

JUL 1986

FOR THE EASTERN DISTRICT OF TEXAS

PARIS DIVISION

MURRAY L. HARRIS, CLERK

LUCILLE YOUNG, ET AL.,

§

BY DEPUTY *Jamie Kishpatrick*

V.

§ CIVIL ACTION NO. P-80-8-CA

SAMUEL PIERCE, JR., Secretary §
of the Department of Housing
and Urban Development, ET AL. §

O R D E R

An order granting the plaintiffs' motion for summary judgment on the issue of liability in this civil action was issued on July 31, 1985. Young v. Pierce, 628 F.Supp. 1037 (E.D. Tex. 1985). That order held that the Department of Housing and Urban Development and its officials ("HUD") knowingly created, promoted, and funded racially segregated housing in thirty-six counties in East Texas in violation of the Fifth Amendment of the United States Constitution and federal statutes. Without conceding the correctness of the finding of liability, the defendants submitted a proposed remedial plan. The court then proposed the appointment of a special master to monitor the desegregation of HUD-assisted housing in East Texas and to supervise discovery during the remedial phase of this litigation. At hearings held on May 5 and May 23, 1986, on the proposed appointment of Francis E. McGovern as the special master, the plaintiffs supported and the defendants opposed the referral to a master. The parties' comments, objections, and amendments to the proposed order of reference have been considered at length in a memorandum opinion filed this day. For the reasons outlined

in that opinion, Francis E. McGovern, Esquire, will be appointed to serve as special master to monitor and report on HUD's desegregation efforts, to study the operation of the publicly funded housing programs in East Texas, and to recommend further action that might be taken as part of a comprehensive remedial decree.

I.

The person designated as special master has served in the same capacity in other complex litigation. See Jenkins v. Raymark Industries, Inc., No. M-84-193-CA (E.D. Tex. December 17, 1985) (order appointing McGovern to prepare a report that compares the characteristics of claims of class representatives and class members in asbestos litigation); Wilhoite v. Olin, CV83-C-5021-NE (N.D. Ala. August 10, 1983) (order appointing McGovern in action seeking damages for and removal of DDT and other contaminants); In re Ohio Asbestos Litigation, OAL Order No. 3 (N.D. Ohio July 14, 1983) (order appointing McGovern to propose a plan for the management of pretrial discovery and trial proceedings); United States v. Michigan, M26-73CA (W.D. Mich. 1983) (order appointing McGovern in action involving Indian treaty). Although he has not previously served as a master in a desegregation case, his lack of civil rights experience is not a disadvantage, since it indicates his neutrality. Moreover, McGovern has experience organizing large amounts of information and working with both plaintiffs and defendants to develop a consensual approach to difficult problems. Counsel for both parties have met with him and reviewed his qualifications.

Despite HUD's objections to the appointment of any master, both parties agree that McGovern is capable and qualified to serve in the role of special master.

II.

The special master shall have three primary responsibilities in this action:

1. to monitor the remedial efforts undertaken by HUD to comply with the order enjoining it from engaging in any conduct that has the purpose or effect of fostering racial segregation and directing it to dismantle the dual system of publicly funded housing in East Texas;

2. to study the operation of the local public housing authorities, rent supplement programs, and section eight housing programs in the thirty-six class action counties, in order to assist the court in evaluating HUD's desegregation efforts and in determining additional ways to facilitate racial desegregation in HUD-assisted housing; and

3. to report to the court on the results of HUD's remedial efforts and recommend further action, if any, that might be taken as part of an appropriate remedial decree, including a definition of substantial compliance.

To assist the special master in carrying out his responsibilities, he shall have all of the rights and powers provided under Federal Rule of Civil Procedure 53.

- a. The master shall have complete and unrestricted access to the records of HUD, including statistical data, contracts, reports, correspondence, plans, advertisements, notices,

compliance reviews, and other relevant documents. Within ten days of entry of this order, HUD shall designate an official to serve as a liason between the master and the agency. The liason official will act to facilitate the master's ability to obtain information from the agency.

b. The master shall have plenary authority to interview, at reasonable times and places, persons, including employees and staff of HUD, whom he believes will have information that will assist him in performing his duties. HUD will use its best efforts to encourage the local public housing authorities and other providers of federally funded housing to cooperate fully with the special master.

c. The special master shall the right to hire assistants as he deems necessary, subject to the approval of the court, and his authority, as outlined in this order, will extend to any other individual whom he designates. He may also seek the assistance of court-appointed experts, whose costs may be assessed against one or both parties.

d. The special master may confer with the parties or their attorneys in ex parte communications, as required to fulfill his duties.

e. In order to prevent duplication of efforts, the master shall receive, if he so desires, all of the requests for and responses to discovery during the remedial phase of this litigation. Each party is directed to supply the master with the requests it has made or will make or the responses it has given or will give.

f. Nothing in this order of reference should be construed to limit, modify, or otherwise interfere with HUD's existing authority to investigate, monitor, or enforce compliance with respect to the plaintiffs' claims of unlawful discrimination.

The master is directed to file periodic reports every three months with the court, with copies to the parties. The reports should describe the monitoring activities in which he has engaged, the results of the monitoring, further interim relief that he believes is warranted, and other matters that he deems appropriate for the remedial phase of this litigation. If any interim report makes a recommendation, the parties shall have ten days from the date of service to object to the recommendations and to request a hearing.

A final report is due by October 1, 1987. To the extent that the master recommends additional action as part of an appropriate remedial decree, the report should state the bases for his recommendations, including any facts and opinions on which he relied. The clearly erroneous rule under Rule 53(e)(2) will apply only to those findings and conclusions of the master that are based on hearings conducted on the record after proper notice. After the filing of the final report, each party will have thirty days in which to object to it or any of its provisions, to request a hearing, or to propose an alternative remedial plan. The hearings on any objections will include the right to present evidence and to cross-examine adverse witnesses. The court retains the authority to reject or modify any

recommendation by the master, regardless of whether any party has filed an objection.

III.

The costs and expenses of the special master shall be borne equally by the plaintiffs and defendants. Within thirty days of service of this order, HUD shall deposit \$12,500.00 with the Clerk of the Court and the plaintiffs shall deposit \$12,500.00 with the Clerk, as interim payments for the master's services and expenses. If the plaintiffs for good cause need more time to obtain their share of the expenses, they may move for an extension.

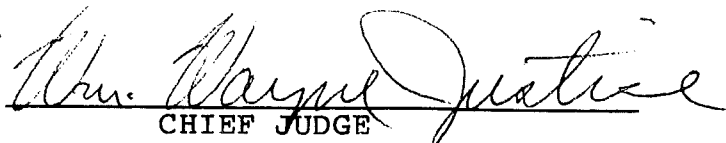
The special master will be compensated for his services at the rate of \$100.00 per hour, and will be reimbursed for the necessary expenses he may incur during the performance of his duties. The master should submit quarterly a voucher of his expenses as the basis for entry of orders directing payment to him. The vouchers should list the hours expended and describe the work performed. The parties shall have ten days from the date of service to respond to the voucher or raise any objections. Accordingly, it is

ORDERED that Francis E. McGovern, Esquire, shall be, and he is hereby, **APPOINTED** special master in this action. It is further

ORDERED that both the plaintiffs and the defendants shall, within thirty days of service of this order, deposit the

sum of \$12,500.00 with the Clerk of the Court.

SIGNED and **ENTERED** this 31st day of July, 1986.


CHIEF JUDGE