Soft on Segregation: How the Feds Failed to Integrate Westchester County



Cherie Michaux, with her daughter Ja'liza Michaux, 12, her nephew Quaheem Moreau, 3, bottom left, and her son Ja'kye Brown, 7, bottom right, in their apartment in Port Chester, N.Y., on Oct. 27. (Melanie Burford for ProPublica)

by Nikole Hannah-Jones ProPublica, Nov. 2, 2012, 3:37 p.m.

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The city of Rye, nestled along the scenic Long Island Sound in affluent Westchester

County, N.Y., represents the best of suburban living. Sprawling mansions perch atop rolling hills. Children attend top-notch schools. Residents browse tony boutiques and sun themselves on café patios in a downtown that manages to be both quaint and chic.

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Drive down the road a bit, cross two four-lane highways and you're in working-class Port Chester. Turn near the aging strip mall with the 99-cent store and head onto a street of down-on-their-luck apartments where brown and black children speed past on bicycles.

Here, you'll find a tiny sliver of Rye, cleaved from the city years ago when interstates 287 and 95 came through. This is where Westchester County has chosen to put 18 units of affordable housing, part of a deal settling a lawsuit over the county's failure to promote integration as required by the Fair Housing Act of 1968.

The goal of the settlement — dismantling the county's pattern of segregated housing — seems at odds with the choice of this site. The only road to these apartments slices through Port Chester, a city that is majority black and Latino, and significantly poorer. Anyone who lives here won't be able to walk or drive directly to the rest of Rye.

The Obama administration cites the Westchester lawsuit as evidence it has taken a more assertive approach than its predecessors to enforcing the fair housing law, which requires communities receiving federal development money to "affirmatively further" integrated housing.

"Until now, we tended to lay dormant," Ron Sims, the deputy secretary of the U.S. Department of Housing and Urban Development, said in August of 2009 as HUD announced the decree settling the case. "This is historic, because we are going to hold people's feet to the fire."

But that is not what happened.

Far from being a new chapter, the tale of Westchester replicates the long history of the Fair Housing Act, in which federal officials have repeatedly backed down from strong enforcement when confronted by determined local opposition.

HUD, for example, raised no objections when Westchester proposed counting the Rye apartments — one-bedroom condos originally designed for seniors — as part of its pledge to build 750 units of affordable housing. Under the terms of the settlement, the site should have been rejected because it sits in a heavily black and Latino census tract.

HUD officials said the department's senior leadership had little appetite for a confrontation over race with the county, which is home to prominent Democrats such as Secretary of State Hillary Clinton and New York Gov. Andrew Cuomo.

As we reported Monday, a series of Democratic and Republican administrations have declined to wield their powers under the Fair Housing Act. The authors of the legislation wanted agencies to withhold federal grants from communities that did not work to dismantle the legal and practical impediments to integration. But over the next four decades, HUD dispersed tens of billions to local communities that did little or nothing to adhere to this part of the law.

ProPublica interviewed former and current HUD officials, Westchester officials and civil rights advocates to chronicle the county's response to the landmark 2009 settlement, as well as its long-term compliance with the fair housing law. We combed through thousands of documents received through public records requests.

In the decades after the Fair Housing Act was passed, documents show, HUD did not challenge Westchester when local officials certified they were working to undo segregation while not even considering race as a factor in housing policy. It fell to a private civil rights group to question Westchester's written assertions.

The county settled the case after a judge ruled that its statements to HUD on fair

housing amounted to a multi-year fraud, raising the possibility of as much as \$150 million in fines.

Rob Astorino, the current Westchester County executive, campaigned against the deal, ousting the Democrat who signed it. Since then, the county has failed to meet several key provisions. Among them: It has not adopted legislation that bans discrimination against residents who pay their rent with government vouchers. It has not produced a HUD-approved analysis of obstacles to fair housing. It has not drawn up a strategy to eliminate local zoning laws that make it harder for African Americans and Latinos to find housing. And it has not launched marketing campaigns to promote integration in the county.

The federal government has raised few objections. Government attorneys told a federal judge in July that the county's continuing resistance placed the deal, called a "consent decree," in danger of collapse. But they have not yet moved to hold the county in contempt.

Craig Gurian, the lawyer who brought the suit, fears that after the initial hope, the Westchester case has set a troubling precedent for other communities weighing whether to follow the housing law.

"I've been waiting for more than three years for the Obama administration to take the decree seriously. I have been waiting for the HUD Secretary to speak forcibly and direct enforcement for all the provisions of the decree. I've been waiting for various Democratic politicians to stand with civil rights principles when it applies close to home. And I've been repeatedly disappointed," he said. "The promise of the consent decree has been squandered."

ProPublica submitted a list of questions to HUD about its failure to use its authority to promote integrated housing nationally and in Westchester. The agency issued only a general statement that said it has worked hard to enforce provisions of the law that bar discrimination against individuals.

The consequences of the county's conduct can be seen at the border between Rye and Port Chester.

Cherie Michaux lives on the Port Chester side of the line but would love to move to Rye. That would allow her 9-year-old son and 12-year-old daughter to attend one of the best school systems in New York.

The Westchester settlement was supposed to tilt the scale in the direction of people like Michaux, who has worked all her adult life but has never been able to move into more prosperous parts of the county.

Instead, the one-bedroom apartments being built in Rye are not appropriate for a family of three, and the starting price of \$150,000 is well beyond her reach. Just 14 steps from the Port Chester line, it does not provide any escape from the problems of the neighborhood.

Michaux, a single mother who works as an assistant teacher, has resigned herself to staying in Port Chester.

"Port Chester is that big old melting pot of those who can't make it," she said.

* *

Gurian, the civil rights lawyer who brought the case against Westchester, grew up in the Flatlands section of Brooklyn, then a working-class Irish, Italian and Jewish neighborhood.

His neighborhood was part of a 60-year shift beginning in the 1910s in which millions of African Americans traveled north in what became known as The Great Migration. Arriving in Detroit, Chicago, New York, Newark and elsewhere, the new residents were crowded into ghettos by discriminatory landlords and by the policies of local and federal governments.

The forces that transformed New York into one of the nation's most segregated metropolitan areas came late to Flatlands, a densely packed urban area near Brooklyn College. Gurian, who was born in 1959, said his landlord, like many others in the city, did not rent to African Americans.

The apartment building had been all white throughout his childhood. But when Gurian's father died in 1988, he was the last white tenant.

Long troubled by the segregation around him, Gurian decided to become a civil rights lawyer. After graduating from Columbia University's law school, he found a job at the New York City Commission on Human Rights. As he handled individual cases of housing discrimination, he was struck by the failure of government to address the root causes of the racial divide.

"New York likes its segregation just like it is," Gurian said from his small Manhattan office. "It's just something that is an open secret, the phenomenon that dare not speak its name."

In 2003, he set out on his own, creating a nonprofit group called the Anti-Discrimination Center. He began to wonder whether he could file a lawsuit that would challenge New York's prevailing housing pattern: A predominantly African-American and Latino inner city bordered by overwhelmingly white suburbs.

"You have all these communities that I describe as white, super-white and ultra-white," he said, referring to the New York suburbs. Looking at the non-action of cities and counties, "it was clear there was a massive collaboration with this status quo."

And then it hit him.

Each year, communities applying to HUD for block grants certified that they were complying with civil rights laws and doing all they could to "affirmatively further fair housing."

But if those signed statements were lies, the federal government had been victimized by fraud. And that would make local governments vulnerable to a lawsuit under the False Claims Act, which allows private citizens to bring court actions against companies or people who cheat the government. (They get a share of the money recovered.)

These days, the false claims law is primarily used against military contractors and health care companies with Medicare contracts. But Gurian thought it could work in a civil rights case.

As far as anyone knew, HUD hadn't stripped grant money from a single community for failures to "affirmatively further" fair housing since the early 70s — even when judges found those communities had violated the law. Under the False Claims Act, Gurian didn't need HUD's support to sue on its behalf.

The lawyer needed a place to test his idea. Westchester County, the segregated homestead to some of New York's most prominent liberals, felt irresistibly symbolic.

So Gurian began asking officials in Westchester to document their fair housing efforts. The county had little to show.

"It was unusually thin and unusually unconnected with questions of segregation," said John Logan, a Brown University sociologist who later reviewed Westchester's "Analysis of Impediments," the document that communities file to show Fair Housing Act compliance when they seek block grants.

Gurian believed he had enough to go to court. "There wasn't any question that Westchester wasn't affirmatively furthering fair housing, that it had no intention of affirmatively furthering fair housing, and every single time it promised the federal government it would do so it was lying," Gurian said.



Craig Gurian, left, an attorney from The Anti-Discrimination Center who brought a fair housing lawsuit against Westchester County under the False Claims Act, works with colleague Heather Rogers, right, during a meeting in his office in New York, N.Y., on Oct. 23. (Melanie Burford for ProPublica)

Gurian's small firm only brought in less than \$100,000 a year at the time, according to his filings with the government. He pleaded with HUD and the Justice Department to join his suit against the county, but they declined.

In December 2006, the Anti-Discrimination Center went it alone and sued one of the nation's wealthiest counties.

The case landed in the courtroom of Judge Denise Cote, a former prosecutor whose background made her familiar with the issues of the case, in the Southern District of New York in Manhattan.

Born in Minnesota, Cote earned a master's degree in history at Columbia University. After graduating, she taught black history at a Catholic school in Manhattan. She came to see the law as a means of addressing society's inequities and headed to law school. "When I came to New York City and saw the poverty and the racial tension and the victims of crime, especially in the poorest neighborhoods, I wanted to use my talents in whatever way I could to help," she wrote in her Columbia Law School alumni profile.

Gurian began taking depositions from Westchester officials. Norma Drummond, who supervised the county's block grant program for more than a decade, acknowledged that the county did not consider race when it assessed obstacles to fair housing. The county "sees discrimination in terms of income, rather than in terms of race," she said.

Drummond said she was aware that HUD had told block grant applicants to consider race and segregation when drafting the key document for block grants — the "analysis of impediments." But the county did not address race in the documents it filed for HUD

grants in 2000 and 2004.

The county's chief executive, Andrew Spano, testified that race had nothing to do with where people lived in Westchester County.

That assertion was at odds with three centuries of history.

The Dutch brought enslaved Africans to Westchester in the early 1600s, before the first British colonists arrived on American soil. On the eve of the Revolutionary War, John Jay, a founding father who grew up in Rye, worked his land with slaves.

After the war ended, Jay became an abolitionist and opened the first of several African Free Schools for the children of former slaves. Forty-five students attended that school, 24 more black students than in the entire 3,300-student Rye school district during the 2010-2011 school year.

As the Great Migration brought thousands of black Southerners to New York City in the 20th century, Westchester's towns and cities snatched up the welcome mats.

White Plains and Scarsdale took the lead. In 1920 and 1922, both adopted zoning codes to keep out lower-cost housing. Within a few years, every incorporated community in the county had similar ordinances.

Many people in Westchester attached real estate covenants to their properties that barred homeowners from selling to African Americans.

Developers proudly advertised their efforts. "Restrictions? Yes!" a Bronxville developer proclaimed in a 1925 "Home and Garden" magazine.

By 1947, the majority of houses in Westchester, Queens and Nassau counties had covenants prohibiting sales to African Americans, according to a study that year by the Journal of Land and Public Utility.

"The segregation patterns were laid down early in Westchester County, were certainly set by the 1950s, and they continue today," said Andrew Beveridge, a demographer at Queens College in New York who was called by Gurian as an expert witness. "Very few African Americans live in other parts of the county, regardless of income."

Beveridge said Westchester County's racial divisions cannot be explained by benign settlement patterns. The county includes heavily black and Latino cities such as Mount Vernon (63 percent black and 14 percent Latino), Yonkers (19 percent black and 35 percent Latino) and New Rochelle (19 percent black and 28 percent Latino) and it borders on the Bronx (43 percent black and 54 percent Latino).

Bordering these cities are Scarsdale (1.5 percent black and 4 percent Latino), Bronxville (1.4 percent black and 4.4 percent Latino) or Eastchester (1.3 percent black and 7 percent Latino).

The county's political leaders insist these statistics reflect class, not race; African Americans and Latinos cannot afford to live in towns like Scarsdale, one of the nation's wealthiest suburbs, they say.

But the connection between race and class can be nearly inextricable, particularly when certain zoning requirements — called "exclusionary zoning" by fair-housing advocates — are present, as they are in Westchester County.

After the U.S. Supreme Court outlawed explicitly racial zoning in 1917, many affluent communities limited the amount of land that could be used for multi-family dwellings, such as apartments or condos, or increased minimum lot sizes for new single-family homes. These requirements curtailed the availability of the most affordable housing, while boosting the prices of existing homes.

The net effect was to block access to black and Latino families. Even those with substantial incomes lagged behind whites in wealth, both inherited and accumulated. As recently as 2009, the U.S. Census Bureau found that the median wealth of white families was roughly 20 times that of black families, a gap produced in part by generations of biased lending practices. One example: For most of the 20th century, federal and local housing policies provided whites access to home ownership, one of the largest generators of family wealth, while systematically excluding African Americans.

Numerous studies, including one published this year in the Urban Affairs Review, have concluded that exclusionary zoning similar to Westchester's increases segregation by eliminating affordable housing options.

In the 15 Westchester communities with black populations smaller than 2 percent, only 1.6 percent of available land is set aside for apartments or condos. By contrast, some of the county's most diverse communities, Peekskill, Tarrytown and Mt. Vernon, combine to designate 11.7 percent for multi-family buildings.

Census data shows that the small amount of affordable housing available in wealthier white communities tends to be occupied by lower-income whites. Such white families typically live in wealthier neighborhoods than even middle-class African Americans, according to research by Brown University's Logan.

This suggests that discrimination plays a factor as well. Indeed, when a Westchester fair housing group sent African American, Latino and white actors to pose as apartment seekers in the county last year, they found evidence of discrimination against the black and Latino "renters" in almost 20 percent of the tests.

Beveridge, who is white, lives in an upscale, nearly-all-white neighborhood along the Yonkers/Bronxville border. He said his white neighbors have openly balked at the prospect of African Americans moving into homes on the market. When Beveridge analyzed the impact of race and income on living patterns in Westchester, he found that race trumped income and that affluent African Americans were nearly as segregated from white residents as poorer ones.

In the 1980s, Gene Capello, then a vice president and assistant general counsel at J.P. Morgan & Co., started looking for a house to buy in Yonkers. Over the phone, real estate agents recommended that he look east of the Saw Mill River Parkway, an area that was almost all white, he recalled. But when they met Capello — and realized that he is African American — they told him the best options for him were on the west side. That's where most of the city's African Americans lived.

"There was a whole expanse of East Yonkers I never saw," he said. "Sure it's a question of whether you can afford things, but what if you don't even have the opportunity to see them?"

Capello, who eventually bought a home in a mostly white area of Westchester, is now

president of the Fair Housing Justice Center in Manhattan. HUD research shows the same type of racial steering that Capello said he experienced continues nationally.

Since, 1976, HUD has pumped \$187 million in block grants into Westchester, conditioned on compliance with the Fair Housing Act. Despite the requirement not to spend federal dollars in communities that resisted integrated housing or took other actions in opposition to the Fair Housing Act, county officials said in depositions that they did not push back when the wealthier towns fought housing that would make their communities more diverse.

As a result, 73 percent of the affordable housing built by the county over the past two decades ended up in the 11 jurisdictions with disproportionate numbers of African Americans and Latinos.

The 12 whitest municipalities — including Bronxville and Scarsdale — did not add a single unit of affordable housing during those years, even though Westchester's 1993 fair housing plan called for 5,000 new affordable housing units countywide within a decade.

When Gurian filed his lawsuit, Westchester fought back vigorously, denying it had made any false claims. HUD officials, the county argued, were well aware Westchester officials were ignoring race but had never threatened to withhold the block grants. In addition, the county contended, HUD had never made clear what it wanted in the required certifications.

At HUD, officials worried that the county might defend itself by suing them.

In her first ruling in July 2007, Cote slapped down the heart of Westchester's defense. Any interpretation of the housing act that excluded race was "absurd," she ruled, since Congress' intent in passing the law was to address racial segregation and discrimination. The judge said Drummond's admission that the county had ignored race in preparing its certifications would likely be seen by a jury as strong evidence that officials had knowingly violated the housing law, a key element in proving a case under the False Claims Act.

Cote delivered the knockout blow in February 2009, ruling that each of the county's requests for payments from HUD was a separate act of fraud. Westchester had made hundreds of requests.

The judge was unmoved by HUD's acquiescence in Westchester's conduct. The decision by "certain HUD bureaucrats" to continue sending the county money did not erase the damage caused by the false statements, she ruled.

The certification that the county was "affirmatively furthering" fair housing "was not a mere boilerplate formality, but rather was a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations," Cote wrote.

The judge noted that the county had used grants from HUD to build housing that had actually "increased segregation."

Cote's ruling left Westchester facing as much \$150 million in fines. The county's Democratic leadership called on the newly elected Obama administration to enter the case and help work out a settlement.

HUD was eager to set a new tone. "The judge spanked HUD and Westchester County for our non-compliance with the Fair Housing Act," Ron Sims, HUD's deputy secretary at the time, said in an interview. "We set to the task of trying to establish the civil rights presence in the Obama administration."

Gurian, vindicated, set out to craft an agreement that developed more affordable housing and dismantled the zoning policies that he believed had served to exclude African Americans and Latinos.



Westchester County Executive Rob Astorino speaks at a town hall event in North Salem, N.Y., on June 13. (AP Photo/Westchester County Executive's Office, Carl Pagano)

He did not get everything he wanted, but under the settlement, Westchester County agreed to:

- Acknowledge racial segregation in the county.
- Draft an analysis of impediments that addressed race and segregation and draw up a detailed plan within four months to implement the deal.
- Spend \$51.6 million to build 750 units of affordable —
 not public housing within seven years in the 32
 whitest jurisdictions. No less than 630 of the 750 units
 would be put in communities that were less than 3
 percent black and 7 percent Hispanic.
- Market that housing to African Americans and Latinos through the New York City metropolitan area.
- Assert its authority over exclusionary zoning and take legal action against communities that refuse to eliminate it.

Gurian's nonprofit received \$7.5 million from the county as payment under the False Claims Act and another \$2.5

million in attorney's fees.

By agreeing to the settlement it signed away any claim to file further court challenges. The settlement and its implementation would be strictly between Westchester County and the federal government. Government officials, he said, assured him they would aggressively enforce the terms.

HUD's officials spoke proudly of their role in bringing about the deal. Sims, then HUD's deputy secretary, called it "a new era" for the housing agency. "This agreement signals a new commitment by HUD to ensure that housing opportunities be available to all, and not just to some," declared Shaun Donovan, the HUD secretary and former commissioner of the New York City Department of Housing Preservation and Development.

Fair housing advocates celebrated Gurian's triumph and hoped it would lead to similar suits across the country. For the first time in decades, HUD officials appeared willing deploy their most powerful weapon — billions in grant dollars — to make the promises of the 1968 Fair Housing Act a reality.

Those cries of victory proved premature. The battle for Westchester had just begun.

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Spano's decision to sign the deal ignited a political firestorm. The three-term county

executive pleaded with voters and county legislatures who balked at approving the settlement not to make the county a "symbol of racism."

Rob Astorino, his Republican opponent in that fall's election, sought to capitalize on anger around the settlement and the anti-tax sentiment sweeping the nation.

The manager of a local radio station, Astorino had served for six years as town board deputy supervisor of Mt. Pleasant, an 84-percent white town that had refused HUD block grants and their civil rights obligation. He'd lost to Spano four years earlier.

But 2009 was different.

While Spano attempted to defend his decision to sign the settlement, he found himself standing alone. Not one of the county's most prominent liberals spoke out publicly for the settlement or its goals.

As president, Bill Clinton championed residential integration. When he left the presidency and opened a New York office, he chose Harlem. But when he bought a home, he chose exclusive, nearly-90-percent-white Chappaqua. The hamlet is part of a municipality targeted by the settlement. Clinton's press office declined interview requests.

Before becoming New York's governor, Andrew Cuomo had founded a nonprofit that developed affordable housing. As Clinton's HUD secretary, Cuomo attempted to toughen the rules linking progress on housing integration to block grant money. Yet as Astorino assailed the settlement, Cuomo did not speak out.

His home lies in nearly 90 percent white New Castle, another community required to participate in the settlement. Cuomo's press office declined requests for interviews.

Three months after Spano inked the settlement, Astorino scored one of the most stunning upsets in Westchester County history.

Overnight, the game changed.

On Jan. 6, 2010, just three days after Astorino took his oath, a special assistant in HUD's Office of General Counsel sent an email to James E. Johnson, who had been picked by HUD to monitor the settlement. Elisabeth Voigt, a HUD lawyer, wanted Johnson to know about a statement by Astorino that "HUD finds concerning."

Astorino had assured a group of local officials that "he would not force anyone to build anything," Voigt wrote to Johnson. "These kinds of statements reflect a lack of commitment on the County's part, undermine the County's ability to meet its obligations by emboldening the cities to resist, and set the County up for failure in the long term."

What did HUD intend to do about this open declaration of defiance? "We don't believe it would be helpful for HUD to respond to this comment," Voigt told Johnson.

A white-collar defense lawyer and former Treasury Department official, Johnson was known for his skills as mediator. He had helped end a contentious dispute over racial profiling in his home state as chairman of the New Jersey Advisory Committee on Police Standards that reviewed police reforms.

His approach assumed a willing partner. He did not have one in Astorino.

At public meetings and in media interviews, Astorino accused HUD of trying to impose a "Utopian integration order." The settlement signed by Spano, he insisted, was a straightforward agreement to create 750 housing units. Nothing more.

In a recent interview at his office, Astorino energetically argued his case against HUD.

"The word integration is nowhere in the settlement," Astorino said, repeating a line he uses often. "This is no integration order from the courts."

He's partly right. The word "integration" is not in the 38-page consent decree. But the settlement requires the county to acknowledge that "the elimination of de facto residential segregation are official goals of the County's housing policies and programs." Westchester also agreed to market the housing specifically to African Americans and Latinos and report the race of every person who moves into the 750 units.

Further, the word integrated appears twice in the settlement. Segregation, three times. All told, the court order uses race, integrate, segregation, African American and Hispanic, or their derivatives, at least 27 times.

But Astorino argues the issue is about class, not race.

"I would love to live in Chappaqua next to the Clintons or Gov. Cuomo," he said. "But I don't have the economic means to do it."

Further, Astorino said communities should have the right to plan and zone the way they want.

"When people choose to buy a home or to live in a specific place, they go in there because the neighborhood is what a neighborhood is. They zoned for that," he said. "I don't think it's necessarily fair that a year later all of a sudden everything comes down and a building goes up next to you."

* * *

The deal with HUD required Westchester to draw up an implementation plan to meet the settlement's terms.

The proposal Astorino turned in in January 2010, nearly two months after the original deadline, did not mention integration. It did not include a plan for marketing the new units to Latinos and African Americans or a strategy for dealing with zoning. Instead, it repeated, word for word, the settlement's general instructions.

Johnson, the HUD-appointed monitor, rejected the plan, calling it "unnecessarily vague." He gave the county another month and tapped Brooklyn's Pratt Institute to review the county's work.

Pratt's experts called the new plan — now seven months in the making — "generic" and so deficient that they wondered if the county had intentionally written it that way.

The court order allowed Johnson to extend the implementation plan's deadline just once. After that, he was supposed to write it himself. But Johnson argued that persuading the county to draw up an acceptable plan would achieve more than forcing one upon it.

"Most litigation that ends in settlement results in resistance," Johnson said. "But

whether or not it's dealing with some very tough issues with law enforcement or church arsons or racial profiling in New Jersey, actually engaging with those whose behavior you would like to change has yielded results."

He gave the county a third chance. The county turned in another plan that Johnson judged deficient.

By this time, civil rights activists watching the case were becoming alarmed. If the federal government didn't stand firm on the easy part of the settlement — writing a plan — what would happen when disputes arose over zoning or where to build the 750 units?

More than 80 civil rights and fair housing advocates, including Sara Pratt, who later became HUD's head of enforcement, sent Johnson a letter, imploring him to correct the deficiencies.

In July 2010, Johnson sent a letter to HUD officials. "I would like to at least consider whether, and under what circumstances, we engage the court," he wrote.

But Johnson said in an interview that HUD was not inclined to seek the court's intervention. So with HUD's approval, he spent the next year and a half extending the deadlines again and again as the county submitted one inadequate plan after another. By January 2012, the county had still failed to deliver a workable proposal. Yet neither Johnson nor the federal government asked Judge Cote to get involved.

Instead, Johnson moved ahead on a different front, approving dozens of housing units ordered under the settlement.

County officials put forward the Rye project that is cut off from the rest of the city by two interstate highways. In a letter to the county, Johnson called the project a "missed opportunity." Then he approved it.

Officials proposed a development on a strip of land in the community of Cortlandt, wedged along a highway and a railroad track. The site met the criteria for low concentrations of African Americans and Latinos only because, other than the residents of the nursing home, two homeless shelters and psychiatric hospital nearby, no one lived on that land.

Johnson, in a letter to the county, said the site wasn't "ideal for promoting residential integration." He approved it anyway.



Cherie Michaux, left, with her daughter Ja'liza Michaux, 12, right, and son Ja'kye Brown, 7, center foreground, and her nephew Quaheem Moreau, 3, background, playing with leaves in Port Chester, N.Y., on Oct. 27. (Melanie Burford for ProPublica)

Gurian contends HUD should have rejected the proposed sites, forcing the county to find better ones or pay fines when it failed to meet deadlines. Johnson countered that such an approach would have been risky.

"I can't predict what the county's behavior would be in that circumstance," he said. "I could have played a game of chicken, but I wasn't going to do that."

Instead, Johnson and HUD decided to go after what they called "low-hanging fruit," hoping to build good will with Astorino and the county's leadership. They feared the settlement could fall apart entirely if they

pushed too hard.

"The key was not to make mistakes," said a former high-ranking HUD official who worked on Westchester strategy. "We were an agency that had not been thorough for decades, had been sitting on its hands and doing nothing for people who had been faced with systematic discrimination in this country. HUD loses this case, we're back to a loss of confidence and people would say we're worthless."

Faced with growing criticism over the housing sites, Johnson tightened the rules for further projects. In what he termed "guidance," he told the county that the rest of the housing needed to be in non-minority neighborhoods that were not isolated by railroads or highways.

But Westchester didn't change course. The county asked Johnson to approve a project in a non-residential part of Chappaqua crammed between railroad tracks and a highway.

Even some town residents complained.

"I'd like to know whether you would like your mother or sister to live here," Chappaqua architect Bill Spade asked the town board.

Instead of rejecting the site, Johnson met with developers to find ways to improve it. The plan remains on hold.

HUD also encountered resistance from Westchester on the portion of the settlement requiring the county to produce an analysis of impediments that addressed race and municipal resistance to affordable housing.

Due within 120 days, Westchester requested a series of extensions. When it finally submitted an analysis in April — days past the extended deadline — it ignored HUD's explicit instructions to address zoning and income discrimination.

"Quite frankly, the staff wrote it, came back to me, I reviewed it and there were things that I deleted that I would not agree with," Astorino said.

By May 2011, HUD had rejected the county's analysis four times. Still, it did not ask Judge Cote to intervene.

Fed up, Gurian returned to court, detailing what he saw as HUD and Johnson's failure to enforce the deal.

As he pressed the judge to step in, HUD took an unprecedented step: It froze \$7 million in block grants to the county. As far as can be determined, it was the first time it had done so over a civil rights violation since the program's creation in 1974. The agency promised to release the money as soon as Westchester submitted an acceptable analysis.

Several former and current HUD officials interviewed for this article said that agency officials were divided over how hard they should press Westchester to comply. Some HUD officials wanted to be more aggressive, but decision makers ultimately decided withholding funds went far enough.

HUD's lawyers opposed Gurian's motion and asked Judge Cote not to get involved, arguing that though the "shortcomings are significant" by withholding the block money

the agency had shown the county's actions "have not been and will not be ignored."

Ultimately, Cote ruled that the Anti-Discrimination Center had no standing to demand tougher enforcement because it had signed away that right when the case settled.

* * *

Last December, as Johnson prepared his first biennial report to the court on the settlement, he solicited HUD's view. The chief lawyer in the HUD regional office for New York responded with a list of 14 areas in which the county had failed to make "significant progress."

"Two years, into the Settlement, the County only appears to have taken the most minimal of steps towards compliance," she wrote.

By the end of 2011, HUD and Westchester were headed back to court. But, it was Westchester, not HUD, asking a judge to intervene. Astorino's lawyers questioned whether HUD had the authority to withhold its block grant. The county also challenged Johnson's demand that the county draw up a plan for dismantling exclusionary zoning, another requirement under the settlement, by February 2012. (Johnson had first instructed the county to complete this work by 2010.)

Astorino eventually lost on both issues, but wasn't deterred. In media interviews, he said, "HUD is trying to force me and Westchester County to dismantle local zoning, sue our municipalities and bankrupt our taxpayers. I will not allow that to happen."

HUD replied with a muted statement that mostly reminded the public the federal government had not brought the lawsuit to begin with. "A local group, not the federal government, first challenged Westchester's certifications to the federal government that it was affirmatively furthering fair housing," it said. "After a federal judge found against the County, the Obama Administration stepped in to see if a settlement was possible."

On the day the analysis of zoning was due, the county filed a report asserting that there was not a single instance in which local ordinances made it harder to build housing affordable to many African Americans and Latinos.

HUD called the document "wholly inadequate" and froze an additional \$5 million in block grants slated for the county. Johnson ordered Westchester officials to try again.

After receiving a last-minute extension, Westchester handed in a copy of the document HUD had rejected in February but attached an analysis of New York zoning law by a local land-use professor that the county said confirmed its earlier findings.

As the dispute over zoning continued, Westchester refused to respond to requests from Johnson. The parties wound up in front of Judge Cote yet again.

In a detailed court filing in July, lawyers for the U.S. Attorney's Office in New York laid out the county's "pattern of delayed and incomplete responses" and failure to launch the public marketing campaign described in the settlement. They also noted that Astorino had vetoed legislation outlawing discrimination against lower-income tenants who pay their rent with the help of federal vouchers. The settlement required the county to adopt such a statute.

At the halfway mark of the seven-year court order, the government said the county's

behavior "will make it all but impossible to achieve the results contemplated by the Settlement."

Still, the government's lawyers did not ask Judge Cote to hold the county in contempt or do anything specific. They simply asked the court to order Westchester to respond to Johnson's requests for information.

The county told the judge it would cooperate. But during his interview with ProPublica, Astorino continued to insist that the county's original analysis of zoning, which found no problems of any kind, was accurate and complete.

"HUD has made some false statements ... that we have failed to do any analysis of zoning," he said. "We've done one very exhaustive analysis that shows we have no exclusionary zoning."

The county still has not come up with a strategy to deal with zoning that makes it harder for African Americans and Latinos to live in the least diverse parts of the county.

Gurian said he is frustrated but not surprised. "We've known from the beginning that Westchester is in a resistance posture and the government is in an appeasement posture," he said. He's hardly the agency's only critic. "HUD is hopeless," said Roberta Achtenberg, who led fair housing enforcement at the agency under President Clinton and views its handling of Westchester as typical.

Michaux, the mother who lives in Port Chester but dreams of giving her children a better education by moving to Rye, has closely followed the progress of the lawsuit through local news reports. She doubts it will provide any deliverance for people like herself. "I feel like they are trying to skirt the issue — yeah, you built it," she says, referring to the 18 units isolated from Rye by two freeways, "but you are skirting the issue by building far away from where your real community is."

"They act like they care, but they don't."

Update (11/2): This post has been updated to clarify that a review by John Logan, a Brown University sociologist, of Westchester county's Analysis of Impediments was conducted after Craig Gurian filed suit against the county.



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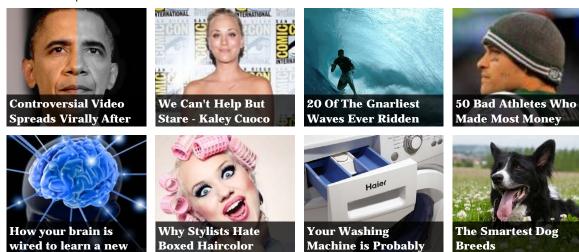
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10 comments

Gary Orfield Nov. 5, 3:21 a.m.

This is great journalism on a truly important issue that will determine the future of a great many families and communities and is rarely discussed in our politics. It untangles the complex of local realities, law, politics and the tendency to sweep issues of race under the rug. One of the reasons why most white believe we do not have civil rights problems any more is that there is no good infomation about how weak the enforcement efforts have been and how much resistance they have encountered.

Hypatia Nov. 5, 6:13 a.m.

You'd think a Government official would at least be able to write basic English...

" Until now, we tended to LAY dormant," Ron Sims, the deputy secretary of the U.S. Department of Housing and Urban Development, said in August of 2009...

John Nov. 5, 4:04 p.m.

people would say we're worthless

Wanna bet that anonymous official had a particular skin color in mind when referring to "people"? Because I'd be willing to bet that the local minorities are already saying that they're worthless. I'd say it, myself, but HUD under Cuomo did solve the problem of minorities not taking loans they couldn't afford to pay back, and that ended oh so well, so that's worth contributed to someone...

I think the takeaway is that we need to stop imagining politicians as champions of "liberal" or "conservative" values. They champion values of totalitarianism, rule by corporate sponsors, rule through corporate shells, or some combination of the three. That's it, for the overwhelming majority.

They won't act because this problem only affects people, whereas fixing the defect might alter doing business. See what the Chamber of Commerce has to say on the issue. I'd bet it'd be enlightening, considering they represent the contractors, realtors, and probably the eventual landlords or mortgage holders.

Just Saying Nov. 5, 4:36 p.m.

Want to see more racism and hate in this country? Force people to integrate into communities they don't want to be in, just for diversity's sake.

Unbelievable Nov. 6, 6:28 p.m.

Just Saying: "just for diversity's sake" - do you think this is for diversity's sake? Do you think the black family wants to live amongst the rich whites to enrich their life? No. They want to live there in order to be able to attend the better schools; in order to enjoy more safety; in order to travel less, etc...

No one cares about diversity here. Housing advocates care about equality - equality of white people and people of color and equality of rich and poor to live in equally good neighborhoods with access to equally good schools.

This wonderful article just shows how powerless the poor, the people of color, and their advocates are. The government, the rich and the white like to continue as it has always been. While they try to convince themselves racism has nothing to do with it nowadays (in 2012), they are just fooling themselves. If racism was gone, they wouldn't be opposing the building of affordable housing that can bring reliable BUT black and Hispanic families in their neighborhood...

John Nov. 7, 10:43 a.m.

"Unbelievable," I'd also add...let them hate. This idea of "tolerance" has done a lot of damage to our society by fostering moral relativism. For example, I can think of a lot of people who'd say that five (white) people living in a small room would be horrible, but Mexicans? Eh, it's their way.

Maybe if we go back to hating and shouting, we can actually have a conversation and solve the underlying problems. Group after group coming into this country was hated. They integrated into their communities anyway. Today, that history is all but forgotten, while we still segregate minorities to the approval of people whose grandparents were likely rented rooms in ethnic ghettoes.

Incidentally, something I meant to ask about the article earlier: How does this square with other minorities? In my area, as little as ten years ago, Asians seemed to be fairly well-integrated in the whiter areas of town. Today, though, they seem mostly in the non-white areas. Is that a trend, part of the studies, of interest to anyone at all?

Pauline Dyson Nov. 8, 9:28 a.m.

Westchester County's segregation history is not unique. I lived in a Ct. rural/suburban town. very middle class, which protected itself from minorities by ensuring apartments would never be built. Our homes had water wells and septic tanks. Citizens refused allow sewer systems and piped water partly because that would mean multi-family residences, apartments that were Federally funded, thereby attracting the poor from near-by towns and cities. In addition the State grant that would permit our high school to run day-care classes for kids from the city was nixed by the School Board "lest our White teen students think having babies would be fun"!

cris Nov. 9, 6:50 p.m.

Everyone who writes, journalist, advocate, commenter or otherwise has their own bias and I have mine. I see several problems that exist and need to be addressed that are to me, more important than the integration issue.

1. Starting with the picture, the photo is rather dark and gloomy, the people don't look too happy. The expression on Ms. Michaux's face says it all. The background looks a little impoverished. Just an observation, but this is the image that the media gives of the single black mother seeking affordable housing. Now put yourself in the shoes of the wealthy or middle class person, white, black or other, and

honestly think about it. Does this image represent what I want moving into my neighborhood. Does it make a difference whether she's black or white or is it more signifiacant that she doesn't have money. What questions do you think comes to their minds... who is going to be watching her children when she is not there, will they be into mischief without adult supervision. Maybe they have high IQs and she disparately want a better school for them. Maybe they are average and she knows the effect of ones surroundings on one future. Maybe they're little horrors. OMG when they get older will they be dating my daughteror my son. Why is she single? Divorced?- maybe he died, was she a teen mom. OMG Affordable housing represents the poverty that I or my parents or grandparents escaped from and here it is catching up to me.

I'm being silly but these are the things that go through people's minds especially if you've been programmed with certain images of people by the media.

- 2. "Michaux, who has worked all her adult life but has never been able to move into more prosperous parts of the county"
- If Ms. Michaux does not come from a family who could help support her income, do you expect a single mother who is an assistant teacher to be able to move to a more prosperous area. Ms. Michaux needs to improve her employment skills and/or start a small business to increase her wealth.
- 3. "Port Chester is that big old melting pot of those who can't make it"
 Why can't these people "make it". What or who is preventing them? What can they do themselves to make their neighborhood a better place to live in.
- 4. "Gurian, the civil rights lawyer ... grew up in the Flatlands section of Brooklyn, then a working-class Irish, Italian and Jewish neighborhood."
- What did working-class Irish, Italian and Jews do to move up the economic ladder? Who and what obstacles did they face and how did they overcome them? How can blacks applies those actions to move up the economic ladder?
- 5. "After the war ended, Jay became an abolitionist and opened the first of several African Free Schools for the children of former slaves."
- Ohh That was very nice (I guess somewhat better than the missionaries who went to Africa to teach the savages about christianity)....BUT.... more importantly what was taught to the children of the former slaves in those schools. Were they taught to be second class citizens, were they taught to be subservient and to be menial laborers, or were they taught to compete for a pie of the "American pie". Were they taught to compete with the white population for a piece of the American Pie. Or were they taught to settled for the pie crumbs?
- 6. "Many [white] people in Westchester attached real estate covenants to their properties that barred homeowners from selling to African Americans."
- Why did they think that African Americans would want to move into their neighborhoods. Did African Americans want to move into their neighborhoods? If so, why did African Americans want to move from where they were?
- 7. "Very few African Americans live in other parts of the county, regardless of income." Maybe African Americans with the means don't want to live there. Not everybody wants to live in a "white" neighborhood including some white people. And not everybody wants to live in a "black" neighborhood including some black people.
- 8. "Even those with substantial incomes lagged behind whites in wealth, both inherited and accumulated. As recently as 2009, the U.S. Census Bureau found that the median wealth of white families was roughly 20 times that of black families, a gap produced in part by generations of biased lending practices." Sound like an argument for Affirmative Action to me. What is being done to address this. 20 times is big difference. Apparently what has been done didn't work very well, and why didn't it?? Also sounds like a call for blacks to open their own lending institutions and other businesses.

Some of the questions we know the answer too so what is the point I'm trying to make. Use your own bias and come to your own conclusion, maybe its what I'm trying to get at, maybe not. This bias was mine.

Allisio Rex Nov. 13, 3:28 p.m.

Forced integration will never work in this Country and morally and legally cannot be forced upon other people. Each group wants to live next to the group they identify with. The Federal Government should stay out because what they doing is creating more and more White Flight. By now it should be clear that Whites just don't want to live next to many non-Whites not necessarily because of the difference in race but primarily because irreconcilable differences in culture, personal behavior/conduct and responsibility.

Lyn Cacchione Tubbs Nov. 14, 9:09 a.m.

I am the granddaughter of Italian immigrants who came to this country and worked hard for a better life. They did not live in government housing, receive welfare or food stamps. They lived on "the wrong side of the tracks" and their oldest son was the first Italian to graduate from the local high school. This he managed to do even after the Principal tried to pick a fight with him so he could keep him from graduating. When you can afford to buy the house next door to me and pay the taxes then you are welcome to live in my neighborhood no matter what color your skin is.

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