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RELOCATION: ILLUSORY PROMISES AND NO RELIEF*

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PUBLIC concern about residential relocation seems to have "peaked" in the mid-1960's.¹ Since that time, there have been steady advances in legislation, programs, and litigation seeking to protect the rights of the displaced, but now the prevailing sentiment appears to be that the relocation problem is not as salient as it was in the fifties and early sixties. In terms of sheer magnitude, the volume of relocation has not abated in recent years, nor will it in the coming decade. According to the National Commission on Urban Problems 1,054,000 dwelling units were demolished by the urban renewal, highway, and public housing programs through 1967, and "it has been primarily the poor, the near poor and the lower middle class whose houses have been demolished."² A study by the National Association of Home Builders estimated that total housing demolition by all public programs in the 1950-

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¹ See, e.g., C. ABRAMS, *THE CITY IS THE FRONTIER* (1965); ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *RELOCATION: UNEQUAL TREATMENT OF PEOPLE AND BUSINESSES DISPLACED BY GOVERNMENTS* (1964); M. ANDERSON, *THE FEDERAL BULLDOZER* (1964); S. GREER, *URBAN RENEWAL AND AMERICAN CITIES* (1965); P. NIEBANCK, *RELOCATION IN URBAN PLANNING: FROM OBSTACLE TO OPPORTUNITY* (1968); *URBAN RENEWAL: PEOPLE, POLITICS AND PLANNING* (J. Bellush and M. Hausknecht eds. 1967); *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY* (J. Wilson ed. 1966).

² NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY* 82 (1968). The public housing figure was for 1937-67, the urban renewal figure for 1949-67, and the highway program figure for 1958-67.

68 period amounted to 2.38 million units.³ With respect to the future, the Commission concluded "it is probable that there will be not far from a million additional demolitions within our cities during the next five or six years as a result of government action" and that "these will continue to fall with special weight upon the poor and other low-income families, and particularly upon low-income Negroes."⁴

Seven years ago this author published a review of over thirty follow-up studies of the results of residential relocation, together with some fresh data from the exhaustive research project on Boston's West End.⁵ That review, which included twenty studies published in the 1950's, five prior to the 1950's and nine from the early 1960's, covered such dimensions as change in housing condition and amount of living space, geographical relocation pattern, change in tenure, change in housing costs, racial aspects of relocation, psycho-social factors of displacement and relocation, and effectiveness of relocation assistance.

The conclusions drawn from that review were highly negative. Increased housing costs were extremely widespread and of considerable proportions, often irrespective of improvements in housing conditions or the family's ability to absorb these increased costs. Relocates generally tended to cluster in the immediate vicinity of the displacement project, a pattern which suggests at best marginal improvement in living conditions and often gives rise to a repeat of the displacement experience within a few years. Patterns of racial segregation became more pronounced. Relocation assistance was utilized by only a minority of displacees. Changes in tenure patterns were not widespread, although some studies did show an increase in ownership. While instances to the contrary existed, most studies did not show a decrease in overcrowding, and in some cases overcrowding actually increased. Displacement and relocation often occasioned severe social and personal disruption. Although some improvement in housing quality was indicated (virtually inevitable from programs which systematically move people out of the community's substandard housing stock), the degree of improvement was far

³ Sumichrast and Farquhar, *Demolition and Other Factors in Housing Replacement Demands* (1967), cited in *BUILDING THE AMERICAN CITY*, *supra* note 2.

⁴ *BUILDING THE AMERICAN CITY*, *supra* note 2, at 83. The elderly are particularly victimized by relocation, for in central city renewal areas about one-fifth of the displacees are elderly. On the special problems of the elderly, see P. NIEBANCK & J. POPE, *THE ELDERLY IN OLDER URBAN AREAS: PROBLEMS OF ADAPTATION AND THE EFFECTS OF RELOCATION* (1965).

⁵ Hartman, *The Housing of Relocated Families*, 30 J. AM. INSTITUTE OF PLANNERS 266 (1964).

less than the displacees and the general community had the right to expect from programs which were devoted to the public welfare and which occasioned the costs associated with displacement and relocation.

This article reviews advances made over recent years in the legislative, administrative, and judicial arenas and brings together the results of ten additional follow-up displacement and relocation studies published since 1965.

STATUTORY AND ADMINISTRATIVE DEVELOPMENTS⁶

The fundamental statutory provision for persons who are displaced by federal and federally assisted programs is the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970.⁷ Because this legislation is too new to have had any impact to date, and because all of the studies and court decisions reported here preceded passage of the Act, I will summarize briefly the major provisions of earlier legislation and then in a later section outline the principal features of the newly passed legislation.

The 1949 Housing Act, which introduced urban renewal,⁸ required localities to guarantee that there will be developed a "feasible method for the temporary relocation of families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families [and individuals] displaced from the

⁶ The material in this section is drawn primarily from 1 NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, HANDBOOK ON HOUSING LAW (1970), and from E. CAHN, T. EICHENBERG, and R. ROMBERG, THE LEGAL LAWBREAKERS: A STUDY OF THE NONADMINISTRATION OF FEDERAL RELOCATION REQUIREMENTS (1970) at Appendix A. See also HOUSE COMM. ON BANKING AND CURRENCY, BASIC LAWS AND AUTHORITIES ON HOUSING AND URBAN DEVELOPMENT, 91st Cong., 2d Sess. (Comm. Print 1970).

⁷ 84 Stat. 1894 (1971).

⁸ The urban renewal program was the first public program which clearly would cause major population displacement. Prior to this, the public housing program and various minor federal, state, and local public works programs caused some displacement, but not of the magnitude that seemed to require statutory recognition and protection. For a brief discussion of displacement and relocation prior to 1949, see P. NIEBANCK, *supra* note 1, at 9-11. Throughout this article, only residential relocation (as distinguished from business or commercial relocation) is examined. On the subject of business relocation see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 1; B. BERRY, S. PARSONS and R. PLATT, THE IMPACT OF URBAN RENEWAL ON SMALL BUSINESS: THE HYDE PARK KENWOOD CASE (1968); W. KINNARD and S. MESSNER, EFFECTIVE BUSINESS RELOCATION: A GUIDE TO WORKABLE APPROACHES FOR RELOCATING BUSINESSES DISPLACED BY URBAN RENEWAL (1970); B. ZIMMER, REBUILDING CITIES (1964).

urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of, and available to, such displaced families [and individuals] and reasonably accessible to their places of employment."⁹ To the Administrator of the Housing and Home Finance Agency (subsequently, the Secretary of the Department of Housing and Urban Development) was delegated the task of issuing rules and regulations to carry out this Congressional mandate.¹⁰ In essence, the 1949 Act offered the concept of decent rehousing and even the equivalent replacement of housing units lost through the renewal process, but no program to carry this out, no way of making the principle operative.

The 1954 Housing Act took some minor steps toward providing operational tools by introducing two replacement housing programs (Secs. 220 and 221)¹¹ and by introducing the Workable Program requirement as a prerequisite for the receipt of urban renewal and other Federal funds. The Workable Program, intended as a lever to assure a comprehensive approach to urban redevelopment, included requirements for both a relocation plan and a comprehensive community plan. Not until recently, however, has the Workable Program been regarded as a serious vehicle for providing adequate relocation housing.¹²

⁹ Housing Act of 1949, ch. 338, § 105, 63 Stat. 416, as amended 42 U.S.C. § 1455(c) (1) (Supp. V, 1970). The Housing Act of 1964, Pub. L. No. 88-560, § 305(a)(1) gives to "individuals" displaced from renewal sites the same protection given to "families" under the 1949 Act.

¹⁰ Housing Act of 1949, ch. 388, § 105, 63 Stat. 416, as amended, 42 U.S.C. § 1455(c) (1) (Supp. V, 1970).

¹¹ Section 220 was added to the National Housing Act of 1934, 12 U.S.C. §§ 1707-1715, as amended (Supp. II, 1967), by the Act of Aug. 2, 1954, ch. 649, § 123, 68 Stat. 596 (codified at 12 U.S.C. § 1715k (1964), as amended, (Supp. V, 1970)). Section 220 provided loan assistance for construction and rehabilitation in renewal areas, but since no subsidy was involved, little assistance was afforded to moderate and low income families. Section 221 was added to the National Housing Act of 1934 by the Act of Aug. 2, 1954, ch. 649, § 123, 68 Stat. 599 (codified at 12 U.S.C. § 1715l (1964), as amended, (Supp. V, 1970)). Section 221 did not become a useful tool for the majority of families displaced from urban renewal areas until a 1961 amendment made mortgage insurance more available, but then only for moderate income families. Interest reduction payments are now made available directly to owners of rental housing projects designed for occupancy by lower income families under the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 201(a) (codified at 12 U.S.C. § 1715z-1, as amended, (Supp. V, 1970)).

¹² In 1968 HUD altered and considerably strengthened the Workable Program requirement contained in 42 U.S.C. § 1451, as amended (Supp. V, 1970), to make it something more than ritualistic paperwork. Citizen groups, often aided by neighborhood Legal Services attorneys, have brought administrative and court actions in several localities to halt renewal and other public programs for violation of Workable Program requirements, most often based on failure to provide adequate rehousing. See U. S.

In 1956 Congress attempted to ease the plight of the displaced elderly by granting eligibility for low-rent public housing to elderly individual householders¹³ and by making available an additional \$120 annual public housing subsidy for units occupied by the elderly.¹⁴ FHA assistance was also made available to non-profit sponsors to develop rental housing for the elderly.¹⁵

Beginning with the 1964 Housing Act Congress turned its attention to requirements for relocation plans and programming and required HUD to issue rules and regulations implementing the basic statutory requirements. A provision added to Sec. 105(c)(1) required, for each urban renewal project, establishment of a relocation assistance program to determine relocation needs, provide information and assistance to relocatees, and "assure the necessary coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community which may affect the carrying out of the relocation program. . ."¹⁶ The 1965 Housing Act also required the local public agency to certify to HUD just prior to actual displacement¹⁷ that the relocation plan originally submitted is still valid and that adequate rehousing does, in fact, exist. A 1969 Housing Act amendment¹⁸ requires biennial review by HUD of each locality's Sec. 105(c)(1) relocation plan and its effectiveness in carrying out the plan.

In 1964 Congress also turned its attention to financial reimbursement for the costs of displacement and relocation beyond the mere reimbursement of moving expenses first authorized in 1956 (with a maximum of

DEPT. OF HOUSING AND URBAN DEVELOPMENT, HANDBOOK RHA 7100.1, WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT (1968); 1 NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, *supra* note 6, ch. II, pt. 1-5. Significantly, a movement is now underway to do away with the Workable Program requirement, supported by the National Association of Housing and Redevelopment Officials, the National League of Cities, and several other organizations. *Id.* ch. II, pt. 1-12.

¹³ Act of Aug. 7, 1956, ch. 1029, § 104(a), 70 Stat. 1092.

¹⁴ 42 U.S.C. § 1410(a), *as amended*, (Supp. V, 1970).

¹⁵ 12 U.S.C. § 1715z-1, *as amended*, (Supp. V, 1970).

¹⁶ 42 U.S.C. § 1455 (c) (1) (C), *as added*, Act of Sept. 2, 1964, Pub. L. No. 88-560, § 305 (b).

¹⁷ 42 U.S.C. § 1455 (c) (2). HUD has interpreted the statutory phrase "reasonable time" to mean "not more than 60 days prior to the estimated date of the commencement of actual displacement of a substantial number of families or individuals from the area of a project involving displacement. . . ." U. S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, URBAN RENEWAL HANDBOOK, RHA 7212.1, ch. 1 at 4. (1968) [hereafter cited as URBAN RENEWAL HANDBOOK].

¹⁸ 42 U.S.C. § 1455 (c) (3) (Supp. V, 1970).

\$100 per family) and raised in 1959 to \$200.¹⁹ In recognition of the increased rents often associated with relocation, Congress authorized a Relocation Adjustment Payment of up to \$500 over a 12-month period for families and elderly or handicapped individuals. Moving and relocation adjustment payments were to be available to households displaced from renewal areas even where displacement resulted from code enforcement or private voluntary rehabilitation undertaken in connection with the renewal plan. In 1968 the maximum amount of the relocation adjustment payment (subsequently dubbed "Additional Relocation Payment [ARP]" by HUD) was raised to \$1,000 over a two-year period.²⁰ While these new aids provided benefit for many families, no recognition was made of the many families whose post-relocation rent increases exceeded \$42 per month (\$500 per year), and, most important, the problem of what happens after expiration of the two-year period was totally ignored. Presumably, the family must either move once again to lower priced and probably substandard quarters, or it must absorb the extra payment itself by diverting budget from other necessary items.²¹ Certain home-owners (as opposed to renters, who are the beneficiaries of the relocation adjustment payments) were made eligible in 1968 for a similar payment of up to \$5,000 over and above the acquisition payment in order to permit them to acquire housing comparable to that from which they were displaced.²²

¹⁹ 42 U.S.C. § 1465 (c) (1) (1964).

²⁰ Act of Aug. 1, 1968, Pub. L. No. 90-448, § 516(1)-(3); 42 U.S.C. § 1465 (c) (2) (Supp. V, 1970).

²¹ The ARP was to represent the difference between the actual cost of obtaining decent housing and 20% of the household's income. Individual householders who were not either elderly or handicapped were not eligible for these payments. Moreover, grants were limited to those unable to secure low-rent public housing. Unwillingness to enter public housing if eligible and if a unit were available would disqualify a displacee for an ARP. See text at notes 164-65 *infra* (on avoidance of public housing among displacees). In some areas displacees had to go through the process of applying for public housing and often waiting several months before their applications were processed and they were declared ineligible or told that no unit was available before they could receive their ARP. See Gorland, *Relocation Adjustment Payments*, 24 J. HOUSING 564-67 (1967); letter from Edward Teicher and others, 25 J. HOUSING 9 (1968).

²² 42 U. S. C. § 1465 (c) (3) (Supp. IV, 1968). The fact that Congress felt it necessary to provide up to \$5000 above the acquisition payment to the displaced owner is in itself a telling commentary on the inadequacy of the prices offered (in pre-condemnation negotiating sessions) and of condemnation awards. Partial recognition of this fact had been made in the 1965 Act, which authorized additional payments for settlement costs such as recording fees, transfer taxes, mortgage payment penalties, and similar expenses incidental to the conveying of real property. 42 U. S. C. § 1465 (d) (Supp. I, 1965).

With respect to the provision of housing and the balance between destruction and construction of housing units, the following steps may be noted: passage in 1965 of the rent supplement program and expansion of the low-rent public housing program (including the introduction of leased public housing) to widen the range of relocation options available to low- and moderate-income families;²³ amendment of the urban renewal law in 1966 to require that in renewal areas intended for predominantly residential usage a "substantial" number of low- and moderate-cost housing units must be provided;²⁴ further strengthening of this provision in 1968 to require that "a majority" of units in such projects be for low- and moderate-income families and that at least 20% of the units be for low-income families;²⁵ and requirement in 1969 Housing Act that renewal projects approved after passage of the 1969 Act must replace any occupied low- or moderate-income residential units demolished or removed with at least an equivalent number of units for low- or moderate-income families, to be constructed or rehabilitated somewhere within the jurisdiction of the local public agency.²⁶

This so-called "1 for 1" replacement housing requirement is, however, not as strong as it appears. Since the Act refers only to projects approved after the Act's effective date (1969), it will be a long time until it has any actual effect, due to the length of the renewal "pipeline." No precise stipulation is given as to what is meant by "units for low- or moderate-income families" (e.g., a given number of vaguely defined "moderate-income" units could replace an equivalent number of truly low-income apartments). Small units might replace large units. The replacement could occur five or ten years after demolition.

²³ Act of Aug. 10, 1965, Pub. L. No. 89-117, § 101(a)-(e), (g), (h), (j); 12 U.S.C. 1701s (Supp. II, 1966).

²⁴ Act of Nov. 3, 1966, Pub. L. No. 89-754, § 703(a), *as amended*, 42 U.S.C. § 1455 (f) (Supp. IV, 1968).

²⁵ 42 U.S.C. § 1455 (f) (Supp. IV, 1968). This provision may have only minor effect. It applies only to reuse in predominantly residential projects, and the emphasis in the renewal program has been on non-residential reuses. In predominantly non-residential projects there would be no barrier to continuing the present practices of providing middle- and upper-income housing. To the extent that the stipulation runs counter to local wishes about the purposes of renewal, there may be an even greater shift to non-residential reuse.

²⁶ 42 U. S. C. § 1455 (h) (Supp. V, 1969). Both the § 1455 (f) and § 1455 (h) replacement housing provisions may be waived by the Secretary of HUD under certain conditions. The replacement housing requirement of § 1455 (h) is invoked only where the local vacancy rate is under 5%, but the precise meaning of the vacancy rate figure is unclear; no indication is given as to whether the figure refers to the total housing stock, certain sizes and price ranges of units, or some other limited subset.

The revised Workable Program requirements²⁷ introduced a considerably more comprehensive "1 for 1" replacement housing requirement, which states that any units demolished under any HUD-assisted program during the Workable Program period must be replaced if the local vacancy rate is less than 3%.²⁸ Unlike the Model Cities guidelines²⁹ there is no time limit set for when the replacement construction must begin. Moreover, the Workable Program (even in its strengthened form) provides little guarantee that such replacement housing will in fact be built. The guidelines lack statutory status; HUD's Workable Program staff lacks the "muscle" to enforce its provisions on the stronger staffs of more programmatic oriented divisions; the requirement itself is too vague; and the reporting and data requirements are not structured in such a way as to facilitate enforcement.

Relocation provisions of other major public programs have by and large paralleled, although often with a time lag of a year or two, developments under the urban renewal program. Relocation provisions under the public housing program are roughly equivalent to those of the renewal program.³⁰ The Model Cities program requires by statute relocation standards equivalent to those in Sec. 105(c) and in addition explicitly permits Model Cities funds to be used to cover relocation costs not otherwise reimbursed under other programs.³¹ In addition, CDA Letter #5³² expands and strengthens through administrative regulation the statutory guidelines for Model Cities areas. The principal requirements of CDA Letter #5 are:

1. No resident may be displaced until he has chosen and has acquired the present right to occupy suitable relocation housing.
2. Program displacement must not result in a permanent reduction in the supply of low and moderate income housing within the city.

²⁷ See note 12, *supra*.

²⁸ U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HANDBOOK RHA 7100.1, WORKABLE PROGRAMS FOR COMMUNITY IMPROVEMENT, ch. 6, § 3(c) (1968). The guideline does not stipulate that the replacement housing must be for low- or moderate-income families, but the context makes fairly clear that this is its intent. The 3% figure itself is not clearly defined since there is no indication of how it is to be applied.

²⁹ See text at note 32 *infra*.

³⁰ See 42 U.S.C. § 1415 (8) (Supp. V, 1970).

³¹ See 42 U.S.C. § 3307 (Supp. V, 1970).

³² City Demonstration Agency Letter No. 5, *Policies and Requirements for Model Cities Relocation*, in HUD HANDBOOK (Nov. 1968). The November 1968 edition of CDA Letter No. 5 was superseded by a second version, dated February, 1970. Point 4 and part of point 6 in the text are contained in the latter version only.

3. The physical start of new construction or rehabilitation must not be more than one year behind the removal of the units from the market.
4. The program must be coordinated with other activities causing displacement in the city.
5. Citizen participation (as outlined in CDA Letter #3)³³ must characterize policy development, planning and execution phases of relocation, including the determination of proceedings for handling relocation grievances.
6. Preferably a central relocation agency should administer the relocation program; in any case, it shall be coordinated with all other agencies responsible for relocation in the city.
7. A displacee is not expected to pay more than 25% of his annual gross income for rent and utilities (including telephone service).
8. Grievance procedures shall be established to handle relocation complaints.

But, while the CDA Letter clearly encourages the development of new and innovative ways of providing for the needs of relocatees and goes well beyond the requirements of the Housing Act, one review of submissions for Model Cities grants indicated that "cities had not, would not, or could not consider relocation in any manner different from standard urban renewal procedures of the past. Not only was innovation lacking for conceiving of relocation as a positive program of high priority, in many cases relocation programs were entirely glossed over in the submissions."³⁴ More generally, as a new and relatively weak agency, the local Model Cities group or administrative agency has tremendous difficulty controlling other programs and actors and, hence, cannot easily enforce these guidelines.

In the transportation field, which now accounts for about as much displacement as is caused by urban renewal, the federal highway program, as a result of the Federal Highway Act of 1968, has provided more liberal benefits than were available under urban renewal,³⁵ despite the fact that prior to these amendments relocation provisions of the

³³ CDA Letter No. 3, *Citizen Participation*, in HUD HANDBOOK (Nov. 1970).

³⁴ Engler, *Residential Relocation in the U. S., A Survey of Literature, Case Studies and Court Cases Since 1964*, 1970 (unpublished paper, Department of City and Regional Planning, Harvard Graduate School of Design). The author describes his personal experience as Relocation Advisor on the staff of HUD's Region 1 office.

³⁵ Highway relocation assistance was enacted as the Act of August 23, 1968, Pub. L. No. 90-495, § 37, 82 Stat. 83 (Codified at 23 U. S. C. §§ 501-11 (Supp. IV, 1968)).

highway program lagged considerably behind those of urban renewal. For the first six years of the federal highway program no statutory relief at all was included in the legislation. The 1962 Federal Highway Act³⁶ required all states to provide relocation advisory assistance and authorized a schedule of relocation payments, but since few states passed laws permitting these payments, the provisions gave little help to displacees. A study of relocation assistance authorized in the 1966 Highway Act³⁷ led to the 1968 provisions.

Moving payments may be "actual reasonable payments" (i.e., without statutory limit),³⁸ or the displacee may elect to accept a scheduled allowance not to exceed \$200, plus a \$100 "dislocation allowance" (for miscellaneous expenses or consolation).³⁹ The same \$5,000 bonus payment as provided under urban renewal is allowed to certain owner-occupants (over and above the acquisition payment).⁴⁰ The relocation adjustment payment to renters, however, is \$1,500 over two years (as opposed to \$1,000 under urban renewal) and may be used as down-payment on a house or as rental payments; furthermore, it is not restricted to persons unable to secure low-rent public housing or similar subsidized units.⁴¹ "Expenses incidental to transfer of property" are also reimbursable.⁴²

The extension of Federal Highway Act provisions through administrative regulation to other programs undertaken by the Department of Transportation was announced by DOT Secretary John Volpe in February of 1970.⁴³

Many of the statutory relocation provisions have been elucidated and strengthened through administrative regulations, such as those contained in the *Urban Renewal Handbook*, so-called LPA and CDA Letters, HUD Regional *Circulars* and other forms and regulations. While these are too numerous (and often picayune) to cover in any great detail, some of the more salient stipulations and citations are worth reviewing. The Local Public Agency is required, during the Survey and Planning

³⁶ Act of Oct. 23, 1962, Pub. L. No. 870866, § 5(a), 76 Stat. 1146, *repealed*, 23 U.S.C. §§ 501-11 (Supp. IV, 1968).

³⁷ SECRETARY OF THE DEPT. OF TRANSPORTATION HIGHWAY RELOCATION ASSISTANCE STUDY, REPORT TO THE HOUSE COMM. ON PUBLIC WORKS, 90TH CONG., 1ST SESS. (Comm. Print 1967).

³⁸ 23 U.S.C. § 505(a) (Supp. IV, 1968).

³⁹ 23 U.S.C. § 505(b) (Supp. IV, 1968).

⁴⁰ 23 U.S.C. § 506(a) (Supp. IV, 1968).

⁴¹ 23 U.S.C. § 506(b) (Supp. IV, 1968).

⁴² 23 U.S.C. § 507 (Supp. IV, 1968).

⁴³ Wall Street Journal, Feb. 17, 1970.

phase of a renewal project, to distribute information to residents of the proposed site including "a brief and general description of the proposed project, and an explanation of the services and payments available to occupants and/or owners, and a statement cautioning site occupants not to move before further information is received."⁴⁴ More detailed and comprehensive informational material must be distributed to site occupants during the execution phase, including: 1) assurance that no one will be required to move until he has had the opportunity to obtain decent relocation housing; 2) a summary of LPA eviction policy; and 3) full information about relocation payments.⁴⁵ Regulations also spell out procedures for maintaining a site office: location, schedule of hours, records to be kept.⁴⁶ Further, regulations issued under the Neighborhood Development Program⁴⁷ provide additional protections which do not seem to be available under conventional urban renewal: 1) rent to income ratio maxima are a suggested 20-25% (no comparable limits are set forth under the conventional renewal program);⁴⁸ 2) there is a categorical prohibition against relocating households in areas "slated for governmental action unless that governmental action is related to rehabilitation or improvement of neighborhood amenities"; and 3) LPA's are required to trace all "lost" households to determine if they have been properly rehoused and have received all payments to which they are entitled.⁴⁹ And proper and improper procedures for relocation planning

⁴⁴ URBAN RENEWAL HANDBOOK, ch. 2, § 1 at 5.

⁴⁵ NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, *supra* note 6, ch. 3, pt. 1 at 93. The *handbook* cites, however, the conclusion of a study of relocation procedures:

Despite HUD's efforts to insure that the statement be comprehensive, many of those interviewed agreed that it is of little or no practical value in informing those site residents who would not have thought to use the sites office's services in any case.

Note, *Family Relocation in Urban Renewal*, 82 HARV. L. REV. 864, 875 (1969).

⁴⁶ URBAN RENEWAL HANDBOOK, ch. 2, § 1 at 5.

⁴⁷ The Neighborhood Development Program (NDP), introduced in the Housing and Urban Development Act of 1968, 42 U. S. C. §§ 1469 a-c (Supp. IV, 1968), is an alternative way of planning and financing urban renewal projects, essentially on a year to year basis rather than over a protracted period. The different time schedule means there is less chance that the relocation plan will become "stale", but it also means that projects to help displacees which require more lead time become more difficult to incorporate. See NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, *supra* note 6.

⁴⁸ Localities are required to submit for each project a relocation plan which sets forth the maximum acceptable rent: income ratio for the project, but HUD will approve plans which contain fairly high ratios.

⁴⁹ URBAN RENEWAL HANDBOOK, RHA 7384.1, ch. 7, § 3, 2b(2)(c).

and estimating both needs and rehousing resources are spelled out in various HUD circulars.⁵⁰

JUDICIAL REVIEW⁵¹

Successful litigation over the relocation question is a comparatively new phenomenon, even though the controversy over relocation has been with us for some time. A series of decisions in the late 50's and early 60's provided little aid or comfort to aggrieved displacees, for the courts consistently held that section 105(c) provided only contract rights between HUD and the LPA.⁵² Relocates were held to have no legal

⁵⁰ URBAN RENEWAL HANDBOOK, chs. 1 & 2. See also HUD's most recent RELOCATION HANDBOOK (1375.1 Supp. 1), issued Sept. 3, 1970 which is a set of uniform regulations intended to cover all HUD programs that involve displacement.

⁵¹ In addition to the publications cited in note 6, *supra*, see McGee, *Urban Renewal in the Crucible of Judicial Review*, 56 VA. L. REV. 826 (1970); Ronfeldt & Clifford, *Judicial Enforcement of the Housing and Urban Development Acts*, 21 HASTINGS L. J. 317 (1970); Tondro, *Urban Renewal Relocation: Problems in Enforcement of Conditions on Federal Grants to Local Agencies*, 117 U. PA. L. REV. 183 (1968); Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L. J. 966 (1968); Note, *The Interest in Rootedness: Family Relocation and an Approach to Full Indemnity*, 21 STAN. L. REV. 801 (1969).

⁵² In *Berman v. Parker*, 348 U.S. 26 (1954), the Supreme Court refused to allow judicial review of a planning agency decision on what land to include in a redevelopment project. The Court said, in an opinion by Justice Douglas, that decisions on the scope and impact of such projects fall within the police power. Further, the Court said:

Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation.

Id. at 32.

For fifteen years following *Berman* the bleak lesson of federal court judicial review was that city hall was invincible. In lawsuits where powerful economic and political interests were arrayed on the side of government in the name of progress, the outcome was with monotonous regularity favorable to urban renewal agencies.

McGee, *supra* note 51, at 836.

There had been a glimmer of hope when the Court of Appeals for the Second Circuit held, in *Gart v. Cole*, 263 F. 2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959), that landowners and tenants attempting to block an urban renewal project had standing for the limited purpose of challenging the Housing and Home Finance Agency's (HHFA) refusal to grant them an oral hearing to deny the feasibility of relocation. Again there was an apparent advance when the Third Circuit Court of Appeals ruled that a corporation being displaced had standing to seek additional compensation for the move. *Merger v. Sharott*, 341 F. 2d 989 (3d Cir. 1965). But there followed a series of adverse decisions lead by *Johnson v. Redevelopment Agency*, 317 F. 2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963), wherein the court found no standing for displacees attempting to challenge the LPA's failure to comply with statutory relocation mandates. *Johnson* was followed by similar decisions in *Harrison-Halstead Community*

right which would entitle them to challenge program administration. As Professor McGee has noted, "standing to sue was the rubric under which federal courts escaped the urgent questions presented by litigants seeking refuge from the urban renewal juggernaut."⁵³

Major reversal of this trend came in 1968 with *Norwalk CORE v. Norwalk Redevelopment Agency*.⁵⁴ Negro and Puerto Rican displacees sought to enjoin an urban renewal project in Norwalk, Connecticut, claiming denial of equal protection in violation of the fourteenth amendment and violation of section 105(c) of the National Housing Act. The district court dismissed the action, holding that "the plaintiffs have no standing to challenge the official conduct here in question."⁵⁵ Reversing, the court of appeals held that plaintiffs had standing to bring both the constitutional and the statutory claims. To sue on the constitutional claim, the court said that the plaintiffs must have a personal stake in the outcome of the litigation and that the right they sought to protect must be one which the courts will protect. Finding both conditions to exist, the court went on to hold that the case was justiciable because, contrary to defendants' claims, it would not involve the court too deeply in over-all urban renewal planning. The court did recognize a need for discretionary decisionmaking which should preclude court involvement in many urban renewal questions. The court also recognized that questions concerning the nature and extent of relocation to be required were truly political.⁵⁶ However, the court found that the appropriate standards had already been set by Congress and that, therefore, the only question presented by the case was whether or not the standard was being adequately enforced.

Turning to the statutory claim, the court said:

The specific practical question here is whether or not plaintiffs may seek enforcement of the section, and the cases make it clear that the answer turns on whether Congress' purpose in enacting it was to protect their interests.⁵⁷

Group, Inc. v. HHFA, 310 F. 2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963), and Green Street Association v. Daley, 373 F. 2d 1 (7th Cir.), *cert. denied*, 387 U.S. 932 (1967). For a thorough discussion of these developments, see McGee, *supra* note 51, at 836-58.

⁵³ McGee, *supra* note 51, at 837.

⁵⁴ 395 F. 2d 920 (2d Cir. 1968).

⁵⁵ *Norwalk CORE v. Norwalk Redevelopment Agency*, 42 F.R.D. 617, 622 (D. Conn. 1967).

⁵⁶ 395 F. 2d at 929.

⁵⁷ *Id.* at 933.

The court found that the plaintiffs' interests were clearly among those intended to be protected by the act.⁵⁸ After further finding that actions taken by HUD and local public agencies under section 105(c) are subject to review,⁵⁹ the court remanded the case to the district court for a merits determination.

In *Powelton Civic Home Owners Association v. Department of HUD*⁶⁰ Judge Body reached conclusions similar to those of the *Norwalk* court. Plaintiffs were property owners, residents, and tenants in an area of Philadelphia which was scheduled as the site for an urban renewal project. The action was for an injunction restraining the Secretary of HUD from disbursing any funds to the project before plaintiffs had been accorded an adequate opportunity to protest the project and present evidence to substantiate their claims. The major complaint was that adequate relocation housing could not be guaranteed for area residents.⁶¹ Finding plaintiffs' claim sufficiently meritorious to withstand defendants' motion to dismiss, the court granted a preliminary injunction against the Secretary of HUD.⁶² The court held that plaintiffs had standing to challenge the actions of the Secretary because the provisions of the National Housing Act with respect to relocation were aimed at protect-

⁵⁸ The interest which displacees have in being relocated in decent, safe and sanitary housing is no less important than any other interest, "competitive" or otherwise, which has been given statutory protection. Since Congress specifically intended to protect the displacees' interest in adequate relocation, the displacees have standing.

395 F. 2d at 935-36.

⁵⁹ Citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967), the court said:

The proposition is now firmly established that "judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress."

395 F. 2d at 932. The court then analyzed the provisions of 105(c) and its legislative history and concluded that there was "no reason to believe that Congress intended to cut off judicial review under the Act." *Id.* at 934.

While the court held that judicial review was available, it noted that its scope was limited, saying: "We are not subjecting to judicial scrutiny the planning of urban renewal programs, [citation omitted] nor are we considering the adequacy of the relocation standard set by Congress." *Id.*

⁶⁰ 284 F. Supp. 809 (E.D. Pa. 1968).

⁶¹ The plaintiffs in this action allege generally that adequate relocation facilities are simply non-existent in Philadelphia, and that therefore the Secretary should not have entered the grant-in-aid contract with the Philadelphia Redevelopment Authority. Essentially, they claim that their interest in relocation, as recognized by the Housing Act and by the grant-in-aid contract itself, cannot possibly be served as required by the statutory provisions; and that the Secretary has arbitrarily concluded otherwise by signing the grant-in-aid contract.

284 F. Supp. at 821.

⁶² *Id.* at 814.

ing their interests.⁶³ Further, the court found that plaintiffs qualified as "private attorneys general," since the plaintiffs "have private individual rights; and they are the appropriate representatives of legal rights conferred by the Housing Act on the public."⁶⁴ Thus, the *Powelton* court granted standing to displacees to bring strictly statutory claims, stripped of any of the constitutional overtones of the *Norwalk* case. The *Powelton* court also went beyond *Norwalk* to hold specifically that the Association itself had standing to bring the action.⁶⁵

Having passed the hurdles of standing and reviewability, relocatees achieved success of another sort in *Western Addition Community Organization v. Weaver*,⁶⁶ where for the first time a court temporarily

⁶³ Indeed, the court said that "it can hardly be contended that the contractually required availability of adequate relocation facilities is intended to benefit anyone other than the prospectively displaced citizens." *Id.* at 823.

⁶⁴ The reasoning of the court in thus granting standing was basically as follows:

With respect to the above discussed statutory values of workable, sound, comprehensive local planning for the project, rehabilitation, and relocation, no one could have a more "special interest" than the citizens whose homes will be acquired and razed by the federally-financed project. Indeed, as far as the rehabilitation and relocation provisions are concerned, we can imagine no *other* than residents within the proposed project who would have any actual interest in assuring the protection of these values. The plaintiff, Powelton Civic Home Owners Association, is certainly an adequate and appropriate representative of those citizens' interests. If the public interest in these values is to be protected, the voices of those most dramatically affected by disregard of the values must be heard. If the residents in the project site have no standing to raise these issues "in the public interest," then, for all practical purposes, no one has standing, and the Secretary's determinations would be virtually immune from judicial review.

Id. at 827.

⁶⁵ We have similarly concluded that the provisions of the National Housing Act recognizing and protecting the values of rehabilitation, relocation and integrated local planning manifest a congressional intent that nonprofit civic organizations representing the citizens who will be displaced by the proposed project are to be considered "aggrieved" by agency action allegedly disregarding their interests.

Id. at 828.

⁶⁶ 294 F. Supp. 433 (1968). The court concluded:

[T]he Secretary's action now under consideration is subject to judicial review—at least to the extent of determining whether the Secretary's discretion concerning the satisfactoriness of the relocation plan has been exercised not arbitrarily but reasonably upon some substantial and supporting factual basis.

Id. at 443. Before reaching this conclusion, the court said:

In the pending case, the Housing Act does not commit to the Secretary's discretion the matter of requiring, prior to displacement, satisfactory assurance that the local agency is in compliance with its contractual obligations concerning adequate and available relocation housing. The provisions of Section 1455 (c) (1) and (c) (2), concerning availability of adequate relocation housing for displacees, are expressed in mandatory terms. The Housing Act, therefore, does not commit that matter "to the agency's discretion" within the meaning of the Administrative Procedure Act.

enjoined an entire renewal project and halted further displacement. The court found that the relocation plan was patently inadequate and that, furthermore, HUD had never officially approved the relocation plan. Instead, HUD had indicated that approval was predicated on four contingencies, which the court found had not been complied with. The court thus concluded that the Secretary had found the plan unsatisfactory. Further, the court appeared to have held that the Secretary could not have found the plan to be satisfactory when it said:

Upon this record the court can well understand why the Secretary refrained for a year from making any official determination, one way or the other, concerning the satisfactoriness of the local relocation plan. It was just not satisfactory.⁶⁷

In characterizing the relief it had granted, the court defined a limited role for itself, allowing the Secretary broad discretion for his ultimate determination of satisfactoriness.⁶⁸ Thereafter, the Secretary reviewed and approved a relocation plan for the project, and, in its subsequent decision to dissolve the injunction despite plaintiffs' objections that the plan was still inadequate, the court reiterated its limited role.⁶⁹

Thus, once again the court made clear that it was not ruling on the

The only area of discretion vested in the Secretary is the "satisfactoriness" of the local agency's required assurance of compliance with its contractual obligations.

Id. at 442.

⁶⁷ *Id.* at 440.

⁶⁸ This injunction relief does not mean that this court is presumptuously attempting to administer the complexities of urban redevelopment. That is not the function of the court nor is the court administratively equipped to do so. Nor does it mean that this court is attempting to substitute its judgment for that of the Secretary concerning the "satisfactoriness" of the local agency's relocation plan.

Our decision simply means that the court can and should see to it that the Secretary complies with the requirements of the federal statute, and his own regulations, not merely in form but in substance, and that the administrative discretion vested in him by law is not arbitrarily abused, as in this case, but is reasonably exercised with some substantial basis in fact to support it. Such is the traditional function of the court upon review of administrative action of the kind here involved.

Id. at 441.

⁶⁹ Since the statute vests the function and responsibility squarely upon the Secretary, the judicial function is narrowly limited to ascertaining whether the Secretary has made the determination required of him by law and, if so, whether he has acted in apparent good faith, reasonably rather than arbitrarily and with some factual basis for his decision. If so, judicial review can go no further. The court may not, and should not, substitute its judgment for that of the Secretary—even if the court might believe that the Secretary could have made a different decision concerning the satisfactoriness of the local agency's relocation plan and assurances. *Western Addition Community Organization v. Romney*, 320 F. Supp. 308, 312 (1969).

substance of the relocation plan, nor was it substituting its judgment of the adequacy of the plan for that of the Secretary. Rather, it was requiring the Secretary to comply with his own regulations and the provisions of the federal statute. The question for judicial review was whether the Secretary's discretion had been exercised arbitrarily or reasonably and upon some substantial supporting basis of fact.⁷⁰

One court has taken a much more significant role in guaranteeing the rights of residents of an urban renewal project area.⁷¹ On April 30, 1970 Judge Weigel of the Northern District of California enjoined the \$385

⁷⁰ Controversy, litigation and judicial supervision are by no means ended in the Western Addition Project. The continuing problems with relocation and the persistence of neighborhood Legal Services lawyers have kept the pot boiling. In February 1971, the federal district court issued a temporary order barring the San Francisco Redevelopment Agency from relocating anyone from the project area unless HUD itself certifies, on a case by case basis, that relocation housing for each displacee meets federal standards with respect to housing quality and the tenant's rent paying abilities. This order followed two unsuccessful bids by the plaintiffs to enjoin the project once again. In early April HUD ordered the San Francisco Redevelopment Agency not to relocate any more residents of the Western Addition Project until new housing was available for them in that area. The order was based on findings that replacement housing had not been constructed to meet displacement needs and that no further land clearance was required to proceed with replacement housing construction. See DEPT. HUD REVIEW, FINDINGS AND DETERMINATION OF HUD PURSUANT TO SEC. 105(c) (3), WESTERN ADDITION A-2 (Cal. RO54, April 1, 1971); San Francisco Chronicle, Apr. 2, 1971. The court is taking extreme steps to protect the rights of displacees and provide supervision over the activities of the local public agency, but is reluctant to use the biggest club of all, stopping further work on the project. Cf. Ronfeldt & Clifford, *Judicial Enforcement of the Housing and Urban Development Acts*, *supra* note 51 at 360: "The threat of this remedy [cutting off funds for a program] is perhaps the only effective means that will induce agencies to eliminate major violations [of statutory relocation provisions]."

⁷¹ This was not really the first time that a court had taken such an active role. In early 1969 a federal district court in Michigan had enjoined an urban renewal project because "defendants have failed to convince the Court that this housing now in existence will provide adequate low-cost rental units to meet the needs of those individuals who face displacement as shown in the comprehensive renewal program." *Garrett v. City of Hamtramck*, Civ. No. 32004, at 7 (E.D. Mich. March 7, 1969). The plaintiffs, two groups of blacks (one group already relocated from a renewal area, the other group residing in an area scheduled for renewal) had claimed that adequate relocation housing was unavailable either for those already displaced or those about to be displaced and that present and future renewal action constituted "Negro removal" from the city. The court examined the relocation plan and compared the projected number of available units to the number of displacees. Finding the plan lacking, the court issued the injunction and set the case for trial. A trial has been held, and a final ruling is expected later this year. In *Hamtramck*, then, the court was willing to review the actual substantive provisions of the relocation plan. It is also quite significant that the court placed on the defendants the burden of proving the plan adequate.

million Yerba Buena Center Redevelopment Project for failing to provide adequate relocation arrangements for persons to be displaced from the project area.⁷² Plaintiffs' major claim was that the relocation plan approved by the Secretary of HUD failed to meet the requirements of section 105 (c)(1) & (2) and that, therefore, federal financing of the project violated the National Housing Act.⁷³ The court held that plaintiffs are entitled to review and set the scope of its inquiry as follows:

The statute commits substantial powers of complex decision making to an executive department which is or should be staffed by highly trained personnel. Because of this and based on the reasoning in *WACO*, the Court concludes that judicial review is limited to the legal question of whether or not there was any basis in fact for the Secretary's decisions. However, the fact that judicial review is limited cannot absolve this Court from the duty of thorough examination of the record.⁷⁴

The court examined thoroughly the record underlying HUD's approval of the relocation plan for the Yerba Buena Project and the approval of the relocation plan for the closely related Western Addition project. Concerning the standard by which these plans were to be judged, the court said:

The substantive requirements of § 1455(c)(1) can be divided into two parts. First, the statute requires that there be relocation dwellings

⁷² *Tenants and Owners in Opposition to Redevelopment v. Dept. of HUD*, No. C-69 324 (N.D. Cal. April 30, 1970) [hereinafter cited as *TOOR v. HUD*].

⁷³ Plaintiffs' four other claims were: (1) "that they have been denied due process of law because they were not accorded adequate hearings prior to the approval of the Redevelopment and Relocation Plans"; (2) "that the Project denies them equal protection of the laws"; (3) "that defendants violated the HUD regulation requiring consultation with minority groups"; (4) "that the Redevelopment Plan includes a luxury hotel in violation of 42 U.S.C. § 1456 (g)." *Id.* at 5.

⁷⁴ *Id.* at 12. On the initial question of review, the court found: that the plaintiffs have standing; that the court has both subject matter jurisdiction under the APA and personal jurisdiction over all of the defendants; and that the approval of relocation plans is not a decision committed to agency discretion and exempted from review under the APA. *Id.* at 5-9.

In delineating the proper standard for review, the court said:

[T]his Court concludes that the Court in *WACO* consistently limited review to a determination of "arbitrariness." The phrase "substantial basis in fact" in the first *WACO* opinion means only that a court should fully explore the record on the question of arbitrariness. It does not mean that a court should overturn a non-arbitrary decision by the Secretary because, in the court's view, the decision was not supported by substantial evidence.

Id. at 12.

"equal in number to the number of and available to such displaced individuals and families . . ." In other words, there have to be at least as many available vacant dwellings as the number of dwellings to be destroyed by the redevelopment. Second, these dwellings have to meet certain standards: (a) they must be "not generally less desirable in regard to public utilities and public and commercial facilities . . . and reasonably accessible to their [the displaced residents'] places of employment"; (b) they have to be "at rents or prices within the financial means of the individuals and families displaced"; and (c) they have to be "decent, safe, and sanitary."⁷⁵

The court examined the plaintiffs' claims in light of these standards and found on the first requirement that "there are serious questions concerning the validity of the Agency's calculations of existing vacancies available for Yerba Buena residents."⁷⁶ The court found the plan not lacking on the utilities, facilities, and accessibility to employment standard. But the court found that the plan definitely failed to provide housing within the financial means of relocatees and that there was no evidence to indicate that the relocation housing would be "decent, safe, and sanitary." The court therefore issued the preliminary injunction.

In November, 1970 Judge Weigel entered a final order which requires the city to provide, within three years, 1500 new or rehabilitated units (over and above those already planned by the city) for households within incomes in the public housing category, a portion of which are to be allocated specifically to relocatees from the Yerba Buena site. The order further requires that five residential hotels be renovated and retained as livable quarters for site residents until new relocation quarters are built. The court's decision explicitly recognized the effects of residential displacement on the city's housing market as a whole, in requiring that replacement housing be built simultaneous with the demolition and

⁷⁵ *Id.* at 15.

⁷⁶ *Id.* at 19. Plaintiffs' four claims were all found to have substantial merit. The claim that the agency's use of the turnover concept as a measure of availability was invalid and misleading was substantiated by a HUD regulation prohibiting the use of turnover estimates. The claim that the agency erred in relying on public housing as a source of vacancies was substantiated by the existence of a long waiting list for such housing. The claim that the agency should not have been able to rely on existing vacancies seemed to be substantiated by HUD's published guidelines. And the claim that the Yerba Buena plan relied on the same sources of vacancies as those relied on for the Western Addition plan was found to be true; however, the court held this to be acceptable if the vacancies were sufficient to accommodate all those relocated from both projects. *Id.* at 16-19.

displacement process.⁷⁷ The Court order also provides for continuing review of the relocation process and a grievance mechanism through appointment of a three-man relocation appeals board⁷⁸ to hear and have final disposition on any complaints brought by relocatees.

The court again took up an active role in the Yerba Buena Center Project, when HUD informed the court that changing circumstances required an updated examination of the Yerba Buena Center relocation plan and performance. In order to preserve the rights of site residents to any improvement in benefits that might result from this review, the court entered an order forbidding any further relocation of residents or demolition of buildings unless each such action is specifically approved by HUD as "imminently necessary for the orderly implementation of the [project]" and as not in "conflict with any applicable statute of the United States."⁷⁹ The HUD study, which was completed on August 24, 1971, concluded that "there are not now nor will there be, sufficient rehousing resources to allow the relocation of Yerba Buena Center residents to continue unabated and uncontrolled."⁸⁰ Consequently, HUD has ordered the San Francisco Redevelopment Agency to file within 120 days a refined and updated relocation plan. The Agency is to consider changed circumstances since the filing of the previously approved relocation plan and is to conform to the standards set forth in the 1970 Uniform Relocation Act. Compliance will undoubtedly be difficult, since HUD has determined that adequate relocation housing is not available and that "[t]otal reliance on HUD funds for the construction of new or rehabilitated housing, to meet the relocation needs of YBC relocatees appears to be totally unrealistic."⁸¹ During the four-month period prior to submission of the new plan, no relocation or demolition activity can be carried out unless approved by HUD as provided in the court order.

⁷⁷ *TOOR v. HUD*, No. C-69 324 (N.D. Cal. Nov. 9, 1970). The court order, however, recommends that "superiority" be given to Yerba Buena displacees for all low-rent public housing. If this recommendation is accepted by the San Francisco Housing Authority, it may well be challenged in court by displacees from other projects and others on the Housing Authority's waiting list.

⁷⁸ One member of the panel is to be appointed by the local planning authority, one by the citizens' organization in the Yerba Buena area, and the third is to be selected jointly by the first two. The court order also requires the local planning authority to maintain an office for the plaintiff community group. Order No. 69,324 SAW.

⁷⁹ *TOOR v. HUD*, No. C-69 324 (N.D. Cal. June 30, 1971).

⁸⁰ Report to the Court by U.S. Dept. of HUD, *TOOR v. HUD*, No. C-69 324 (N.D. Cal., filed Aug. 24, 1971).

⁸¹ *Id.* at 6, 10.

In contrast to previous cases, the court in *TOOR* is closely scrutinizing the project, and the court is requiring HUD to supervise the project. This is a truly significant victory for the Yerba Buena Project site residents, for the court is evidently not content to rely on promises of good faith conduct. Instead, the court is insuring protection of the potential relocatees' statutory rights and compliance with the statutory standards for relocation plans. This close involvement is justified by the court's interpretation of section 105 (c) (1), "which provides not only that there shall be a feasible method (i.e., plan) for relocation at the outset, but also that the loan and grant contract shall require that 'there are or are being provided' dwellings which meet the substantive requirements of (c) (1)." From this the court concluded:

Both parties to the contract, the Department of Housing and Urban Development and the local public agency, are thus under a continuing obligation to insure the availability of relocation housing which meets the standards of the statute. In other words, even if a plan is properly approved at the time the contract is made, and even if supplementary information properly gives the Secretary satisfactory assurance just prior to actual displacement, both the federal and the local defendants remain under a continuing obligation to provide adequate housing at all times during the relocation process.⁸²

Litigation in the field of highway relocation has lagged somewhat behind that in urban renewal.⁸³ Three major cases are worth noting. In *Triangle Improvement Council v. Ritchie*⁸⁴ a group of black residents of the Triangle area of Charleston, West Virginia, and a local civic improvement association brought an action to enjoin the construction of an interstate highway system and, alternatively, to force the construction projects to comply with federal standards applicable to the relocation of highway construction project victims. The district court dismissed the claim for an injunction on the ground that the plaintiffs had waited too long to assert whatever claims they might have had concerning the selection of the highway route and conducted an evidentiary hearing limited to the statutory and constitutional challenges to the relocation program. Plaintiffs contended that the plan then in effect

⁸² *TOOR v. HUD*, No. C-69 324, at 10 (N.D. Cal. June 30, 1971).

⁸³ See generally Roberts, *Highway Relocation Planning and Early Judicial Review*, 7 HARV. J. LEGIS. 179 (1970).

⁸⁴ 314 F. Supp. 20 (S.D.W.Va. 1969), *aff'd per curiam*, 429 F.2d 423 (4th Cir.), *rehearing denied and rehearing en banc denied, id., cert. granted*, 400 U.S. 963 (1970), *petition for cert. dismissed*, 39 U.S.L.W. 4596 (U.S. May 17, 1971).

failed to meet the requirements of section 30 of the Federal-Aid Highway Act of 1968 and that the plan, by forcing these residents into a discriminatory housing market, constituted a denial of equal protection of the laws proscribed by the fourteenth amendment. This was basically the same type of approach taken in *Norwalk*. The court found that the residents and the organization had standing to challenge the program but ruled against the plaintiffs on all of the essential substantive questions. First, the court found that the statute was not clearly applicable to programs begun before its passage, and decided to go along with the interpretation by the Bureau of Public Roads, which had published a memorandum stating that coverage of the statute did not extend to programs, such as that in Charleston, for which land acquisition approval had been given prior to passage of the Act and issuance of the memorandum. Second, the court found that the various federal, state, and local project officials were making every effort to provide a program that would satisfy the new criteria anyway. On the constitutional question, the court found that the state and federal officials had represented in court that the program could be carried out in compliance with current federal standards and without discrimination; that adequate relocation housing would, apparently, be available; and that some of the area residents had actually "refused offers of satisfactory and lawful relocation housing."⁸⁵

This case actually did little in the long run to advance the fortunes of relocatees. The court seemed to take away with one hand what it had given with the other by accepting completely the agency's interpretation of the relevant statute and the representations of the officials as to what they could and would do after just having found that plaintiffs had a right to challenge the validity of the action which had been taken.⁸⁶

⁸⁵ 314 F. Supp. at 31.

⁸⁶ The Fourth Circuit Court of Appeals affirmed the district court decision without an opinion and denied motion for reconsideration and rehearing en banc. *Triangle Improvement Council v. Ritchie*, 429 F.2d 423 (4th Cir. 1970). Judge Sobeloff dissented from the decision to deny rehearing en banc in an opinion which focused on a change in Bureau of Public Roads policy to the effect that the 1968 Act would now be applied to programs which were initiated before passage of the Act. He said that the majority of the court was apparently willing to rely on the new regulation and its application to the Triangle projects as adequate protection for the plaintiffs' rights. However, Judge Sobeloff urged that the court should not consider the question moot. Rather, he emphasized that the court should take an active interest in assuring that the various public officials involved did what was required by the new regulation. At the very least, he said, the court should make clear that it recognized that these officials did have a

The second noteworthy case, *Concerned Citizens for the Preservation of Clarksville v. Volpe*,⁸⁷ involved an attempt by a group of black and Mexican-American families to halt a federal-aid highway project through the Clarksville area of Austin, Texas. They sought to enjoin construction, claiming: (1) noncompliance with applicable federal relocation statutes and regulations; (2) failure to provide adequate procedures to enforce federal relocation requirements; (3) denial of equal protection of the laws by displacement of residents into a discriminatory housing market without adequate assurances of non-discriminatory replacement housing; and (4) failure to hold a required public hearing on project design.⁸⁸ The district court granted summary judgment to the defendants, and the court of appeals in essence affirmed that decision.⁸⁹ Affirmance as to the relocation questions was based on the fact that all of the area residents had accepted relocation by the time the case was argued to the circuit court and on the decision of the Supreme Court in the *Triangle* case. The court did add a word of caution as to how their decision should be interpreted:

It must be made clear, however, that by our silence on the merits of the issue here before us, we express no opinion upon whether the Federal and State officials charged with supervision of the highway expressway project complied with the pre-displacement relocation assurance requirements of the 1968 Act.⁹⁰

The court also cautioned that it had not decided whether actual relocation complied with the requirements of the Act or that relocation had

duty to provide the type of relocation program required by the 1968 Act. *Id.* at 425-26.

The Supreme Court granted certiorari, [400 U.S. 963 (1970)] heard oral argument in the case, [39 U.S.L. W. 3421 (U.S. March 22, 1971).] and then dismissed the petition for writ as improvidently granted. [39 U.S.L. W. 4596 (U.S. May 17, 1971).] The reason for this dismissal, as stated by Justice Harlan in a concurring opinion (the majority wrote no opinion), was that the passage of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the fact that only ten residents remained to be relocated at the time rendered the question inappropriate for Supreme Court determination. The Court believed that any ruling would have an effect on the application of the new law, and it did not want to make such a determination on a record which covered only the 1968 Act. 39 U.S.L.W. at 4597.

⁸⁷ No. 30286 (5th Cir. June 9, 1971).

⁸⁸ *Id.* at 4.

⁸⁹ The case was actually remanded for a determination as to whether the one hearing which was held had adequately dealt with design issues relating to a single interchange. *Id.* at 20.

⁹⁰ *Id.* at 13.

been non-discriminatory because these questions had not been presented in the appeal.

This demonstrates a principal weakness of judicial review in the area of relocation: when the displacing agency is not enjoined at the outset, it will proceed expeditiously to move families and demolish buildings. By the time the issue reaches the appellate level, court dockets being as overburdened as they are, "any attempt at injunctive relief would require this court to undo what has, by the working of time and intervening events, escaped the power of the injunction."⁹¹ Or, as the court reiterated in relation to the question of the adequacy of the initial highway location hearing:

Although we in no way condone hearings of any sort conducted in a legally deficient manner, we recognize that there must come a point in time when even the most grievous wrong is sadly beyond the power of equity to rectify. Here the appellants, persons displaced from the Clarksville community by an expressway project, have been relocated and their homes demolished, commitments have been entered into by the City of Austin, the State of Texas, and the federal government among themselves and third parties, and construction is proceeding.⁹²

Recently a California federal court demonstrated its willingness to take effective initial action to protect the rights of highway project area residents. In *La Raza Unida v. Volpe*⁹³ the court halted work on a freeway project in Alameda County, California, until the court could hold a hearing on plaintiffs' request for a preliminary injunction. All real property purchasing, resident relocation, and building demolition was halted. State officials may contact owners, occupants, or tenants in the project area for the limited purpose of obtaining information to facilitate housing planning, but any contact must include a written statement in English, Spanish, and Portuguese which, at least, "must indicate that a lawsuit has been filed challenging the Route 238 Highway Project and that it is uncertain whether the highway will be built and whether relocation will ever be required."⁹⁴ The court was thus willing to protect plaintiffs' position until they could fully present their case, and it seems likely that the court would be willing to enjoin further project activity until the suit is settled on the merits. Only if courts are

⁹¹ *Id.* at 12.

⁹² *Id.* at 21-22.

⁹³ *La Raza Unida v. Volpe*, No. C-71 1166 (N.D. Cal. July 2, 1971).

⁹⁴ *Id.* at 2.

willing to take such measures can residents hope to challenge effectively project administration.

Litigation has provided a steady strengthening of the rights of relocatees, but these advances must be viewed in their proper perspective. In their attempts to obtain judicial review of federal and local agency action, relocatees saw the collapse of the "standing" obstacle, only to be confronted with judicial indecisiveness on the scope of judicial review. Now several courts have been willing to go beyond that point and to take effective action, but this assumption by courts of the role of policymaking agent and quasi-administrator will likely prove unmanageable.⁹⁵ If courts accept the advances of *WACO* and *TOOR*, use the preliminary injunction to halt projects before demolition renders moot the challenges that are brought, and take an active part in enforcing statutory standards, then the judicial process may become an effective alternative for at least some relocatees.⁹⁶ Yet, realistically, such judicial activism is still the exception. For the courts to play this protective role, literally hundreds of well-prepared suits will have to be brought in city after city by those seeking to force redevelopment authorities and highway agencies to uphold the law. The awareness of rights and the organization and resources necessary to mount such a drive do not now exist. Therefore, the majority of families displaced by renewal, highway, and other public projects will remain unaffected by the avant-garde in litigation strategy.

THE UNIFORM RELOCATION ACT

In late 1970 Congress passed S. 1, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.⁹⁷ The legislation

⁹⁵ See, e.g., *TOOR v. HUD*, No. C-69 324 (N.D. Cal. Nov. 9, 1970); *La Raza Unida v. Volpe*, No. C-71 1166 (N.D. Cal. July 2, 1971). See also *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969). Although dealing with public housing discrimination, not urban renewal, the court here took on quasi-administrative powers in the housing field by ordering the Chicago Housing Authority to build a given number of units, in specified areas of the city, and meeting certain design standards. *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (1969). See also *Hicks v. Weaver*, 302 F. Supp. 619 (E.D. La. 1969) (payment of federal funds enjoined); Note, *Public Housing and Urban Policy: Gautreaux v. Chicago Housing Authority*, 79 *YALE L.J.* 712 (1969).

⁹⁶ Since the number of Legal Services and similar lawyers specializing in housing cases has increased markedly, suits building on these several landmark cases may well proliferate throughout the country. Moreover, the threat of litigation and injunction during the costly construction phase may well make public agencies far more solicitous of relocatees' rights.

⁹⁷ 84 Stat. 1894 (1971). The act was not signed by the President, and hence did not

culminated several years' work by key Congressional committees and leaders, designed to "establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."⁹⁸ No coverage is given to persons displaced by purely state or local government activities.⁹⁹ These can be quite substantial: a recent HUD report indicates that in Chicago during the period June 30, 1969 to July 1, 1971 61 per cent of all units removed from the housing supply through public action (and assumedly roughly the same proportion of persons displaced) will be removed under the municipal (non-federally aided) code enforcement program.¹⁰⁰ Although the legislation is unclear on this point, it appears that coverage may not extend to all displacees from projects where federal aid is given directly to the private sector.¹⁰¹

become law, until January 2, 1971. See 1970 U. S. CODE CONG. & AD. NEWS 2222. Although a virtually identical bill passed the Senate in 1969, 115 CONG. REC. 31370 (1969), it did not receive House approval.

⁹⁸ § 201, 84 Stat. 1895 (1971). In contrast to "rehousing" schemes (as the British use the term)—the primary aim of which is to displace persons *in order to effectuate improvement in their housing conditions*—the rather minimal statement of goals of United States policy should be carefully noted: relocation protections are offered in order that displacees shall not suffer disproportionate injuries in the process of carrying out governmental plans.

⁹⁹ For a discussion of the need for supplementary state action in the relocation field, see Mandelker, *A Model State Relocation Law*, 1971 URBAN L. ANNUAL 117.

¹⁰⁰ See U.S. DEPT. OF HUD, CITY OF CHICAGO TEAM PRELIMINARY REPORT ON CHICAGO HOUSING SUPPLY (Nov. 19, 1970).

¹⁰¹ Sec. 101 (4) defines "Federal financial assistance" as "a grant, loan or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia." Displacees from projects aided by non-subsidized FHA or VA guaranteed loans thus are clearly excluded. Displacees from sites of FHA Sec. 221(d)(3), 235, 236 and rent-supplement projects (Sec. 101, Housing Act of 1965), where no federal contribution is made directly to a state agency, may not be covered (the Federal contribution in these cases may be a payment to the private mortgagee to reduce interest payments by the mortgagor down to 1%, or a payment of a private developer to permit rent reductions in units built or rehabilitated with FHA guaranteed loans.) HUD's regulations implementing the 1970 Act permit relocation payments under the above program "where contributions are made to a state agency and the performance by such State agency, or by a private body acting on behalf of such State agency, of the undertakings necessary to enable it to receive such contributions will be the direct cause of displacements." See 36 Fed. Reg. 8785-8798, 42.20(g)(14) (1971). It is not known what congressional intent was with regard to persons living on the site of such projects, and none of the federal agencies has been willing to commit itself on this issue, a clarifying amendment to the 1970 Act may be expected, and possibly some litigation.

And, of course, persons displaced by purely private action are not covered by the Act. Although no accurate figures are available on private displacements, it has been estimated that at least as many families are displaced by private as by public action.¹⁰²

A summary of the principal features of the new law, as they affect residential displacees, follows.¹⁰³

Eligibility

The Act makes eligible for assistance "any person who, on or after the effective date of this Act, moves from real property . . . as a result of the acquisition of such real property . . . or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance."¹⁰⁴ This is a considerable advance over previous stipulations which did not grant eligibility to residents of urban renewal areas until

¹⁰² A study by the National Association of Home Builders estimates that in the 1950-68 period there were 2.35 million housing units demolished by the private sector—almost identical to the amount demolished by public action (see Sumichrast and Farquhar, note 3 *supra*.) In addition to the development decisions of private entrepreneurs, institutions such as hospitals, universities and private schools are accounting for an increasing proportion of private displacement. For a description of the New York City situation, see David K. Shieler, "Instructions' Growth Adding to Acute Housing Shortage Here", N.Y. Times, Oct. 20, 1969.

Although private sector demolitions clearly have an impact on rehousing efforts by the public sector and a strong case can be made for regulating this activity as well, only in New York City has some attempt been made to provide controls in this area, through regulation of demolition permits and requirement of relocation bonuses to persons displaced by private owners. A bill, AB 274, which has passed the California Assembly and is currently awaiting Senate action, provides that no apartment house or residential hotel in the City of San Francisco can be demolished without proof that comparable housing is available for displaced tenants. Cf. Frank, *To Control Sunlords' Abuses—Private Rental Housing Proposed to Become a Public Utility* 20 J. OF HOUSING 271-72 (1963).

Another area left untouched by the new legislation is displacement by the elimination of job opportunities directly resulting from acquisition of commercial and industrial property by federal and federally aided programs. Examples in Ossining, N. Y., and Selma, Alabama, of job displacement which, because of absence of relocation opportunities, causes residential displacement as surely as if the workers' homes had been taken were offered in congressional hearings on S. 1. See *Hearings on Uniform Relocation Assistance and Land Acquisition Policies Before the House Comm. on Public Works*, 91st Cong., 1st Sess. 482 (1970) (testimony of Yale Rubin).

¹⁰³ Although beyond the scope of this article, the Act also contains important stipulations affecting displaced businesses, see, e.g., § 101 (7), 84 Stat. 1894; § 202 (c), 84 Stat. 1895, and procedures to be followed in acquiring property. See tit. III, 84 Stat. 1904.

¹⁰⁴ § 101 (6), 84 Stat. 1894 (1971).

the date of project execution. No benefits, however, are available to persons who are living in a unit that is to be taken but who do not wait for the official order to vacate. Many previous studies have shown that a large number of families move "prematurely," either out of ignorance, the desire to take advantage of an available housing opportunity, pressure from public agencies, or as a result of the general deterioration in property and neighborhood conditions that occurs when "the dead hand of renewal" strikes.¹⁰⁵ Despite the fact that these families move as a direct result of a planned public action they will receive no benefits under the new law.¹⁰⁶ A further group not eligible for relocation payments but clearly affected by public actions are persons living in adjacent areas who often are displaced in large numbers because of private actions triggered by the public building activity.¹⁰⁷

Moving Payments

Households are now allowed reimbursement for actual moving expenses, or they may elect to receive a moving allowance (according to

¹⁰⁵ [N]eighborhoods marked for clearance usually begin to deteriorate as soon as schemes to develop them are made public. Landlords cease to repair, municipal services decline and residents begin to flee, often leaving the housing stock in disrepair and sometimes abandoned.

McGee, *supra* note 51, at 831; *accord*, Note, *supra* note 45, at 888. Figures from Newark show that owing to the accompanying controversy and rumors the population of a proposed medical school site dropped 40%, from 5500 to 3300, households prior to declaration of the site boundaries and announcements of relocation payments. Note, 21 STAN. L. REV., *supra* note 51, at 837, n.191, citing *Hearings on the Intergovernmental Cooperation Act of 1967 and Related Legislation Before the Subcommittee on Intergovernmental Relations of the Senate Comm. on Government Operations*, 90th Cong., 2d Sess. 284-85 (1968). A study from Detroit reports the impact of neighborhood deterioration. Terberry, *The Human Impact of Relocation*, published as *Household Relocation: Residents' Views*, in *STUDIES IN CHANGE AND RENEWAL IN AN URBAN COMMUNITY* (C. Lebeaux & E. Wolf, dirs. 1965) [hereinafter cited as *DETROIT STUDY*].

¹⁰⁶ The Senate version, but not the final version, of the bill provided a broader definition of "displaced persons", which included those who move as a result of a reasonable expectation of acquisition.

¹⁰⁷ In the Yerba Buena Renewal area of San Francisco, it is estimated that three times as many persons will be displaced because of related private action as will be displaced by the renewal project itself. See *San Francisco Chronicle*, March 2, 1971: "[Supervisor Roger] Boas said hundreds of tenants face eviction as hotel owners sell off their buildings to take advantage of rising property values in and around the new Yerba Buena Center renewal project There are 17 hotels operating within boundaries of the Yerba Buena Center renewal area. They house more than 1000 persons However, Boas estimated, there are upwards of 3000 other tenants living outside the renewal project who would not receive these relocation services when their hotels are torn down because private, not public, action would likely be involved." Under the new act, such persons may be given housing referral services, at the agency's discretion.

schedules established by the relevant Federal agency) of up to \$300, plus a "dislocation allowance" of \$200.¹⁰⁸ Previously, maximum moving allowances were \$200, and the "dislocation allowance" (essentially a non-specific compensatory payment for the bother and incidental expenses of moving),¹⁰⁹ which existed only under the Federal highway program, was \$100.¹¹⁰

Replacement Housing for Homeowners

Homeowners who purchase a comparable replacement home may receive a payment of up to \$15,000 in excess of the condemnation award or negotiated price paid by the taking agency.¹¹¹ This payment recognizes the fact that the cost of obtaining a comparable replacement home may be considerably in excess of the so-called "fair market value" of the previous home, a function in part of the inadequacy of the concept of "fair market value" in the eminent domain situation,¹¹² the rising cost of obtaining and maintaining decent housing (caused in part by market pressures attributable to public takings themselves), and the tight money market. Owners who hold mortgages written at a time when interest

¹⁰⁸ § 202 (b), 84 Stat. 1895 (1971).

¹⁰⁹ Examples of expenses associated with moving which are not strictly moving expenses are payments for phone and utility connections, deposits of various types, painting and redecorating and so on. See Note, 21 STAN. L. REV., *supra* note 51, at 808-09.

¹¹⁰ 23 U.S.C. § 505 (b) (Supp. V, 1970).

¹¹¹ § 203 (a), 84 Stat. 1896 (1971). It should be stressed that all payment amounts cited in this description of the new Act are maxima. It cannot be assumed that most families will receive anywhere near these amounts. During the period October 1, 1968, through December 31, 1969, the average homeowner's payment made under the 1968 Federal Highway Act (in which the maximum stipulated is \$5,000) was only \$2,324. *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 595 (1970) (statement of F. C. Turner). HUD reports a much higher replacement housing payment; through June, 1969, the average payment made to families displaced from renewal areas was \$4625. Communication from Hilda M. James, Deputy Director of Relocation and Special Services Division of HUD, (undated). The average Relocation Adjustment Payment (or additional Relocation Payment) to displaced families was \$373, to individuals \$407, whereas the limit up to that point was \$500. Furthermore, it is unclear that all persons entitled to such payment actually receive them. No figures on eligibility are given by HUD, but in the four year period 1965-69 only 21,000 of the 57,000 families displaced received RAP payments (note in this regard the low percentage of families moving to public housing who would not be eligible for such payments, *infra*, text at notes 164-65). Average moving payments were only \$82 for families, \$55 for individuals, despite the \$200 limit. HUD, STATISTICAL YEARBOOK, RAA Tables 13 & 16 (1968).

¹¹² See Lowell S. Jarvis, *Eminent Domain, Efficiency and Equity* (Working Paper No. 4, Dept. of Economics, University of California (Berkeley)). See generally Note, 21 STAN. L. REV., *supra* note 51, at 855-60 (1969). See also note 163 *infra*.

rates were in the 5% range clearly are disadvantaged when they are forced to secure a new mortgage in the current market, when one is fortunate to secure financing at 8%, and the new legislation specifically authorizes the additional homeowners' grant to cover increased financing costs.¹¹³ These additional payments are available only to persons who have owned and occupied their homes at least six months (180 days) prior to initiation of negotiations for acquisition of the property and only if the new home is decent, safe, and sanitary and is purchased and occupied within a year from the date of the final federal acquisition payment or the date on which the owner moves from the acquired building, whichever is later.¹¹⁴ Families ignorant of pending acquisition plans who purchase homes in clearance areas just a few months before negotiations are begun will, thus, not be eligible for these benefits.¹¹⁵ And, as is often the case, if actual taking does not occur until well after acquisition negotiations have begun, families may be living in recently purchased homes for a year, 18 months, or longer, and still not receive the financial benefits provided under the new Act. This supplemental payment does represent a considerable increase over the previous \$5,000 maximum contained in both urban renewal¹¹⁶ and highway legislation.¹¹⁷

Replacement Housing for Tenants

Displaced tenants and displaced owners who become tenants may receive up to \$4,000 over a four-year period in order to permit them to obtain a decent, safe, and sanitary unit.¹¹⁸ This payment may also be

¹¹³ § 203(a)(1)(b), 84 Stat. 1896 (1971). It is unclear whether these payments can or will be used to compensate persons who "own" their homes under so-called "contract sales," common in low income areas and certain parts of the country. This situation is described in A. DOWNS, *URBAN PROBLEMS AND PROSPECTS* 194-95 (1970). HUD indicates that it intends to cover these costs and has under the previous \$5,000 replacement housing payment. General communication from Hilda M. James, *supra* note 111.

¹¹⁴ § 203(a)(2), 84 Stat. 1897 (1971).

¹¹⁵ If the proposed limitation [with respect to a period of prior residency to be eligible for relocation benefits] is retained, it is likely to cause more hardship than it would avoid. Not infrequently a person, perhaps a newcomer to the city, will buy a house or rent an apartment in complete ignorance of any plans for governmental acquisition of the property. Far from being speculators they . . . are often the victims of their own ignorance . . . and, at times, of the sharp dealings of the former owners who are "getting out while the getting is good."

Hearings on Uniform Relocation Assistance and Land Acquisition Policies, *supra* note 102, at 188 (statement of G. P. Norton).

¹¹⁶ 42 U. S. C. § 1465(c)(3) (Supp. V, 1970).

¹¹⁷ 23 U. S. C. § 506(a) (Supp. V, 1970).

¹¹⁸ § 204(1), 84 Stat. 1897 (1971).

used as down payment on the purchase of a replacement home (for renters who choose to become owners), but the tenant must match with his own savings any agency payment greater than \$2,000.¹¹⁹ These relocation payments are available only if the tenant has been the lawful occupant of the unit taken for at least 90 days prior to initiation of negotiations for acquisition of the dwelling. Thus, persons moving to a clearance area just prior to takings and ignorant of these plans (a situation likely to occur more frequently among tenants than owners) are not eligible for these benefits. And the same delays between initiation of acquisition negotiations and actual taking may occur.¹²⁰ The so-called relocation adjustment payment is thus increased to \$1,000 per year (\$83 per month) from its previous limits of \$500 under HUD programs¹²¹ and \$750 under the highway program,¹²² and the duration of these payments is increased from two to four years. Contrary to previous requirements with respect to the Relocation Adjustment Payment,¹²³ displacees no longer need demonstrate that they are eligible in terms of income yet unable to obtain admission to public housing before qualifying for these payments. Furthermore, displaced individual householders who are neither elderly nor handicapped are eligible for these payments for the first time—a significant advance, considering that one-person households constitute nearly one-third of all relocated households and usually have incomes far lower than do families.

Although the “day of reckoning” is postponed, the question still remains as to what happens when the rent support ceases at the end of the four-year period. It is unlikely that many displaced families will have increased their income sufficiently to be no longer in need of subsidy.¹²⁴ The vast majority of these families, after four years instead of two, will

¹¹⁹ § 204(2), 84 Stat. 1897 (1971).

¹²⁰ “We cannot imagine how prospective residents are expected to know when negotiations will begin, either 90 days or a year before the event, and consider this a most unjust condition for receiving relocation aid.” *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 338 (statement of B. Reach). Even the Undersecretary of HUD recommended that the Act read “90 days prior to displacement” (as opposed to 90 days prior to initiation of negotiations for acquisition of the property). *See id.* at 1029.

¹²¹ 42 U. S. C. § 1465(c)(2) (Supp. V, 1970).

¹²² 23 U. S. C. § 506(b) (Supp. V, 1970).

¹²³ *See* note 21 *supra*.

¹²⁴ Assuming their income does increase somewhat, they lose their discretionary freedom to devote this income to anything but housing, if they wish to remain in their existing quarters. And, they will be paying an excessive proportion of their income for rent.

be faced with the unhappy choice of diverting needed funds from other important budgetary items in order to pick up the added rent, or moving to cheaper (and almost by definition substandard) quarters.

Relocation Assistance Advisory Services and Replacement Housing

The Act calls for a relocation assistance advisory program to be provided for all displacees and (at the discretion of the agency head) for persons living in adjacent areas who will suffer substantial economic loss.¹²⁵ The program is to include an accurate determination of the need for relocation assistance, current and continuing information on the availability and cost of decent relocation housing, and assurance that adequate relocation housing within the means of displaced families¹²⁶ will be available within a reasonable period of time prior to displacement.¹²⁷ Responsibility for developing and supervising the relocation plan now rests with the federal funding agency as much as with the locality. In addition to this program, the federal agency is empowered (but not required) to "take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project," in the event that a federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available. In other words, the federal agency may become a "houser of last resort" if adequate rehousing resources are not available through other programs and means.¹²⁸ The term "provide" does not necessarily mean "build,"

¹²⁵ § 205, 84 Stat. (1971).

¹²⁶ HUD's new regulations on the 1970 Act stipulate a maximum of 25 percent rent to income ratio. 24 C.F.R. § 42.95(c), 36 Fed. Reg. 8794 (1971).

¹²⁷ The Act provides, however, that the head of the federal agency "may prescribe by regulation situations when such assurances may be waived." § 205(c)(3), 84 Stat. 1898 (1971). Richard LeGates has pointed out the implicit contradiction in the provision for large additional temporary payments to displacees and the concept of an adequate relocation plan which theoretically is to provide assurance that a sufficient number of decent dwellings within the financial means of displacees will be available at the time of displacement. Conversation with Richard LeGates, March 31, 1971.

¹²⁸ California's so-called "Ralph Bill," enacted in 1968, permits the California Department of Public Works to build, rehabilitate, or purchase housing units and exchange such units for homes occupied by low-income families living on sites of proposed highways, if such sites are in economically depressed areas. CAL. STREETS & HWYS. CODE §§ 135.3-.7 (West 1969). Such exchanges are at the option of the displacees and are an alternative to condemnation procedures and awards. The Department is also authorized to contract with lending institutions to provide mortgage loans to displacees who have accepted such an exchange, in order to insure substitute financing at equivalent terms. Current plans contemplate the provision of rental units in multi-family structures, through the National Housing Act § 236 (12 U.S.C. § 1715z-1) program administered

and such action can occur only if the agency itself determines that a need exists.

It seems unlikely that taking agencies other than HUD will become housing developers using their project funds for relocation housing. The strong resistance to housing development activity by federal agencies was brought out in the hearings on S.1. A memorandum on this subject, prepared for the House Committee on Public Works by the Bureau of the Budget (whose power in this area is paramount) states that:

The Committee's question [on use of federal public works projects funds for development and acquisition of replacement housing] suggests that even with these improvements [the benefits provided under S.1] and notwithstanding existing housing programs, State and local authorities might be unable to assure the production of replacement housing. In the absence of operating experience under the pending bill, we have no basis for such a conclusion. A conclusion that the private housing industry aided by existing public programs will not respond to economic demand by producing an adequate supply of replacement housing would appear to be premature. The provision of additional authority along the lines suggested by the question raised should, in our opinion, await evidence that a significant problem exists.¹²⁹

The BOB then goes on to add a list of questions and problems regarding the notion of "houser of last resort" which suggests strong Administration opposition to this role and the unlikelihood that such replacement housing will be approved within the foreseeable future.¹³⁰

The position of another key federal agency, the Department of Transportation, was also indicated in the hearings on S.1. When questioned by Committee members about a statement by DOT Secretary John Volpe that the Department will require from state agencies "specific written assurance that adequate replacement housing will be available

by FHA, by utilizing Department of Public Works funding for interim construction loans.

Replacement housing activity on a small scale is underway in Los Angeles, San Ysidro, and Stockton. In the Watts area of Los Angeles, where activity is most advanced, twenty-seven homes have been provided for displacees, all of which were "move-on's" transported from an airport expansion site. Interview with Richard Babel, Right-of-Way Agent, California Department of Public Works, May 13, 1971.

¹²⁹ *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 593.

¹³⁰ *See id.*

(built, if necessary) before the initial approval or endorsement of any project," Federal Highway Administrator F. C. Turner stated: "The Secretary did not intend to be interpreted that the Highway program would itself build the housing that would be required. He meant that it had to be built by . . . the normal processes, private enterprise, government assistance, or what is available in other programs. . . ." ¹³¹

In many respects the Uniform Relocation Act may represent a significant advance in protections and benefits for displacees, although any initial assessment must await promulgation of administrative regulations to carry out the congressional mandate. Regulations can and often do adulterate legislative strength. Although each federal agency is left to issue its own regulations, a task force chaired by the Office of Management and Budget, and comprised of representatives of the Departments of Justice, Transportation, Defense, and Housing and Urban Development and the General Services Administration has developed guidelines to which individual agency regulations will have to conform. This should reduce the amount of nonuniformity in the final operating rules and regulations.¹³³ The annual reports which the Act requires from each Federal agency on the effectiveness of its provisions (beginning January 15, 1972) will help to determine how useful a tool it is.¹³⁴ An interim

¹³¹ *Id.* at 601. Like the Bureau of the Budget, the Department of Transportation also shows consummate faith in the private sector's ability to solve our most serious housing problems. When Representative Cleveland pressed the Administrator on this point, positing a situation where a locality opposed to a highway would only have to show that no replacement housing had been built in order to halt the highway project, Mr. Turner replied:

But I cannot conceive of the situation where the governing authorities of a city would have control over the private sector of the economy in that city, which would certainly be able to provide housing if there were a need shown for that housing.

Id. at 601.

¹³² Issued on Feb. 27, 1971.

¹³³ See Memorandum from President Richard M. Nixon to Heads of Departments and Agencies, Subject: The Uniform Relocation and Real Property Acquisition Policies Act of 1970, Jan. 4, 1971. Some fifteen to twenty federal agencies are directly affected by the new Act. Over 90 percent of the annual displacement due to federal and federally-assisted activity results from HUD and DOT programs, however; another 3 to 5 percent is attributable to the Corps of Engineers. Personal communication to author from S. Reid Alsop, Office of Chief Counsel, Federal Highway Administration, Mar. 29, 1971.

The various Federal agencies have each been promulgating their individual interim regulations. See, e.g., 36 Fed. Reg. 8785 (1971) (HUD regulations); 36 Fed. Reg. 12534 (1971) (HEW regulations); 36 Fed. Reg. 12623 (1971) (Interior regulations).

¹³⁴ § 214, 84 Stat. 1901 (1971). The White House Memo also established a Relocation

period of confusion may be expected, since the Act repeals the relevant relocation sections of previous statutes,¹³⁵ and it is unclear what authority existing administrative regulations have until the new regulations are issued. The provisions of the Act became effective upon enactment, except that until July 1, 1972, many of the key sections are applicable only to state and local agencies able under their own laws to comply with the Uniform Act.¹³⁶ In any case it takes a while for regulations to filter down to the local level and for operational procedures to accord with new regulations.¹³⁷

To the extent that congressional intent is carried out, the new provisions certainly provide considerable additional financial benefits to displacees¹³⁸ and bring these protections to thousands of families who will be displaced by agencies and programs which currently offer no or few relocation benefits.¹³⁹ On the other hand, the Act may (depending again on the administrative regulations that issue) represent a step

Assistance Advisory Committee under OMB to review the government's relocation program. See note 133 *supra*.

¹³⁵ § 220(a), 84 Stat. 1903 (1971).

¹³⁶ § 221, 84 Stat. 1904 (1971).

¹³⁷ Persons displaced after the January 2, 1971, effective date but before the new regulations are promulgated and put into effect locally will have the right to receive supplementary payments, even if they are already relocated. Some of the more conscientious local agencies are notifying relocatees of these future rights and are keeping track of them so these additional payments can be forwarded. Other displacees may have to petition the taking agency for these payments, may have to go to court to obtain them, or, if unaware of their rights, may lose out on these benefits altogether.

¹³⁸ It should be noted, however, that the President's statement upon signing the Act indicates that attempts will be made next year to curtail some of these benefits.

In signing this legislation . . . I must note that the bill contains some deficiencies which I believe warrant corrective action by the Congress. These include needed corrections in the limits, computation, formulas and safeguards to assure that payments are fair but not excessive. Early in the next session, the Executive Branch will submit proposals to accomplish such changes.

Statement by President Nixon, Office of the White House Press Secretary, Jan. 2, 1971.

¹³⁹ A possible weakness in the Act with respect to the urban renewal program is that unlike previous relocation payments which were 100% reimbursable by the federal government, the new payments will be included as part of the standard renewal formula, which requires the locality to pay one-third of project costs. Many localities may be unable to bear these additional costs and there may be a tendency to avoid responsibilities to relocatees in order to reduce local government costs. The impact of this new provision was deferred until July 1, 1972 under section 211(a) which provides for Federal reimbursement of up to \$25,000 in displacement costs per relocatee until that date. It can be anticipated that the attempts will be made prior to July 1972 to amend the Act to provide for full federal payment of relocation costs. For the anguished reactions of one local planner to this provision, see letter from Francis X. Leighty, 28 J. OF HOUSING 110-11 (1971).

backward from the most advanced protections and benefits currently offered by some of the affected programs and often won by hard administrative and judicial struggle. The provisions of Sec. 105(c)(3) of the Housing Act,¹⁴⁰ requiring periodic federal review of local relocation plans, which quickly become outdated, and of the effectiveness of local relocation programs, are not included in the new Act (although they are retained in the Housing Act, where they apply to local renewal agencies). The strong provisions currently applicable to the Model Cities program¹⁴¹ will in all probability not be the standard used to carry out the Uniform Act.

Perhaps most critical, the Uniform Act would appear to be far less effective in replacing and increasing the stock of low- and moderate-income housing lost as a result of federal and federally assisted projects than it is in providing monetary payments to the displaced persons. The basic statutory mandate remains no more than a requirement that the taking agency assure that satisfactory relocation housing resources are available prior to displacement—the very same assurances that in the past have proved totally inadequate to maintain, let alone increase, the supply of decent low- and moderate-income housing and to protect the interests of both displacees and the low- and moderate-income housing groups in general. And the federal agency head only need receive “satisfactory assurance” from state and local agencies that rehousing resources are available,¹⁴² again raising the critical defect that federal agencies are not likely to halt major state and local projects which the supervising federal agency itself wishes to foster.¹⁴³

¹⁴⁰ 42 U.S.C. § 1465, as amended (Supp. V, 1970).

¹⁴¹ See text at notes 31-34, *supra*.

¹⁴² § 210, 84 Stat. 1899 (1971).

¹⁴³ Adequate administrative enforcement of the laws . . . might well begin to reverse some of the undesirable housing and redevelopment trends; unfortunately, there is little reason to expect that the agencies responsible for their enforcement—HUD and the local agencies—will make vigorous efforts at enforcement. In fact, these administrative agencies have continually failed to enforce those laws designed to benefit and protect the low income families. . . . HUD relies almost entirely on information offered by the local agency. This narrow informational channel frequently makes it impossible for HUD to learn the actual, as opposed to the professed, intentions of the local agency, or its compliance with both federal law and HUD's rules. While HUD has some investigators, it does not have enough to adequately investigate the local programs. . . . HUD is under many of the same political and economic pressures that affect the local agency. Ronfeldt & Clifford, *supra* note 51, at 323, 326-27. See also C. ABRAMS, *supra* note 1, at 137-38. In this regard, it is fortunate that the version of the Act which was finally enacted deleted an incredible provision contained in the House version of the bill which would have barred displacees from seeking judicial relief with respect to all

Nothing as strong even as the "one for one replacement" provisions of the 1969 Housing Act (with respect to urban renewal projects)¹⁴⁴ is contained in the new bill, and only a carefully drawn and enforced provision of this sort can serve to protect the housing supply and the long-term interests of displacees; although, even this provision at best maintains the status quo and does not increase the stock of low- and moderate-income housing. Moreover, it still permits an interval that may be as long as several years from the time the housing is demolished to the time it is replaced, thus creating a loss of housing units over a considerable period of time.

In the absence of such provisions, displacees (particularly renters, who comprise the majority of this group) can look forward to steadily inflating rents as the housing squeeze becomes more pronounced. And to the extent that those protected by the Uniform Act receive special benefits and protections, it will be only at the expense of other low- and moderate-income families who do not have the "good fortune" to be living in project areas and who must compete for the limited supply of available housing, decent and otherwise, with families who are protected by special benefits and assistance and who have the (temporary) advantage of increased rent-paying abilities.

REVIEW OF RECENT RELOCATION STUDIES

To provide some insight into the impact of residential relocation, the results of ten follow-up studies of relocatees undertaken in the United States and Canada within the past decade will be reviewed. Included in the summary (Table I) are only those studies which collected independent data, although reference is occasionally made to other studies. Thus, in-house "official" reports by the displacing agency or the agency responsible for rehousing are not considered.¹⁴⁵ All ten studies deal with urban renewal displacees; although two of the studies—those from Springfield and Topeka—also include displacees from highway construction and code enforcement. The principal subjects for analysis are housing improvement and housing costs.

administrative determinations made under the Act. See H.R. REP. NO. 91-1656, 91st Cong., 2d Sess. 5 (1970).

¹⁴⁴ Act of Dec. 24, 1969, Pub. L. No. 91-152, § 209, 210, 83 Stat. 388; 42 U.S.C. § 1455(h) (Supp. V, 1970).

¹⁴⁵ For a discussion of the shortcomings of official relocation reports, see text accompanying notes 221-28, *infra*.

TABLE I. SELECTED FINDINGS FROM 10 INDEPENDENT RELOCATION

STUDY	RACE	INCOME	CONDITION	SPACE
Austin 1969	100% Negro	median \$3700	Housing: 31% deteriorating or dilapidated post Area: ^a 51-59% same 14-24% better 17-26% worse	N.A.
Philadelphia 1968	N.A.	N.A.	Apt: 80% better 7% worse Desirability of neighborhood: 30% better 22% worse 30-50% living in substandard housing post. ^b	58% better 30% worse
Springfield 1968	51% Negro and Puerto Rican	N.A.	83% substandard Pre 14% substandard Post ^c	42% gain 18% lost
Toronto 1968	91% white	median \$3833	Pre: 100% fair or poor Post: 72% good 13% fair 15% poor	Pre: 1.22 ppl/rm Post: 1.09 ppl/rm
Madison ^c 1968	42% Negro	Median mo. \$330 Negro \$380 White	Pre: 43% substandard Post: 11% general housing situation not improved.	1.01+ppl/rm: 67% Pre 71% Post
Topeka/ 1967	UR: 54% white H: 74% white	N.A.	UR: Pre: 30% good 15% fair 55% (very) poor Post: 43% good 30% poor 27% (very) poor H: Pre: 48% good 25% fair 27% (very) poor Post: 60% good 25% fair 15% (very) poor	UR&H: 39% increase 34% lost 1.01+ppl/rm: UR: Pre: 24% Post: 16% H: Pre: 18% Post: 18%

a. Pre- and post-relocation neighborhood conditions were rated along four dimensions: area cleanliness, street and sidewalk conditions, lighting, and recreation for children. The percentages in the table give the range reported for the four items.

b. This survey apparently was methodologically weak, according to the Housing Association of Delaware Valley, which published it. With regard to the figure on post-relocation substandard housing, the report states that "a spot check of some of the houses of those relocated indicates that between 30% and 50% of Area III residents have been relocated into substandard housing." (p. 8)

c. "It is to be re-emphasized that this 14 percent figure does not include the 'lost' population. . . . If we adjudge this lost population of 13% to be transient and indigent, it is reasonable to assume that many of these families are living in substandard housing as well. The exact percentage is conjectural, but it would be unwise to minimize the number, since SRA [Springfield

STUDIES, 1965-69

RENT	PUBLIC HOUSING	TENURE	DESTINATION
67% of renters 76% of owners paying more	N.A.	Pre: 51% own; 19% of former owners have become tenants	66% within 1 mile
\$54 Pre \$64 Post (renters)	N.A.	Pre: 30% own Post: 46% own	more than $\frac{1}{3}$ in areas immediately adjacent
$\frac{2}{3}$ paid more after relocation	13%	N.A.	N.A.
median % of income for housing: 18% Pre, 24% Post ^d	25%	Pre: 35% own Post: 47% own	36% less than 1 mile 53% less than 2 miles
Under \$60: 13% Pre, 1% Post Over \$90: 34% Pre, 59% Post 25% or more of income for rent: 35% Pre, 55% Post	16%	N.A.	Whites dispersed, Negroes concentrated.
\$60+/month: UR: Pre: 3% Post: 32% H: Pre: 30% Post: 45%	UR: 5% H: N.A.	UR: Pre: 36% own Post: 45% own H: Pre: 52% own Post: 58% own	UR: 40% within 1 m. 80% within 2 m. H: 36% within 1 m. 65% within 2 m.

Redevelopment Authority] records disclose that 69% of these lost families earned \$3,000 or less before relocation. In short, we must assume that a range of 14% to 27% of relocatees are living in substandard housing." (p. 1258)

d. Families receiving public assistance are excluded from these calculations.

e. Although this study relies principally on official redevelopment agency records and data, a considerable degree of independent analysis and supplementary information are also included.

f. The Topeka study reports and compares a highway project and an urban renewal clearance project. The tabular data are reported separately for each project—H = highway, UR = urban renewal. Although this investigation was an independent project under a grant given to the Menninger Foundation by the Social Security Administration, the project director and senior author of the report also served as the Topeka Urban Renewal Agency's relocation consultant.

TABLE I. SELECTED FINDINGS FROM 10 INDEPENDENT RELOCATION

STUDY	RACE	INCOME	CONDITION	SPACE
New York 1967	19% Negro and Puerto Rican	median \$300- 350/mo.	Pre: 86% deteriorated or dilapidated Post: N.A. ^g	Average rooms: Pre: 3.5 Post: 4.4 (public hous- ing) Pre: 3.3 Post: 3.7 (private hous- ing)
Winnipeg 1967	13% Indian- Metis	\$3300	Pre ^h : 38% good repair 26% dilapidated/ deteriorated Post: 85% sound 6% dilapidated/ deteriorated	N.A.
Washington 1966	79% non- white	88% "low in- come earn- ers" 42% welfare/ surplus food recipients	Pre: 22% good 46% major repairs/ dilapidated/unfit Post: 86% good 0% major repairs/ dilapidated.	N.A.
Detroit 1965	95% Negro	Median \$2735	Post: ^j 53% good 24% fair 18% poor 61% improved 35% deteriorated Neighborhood: 42% im- proved 51% dete- riorated	$\frac{1}{3}$ gained $\frac{1}{3}$ lost

g. Only scattered information about post-relocation housing conditions is given in this report. Of the 78 families originally interviewed, 24 moved to public housing, 24 moved to private accommodations, 14 were temporarily relocated on-site, and the remainder had either moved out of town, were "lost," or had not yet moved. Two of the 24 families who had moved to private housing were in apartments judged to be substandard.

h. The pre-post ratings are not strictly comparable. Pre-relocation ratings were the relocatees' own evaluations; post-relocation ratings were done by the interviewer.

i. Four small subsamples of relocatees (ranging in size from 17 to 25) were included in the study, differentiated by where they moved and income level. Although the data tables and writeup are somewhat unclear, it would appear that one of the four groups showed an increase in housing costs, while little change was experienced by the other three groups.

j. The rating of post-relocation housing conditions was done by the interviewer. Comparison of pre-post housing and neighborhood conditions was the relocatee's own subjective appraisal.

STUDIES, 1965-69 (Continued)

RENT	PUBLIC HOUSING	TENURE	DESTINATION
\$56 Pre \$76 Post 69% increase 23% decrease	31%	N.A.	N.A.
mixed	14%	N.A.	N.A.
57% increase 23% decrease Of those paying more, 60% at least \$20/month 15% at least \$40/month more	61%	Pre: 5% own Post: 2% own	Scatteration
\$56 Pre \$65 Post 57% increase 30% decrease 1/5 paying at least 50% of income post	N.A.	Pre: 20% own Post: 16% own	N.A.

STUDIES SUMMARIZED IN TABLE I

- AUSTIN: Williams, *The Effects of Urban Renewal Upon a Black Community: Evaluation and Recommendations*, 50 Social Sci. Q. 703-12 (1969).
- PHILADELPHIA: Volunteer Community Resources Council, *Follow-up Survey on Relocates from University City Unit III*, published as HOUSING ASSOCIATION OF DELAWARE VALLEY, SPECIAL MEMORANDUM No. 40 (1969).
- SPRINGFIELD, MASS. Fozen, Goshin & Bellin, *Evaluation of Housing Standards of Families Within Four Years of Relocation by Urban Renewal*, 58 Am. J. Pub. Health 1256-64 (1968).
- TORONTO: Marvin H. Lipman, *Relocation and Family Life: A Study of the Social and Psychological Consequences of Urban Renewal*, April 1968 (unpublished doctoral dissertation, School of Social Work, University of Toronto).
- MADISON: James G. Gutensohn, *Relocation: History, Criticism, Case Study*, Jan. 1968 (unpublished thesis in University of Wisconsin Department of City and Regional Planning).
- TOPEKA: W. KEY, *When People Are Forced to Move* (1967).
- NEW YORK CITY: WOMEN'S CITY CLUB OF NEW YORK, INC., *When the City Takes Over: A Study of Building Maintenance and Relocation in the Bellevue South Urban Renewal Area* (1967).
- WINNIPEG: COMMUNITY WELFARE PLANNING COUNCIL OF WINNIPEG, *A Study on Some of the Social Aspects of Urban Renewal: A Detailed Investigation of the Social Effect of Relocation Upon Selected Families from a Renewal Area in Winnipeg* (1967).
- WASHINGTON, D. C.: D. THURSZ, *Where Are They Now? A Study of the Impact of Relocation on Former Residents of Southwest Washington Who Were Served in an HWC Demonstration Project* (1966).
- DETROIT: S. TERREBERRY, *The Human Impact of Relocation* (Wayne State University 1965), published as part III of E. WOLF & C. LEBEAUX, *Change and Renewal in an Urban Community: Five Case Studies of Detroit* (1969).

Housing Conditions

All relocation studies report an aggregate improvement in housing conditions. But, as one of the studies reported here notes, "most of this was artifactual since the housing in the Urban Renewal Area was some of the worst in [the city] . . . no comparable stock of such dilapidated housing was available to which they could move."¹⁴⁶ In other words, any program which relocates people from the city's worst housing stock will produce an aggregate improvement in housing quality for that group—the remaining housing into which these families must move can hardly be as bad as that from which they were displaced. The real question then is not "has there been an improvement in housing conditions for displacees," but rather first, "how much of an improvement has there been" (and, as a corollary, "how long will these improved conditions last, given the workings of a tight housing market") and second, "what costs have the displacees been forced to assume to secure these improved conditions."

Of the eight studies in which data on housing conditions were independently gathered,¹⁴⁷ five reported that a minimum of 28%, a maximum of 57% of displacees were living in housing not rated as good (standard) following relocation. The only two reports where the proportion of families living in substandard housing was quite low were one of the two Canadian studies (Winnipeg,¹⁴⁸ where only 6% were living in dilapidated or deteriorating units) and the Southwest Washington study,¹⁴⁹ where no families were found to be living in units which were dilapidated or in need of major repairs (although no data are given on

¹⁴⁶ W. KEY, *WHEN PEOPLE ARE FORCED TO MOVE* 90, 278 (1967) [hereinafter cited as *TOPEKA STUDY*].

¹⁴⁷ The Madison study used official redevelopment data for housing conditions. James G. Gutensohn, *Relocation: History, Criticism, Case Study*, Jan. 1968 (unpublished thesis in University of Wisconsin Department of City and Regional Planning) [hereinafter cited as *MADISON STUDY*]. See Table 1, n.e. The New York City study gave only partial information on post-relocation housing conditions. WOMAN'S CITY CLUB OF NEW YORK, INC., *WHEN THE CITY TAKES OVER: A STUDY OF BUILDING MAINTENANCE AND RELOCATION IN THE BELLEVUE SOUTH URBAN RENEWAL AREA*. (1967) [hereinafter cited as *NEW YORK STUDY*]. See Table 1, n.g.

¹⁴⁸ COMMUNITY WELFARE PLANNING COUNCIL OF WINNIPEG, *A STUDY ON SOME OF THE SOCIAL ASPECTS OF URBAN RENEWAL: A DETAILED INVESTIGATION OF THE SOCIAL EFFECT OF RELOCATION UPON SELECTED FAMILIES FROM A RENEWAL AREA IN WINNIPEG* (1967) [hereinafter cited as *WINNIPEG STUDY*].

¹⁴⁹ D. THURSZ, *WHERE ARE THEY NOW? A STUDY OF THE IMPACT OF RELOCATION ON FORMER RESIDENTS OF SOUTHWEST WASHINGTON WHO WERE SERVED IN AN HWC DEMONSTRATION PROJECT* (1966) [hereinafter cited as *WASHINGTON, D. C. STUDY*].

the number of families living in units in need of non-major repairs and which might fall into the Census category "deteriorating.") It should also be noted that over three-fifths of the Southwest Washington sample moved into public housing, a figure more than double that for any of the other reported studies, and over three times the average figure for urban renewal projects.¹⁵⁰

Exact comparability between different studies is difficult because of the different terms, categories, and standards used in judging housing conditions, but it is clear that very substantial numbers of displacees—often one-third to one-half—are found to be living in substandard quarters following forced displacement. However, post-relocation housing conditions may be below the generally recognized standards of acceptability, embodied in local housing codes or the census, yet still represent an actual improvement in the individual family's housing—e.g., a move from very poor to poor housing, or from poor to fair housing. In fact, the Philadelphia study shows that, although 30% to 50% are living in substandard housing following relocation,¹⁵¹ for 80% the post-relocation apartment is better than the pre-relocation apartment. Also, not all pre-relocation housing is in substandard condition: both highway and renewal planning often involve taking some good with the bad.¹⁵² In some cases this proportion may be quite high: in Topeka 30% of the urban renewal project housing was in good condition, 48% of the housing taken for the highway. (In this type of situation, the data on aggregate improvement must be seen in the total context: the proportion of families living in good housing rose only from 30% to 43% for the urban renewal displacees, from 48% to 60% for the highway displacees—a very slight increase in aggregate benefits.) Even in the Southwest Washington area, over one-fifth (22%) of the pre-relocation housing was in good condition.

Apart from actual physical conditions, another important consideration is amount of living space, or degree of overcrowding. This is an aspect of substandard housing conditions that is becoming increasingly salient as we learn more about the psycho-social parameters of the housing problem¹⁵³ and as housing costs increase, forcing families to accept

¹⁵⁰ See text accompanying notes 164-65, *infra*.

¹⁵¹ Volunteer Community Resources Council, *Follow up Survey on Relocates from University City Unit III*, published as HOUSING ASSOCIATION OF DELAWARE VALLEY, SPECIAL MEMORANDUM No. 40 (1969) [hereinafter cited as PHILADELPHIA STUDY]. But see Table 1, n.b.

¹⁵² See note 205 *infra*.

¹⁵³ See A. SCHORR, SLUMS AND SOCIAL INSECURITY 17-25 (1963); Greenfield & Lewis,

less space in order to keep within their budgets.¹⁵⁴ In view of the importance of overcrowding, it is disturbing to note that three of the ten studies reported contain no information about overcrowding, and even a study as careful and comprehensive as the Southwest Washington study neglected this area entirely.¹⁵⁵ Similar to the findings on housing conditions, most of the studies show an aggregate increase in living space, either in terms of fewer persons per room on the average, or a greater number of families gaining space than losing space. But even where a greater number gain than lose space, a substantial number are space-losers. In the Philadelphia study, while 58% gained space, 30% lost space; in the Springfield, Massachusetts, study¹⁵⁶ 42% gained space, 18% lost space; in the Topeka study 39% gained space, 34% lost space.¹⁵⁷ The Detroit study showed that an equal proportion gained and lost space. But absolute gains and losses of space are not the most critical consideration; what is important is space relative to family size (*i.e.*, degree of overcrowding). Relocation may result in a reallocation of space either in the direction of giving more to those who need it or increasing the space problems of those who already are overcrowded. Unfortunately, only two of the studies deal with this important issue. In Madison, the proportion of families living in overcrowded conditions (1.01 or more persons per room) increased from an extremely high 67% pre-relocation to 71% post-relocation. And in Topeka, overcrowding decreased from 25% to 16% among urban renewal displacees and among the highway displacees remained at 18% pre- and post-relocation. Thus, the results are mixed (and inconclusive) with respect to overcrowding. It appears, however, the relocation does not clearly result in relief of overcrowding. Indeed, for some families, and possibly for the aggregate, it may even exacerbate the problem.

An Alternative Density Function Definition of Overcrowding, 43 LAND ECON. 282-85 (1967).

¹⁵⁴ The 1970 Census data on overcrowding in San Francisco show an increase from 6.3% (in 1960) to 7% in occupied units with more than one person per room.

¹⁵⁵ The major federal study of post-relocation housing conditions also omitted this factor. See HHFA, *The Housing of Relocated Families: Summary of a Census Bureau Survey*, in URBAN RENEWAL: THE RECORD AND THE CONTROVERSY 336-52 (J. Wilson, ed. 1966); Hartman, *A Comment on the HHFA Study of Relocation*, in *id.* at 353-58.

¹⁵⁶ Pozen, Goshin & Bellin, *Evaluation of Housing Standards of Families Within Four Years of Relocation by Urban Renewal*, 58 AM. J. PUB. HEALTH 1256-64 (1968) [hereinafter cited as SPRINGFIELD STUDY].

¹⁵⁷ In most instances, the calculation of gain and loss of space is based purely on a room count, not on the size of the rooms.

The question of change in tenure as a result of relocation will be dealt with only briefly, since the meaning of the data is more ambiguous. Six of the ten studies include this information. The majority report that homeownership increases following relocation. In Topeka, the proportion of owners rose from 36% to 45% among urban renewal displacees, from 52% to 58% among highway displacees; in Philadelphia the figure rose from 30% to 46%. In two studies the proportion of owners dropped slightly: from 5% to 2% in Washington and from 20% to 16% in Detroit. While homeownership is generally considered a desirable goal, the studies do not give sufficient information to permit such a conclusion for displacees. Many families may have become owners reluctantly, as the only way to secure decent relocation housing. A shift from owner to tenant status may be a severe personal loss, or it may be a desired change (particularly for older people in a large house). Thus, I do no more than report the finding that generally aggregate ownership rates increase slightly as a result of relocation,¹⁵⁸ with some instances to the contrary. I make no judgment as to the import of this finding.

One final aspect of housing conditions, which was unfortunately covered in only three of the studies, concerns the neighborhood and general residential environment—the question of overall residential satisfaction. In the Philadelphia survey, 30% of displacees relocated into “better” neighborhoods, 22% into “worse” neighborhoods. In Austin,¹⁵⁹ where four specific neighborhood attributes were rated, relocation resulted in a slight deterioration of neighborhood quality for displacees. And in Detroit, for 51% neighborhood conditions had deteriorated, while improvement was experienced by only 42% of displacees. This contrasts with the Detroit data on housing per se, which show that a far higher proportion experienced improved housing.

What conclusions should follow these seemingly mixed and incomplete data on housing change? Much, of course, depends on initial expectations and standards. For some, it is sufficient that relocation does not appear markedly to increase the number of slum dwellers, that improvement in one or more areas is experienced by a majority of dis-

¹⁵⁸ It is likely that the new financial benefits of the 1970 Uniform Relocation Act together with the tight rental housing market, will serve to increase the proportion of homeowners among displacees. Note especially the right to use as a downpayment the \$4,000 displacement payment to tenants. See text accompanying notes 118-22, *supra*.

¹⁵⁹ Williams, *The Effects of Urban Renewal Upon a Black Community: Evaluation and Recommendations*, 50 *SOCIAL SCI. Q.* 703-12 (1969) [hereinafter cited as *AUSTIN STUDY*].

placees,¹⁶⁰ and that needed public works projects such as highways and downtown redevelopment can proceed at the same time that aggregate housing conditions can show a slight to moderate gain. For those who view improving housing conditions of the most disadvantaged as the primary goal of programs such as urban renewal—or at the least a goal no less important than the “positive” rebuilding aspect—the results reported here may be regarded as somewhere between dismaying and shocking. Redevelopment and other public works projects that leave 30%, 40%, and 50% of displacees in substandard conditions at the same time that substantial numbers of decent, low-rent units are being destroyed in the displacement process; that only marginally relieve, or in some cases even exacerbate, overcrowding; and that lead to less satisfactory general neighborhood conditions (which may cancel any improvement in individual housing conditions) are unacceptable as vehicles of public action and deplorable as objectives of public policy. Moreover, where the overall stock of low-rent housing, decent or otherwise, is being diminished, as is the case with the public programs under discussion here, improved housing conditions may be extremely ephemeral. In a tight housing market where the tenants are low-income families consisting largely of racial minorities, landlords allow their properties to deteriorate, and municipal services tend to decline. What could be rated as standard housing at the time the displacee moves in may, within a matter of two or three years, be seriously substandard—an alteration in no small part attributable to the same public actions and programs which necessitated the displacement and relocation. A goal more in keeping with social welfare principles would be that 100% (or virtually 100%) of the displaced families must live in decent housing, without overcrowding, located in decent neighborhoods, and that public programs must at least maintain, if not increase, the supply of decent low- and moderate-rent housing so that whatever gains are achieved by displacees will not be of a temporary nature.

Housing Costs

Data on housing costs for relocatees are both less subjective and less

¹⁶⁰ But instances of deterioration in housing conditions following displacement, deterioration quite extreme in some cases, should not be overlooked. Statements submitted to the House Committee on Public Works by Legal Services attorneys documented cases of displacees having to sleep on the ground, under bridges, and in basements because they were unable to find housing within their financial means. *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 454-58.

ambiguous. All ten studies include some information on this subject, and, with one exception of mixed results among four small subsamples (Winnipeg), all studies indicate substantial increases in housing costs. The New York City study showed an increase in median rent from \$56 to \$76—a 36% increase. In Detroit, the median rent went from \$56 to \$65—a 16% increase, and after relocation one-fifth of the relocatees were paying at least half of their income for housing! In Madison 59% of the group was paying more than \$90 per month after relocation, compared with 34% prior to relocation. Although in all cases the majority receive rent increases, there is also some downward movement reported. Thus, while 57% of the Detroit and Washington groups experienced rent increases, 30% reported decreases in Detroit, 28% in Washington. In Washington, these increased rents prevailed despite the fact that over three-fifths of the displacees moved to public housing, where rents are considerably below market levels and are adjusted to income levels. These rent increases were also quite substantial: three-fifths of those paying increased rents had to pay at least \$20 per month more, 15% had to pay at least \$40 per month more. In Toronto, the median rent-income ratio rose from 18% to 24%. In Madison, the proportion of families paying one-fourth or more of their income for rent rose from 35% before relocation to 55% afterwards.

The detailed analysis necessary to evaluate the impact of these increases is missing from most of the studies. Obviously, there is a difference between increases representing greatly improved housing conditions, which the family can afford and voluntarily accepts and those increases representing either no housing improvement or only marginal benefits and an unwanted burden, which the family can hardly afford. The difference between a moderate-income family which experiences a \$75 increase in monthly housing costs because it has moved from an urban slum to ownership of an attractive single-family house is obviously not in the same category as the identical dollar increase experienced by a large low-income family which moves to an overpriced slum. Ideally, we should have information on family incomes, housing conditions, and personal preference in order to gauge the meaning of rent or rent-income data. However, in view of the race and income of most displacees, the data presented in the previous section on changes in housing conditions, and the above data on rent-income ratio changes, it seems safe to say that the vast majority of rent increases are of the negative kind: those which are not voluntarily borne, which the family is in a poor position

to absorb,¹⁶¹ and which in many cases do not result in significant housing improvement. The complete picture, then, of housing costs juxtaposed against changes in housing conditions, must lead to the conclusion that relocation works to the clear disadvantage of displacees, a group that by virtue of race and income is least able to absorb these effects and that by any social welfare criteria ought not to be placed in the position of having to pay these costs.¹⁶²

Other Findings of Relocation Studies

Although housing conditions and costs are the two primary areas of interest in assessing the effects of relocation, some of the other findings of the ten studies reviewed are noteworthy.¹⁶³

Dispersion

The six studies which report data on the destination of relocatees indicate that the centripetal tendency noted in my 1964 article is still evident, although perhaps to a lesser degree. The Washington study reports scatteration (doubtless because a very large part of the District is open to nonwhites and because the area immediately around the centrally located Southwest was non-residential), and the Madison study reports dispersion among white relocatees, although Negroes were concentrated. All other studies indicate rather high degrees of concentration around the area of displacement: 66% within one mile of the center of the re-

¹⁶¹ The DOT HIGHWAY RELOCATION ASSISTANCE STUDY indicated that 27% of the residential properties to be taken for highways in the three-year period commencing July 1, 1967, would be valued at \$6,000 or less, 73% at \$15,000 or less; 41% of the displaced renters would be paying \$60 or less. HIGHWAY RELOCATION ASSISTANCE STUDY, *supra* note 37, at 6. The study concluded that "the greater number of projected displacements will involve the midrange or lower cost housing" and that "[m]any of the state highway departments reported that a major difficulty in relocating low or moderate income families is the shortage of low-rent housing, either public or private." *Id.* In congressional hearings on the 1968 Federal-Aid Highway Act, the Director of the Bureau of Public Roads disclosed that the 1967 study had in fact underestimated the displacements that would occur in the 1967-70 period.

¹⁶² Increased financial costs due to relocation may not be confined to housing. The Detroit Study presents data on other cost increases; for example, one half of the respondents said transportation costs had increased after relocation, while only five percent said such costs had decreased. DETROIT STUDY, *supra* note 105, 414. *Accord*, TOPEKA STUDY, *supra* note 146. Since housing costs are closely related to location, a need clearly exists to take into account changes in locational costs in order to arrive at a true picture of the financial effects of relocation.

¹⁶³ Some of this information is not summarized in Table 1.

newal area in Austin; 40% within one mile and 80% within two miles of the renewal area in Topeka. A centripetal pattern of displacement in itself probably correlates with minimal housing improvement, with either increased patterns of racial segregation or maintenance of existing segregated patterns, and with a high probability of future relocation due either to related public action or to private market responses to public action in adjacent areas.

Public Housing

Of the seven studies which report data on use of public housing by displacees, six are in the 5% to 31% range, and only the Washington, D.C., group showed a majority of displacees moving into projects. Nationally, slightly under 19% of all families displaced from urban renewal areas relocate into public housing, and a far smaller percentage of individual householders.¹⁶⁴ (No comparable data are available for those displaced by highways and other public programs.) Displacees from public projects have priority for public housing admissions, and the relatively low proportion of families moving to these attractively priced and generally not substandard units indicates both the small number of suitable units available in most cities and the reluctance of many displacees to move to public housing.¹⁶⁵ Moreover, greater use of public housing resources by displacees would not aid in solution of the general housing problem, since other needy families would have to be "bumped" from the waiting lists to make way for those with eligibility priority.

¹⁶⁴ U.S. DEP'T OF HOUSING AND URBAN DEV., 1968 STATISTICAL YEARBOOK, RAA Table 13 at 371. Fifty-four percent of displaced families are eligible for public housing; thirty-five percent of eligible families move to public housing. No data are given on the number of individual households (which represent 32% of all displaced households) who move to public housing or federally-aided housing, but the percentage is undoubtedly lower than for families, since only elderly and handicapped individuals are eligible for public housing. Ineligibility may result other than from lack of sufficiently low income; there is in particular a vague category of "social ineligibility" which keeps many people out of public housing.

¹⁶⁵ As to this reluctance, see Hartman, *The Limitations of Public Housing*, 29 J. AM. INST. OF PLANNERS 283 (1963). Similarly, Downs reports that "the vast majority (over 85%) of households displaced by highway projects do not want to live in public housing." A. Downs, *Housing Relocation and Compensation Related to the Interstate Highway System*, Baltimore, Maryland, February 28, 1968 (Real Estate Research Corporation and Baltimore Urban Design Concept Associates). Greater acceptance of public housing among a group of largely black, highly transient fatherless families in Syracuse is reported by Laurance T. Cagle and Irwin Deutscher. Cagle & Deutscher, *Housing Aspirations and Housing Achievement: The Relocation of Poor Families*, 18 SOCIAL PROB. 243 (1970).

Relocation Assistance

Only a few studies indicate the extent to which relocatees are able to benefit by home-finding and other assistance (apart from moving expenses and other benefits to which displacees are entitled) offered by the taking agency or a centralized relocation service. Eighty percent of those in the Philadelphia study relocated on their own, 43% said they had not been contacted by the Centralized Relocation Bureau. Twenty-two percent of the Toronto group said they had gotten their new housing through the local public agency (and this figure includes the 25% who moved to public housing). In Springfield, 27% of the displacees found their new home through the relocation agency. In the Detroit study the agency's services were ranked last on a list of five forms of rehousing assistance: 31% of all families and 6% of all individual householders made use of the agency's service (whether such use produced results or not), and only 3% of all respondents reported moving into a house that the city had helped them find.¹⁶⁶ It seems clear that such services are used by a minority of displacees, and even fewer actually find their homes through agency assistance. If one disregards public housing resources, the proportion is probably miniscule: in the New York City study none of the private accommodations was found by the Department of Relocation.¹⁶⁷ In all probability this reflects not so much inferior services (although there doubtless is much room for improvement here)¹⁶⁸ but rather the realities of the housing market: Where there is only a small supply of available relocation housing, agency help probably will make little difference, and the family is often better off fending

¹⁶⁶ DETROIT STUDY, *supra* note 105, at 402. In the Philadelphia study, 30% of the displacees said they had not received moving expenses, and, of those who did, 45% said the amount received was inadequate. See also note 111 *supra*.

¹⁶⁷ New York City's system of bonus payments to relocatees who find apartments on their own may be partly responsible for the low reliance on the official agency.

¹⁶⁸ For a discussion of centralized relocation services, see R. GROBERG, CENTRALIZED RELOCATION: A NEW MUNICIPAL SERVICE (1969); P. NIEBANCK, *supra* note 1. Centralizing relocation services is, of course, by itself no guarantee of adequate services. A review of the performance of the Philadelphia Centralized Relocation Bureau over a two-year period indicates that 77% of the legitimate needs of Bureau clients went unanswered. E. WOOD, THE NEEDS OF PEOPLE AFFECTED BY RELOCATION (1965), cited in L. BERSON, THE DISPOSSESSED: A STUDY OF INVOLUNTARY MOBILITY AMONG PHILADELPHIA'S LOW INCOME FAMILIES (1967).

Among the benefits cited by advocates of a centralized relocation agency are increased influence in the structure of local government and the ability to sustain a relocation staff on a permanent basis, providing more skilled and experienced personnel. Personal communication to author from Mary K. Nenno, Director of Program Policy and Research, National Association of Housing and Redevelopment Officials, Apr. 21, 1971.

for itself.¹⁶⁹ Agency assistance can even be a hindrance, since landlords often are reluctant to involve themselves knowingly with displacees and the regulations and red tape that contact with the agency may involve.

Re-relocation

Several of the studies report considerable instances of multiple moves following displacement, although the causes for these changes are not clear. The Detroit study showed that 37% of those interviewed had moved one or more times in the approximately two years since the original relocation destination. The Madison study showed that multiple moves were extensive for Negro relocatees. The Springfield study found that 40% of the displacees had made a subsequent move in the one to four years following the initial relocation (54% of the Negro and Puerto Rican families, 22% of the white families). In Southwest Washington nearly 40% of the families in the original sample were untraceable five years following relocation, when the interviews were conducted. Of those that were found, 36% were not living in the same place they had first moved to upon relocating, and 10% had moved three or more times. None of the studies answers the important question of whether these mobility rates are lower or higher than those for comparable populations which have not been displaced. If apparently high rates of mobility are characteristic of relocation populations more generally, this may be an indication of unsatisfactory initial moves, but more extensive data gathering would be required to determine just what have been the "final" effects of forced displacement.

Racial Effects of Relocation

Only a few studies deal directly with the question of how relocation affects racial patterns of residence and the differential effects of relocation on different racial and ethnic groups.

The Austin study concluded that "this project in no way contributed to ethnic desegregation through relocation." None of the displaced families (all of whom were Negro) moved to Anglo neighborhoods, and no Anglos have moved into the redeveloped area from which the original families were displaced.¹⁷⁰ A U.S. Civil Rights Commission staff report on urban renewal relocation in Cleveland concluded that: "The great

¹⁶⁹ "When adequate choices are not available, there is not much a relocation officer can do to change the situation." *TOPEKA STUDY*, *supra* note 146, at 91.

¹⁷⁰ *AUSTIN STUDY*, *supra* note 159, at 708.

majority of Negroes displaced by urban renewal in Cleveland have been relocated in predominantly or entirely Negro areas. Very few Negro families have been relocated in areas significantly of less racial concentration than the areas from which they were displaced."¹⁷¹ A study of relocation in Providence during the years 1960-65 concluded that racial residential segregation increased as a direct result of relocation.¹⁷² The results of a study of urban renewal in Columbus, Ohio, show that relocation has had slight, but mixed, results on residential patterns: "In the aggregate of all projects undertaken during this time-span [1959-64], urban renewal tended to somewhat desegregate non-whites, though this influence was slight. The people who were relocated ended up in less segregated areas if they were non-whites and more segregated areas if they were whites."¹⁷³ The study also concludes that while "fairly massive urban renewal activity in Columbus, between 1959 and 1964, did not by itself have any really significant effect on the pattern of racial segregation in the city . . . the effects of urban renewal and highway relocation, institutional expansion, housing rehabilitation, immigration, and the natural increase of white and non-white families, may well have served together to create an increasingly segregated city."¹⁷⁴ A study of highway displacement in St. Paul showed that non-whites tended to relocate in a more concentrated pattern than was true of whites and that "the clearance contributed to the increase in the non-white density in all parts of the (still mixed) non-white area. . . . [T]he freeway clearance, along with the earlier redevelopment projects, increased the density of the non-white concentration and extended its boundaries."¹⁷⁵

Other racial differences shown in some of the studies cited will be noted only in passing. Both the Springfield and Madison studies showed that racial minorities wound up in significantly worse housing than did white relocatees, although the Topeka study showed the greatest relative gains for Negroes (here the comparison was with Mexican-American and elderly white households). In the words of the Madison report,

¹⁷¹ Staff Report on Urban Renewal Relocation, Exhibit 26, Hearings before the United States Commission on Civil Rights in Cleveland, Ohio, Apr. 1-7, 1966.

¹⁷² Eric P. Godfrey, Residential Relocation in Providence, 1960-65: An Ecological Approach, 1970 (unpublished masters thesis at Brown University).

¹⁷³ N. Schoening, The Effects of Urban Renewal on the Pattern of Racial Segregation in Columbus, Ohio, 1969 (unpublished thesis in Ohio State University Department of City and Regional Planning) 34.

¹⁷⁴ *Id.* at 42.

¹⁷⁵ Davis, *The Effects of a Freeway Displacement on Racial Housing Segregation in a Northern City*, 26 *PHYLON* 209, 211, 214 (Fall 1965).

"Madison is a city with less than one per cent of its population Negro. Yet it is most apparent that far from improving housing, urban renewal has meant disproportionate hardship and multiple moves for Negro families."¹⁷⁶ With regard to housing space, the Topeka study showed that ethnic minorities more frequently moved to overcrowded quarters, but the Springfield study gives the opposite results. Both the Topeka and Madison studies show that non-white relocatees make greater use of public housing. Possibly related to this, the Springfield study also shows greater use of agency relocation assistance by Negroes and Puerto Ricans. In Madison extensive re-relocation among Negro displacees was found. The Columbus study showed slightly higher rent increases for non-whites; the Madison study showed opposite results, and a Cincinnati report comparing Negro families, Negro individual householders, and white individual householders shows that the highest rent to income ratios both pre- and post-relocation occur among Negro individuals, although the greatest increase in rent to income ratios is experienced by white individuals.¹⁷⁷

Thus, although the evidence is quite incomplete in this area and some contrary findings appear, the general pattern is that racial minorities fare somewhat worse in the relocation process and that relocation does little to decrease, and on occasions intensifies, patterns of racial segregation—often as part of broader patterns of urban population and land use change which urban renewal and displacement support. The extent to which these effects are due to a "colorblind" laissez-faire policy—the absence of any explicit agency policies concerning increasing or decreasing racial segregation through relocation¹⁷⁸—as opposed to a more conscious and planned shift in land uses and residential patterns cannot be ascertained on the basis of current information.¹⁷⁹

¹⁷⁶ MADISON STUDY, *supra* note 147, at 86. In his Baltimore study Downs concludes that:

The net effect of public improvements which displace low-income Negro householders in Baltimore is to increase the pressure upon white householders to withdraw from the city so as to make additional housing available to the displaced Negro families. . . . Whether it is officially admitted or not, the behavior of public officials engaged in relocation assistance in helping to maintain segregated housing patterns has been a major force accelerating the withdrawal of white population from many cities, including Baltimore.

A. Downs, *supra* note 165, at III-15, -17.

¹⁷⁷ F. Farmer, *Geographic Dispersion of Relocatees from Clearance Areas Within Cincinnati*, 1965 (unpublished thesis, University of Cincinnati).

¹⁷⁸ This is Schoening's conclusion regarding Columbus, based on interviews with local renewal officials. Schoening, *supra* note 173, at 41.

¹⁷⁹ It is of interest to note that when asked what were the reasons for renewal of their area, 52% of the Detroit respondents ascribed a racial motive to urban renewal.

Psycho-Social Effects of Relocation

The study of Boston's West End provided considerable information and triggered much concern about the psychological and social dimensions of the uprooting and adaptation experiences occasioned by forced displacement.¹⁸⁰ There has been some follow-up on this question, despite the difficulty of measuring and obtaining data on this aspect of the relocation experience, the concentration of official standards on more objective, tangible aspects of the experience, and the difficulty of fashioning compensations and remedies for these losses.

Several of the studies have gathered information on length of residence of displacees, one important indicator and cause of social and emotional ties to a particular residence and neighborhood. The New York City study showed over one-fourth of the displacees had lived in their buildings at least twenty years, 46% at least ten years. The Washington study showed that 65% of the displacees had lived in the Southwest for ten or more years, and that only 15% had lived there three years or less. The Toronto study showed that 21% of the displacees had lived in the neighborhood ten years or longer, 51% seven years or longer. In the Philadelphia sample the average length of residence in the area was 21 years.¹⁸¹ Not all studies indicate considerable stability on the part of displacees, however: nearly four-fifths (78%) of the groups studied in Winnipeg had lived less than three years in the residence from which they were displaced. In general, however, the West End finding of considerable local rootedness is supported in these other studies.¹⁸²

Most of the studies that have given special attention to the psychological and social dimensions of relocation also generally support the conclusions of the West End research. The Detroit study concludes that:

DETROIT STUDY, *supra* note 105, at 418. See also IOWA STATE ADVISORY COMM'N TO THE UNITED STATES COMM'N ON CIVIL RIGHTS, REPORT ON THE URBAN RENEWAL PROGRAMS AND THEIR EFFECTS ON RACIAL MINORITY GROUP HOUSING IN THREE IOWA CITIES (1964).

¹⁸⁰ Fried, *Grieving for a Lost Home*, in THE URBAN CONDITION (L. Duhl, ed. 1963). See generally Fried & Gleicher, *Some Sources of Residential Satisfaction in an Urban "Slum,"* 21 J. AM. INST. OF PLANNERS 305 (1961); Hartman, *Social Values and Housing Orientations*, 19 J. SOCIAL ISSUES 113 (1963).

¹⁸¹ Table 1 of the Philadelphia study indicates "Years in Area III:21," without explicitly stating what is the exact measure being used. It would seem clear from the context of the chart that this is intended to be either a median or average.

¹⁸² The Syracuse study, Cagle & Deutscher, *supra* note 165, indicates little neighborhood attachment, though the relocation experience turned out to be disruptive for fatherless black families.

A small number ascribed a positive role to relocation in their lives. These persons had usually already planned to move, and urban renewal gave them a push that they later felt they needed. Others, perhaps 1 in 10, remain emotionally neutral to the relocation process, which might best be described as "just one of those things."

About 4 out of every 5 reported some negative impact, either short- or long-term, from relocation. For more than half of these people time seemed to have healed the initial wounds. Some of these still felt a sense of loss, particularly for the people in the neighborhood, but their new homes or neighborhoods or perhaps just life in general, was providing sufficient compensation to relegate the relocation experience to its place in their personal histories. For others, however (probably more than a third but less than half of all interviewed relocatees), two years had passed but had not erased or replaced their sense of loss. Some were "grieving for a lost home," and some were grieving for a lost neighborhood. A few even feel that relocation marked the end of their lives in any meaningful sense.¹⁸³

The Toronto study, which was designed as a replication of some aspects of the West End research, essentially supported most of the earlier study's conclusions relating to social and psychological impact. "Relocation can offer a major crisis of transition; few in the working class community appear ready to meet it."¹⁸⁴ The Washington findings, too, support the conclusion that relocation can have seriously damaging social and psychological consequences:

This investigation reveals a poignant fact. No matter how dirty, inadequate, and unsanitary the old Southwest was, it was also *home* for families that had been there for a long time. . . . For many, the loss was deep and continues to be felt. They have not 're-adjusted' and one-fourth of the respondents have not made a single friend since leaving the old Southwest.¹⁸⁵

Not all relocation projects produce such negative results, however. The Austin study concluded, "[I]t appears that 'loss of community' was highly salient for some, 26.3 percent, but was not uppermost in the minds of the majority."¹⁸⁶ The Topeka study concludes that "[p]er-

¹⁸³ DETROIT STUDY, *supra* note 105, at 427-28.

¹⁸⁴ M. Lipman, *Relocation and Family Life: A Study of the Social and Psychological Consequences of Urban Renewal*, April, 1968, 208-09 (unpublished thesis in University of Toronto School of Social Work).

¹⁸⁵ WASHINGTON, D.C. STUDY, *supra* note 149, at 100-01 (emphasis in original).

¹⁸⁶ AUSTIN STUDY, *supra* note 159, at 708.

haps the major conclusion is that there is little long-term impact. Forced relocation does not substantially harm the population."¹⁸⁷ And the Winnipeg study (the one study which did not show clear increases in housing costs) showed that "the respondents are overwhelmingly positive in their evaluation of the non-physical, interpersonal, and social aspects of their move. . . . The relocation makes a new way of life possible for them, and particularly for their children." But "those who moved into the periphery of the old core area . . . are obviously the exceptions to most of the above statements."¹⁸⁸ It would thus appear that relocation frequently causes damaging, and long-term, psychosocial effects, although this is not true for all groups or persons.

Closely related to the question of psycho-social effects is the issue of expressed satisfaction and dissatisfaction on the part of the relocatee. Perhaps more than any other index of success or lack of success in the displacement and relocation process is the relocatee's own global sense of whether or not he is better off as a result of the experience. This simple subjective evaluation by the person who has been relocated ideally should subsume and balance against one another all issues of housing and neighborhood change, cost and benefits, social and personal aspects. Yet few independent studies, and no official studies, employ this measure. The results of the few surveys which include this question (or some variant thereof) follow. The Austin study reports that 62% of the respondents, when asked how they felt about moving, stated that they did not want to move. The three most frequent reasons given (in descending order) were community and social ties, financial concerns, and locational convenience. In Washington 20% of the displacees stated at the time of relocation that they would prefer staying in Southwest "without any improvement at all in the circumstances of their environment, rather than face a move to another part of the city."¹⁸⁹ When asked the key question about whether or not they are happy that they

¹⁸⁷ TOPEKA STUDY, *supra* note 146, at 277-78. Although somewhat inconsistent with its more general conclusion stated above, yet more consistent with the data it generated, the Topeka study does conclude that both the elderly and Mexican-American populations did suffer negative consequences from relocation. The study contains criticism of the methodology used in the West End study.

¹⁸⁸ WINNIPEG STUDY, *supra* note 148, at 114.

¹⁸⁹ WASHINGTON, D.C. STUDY, *supra* note 149, at 55. Another 54% indicated their wish to relocate in Southwest after renewal of the area. In the post-relocation interview, however, when asked to recollect how they felt when they learned they would have to move from Southwest, 50% indicated they strongly disliked having to move, and only 18% remembered being pleased at the idea. *Id.* at 57.

had to move, "only 29.6 percent are happy they had to move. More than one in every three [34.7%] heads of household is [sic] very sorry that they had to move."¹⁹⁰ This finding holds despite the fact that 50% like their homes better than those they had in the Southwest and "is a further concrete indication of the importance attached by all people to the non-physical factors that make for a good neighborhood."¹⁹¹ The New York City study showed that 68% of those interviewed expressed a desire to stay in the area. In the Detroit study, "when asked if they would want to move back around _____ Street 'if the neighborhood was still like it used to be before the city took over,' almost half (44 percent) said 'Yes.'"¹⁹² In the Philadelphia study, data on "total preference" show that 28% prefer the new housing, 24% prefer pre-relocation conditions. The Topeka sample was asked, "Taking everything into account, how do you feel about the change?" Among the sample of urban renewal relocatees, 64% reported they were "satisfied," 28% reported they were "dissatisfied"; among the highway relocatees, the respective figures were 77% and 14%. Although the study found less severe expressions of grief than Fried had found in the West End research,¹⁹³ the interviews "indicate the presence of feelings of grief, nostalgia, regret, or whatever label is best applied to such feelings, for a large proportion of the population."¹⁹⁴ Both age and ethnic group status were found to be important variables in the Topeka study: "Older people and those with a well-organized subgroup which retains its culture are more resentful about the move when it is forced."¹⁹⁵ The Winnipeg study reports generally positive assessments of the relocation experience taken as a whole.

While the results are mixed, it is clear that according to these global and subjective measurements of relocatees' response to forced displacement, a substantial negative reaction is caused. Even in those instances where a higher proportion of relocatees express positive feelings about the move, the question must be asked whether the difference is significant enough, whether we (and the relocatees) have the right to expect more universally spread benefits from public programs.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² DETROIT STUDY, *supra* note 105, at 426. See also quote in text accompanying note 180, *supra*.

¹⁹³ Fried, *supra* note 180.

¹⁹⁴ TOPEKA STUDY, *supra* note 146, at 180.

¹⁹⁵ *Id.* at 213.

CONCLUSIONS

It appears beyond doubt that forced residential relocation produces net damage to the universe of displacees, as measured by both objective and subjective indices. If such a conclusion can be drawn largely on the basis of urban renewal relocation, which offers the greatest protections to the displacee,¹⁹⁶ then a fortiori it must be true generally for all relocation, which includes the highway program and many other government activities that provide fewer or no statutory benefits, have less concern for the displacee, and in no cases replace any of the housing stock which these programs remove. In Prof. Michelman's words:

Easily identified, relative [sic] small numbers of people are being handed a distinctly disproportionate and frequently excruciating share of the cost of whatever social gain is involved. . . . Those dislocated are likely to be members of a social class which comes increasingly to be identified as a faction—"the urban poor." Yet their influence and organization is not so great, certainly less than their numbers might indicate. . . . Altogether, the spectacle of uncompensated dislocations under these circumstances is an oppressive one.¹⁹⁷

One computation of the aggregate financial losses alone is staggering. Anthony Downs has computed the following:

[P]resent practices regarding residential households displaced by highways and urban renewal projects will unfairly impose uncompensated costs of at least \$156.5 to \$230 million per year (in 1968 dollars) upon approximately 237,200 displaced persons and at least another 237,200 non-displaced persons. . . . It amounts to an uncompensated loss averaging from \$812 to \$1,194 per household for each of the estimated 192,800 households involved. The median income of these households is probably around \$4,000 per year. Therefore *the average uncompen-*

¹⁹⁶ It should be recognized, however, that the assistance and subsidies available under the urban renewal program are such that little or no direct benefit will accrue to the low-income person; in terms of possible benefits, relocation is all he has. Cf. Note, *supra* note 45, at 865. ("[A]s the federal urban renewal program is statutorily constituted, the main benefit accorded the displacee is aid in locating the new housing he needs.")

¹⁹⁷ Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165, 1255 (1967). Not everyone shares these feelings of distress, however. The Chairman of the House Subcommittee on Roads, Rep. John Kluczynski of Illinois, remarked during the 1970 congressional hearings, "I, for the love of me, can't find out why they find some excuse to hold up construction because of little things such as housing." See Charles M. Sevilla, *Asphalt Through the Model Cities: A Study of Highways and the Urban Poor*, Jan. 30, 1971, 97 (unpublished thesis, Urban Law Institute, National Law Center, George Washington University).

sated loss which each is compelled to suffer amounts to confiscation of from 20 to 30 percent of one year's income.¹⁹⁸

The central problem is inadequate rehousing resources, a fact which virtually all observers point to, and which the government pointedly

¹⁹⁸ A. Downs, *supra* note 113, at 223. Downs also lists a formidable catalogue of the different kinds of losses imposed on residential households by displacement activity:

- A. *Losses imposed upon residential households by displacement itself*
 1. Disruption of established personal and other relationships
 2. Losses due to the taking of real property
 3. Losses due to home financing arrangements, especially contract buying
 4. Costs of seeking alternative housing elsewhere
 5. Costs of paying for alternative housing elsewhere
 6. Moving costs
 7. Higher operating costs of residing elsewhere
- B. *Losses imposed upon residential households by uncertainties and delays*
 8. Deterioration in the quality of life during waiting periods
 9. Inability of property owners to sell property at reasonable prices during waiting periods
 10. Declines in the value of properties during waiting periods because of neighborhood and individual property deterioration
 11. Losses of income suffered by owners of rental property because of the departure of tenants before actual taking occurs
 12. Costs of maintaining property after its fair market value has been established for purposes of litigation
- C. *Losses imposed upon residential households not directly displaced but located in surrounding areas*
 13. Higher taxes paid because of increased city costs to counteract vandalism and other deterioration in the area
 14. Disruption of local communications through the blocking of streets
 15. Reduction in the quantity and quality of commercial and other services available in the area because they have left or been displaced
 16. Reduction in employment opportunities and increased costs of travelling to work because firms have been compelled to move elsewhere or have gone out of business
 17. Spillover effects of deterioration in the clearance areas during the waiting periods
 18. Higher rents or housing prices because of increased competition for housing among low-income households resulting from displacement
 19. Reduction in the efficiency of community facilities through:
 - a. Loss of patronage if displacement has removed customers
 - b. Overcrowding if displacement has removed alternative sources of supply (such as a local school)
 20. Losses in property values due to changes in the accessibility of various parts of the metropolitan area
 21. Losses resulting from congestion, vibration, noise, street blockage, dust, and other negative factors involved in the process of constructing the new highway or urban renewal project
 22. Losses in property values due to increased ugliness, noise, air pollution, or other adverse effects of the completed highway or urban renewal project

Id. at 224-25.

ignores. Paul Niebanck expresses what nearly every serious study of relocation has concluded: "[T]he greatest handicap which these relocation agencies now have is the universal shortage of low-rent, decent housing."¹⁹⁹ At a time when there is already a severe and extensively documented shortage of decent low- and moderate-income housing,²⁰⁰ relocation of displaced families into decent housing at prices they can afford is a virtual impossibility, particularly when the very programs doing the displacing are also removing a substantial part of the very housing stock they must rely on for relocation resources.²⁰¹ In Baltimore, thirteen years of housing construction destroyed 21% of the city's low-income housing.²⁰² In Charleston, West Virginia, between 1966 and 1971, fifteen percent of the city's population was displaced, although the city's vacancy rate was only 1 or 2 percent.²⁰³ A recent HUD staff report on Chicago showed that "approximately 6,200 more units of housing for low income families will be demolished than added to the supply for the two-year [Workable Program] period [July 1, 1969-June 30, 1971] . . . and the number of demolitions will probably be at least as great if not greater for the next Workable Program period."²⁰⁴ The urban renewal program through 1967 demolished 404,000 dwelling units, with another 356,000 scheduled for demolition in presently approved projects, while only 107,000 dwelling units have been constructed on renewal sites, and only 196,000 are planned—a net loss of nearly a half million units, even under the unlikely assumption that all planned units

¹⁹⁹ P. NIEBANCK, *supra* note 1, at 77.

²⁰⁰ BUILDING THE AMERICAN CITY, *supra* note 2; REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968); PRESIDENT'S COMMITTEE ON URBAN HOUSING, A DECENT HOME (1968).

²⁰¹ It must be borne in mind that "slum clearance projects themselves generate effects that are adding impetus to a process that results in the cumulative development of blight in the older, low-rent neighborhoods outside the clearance areas." Gruen, *Urban Renewal's Role in the Genesis of Tomorrow's Slums*, 39 LAND ECON. 285-91 (1963).

²⁰² TIME, March 23, 1970, at 72.

²⁰³ *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 364.

²⁰⁴ Memorandum from Don Morrow, Acting Regional Administrator to HUD Secretary George Romney, Oct. 2, 1970. One does not know whether or not to take comfort from the Acting Regional Administrator's comment on these data that "the size of this deficiency surprised both HUD and the City." *Id.* A somewhat muted version of the report was released publicly on November 19, 1970. See note 100, *supra*. The published report also notes that the number of units constructed substantially exceeds the number of units demolished during this period for moderate-income households and low-income elderly.

will actually be built.²⁰⁵ The highway program displaces some 50,000 households per year and replaces not a single unit.

The fundamental dilemma or illogic of relocation is still as the late Charles Abrams described it in 1965:

These excellent specifications [regarding statutory relocation requirements] assume there are plenty of vacancies to choose from; that the vacancies are in good standard houses; that the rents are reasonable; that they are well located; that shrinking the poor man's housing supply by clearances will not affect the price or availability of what remains; that the average low-income family does not know that such better opportunities exist; that public officials can do better than the tenants themselves in finding good units even when the officials have to find them for hundreds of families simultaneously. They also assume there is no shortage at all in the cities where the houses are to be demolished, no housing problem and no slum problem except in the slum targeted for removal.

....

... One could add that if enforced relocation is the blessing it is said to be, it should be undertaken even in the absence of an urban renewal program.²⁰⁶

The new Federal legislation can at most postpone the day of reckoning by offering substantial financial benefits which will be eaten up in a few years but will at least serve to mute or soften the protests of displacees. In its failure to deal directly with the underlying housing shortage, the new legislation may be described as an attempt to buy off displacees with what in effect are large bonuses.²⁰⁷ Legislation which

²⁰⁵ BUILDING THE AMERICAN CITY, *supra* note 2, at 152-69. The vast majority of all 760,000 units demolished or to be demolished are in the low- and moderate-rent category, and probably between one-fifth and one-fourth of these units, about 175,000 units in all, do not fall in the substandard category. *See id.* *See also* text accompanying note 152, *supra*.

²⁰⁶ C. ABRAMS, *supra* note 1 at 136, 142; *cf.* AUSTIN STUDY, *supra* note 159:

It would appear that if standard housing which is conveniently located and within the financial means of the low income population was available, then there would be scant need for urban renewal in the first place. Few families live in substandard housing because they want to.

Id. at 710; Note, *supra* note 45, at 864: "The former residents [of renewal areas] know that they cannot afford improved housing; if they could, they would already be living in it."

²⁰⁷ The most important issue every relocation program faces is that of guaranteeing that displaced persons are adequately housed in standard units at prices they can afford and comparable to what they were paying before relocation. Given the realities of today's housing crisis, in most instances adequate replacement housing can be provided only if new, low- and moderate-income housing is produced Relocation payments and assistances are of secondary importance. They are only

would truly protect relocatees must compensate the housing stock as well as the displaced household.²⁰⁸ The "one for one" replacement principle is a *sine qua non* of adequate relocation, but a statutory requirement of this sort must be far stronger and more precise than currently exists in either the Housing Act or Workable Program Handbook. There must be stipulations as to parity of replacement housing with respect to rent levels and unit size—that is, housing demolished in the \$60-70 rental range must be replaced by units in the same rental range, three-bedroom apartments are not to be replaced by efficiency units.²⁰⁹ Locational requirements might also be introduced, perhaps on a metropolitan basis, to reduce racial and socio-economic segregation.²¹⁰ The replacement units must be available at the time of displacement, not two years, three years, or more following the need that has been created.²¹¹ Reporting requirements and supervisory personnel must be adequate to permit true enforcement of such a stipulation. And, to do more than merely maintain the status quo (the most that could be expected from even the most rigorously enforced and successful "one for one" requirement), construction of more replacement housing than the number of units demolished would have to be required as a prior condition to undertaking projects which require family dislocation.²¹²

While some headway may be made through litigation in protecting the interests of displacees and requiring the construction of replacement housing, this is basically not a job the courts can do. "[O]nly the naive," writes Prof. McGee, "will not perceive the essential limits of judicial

palliatives which can ease some of the temporary difficulties inherent in dislocation. Experience shows, and the Congress has recognized, that if necessary new housing is not provided, displacees face the bitter realities of competing in impacted housing markets, thereby further over-loading these markets, and paying high rents for substandard and over-crowded units.

Hearings on Uniform Relocation Assistance and Land Acquisition Policies, *supra* note 102, at 447 (statement of K. P. Phillips).

²⁰⁸ For explication of these two related principles of compensation, see A. DOWNS, *supra* note 113.

²⁰⁹ Obviously, such a requirement would be subject to modification to meet actual relocation needs, but in most instances severe and increasing shortages of units exist for medium and large sized families.

²¹⁰ Cf. *Gauteaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969).

²¹¹ See Note, *supra* note 45, at 866, which suggests that where a housing shortage exists and the displacees are largely poor and non-white (i.e., most relocation situations), "the statutory requirement of a feasible relocation plan should bar demonstration without *prior* construction of low-cost replacement housing." (Emphasis added.)

²¹² See Judge Weigel's final order in the Yerba Buena case. *supra* note 77, which requires the city to construct 1,500 additional units of housing, even though the num-

review.”²¹³ The most advanced decisions and court actions have come in the two San Francisco cases, *WACO* and *TOOR*, yet anyone acquainted with the detailed situation of the residents of these two areas and the continuing activities of the local redevelopment agency is well aware of how little true protection the court can actually offer.²¹⁴

Given the realities of the local agency's motivations, it is not extreme to say that the only threat or action they will respond to is the cessation of project funds and the prohibition of further construction or displacement, demolition, and other preparatory work that precedes construction. And, when the interests, monies, and plans of an entire highway or development project are weighed against the rights and needs of a few dozen or even a few hundred of that “faction—‘the urban poor.’”²¹⁵ the courts (and certainly federal officials in the executive branch) have shown that they will rarely use the big stick: in the few instances where it has been wielded, it was only of temporary duration.²¹⁶

Nor does administrative protection of the rights and interests of displacees offer much promise.

ber of households remaining to be displaced from the site was probably no more than 1,100 at the time the order was issued.

²¹³ McGee, *supra* note 51, at 894.

Another and less complicated rationalization of judicial abdication in the urban renewal cases might be that the political strength of the displacees is too diffused and lacks sufficient economic support to withstand the larger and more powerful forces that compel the adoption of a renewal scheme. The real answer might well be that the courts *would* not disturb renewal schemes, not that they *could* not.

Id. at 855 (emphasis in original); *cf.* Note, *supra*, note 45, at 866-67:

The governing statute provides that renewal shall not go forward in the absence of such relocation housing resources, but the low political and legal visibility of the site residents' interests renders it likely that this statutory mandate will not be enforced, except in cases of flagrant abuse.

See also *id.* at 890-95. For a more optimistic, although largely prospective and exhortative, view of the role of judicial review, see Tondro, *supra* note 51, at 225-27.

²¹⁴ See *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 418-37 (statement of S. Wolinsky). The author of this article also serves as the community-appointed representative on the relocation appeals board established by Judge Weigel's order, see note 78, *supra*, and accompanying text, and has first-hand knowledge of the truth of this statement. See also, Note, *supra* note 45, at 892-93.

²¹⁵ Michelman, *supra* note 197 at 1255.

²¹⁶ *Cf.* McGee, *supra* note 51, at 894:

Courts faced with the proposition of dismantling or disrupting a plan painstakingly pieced together over months and years must inevitably opt for some middle ground, fashioning a remedy somehow consistent with execution of the plan The courts have limitations and are not likely to make the difficult choices that ultimately are determined by considerations of political and economic power.

Among the local agencies which administer the urban renewal program the emphasis is on renewing the city, not rehousing the poor. This is not surprising; the local agencies are pressured by banks, real estate interests, developers, mayors and downtown merchants to press on with developing the city and eradicating ugliness. Adequate rehousing of site residents is thus viewed not as an integral part of the renewal program, but rather as a statutory obstacle to be overcome in order to implement the program's other goals.

....

Relocation agencies have too little incentive to support the interests of relocatees whose needs conflict with those of the redevelopment plan as a whole; if they do seek to act in the best interests of the relocatees, and the redevelopment is unable to proceed according to schedule, they are likely to incur the wrath of the local political structure.²¹⁷

Similar conclusions have been reached in other comprehensive reviews of renewal and relocation administration.

It is increasingly clear that the LPA and the Relocation Assistance Administration [sic] (RAA) do not adequately represent the interests of relocatees but often compromise their interests with those whose political and economic futures and futures depend upon successful completion of the renewal projects. This often requires the subordination of relocation and low-income housing goals to other considerations.²¹⁸

The interests of relocatees are not always compatible with those of the business and civic leaders of the community. The leaders are interested in the increased tax base that results from a renewal project, in revitalization of the downtown business district to offset competition from suburban shopping centers, and in luring the middle class back into the cities. The goals are achieved by using the renewal land for just about any purpose except low-income housing; the more such

See also Franklin, *Expanding Relocation Responsibilities of Local Renewal Agencies*, 11 N.Y.L.F. 51, 70 (1965):

A court inclined to rule that the LPA's relocation planning is infeasible; that is, that the projections and assurances have no reasonable foundation, will find that the plaintiff . . . usually seeks to block the project completely, or at least that portion which affects him. Accordingly, an order directing the relocation planners to go back to the drawing boards will not satisfy him, and the court would be involving itself directly in the kind of review function which administrative agencies are far better equipped to handle.

²¹⁷ Note, *supra* note 45, at 866, 890. See also *id.* at 872: "Most of the LPA officials we talked with could not even accurately tell us how many of their relocatees were paying more for their new housing than they could afford."

²¹⁸ McGee, *supra* note 51, at 849.

housing is included in the renewal plan, the less land there is with which to satisfy the major objectives of these groups. . . .

....

This wholesale turnover of part of the renewal program to an agency compelled [sic] to adopt a biased view of the problem perhaps reflects the RAA's [Renewal Assistance Administration, HUD] response to pressures on itself. The LPA, not disgruntled relocatees, is the RAA's recurring "client" . . . [B]y identifying so strongly with one point of view, the RAA, in its supervision of relocation, has become yet another regulatory agency, now controlled by the very interests it was designed to regulate.²¹⁹

One study of the highway and Model Cities programs noted that "there appears to be a nation-wide trend by state highway departments to falsify certifications to the federal highway officials of the existence of adequate housing for those displaced by highway construction. . . . State highway officials are giving totally inaccurate certifications of relocation housing to the federal government in order to gain approval of their projects, and federal highway officials are accepting the states' representations."²²⁰ Another authoritative review of the subject concluded:

That evidence supporting relocation planning is often inadequate is a consensus view among outside observers of the urban renewal program

....

. . . The difficulty of accurately estimating the extent and quality of future housing resources cannot be overestimated . . . However, one could ask for more honesty in the planning process. If federal requirements are impossible to fulfill, that fact should be admitted. All too often, statistics are generated that may have little relation to an unknown reality, and then are submitted as accurate.²²¹

The LPA's own commitments and the impossibility of carrying out adequate relocation in the present housing market have turned local administrators into "jugglers of statistics" and have produced "misstatements of fact rare in the annals of officials reporting."²²² A former

²¹⁹ Tondro, *supra* note 51, at 198-99. Tondro goes on to describe the ways in which LPA is allied with the local power structure and the consequent inability of low-income groups to participate in the planning process. *Id.* at 198-200.

²²⁰ Charles M. Sevilla, *supra* note 197, at 88, 99.

²²¹ Note, 21 STAN. L. REV., *supra* note 51, at 843, 848. For a further discussion of the problems of finding housing resources, see Note, *supra* note 45, at 881-82.

²²² C. ABRAMS, *supra* note 1, at 135, 136.

HUD Regional Office staff member concluded that "without doing the LPA's an injustice, I think it would be fair to say that often times the figures are manipulated to 'balance' the needs and resources so that the form will reflect no discrepancies."²²³ The Madison and Detroit studies discussed above both report distortion of local statistics to present a more positive picture. Local agencies will often use "compromised standards" to create a positive statistical picture. The Springfield study cited above noted:

A local government seeking to secure eligibility for federal subsidy may be tempted to invoke very rigid housing standards for an area it wishes to subject to the bulldozer. The same local government may inconsistently apply more permissive standards to the subsequent dwellings of relocatees to advance the spurious claim that urban renewal has benefited the poor, who are now allegedly living amid superior surroundings.²²⁴

A *Harvard Law Review* note observes:

[M]any of those we interviewed, including both community leaders and relocation officials, had strong doubts concerning the value of the standard being applied. Temporary repairs apparently can enable housing to pass inspection even where the building will almost inevitably decay and become dangerous within a few months.

At least part of the problem of physically inadequate rehousing is caused by the LPA's housing inspectors. Many of the inspectors are, as at least one relocation official characterized them, "landlord oriented." Many come from real estate backgrounds; they sympathize with the

²²³ Robert Engler, Information and Decision-Making vis a vis the Relocation Process in the Title 1 Urban Renewal Program, as viewed within the HUD Regional Office, 1969 (unpublished paper at Massachusetts Institute of Technology Department of Urban Studies and Planning); see 1 NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT HANDBOOK ON HOUSING LAW, *supra* note 6, ch. III, pt. 1, at 84:

The sorry state of relocation planning is most clearly indicated by the following remarkable statement, contained in HUD Regional Circular 907 (at 3), and addressed to federal officials reviewing relocation plans: "Generally data which do not add up to the totals . . . or which do not square with generally known relationships, will have impaired credibility."

The Law Project catalogued many techniques and manipulations used by LPA's in "relocation planning," including use of inaccurate or obsolete data, failure to consider displacement by other agencies, use of unsupportable assumptions concerning the availability of public housing as a relocation resource, misuse of the turnover concept, misuse of assurances about proposed construction which prove unworkable and inadequate phasing. *Id.* at 84-91.

²²⁴ SPRINGFIELD STUDY, *supra* note 156, at 1259. See also the extensive documentation of double standards and other abuses in E. CAHN, *supra* note 6, at 1-14.

owners and tend to overlook the now minor but potentially dangerous infraction whenever they can.²²⁵

Another study concluded:

A more fundamental reason for the misleading nature of the RAA's success figures is that they are based on data submitted by the LPA's and only spot checked, if checked at all, by the RAA. The LPA must submit a high percentage of relocation success to satisfy its contractual promise to the RAA that there is adequate relocation housing in the LPA's community.²²⁶

Local official data may be understating the degree of substandard relocation by very substantial margins.²²⁷ A HUD Regional Office review of agency relocation activities in Chicago revealed the shocking statistic that "approximately 30 percent of the families being relocated in the sample the team examined were not placed in homes meeting HUD standards." ²²⁸

As noted above, HUD, at both the regional and national levels, is subject to the same constraints and pressures, motivated by the same desires as the local public agency, and hence can and will offer little protection of relocatees' interests by intervening against the local agency. Robert Engler writes:

The major problem . . . is that HUD depends on the LPA to provide the appropriate information on relocatees' needs and demands, to develop the means of meeting those needs with rehousing programs, to implement the policies which they have designed to protect the rights of the relocatees, and then to evaluate whether they did a successful job. The situation in itself is designed to fail, and with the manpower problems and political pressures (among other things) which HUD faces, adequate protection for those to be displaced from urban renewal has become largely mythical.²²⁹

²²⁵ Note, *supra* note 45, at 883.

²²⁶ Tondro, *supra* note 51, at 194. Tondro refers to the statutory requirement for decent, safe, and sanitary relocation dwellings as "the myth of relocation success." *Id.* at 191.

²²⁷ The independently collected Center for Community Studies (Massachusetts General Hospital) data on the housing conditions of West End relocatees showed 25% relocated into structurally unsound housing, whereas official Boston Redevelopment Authority figures showed only 2% in substandard housing. See Hartman, *supra* note 5, at 280-81.

²²⁸ Memorandum, *supra* note 204.

²²⁹ R. Engler, Urban Renewal Relocatees: Section 105(c) of the Housing Act and the Future of the Title 1 Program, 1970 (unpublished paper at Massachusetts Institute of Technology Department of Urban Studies and Planning).

Testifying before Congress on S. 1, Edgar Cahn noted that: "HUD has almost no independent investigative capacity and has deliberately preferred to be dependent on the LPA's not only to develop the specific standards but also to provide the information necessary to determine in advance if those standards can be met. Thus, LPA's supply the information which HUD uses to evaluate the LPA's compliance with relocation standards."²³⁰ The *Harvard Law Review* study concluded:

Given its limited staff and budget, it is difficult for HUD to evaluate the statistics submitted to it in order to determine whether the statutory requirements are met. Rather than conduct detailed field investigations into the accuracy of the local agencies' sources and predictions, HUD generally has to be content with satisfying itself that the figures are internally consistent and consistent with other available data.²³¹

But inadequate staff is only part of the problem. The same review goes on to note:

One of the reasons HUD is presently ineffective is its political timidity, which would not be changed merely by increasing its staff and altering its procedures. HUD is subject to political pressure; both Congress and important mayors can exercise sufficient influence to dampen HUD's enthusiasm for curbing local agencies. Moreover, some site representatives are known to have no qualifications beyond their involvement in politics. These people tend to represent the same point of view as the LPA; they are "realists" who recognize the necessity of compromise. Unfortunately, the interests which are compromised tend to be those of unrepresented groups, such as relocatees.²³²

One possible avenue for true protection involves making relocation an independent function, separating it from the "positive" rebuilding func-

²³⁰ *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 382 (remarks of E. S. Cahn). But see text at notes 93-94 *supra*.

²³¹ Note, *supra* note 45, at 878; cf. HUD Regional Circular 907, *quoted in* Robert Engler, *supra* note 223.

²³² Note, *supra* note 45, at 896. HUD's recent retreat on the issue of suburban desegregation is but one example of this acquiescence to local interests. Another, more local illustration: in late 1969, the San Francisco Citizens' Emergency Task Force for a Workable Housing Policy presented to HUD an extensively documented and persuasive report on the city's housing crisis, which caused HUD to return as unacceptable the city's application for Workable Program recertification (see *The Shame of San Francisco: An Analysis of San Francisco's Housing Crisis and the Defects of San Francisco's Proposed Workable Program for Community Development* (1969)). Within a month, following an immediate trip to Washington by Mayor Joseph Alioto and key city officials, recertification was given, although no more than vague promises of reform were given by the city fathers.

tions of operating agencies, and making satisfaction of relocation requirements a precondition to continuing program operation. Such an approach would recognize honestly that relocation and the housing of low-income families is not a primary interest of renewal, highway, and related agencies²³³ and that they ought not be expected or required to take responsibility for this phase of operations. Creation of a centralized relocation agency is by itself no answer, since there is no reason to expect that such an agency will be independent of a city's other operating agencies and free from the same political pressures which relegate the interests of displacees to a secondary position.²³⁴ An independent relocation agency, to be effective, would have to be responsible primarily to the displacees, with full control over the relocation program, and powers to hold up subsequent construction phases on the site to be cleared. But this is a politically unlikely transfer of power. Short of this, one can only call for meaningful participation in the relocation planning and execution phases by displacees themselves and their advocates, an adequate grievance mechanism, and ongoing independent evaluation of relocation while the process itself is underway.

Meaningful citizen participation in all phases of the relocation process can help to prevent many abuses.²³⁵ Adequate technical assistance and funding for local groups is necessary to make this participation real. Such a procedure ideally would involve participation in the federal agency's review of relocation plans by all affected parties, such as Project Area Committees, citizen participation components of Model Cities areas, citizens groups established under the Workable Program, local CAP agencies, Legal Service programs, civic groups and community organi-

²³³ One index of the minor place that relocation claims in the total scheme of agencies' activities is the miniscule proportion of total funds devoted to relocation. In 1966 relocation payments comprised but 0.4% of gross urban renewal project costs. HUD, 1966 STATISTICAL YEARBOOK 403. Of HUD's total expenditures for 1968 (\$2.5 billion), less than 6% went for relocation. HUD, 1968 STATISTICAL YEARBOOK, RAA Table 18. Data presented in RAA Tables 16 and 17 (for a slightly different time period) indicate that less than a fifth of relocation expenditures—a little over 1% of HUD's total expenditures—was for residential, as opposed to business, relocation.

²³⁴ For example, in San Francisco, which has a Central Relocation Service, the Director of the Service is also relocation director for the Redevelopment Agency and the Services offices are located at the Redevelopment Agency.

²³⁵ The strategy for successful demolition in Boston and New York included keeping the inhabitants of the proposed clearance area in the dark as long as possible in order to minimize their certain opposition to a program that was committed to tearing down their homes and their neighborhoods.

L. KEYES, JR., *THE REHABILITATION PLANNING GAME* 5 (1969).

zations.²³⁶ The citizens group should have full access to all relevant information, including copies of all agency submissions. All interested parties should be permitted to submit comments to the federal agency for inclusion in its review process, and the agency's findings should be made available to all interested parties upon request.²³⁷ But it must be acknowledged that, even if full participation in the relocation process can enhance the possibility of decent rehousing, many groups will not want to be displaced at all, and rather than be coopted into the displacement process they will and should fight those plans which, often unnecessarily or unfairly, will cause their removal. There is also a danger that community groups will become too closely identified with a project which is not to the community's benefit and will find themselves taking the blame for the project and its effects; there is no surer way to destroy good community organization.

A regularized grievance mechanism would also provide much simpler and quicker relief than is afforded by litigation. At present, neither HUD nor DOT has a procedure for handling relocation complaints:

HUD responses to letters of complaint are usually forthcoming only after the passage of much time. In a recent San Francisco challenge, after four months of utter silence, HUD still had not communicated with the citizen group raising the complaint. The project was being carried on, displacing hundreds of site residents under a relocation plan submitted many years earlier and never updated.

Responses, when finally received, rarely involve significant relief, even where clear violations of statutes and regulations occur. Accommodations usually occur only where compelled by strong political or publicity leverage. Since displacees ordinarily are poor and powerless, these occasions are rare indeed. . . .

Only rarely does HUD conduct any investigation at all. . . . Even in cases where HUD goes beyond a paper check, its investigation is

²³⁶ See Implementation of New Relocation Plan Review Provisions of the 1969 Act, in *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 451-54 (memorandum submitted by Kenneth F. Phillips). This memorandum also discusses the legal grounds for demanding citizen participation in relocation planning. *Id.* at 453-54.

²³⁷ Another approach to site resident participation, probably somewhat less realistic and effective, involves subjecting certain programs (those designed to benefit site residents) to approval or veto by relocatees, while subjecting others to detailed participation by a formal organization of relocatees with official status in the renewal process. Under this proposal HUD funds would be available to pay for the costs of building a neighborhood organization, including a staff and professional consultants. See Note, *supra* note 45, at 897-907.

usually conducted by the same officials who have worked with the city to prepare the challenged plan and have reviewed and approved it.²³⁸

A detailed proposal for a mandatory grievance mechanism to be established by each local taking agency or locality has been put forth by the Citizens Advocate Center.²³⁹ In brief it calls for:

- (a) full access to sufficient concrete, verifiable information to permit ready corroboration of complaints;
- (b) sanctions (individual and official) against local and federal officials who misrepresent essential facts about relocation;²⁴⁰
- (c) an independent investigative unit within the Executive Branch to test the validity of information presented in grant applications;
- (d) a speedy and efficient system for filing and processing complaints;
- (e) a flexible and wide-ranging set of remedies, ranging from reprimands and cash awards to temporary restraining orders.

Another proposal would establish an independent relocation review board, akin to a federal regulatory agency, with an investigative staff and powers to approve relocation plans and order projects halted if relocatees' rights are being violated.²⁴¹

Analysis and evaluation of relocation by groups or agencies without interest in the operation of the programs which require relocation would seem a *sine qua non* of any relocation process that pretends to success and objectivity. The structural limitations of official self-criticism are too obvious to warrant discussion. The results of the ten independent relocation studies summarized above, when compared with the super-positive reports from public agencies, is eloquent testimony to the need

²³⁸ *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 450-51 (testimony of Kenneth F. Phillips).

²³⁹ *Id.* at 386-87 (testimony of E. S. Cahn). The Yerba Buena relocation appeals board, *see* text at note 78 *supra*, may provide an alternative model, although residents of that area have been afforded little protection by the Board to date. In two of the three cases already brought before it, the Board, by majority vote, has allowed the Redevelopment Agency to bring eviction proceedings against the complainants. Residents and their organization, TOOR, have ceased bringing cases before the Board for the past few months.

²⁴⁰ On the average, 5 to 7 federal officials now regularly sign statements asserting that legal requirements have been fulfilled, when they are on actual or official notice that those requirements have not and could not be fulfilled. [citation omitted] Under oath such a statement would constitute perjury. Without an oath, it is certainly illegal misrepresentation. To HUD officials, it is just a bothersome 'sign off' procedure.

E. Cahn, T. Eichenberg, and R. Romberg, *supra* note 6, at 31.

²⁴¹ *See* Note, *supra* note 45, at 896-97.

for such independence. As Edgar Cahn noted before the House Committee on Public Works, "the single most useful, precise, carefully documented, fine grained analysis of the patterns of lawlessness [with respect to statutory relocation requirements] we have presented are to be found in the Reports to Congress by the Comptroller General of the United States and prepared by an arm of Congress, the General Accounting Office."²⁴² Paul Niebanck and Mark Yessian call for a performance audit of the relocation operation: "Operating along the same lines of the General Accounting Office in Washington, this audit should be carried out by an independent group, perhaps a government agency but preferably a private research group or university, and should be administered on a periodic basis to a sample of relocatees."²⁴³ The necessity of independent evaluation if accurate information is to be obtained in this area is so patent that failure of the Congress and government agencies to adopt such a procedure can only be regarded as a conscious effort to conceal the truth and avert criticism and possible adverse effects on the building of highways, redevelopment schemes, and other government projects.²⁴⁴

* * * * *

²⁴² *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 376 (testimony of E. Cahn).

²⁴³ P. NIEBANCK, *supra* note 1, at 102. He adds: "The auditing group should seek the relocatee's own reaction to such matters as the new environment, housing quality, and the cost of living, and should place great weight on each household's overall satisfaction with its postrelocation situation." *Id.*

The difficulties of finding a truly objective research unit in so thorny an area should not be underestimated. Government groups may not be free to evaluate candidly the work of sister agencies; universities are frequently themselves beneficiaries of and participants in public and private land-use dealings which involve substantial displacement; private consulting groups often are reluctant to offend future clients; and sensitivity to the needs and life-styles of displaced populations has not characterized most research groups in the past.

²⁴⁴ For a full description of the evasive practices "which surface only occasionally in an isolated complaint or a single court case," see *Hearings on Uniform Relocation Assistance and Land Acquisition Policies*, *supra* note 102, at 373-76 (testimony of E. Cahn).

The history of statutory relocation requirements—twenty years of them—is that they are ignored, they are evaded, they are not enforced. . . .

[L]et us be very candid, the Executive Branch—particularly HUD and DOT—have long engaged in, and knowingly tolerated, a pattern of pervasive evasion of statute after statute, congressional mandate after congressional mandate, and court case after court case.

The record leaves no room for doubt regarding relocation requirements. For the past twenty years there has been a pattern of official lawlessness on the part of the Federal government which must be arrested.

Id. at 371.

Is there then an answer to the relocation problem? The various writers on the subject have suggested judicial review, greater federal supervision of local and state agencies, grievance procedures, independent evaluations, and congressional action. The likelihood is that none of these will work, as none of them has worked. "Relocation" is a prototype issue of the powerless poor facing powerful interests, public and private, economic and political, in what amounts to a battle over turf. The land on which displacees live is "needed" for projects which those with power want to carry out, and those displaced will not get decent housing in decent neighborhoods at prices they can afford, any more than will the millions of other Americans who live in substandard conditions and are not being displaced. The resources—land and money—simply will not be made available, the many institutional barriers to housing the poor and those without white skins will not be pierced. Short of a major redistribution of power and resources in the society, the most that can be done is to describe fully the costs and benefits involved in relocation, analyze the way the system operates, and prevent official deception from becoming the accepted truth.

