decree constituted an excellent framework to address the problems of public and assisted housing in Dallas and he recognizes that the full accomplishment of that decree has been delayed and he really does not want to delay that full accomplishment any longer." [4/8/94 Tr. page 69].[3]

11. The full and complete accomplishment of the 1987 Consent Decree, including the Plan attached as Exhibit B to that decree, required, among other things, (i) the demolition and replacement of all but 800 to 900 units of public housing in West Dallas, and (ii) use of the resulting vacant land for purposes other than low-income housing. It is uncontested that the fiscal resources necessary to accomplish the demolition and replacement were not forthcoming during the pendency of the decree and that the decree did not require HUD, or DHA, to provide those resources. It is also uncontested that the lack of those resources frustrated the 1987 Consent Decree. Accordingly, compliance with the directions of the Fifth Circuit (which are quoted above in paragraph A.1) required the vacation of that decree.

---

[3]While these statements were made after the Court vacated the consent decree, the statements are admissions that the undertaking and accomplishment of the decree did not occur.

B. This Court's Jurisdiction To Vacate

12. The Court's power to vacate pursuant to Fed. R. Civ. P. 60(b)(6) is not limited by time or by any other term of an order. HUD reliance upon Kokkonen v. Guardian Life Ins. Co., ___ U.S. ___, 114 S. Ct. 1673 128 L Ed 2d 391 (1994), in support of its position that this Court lost jurisdiction to act under 60(b)(6), is misplaced. Kokkonen held that when a settlement agreement is not embodied in an order of dismissal or other orders of the court, then the court has no jurisdiction to enforce the agreement. Id. at 398. However, in this case, the settlement agreement is not only incorporated in an order of the court, the Decree is the settlement agreement. There has been no order of dismissal. Kokkonen explicitly recognized the distinction between cases seeking to enforce settlement agreements and cases seeking to reopen previously dismissed cases because of a breach of a settlement agreement. Id. at 396. Therefore, Kokkonen does not support HUD's position.

13. HUD also cites U.S. v. Overton, 834 F.2d 1171 (5th Cir. 1987), as authority for the proposition that this Court lacks jurisdiction because of the three-year limit on jurisdiction in the 1987 Consent Decree. However, the plaintiffs in Overton were not seeking to vacate the stipulation and dismissal containing the three-year limitation; instead, they were seeking to enforce the terms of a school desegregation consent decree in order to avoid the burden of proving intentional racial discrimination (Id. at 1173-1174) -- and there were no proceedings under Fed. R. Civ. P.

60(b) to set aside the stipulation and dismissal. Indeed, Overton contains no discussion of the district court's power and responsibilities under Fed. R. Civ. P. 60(b).

16. In fact, HUD's own conduct is inconsistent with its position that this Court lost all jurisdiction at the end of the three-year period. On January 15, 1993, HUD asked this Court to substantially modify the 1987 Consent Decree and to extend this Court's jurisdiction over HUD *for another 8 years*. [HUD Memorandum in Support of Motion to Allow Implementation of West Dallas Agreement, page 23 at n. 13]. Then, on April 8, 1994, HUD again sought to invoke the jurisdiction of this Court *for a three-year extension* [4/8/94 Tr. page 53]. Certainly, if this Court had jurisdiction to modify the decree in HUD's favor in 1993 and 1994, then it had jurisdiction in 1992 to vacate the 1987 Consent Decree.

C. Constitutional Limits On This Court's Discretion

15. This Court's power to modify an order under 60(b)(6) is limited by the obligation to avoid creating or perpetuating a constitutional violation. Rufo v. Inmates of Suffolk Jail, 502 U.S. 367, 370, 116 L Ed 2d 867, 890 (1992)(obligation to take creation or perpetuation of a constitutional violation into account in evaluating a proposed modification). In this case, the Fifth Circuit's 1990 decision which vacated the 1987 Consent Decree (912 F. 2d 819), established a basis for the modification by this Court. Under Rufo, the proposed modification, here vacation, must be evaluated by whether or not a constitutional violation would be created or perpetuated.

16. By HUD's own admissions in this case, failure to vacate the 1987 Consent Decree would leave in place a constitutional violation. This is established, without question, by the following HUD responses to the plaintiffs' Request for Admissions:

> Excerpts from HUD 5/11/94 responses to Requests for Admissions (*The requested admission is in plain text and HUD's response is in bold type.*)
>
> > 1. As the court has found, the predominantly African-American location and racial composition of DHA's non-elderly projects is a direct result of purposeful racial segregation. Walker III, 734 F.Supp 1289 (N.D. Tex 1989).
> >
> > **HUD: Admitted.**
> >
> > 2. DHA has less than 200 public housing units in predominantly white areas which can be offered to African-American non-elderly applicants [plaintiffs' 1/13/92 exhibit #22 - census tract location and occupancy table].
> >
> > > **HUD: "...it is HUD's understanding from DHA that DHA has nearly 300 public housing units in areas which plaintiffs describe as "predominantly white."**
> >
> > 3. DHA's Section 8 certificate and voucher program has been unable to place more than 19% of the Section 8 units in predominantly white[4] census tracts [plaintiffs' 1/13/92 exhibit #20].
> >
> > > **HUD: "Based on HUD's understanding from DHA, it is admitted that the statement is true according to plaintiffs' definition of "predominantly white" and provided that the statement relates to the time period of approximately January, 1992."**

[4]By "predominantly white" in this context plaintiffs mean census tracts with less than 30% total minority population.

4. The lack of integrated housing opportunities in DHA's public housing program means that each offer of a unit to an African-American applicant in the predominantly black projects 9-1 through 9-11 is an offer which perpetuates past segregationist policies and practices in which African-American applicants are assigned to a predominantly black project in a predominantly black area.

HUD: Admitted.

. . . .

111. As the Court found in Walker I, DHA violated the Consent Decree approved in this matter by "its delay in putting a new, non-discriminatory Tenant Assignment & Selection Plan into effect. 734 F.Supp. 1231, 1232 (N.D. Tex. 1989). The late plan finally presented was defective and violated the decree in several ways. Id. at 1235.

HUD: Admitted.

112. As the Court found in Walker I, DHA violated the Consent Decree by "its failure to provide the tenant mobility services required by the Decree." Id. at 1232. The violations consisted of delay in establishing the housing mobility division, failure to provide adequate resources, failure to provide correct information to those who wanted to use the Section 8 program, and delay in providing mobility services. Id. at 1235-39.

HUD: Admitted.

113. As the Court found in Walker I, DHA violated the Consent Decree by "its actions concerning the 120% Fair Market Rent Exception for the use of Section 8 certificates and vouchers in non-impacted areas of Dallas and its suburbs." Id. at 1232. DHA delayed over three months in even submitting a request to HUD for a 120% rent exception that would make it possible to obtain adequate numbers of Section 8 units in non-impacted areas of Dallas and its suburbs. HUD denied the request, and did not approve the 120% rent exception for Section 8 certificates until six months after approval of the Consent Decree. HUD then took the position that this exception would not be granted for Section 8 vouchers. Once HUD changed its position on the vouchers, DHA refused to implement this exception until the court ordered it. Id. at 1239-40.

HUD: Admitted.

114. As the Court found in Walker I, DHA violated the consent decree by "its failure to meet the Decree's first year goal for the use of Section 8 assistance in non-impacted areas, and its refusal to use a substantial number of Section 8 certificates and vouchers allocated by HUD to DHA." Id. at 1232. DHA failed to meet the Consent Decree's modest goal of 15% of its Section 8 units in use in non-impacted areas. Id. at 1241-42.

HUD: The first sentence is admitted. The second sentence is admitted to the extent that the sentence refers to the first year of the decree.

115. As the Court found in Walker I, DHA violated the consent decree by "its failure to request code enforcement from the City of Dallas on housing that failed Housing Quality Standards ("HQS")." Id. at 1232, 1242-43.

HUD: Admitted.

116. As the Court found in Walker I, DHA violated the consent decree by "its failure to meet the Decree's deadlines for the site selection, construction, and initial occupancy of the 100 units of new low income public housing." Id. at 1232. The site was selected by the Court and not DHA. Id. at 1244. DHA violated the next deadline by not beginning construction on time, and "HUD was at least partly at fault for this violation." Id. at 1245. DHA also violated the Decree because initial occupancy of the 100 new units did not begin on time. Id. at 1245.

HUD: Admitted.

117. The Court in Walker I, found additional violations of the Decree by DHA. Id. at 1245. These violations consisted of DHA policy of refusing to assign new tenants to the West Dallas project, DHA's notice to those on the Section 8 waiting list, and the one-for-one replacement with a Section 8 certificate or voucher for every unit demolished in West Dallas. Id. at 1245-46.

HUD: Admitted.

118. As the Court found in Walker III, "the City was a substantial cause of DHA's deliberate racial segregation and discrimination in its public housing programs in Dallas." 734 F.Supp. 1289, 1290.

HUD: Admitted

119. The Decree provides that "6.D. DHA shall demolish a unit in the Project for every such unit provided by HUD pursuant to this Decree and comprehensive plan". C.f. 1987 decree 7.C. and 7.D. HUD has provided approximately 1,400 replacement units. DHA has not demolished any units in compliance with the Decree and comprehensive plan [plaintiffs' 1/13/92 exhibit #8 - Henderson deposition, page 17].

HUD: Admitted, with the qualification that DHA intends within a short time to commerce (sic) demolition of West Dallas units.

120. Exhibit B, incorporated into the 1987 Decree, provides that DHA will achieve a "decent, safe, and sanitary environment for the residents of the West Dallas project by the following actions:

A. Modernizing approximately 800-900 units for which funding has already been made available by HUD.

B. with respect to the remaining approximately 2,600 dwelling units,

1) demolishing those that are currently vacant;

2) relocating the current occupants outside the West Dallas project or to units modernized pursuant to ¶4A of this Plan, supra;

3) as units are vacated by occupant families, demolishing those structures; and

4) preparing the land for redevelopment for uses other than assisted low-income housing." DHA has complied with A. (modernization) and partially complied with B.2) (relocation). DHA has not complied with B. 1), 3) (demolition) or B. 3) (redevelopment for uses other than assisted low-income housing.

HUD: Admitted.

121. Paragraph II.2.D. required that "Clearance and demolition of buildings will follow a carefully-developed plan to be submitted and approved by HUD."

HUD: The first sentence is admitted.

Under the plan submitted and approved by HUD, all but the 800 modernized units should have been demolished and replaced by the end of the five years.

HUD: The second sentence is denied except to admit that under the plan submitted and approved by HUD, all but approximately 800 units could have been demolished and replaced within 5 years.

Only 1,400 of the units have been replaced.

HUD: The third sentence is denied, except to admit that 1,435 units had been replaced as of January 1, 1994, and that Secretary Cisneros' housing assistance plan calls for an additional 1,372 replacement units.

None of the units have been demolished.

HUD: The fourth sentence is admitted with the qualification that DHA intends within a short time to commence demolition of West Dallas units.

122. DHA's failure to comply with the West Dallas provisions of the decree directly affects the residents of the 800 modernized units. These class members continue to suffer the adverse environmental, physical, and social conditions which, according to the 1987 decree, negate any prospects for the long term viability of the modernized units. 1987 Decree 5.A. through 5.G.

HUD: Admitted.

123. DHA's failure to comply with the West Dallas provisions of the decree also directly affects the housing choices of African-American applicants for DHA's public housing and Section 8 programs.

HUD: The first sentence is admitted.

Had DHA been able to comply with the 1987 consent decree then an additional 1,300 Section 8 certificates or other forms of assisted housing units would have been available in the form of replacement units. Walker I, 734 F.Supp. at 1270.

HUD: The second sentence is admitted, except to deny that DHA has been unable to comply with the 1987 consent decree.

Now, those units are available only in that vestige of purposeful segregation, the West Dallas project. Walker I, 734 F.Supp. at 1268; Walker III, 734 F.Supp. at 1306; Walker v. HUD, 912 F.2d 819, 821 (5th Cir. 1990) - characterizing the West Dallas project as "one of Dallas's worst slums".

HUD: The third sentence is denied, except to admit that there at least 1,300 vacant and uninhabitable units currently existing on the West Dallas site and that Secretary Cisneros' housing assistance plan calls for the demolition of all vacant units after completion of DHA's plan for reconfiguration of the project.

....

148. Exhibit B paragraph 9. of the 1987 consent decree requires DHA to apply "for all possible housing allocations or other forms of assistance that may become available through HUD that might help accomplish the goals of this plan".

HUD: Admitted.

149. The goal of the plan is "to remedy the unlawful discrimination alleged by plaintiffs in this lawsuit. This goal applies to all DHA public housing projects and Section 8 developments and programs" [Preface to Exhibit B of 1987 decree]. One form of assistance that would help accomplish the goals of the plan is HUD CIAP funds to improve the quality of the minority projects to a standard approaching equality with the predominantly white HUD-assisted projects. A basic improvement is the

installation of air conditioning in the non-elderly projects.[5] DHA did not even apply for CIAP air conditioning until April 1991. HUD has denied the application [plaintiffs' 1/13/92 exhibit #4 - 1991 CIAP application; plaintiffs' 1/13/92 exhibit #5.A. - HUD denial of funds for non-West Dallas air conditioning].

HUD: Admitted.

150. DHA has never applied for CIAP equalization funding under HUD's desegregation CIAP set-aside [plaintiffs' 1/13/92 exhibit #40 - CIAP guidelines, page 4, notice of preference for items designed to cure disparities between white and black projects].

HUD: Admitted with the qualification that beginning in fiscal year 1992 DHA has not been eligible for CIAP funding.

151. HUD has made available special allocations of Section 8 certificates and vouchers for public housing authorities who incorporate the use of such certificates and vouchers into a desegregation plan [plaintiffs' 1/13/92 exhibit #28 - PHACA guidelines, page 2[6]]. DHA's applications for certificates and vouchers do not even mention desegregation [plaintiffs' 1/13/92 exhibits #38 - 1991 DHA Section 8 application; #39 - 1991 DHA Section 8 application].

HUD: Admitted that HUD has made available special allocations of Section 8 certificates and vouchers for public housing authorities who incorporate the use of such certificates and vouchers into a desegregation plan in connection with settlement of litigation; further admitted that DHA's 1990 and 1991

---

[5]Air conditioning is eligible for federal public housing funding [plaintiffs' 1/13/92 exhibit #41 - public housing development criteria and air conditioning; plaintiffs' 1/13/92 exhibit #4 - DHA 1991 CIAP application; plaintiffs' 1/13/92 exhibit #5 - HUD approval of air conditioning for West Dallas CIAP].

[6]"PHAs that elect to sign a PHACA Agreement (see below) and submit a Title VI assessment for HUD determination may be considered for Section 8 Certificates or Vouchers that have been set-aside for desegregation purposes."

Section 8 applications did not mention desegregation.

152. HUD has taken no action to require DHA to comply with the requirements of the 1987 consent decree. In many instances, HUD has even opposed plaintiffs' attempts to require DHA compliance with the 1987 decree.

HUD: Admitted, with the qualification that HUD provided DHA with technical assistance designed to help DHA comply with its consent decree obligations and that in some instances HUD opposed what plaintiffs denominated as attempts to require DHA compliance with the 1987 decree on the ground that such attempts were in fact requested modifications of the decree and/or contrary to HUD regulations.

....

157. HUD continued the policy of racial segregation in low rent public housing that was initiated by its federal predecessors for the purpose and effect of racial discrimination. HUD has acted on its own and in concert with and in cooperation with DHA and the City of Dallas for the purpose of and with the effect of maintaining racial segregation and its effects in DHA's low income housing assistance programs.

HUD: Admit that DHA's public and assisted housing programs have been operated on a discriminatory basis, perpetuating racial segregation, and that HUD has not fulfilled its obligations under 42 U.S.C. § 3608(e)(5) of the Civil Rights Act of 1968 in eradicating this segregation. Despite reasonable inquiry, HUD lacks sufficient knowledge information or belief to admit or deny the remaining allegations in this request with regard to the intent of HUD and its federal predecessor agencies.

....

160. Despite the remedial purposes of the consent decree in this case, plaintiffs and the plaintiff class continue to be subjected to remaining vestiges of racial segregation.

> **HUD: The first sentence is admitted to the extent it is construed to state that "some of the plaintiffs" and plaintiff class continue to be subjected to conditions which are in part attributable to prior *de jure* segregation by the City and DHA.**

These vestiges include the following:

> A) all but less than 300 of the non-elderly units in DHA's low rent public housing program are located in predominantly minority and low-income areas and 3,500 of these units are located in the West Dallas project,
>
> B) less than 20% of the units available for the class members utilizing §8 EHP assistance are located in predominantly (70% to 100%) white census tracts,
>
> C) the DHA non-elderly public housing and Section 8 units in predominantly minority and low-income areas do not provide the same kind and quality of unit, project, and neighborhood facilities, amenities, services, and conditions as are provided by the predominantly white occupied HUD assisted multi-family projects located in predominantly white areas in Dallas County, Texas,
>
> D) there is a substantial lack of federally assisted housing for non-elderly low income households as compared to the housing for elderly low income households. This disparity has been caused by racially based opposition to providing federally assisted housing to non-elderly families. This disparity has the racially discriminatory effects of adversely affecting a disproportionate number of African-American families and perpetuating segregation in housing patterns,
>
> E) many of DHA's projects are racially identifiable.

> **HUD: Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of the second sentence to the extent it states that the conditions described in each subpart constitute vestiges of prior _de jure_ segregation. Subject to the foregoing qualification, the statements contained in subparts A, B, and E are admitted, using plaintiffs' definition of "predominantly minority" and "predominantly white" areas. Despite reasonable inquiry, HUD lacks sufficient knowledge to admit or deny the truth of the statements contained in subparts C and D.**
>
> 161. HUD is currently taking the position that its remedial obligations in _Walker_ are satisfied and that it has no obligation to remedy the remaining vestiges of racial segregation in DHA's low income housing assistance programs.
>
> **HUD: Denied, except to admit that HUD takes the position that any remedial obligations in this case that might be found will be satisfied when Secretary Cisneros' plan is implemented.**
>
> . . . ."

17. The agreed purpose of the 1987 Consent Decree was "to remedy the unlawful discrimination alleged by plaintiffs in this lawsuit" [Preface, Exhibit B to Consent Decree]. The decision to vacate the decree must include an assessment of whether or not the vacation will further that purpose. _U.S. v. City of Miami_, 2 F.3d 1497, 1505 (11th Cir. 1993). Here, it is clear that the only Rule 60(b)(6) action that would prevent the perpetuation of the constitutional violations in this case was vacation of the 1987 Consent Decree.

D. Equitable Considerations

18. HUD is not an innocent party. HUD has admitted its own liability. HUD has admitted that vestiges of the unconstitutional de jure segregation continue to affect the African-American applicants for and residents of DHA's low-income housing programs.

19. The order vacating the consent decree did nothing to increase HUD's financial obligations. HUD's right to insist on demolition and its credit for replacement units already provided were untouched. HUD has not asserted that the modernization funds it released to DHA for the West Dallas units were not properly or legally used for the statutory purposes for which the funds were allocated.

20. It would be inequitable, to say the least, to allow the vacated consent decree to have the effect of either barring a remedy for HUD's admitted violations, or of barring a remedy for the admitted continuing vestiges of racial segregation in DHA's low-income housing programs. The vacation of the decree only put HUD to the test of whether it had violated its constitutional and legal obligations. Had plaintiffs not been able to show that HUD had violated those obligations, the vacation of the consent decree would have had no effect. Not only did the plaintiffs establish such violations, but HUD also admitted the continuing effects of de jure racial segregation in DHA's low-income housing programs. The exercise of this Court's power to freeze in those effects by barring a remedy would be neither equitable nor constitutional.

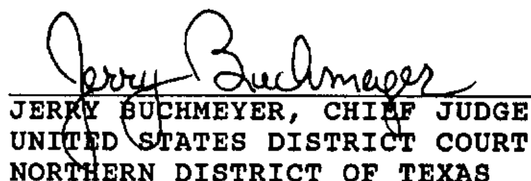
21. Moreover, this Court's refusal to vacate the consent decree would have given continued prospective effect to a court order which had not achieved its desired purpose. When faced with the issues of publicly funded and maintained racial segregation, a federal court may release jurisdiction only when the effects of that segregation have been eradicated to the extent practical. Hills v. Gautreaux, 425 U.S. 284, 300 (1976); Young v. Pierce, 685 F.Supp. 975, 979 (E.D. Tex. 1988).

E. Effect Of The Proposed Cisneros Plans

22. First, HUD and the Department of Justice argue that this Court should consider only the record of the case as it was in 1992. Then, they argue that the Court should consider the various versions of the Cisneros Plan which were submitted to the Court in 1994. While the Cisneros Plan continues to change, this Court has already ruled that at least one version did not justify the reinstatement of the 1987 consent decree [4/8/94 Tr. page 50]. Specifically, the concentration of from 1,200 to 1,600 units of public housing on the West Dallas site would violate both the limit of 800-900 units and the use of the land cleared by demolition for purposes other than low-income units. The demolition of the modernized units which may be necessary for the proposed reconfiguration would also violate the 1987 Consent Decree. Walker v. HUD, 912 F.2d 819, 827 (5th Cir. 1990).

23. The stated purpose of the Cisneros Plans is not the reinstatement of the 1987 Consent Decree but, instead, to "meet the legal standards for an appropriate remedy in this lawsuit" and as a "remedial package as the complete remedy for the HUD violations found and admitted" [HUD MEMORANDUM IN SUPPORT OF SUPPLEMENTAL MOTION TO ALLOW IMPLEMENTATION OF CISNEROS HOUSING PLAN, pages 3, 25]. Reinstatement of the 1987 Consent Decree would bar implementation of any remedial plan -- *including the Cisneros Plans* -- for the admitted violations and remaining violations.

ENTERED: APRIL 16, 1996



JERRY BUCHMEYER, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS