

DISCRIMINATION AGAINST MINORITIES IN THE FEDERAL HOUSING PROGRAMS

In passing the Housing Act of 1949, Congress defined the policy of the United States to include the requirements of a decent home and a suitable living environment for every American family.¹ Low rent public housing and urban redevelopment are two of the major programs that have been authorized to implement this aim. Unfortunately, in some cases, the administration of these programs has resulted in discrimination against non-white minority groups living in blighted areas. The recent action of the United States Supreme Court, denying certiorari in a case involving discrimination against Negroes in a San Francisco, California, public housing project, has temporarily left many of the legal problems in this area unresolved.²

More than 15 million Americans live in substandard housing.³ Available data indicate that there is more substandard housing among the non-white than among the white population.⁴ Large-scale migrations of non-whites into industrial centers in the last decade have accentuated the housing difficulties of this group.⁵ As compared with whites, five times as many non-whites live in dilapidated urban homes, and twice as

1. 50 STAT. 888 (1937), as amended, 42 U.S.C. § 1401 (1952).

2. *Banks v. Housing Authority of City and County of San Francisco*, 120 Cal. App. 2d 1, 260 P.2d 668 (1953), *cert. denied*, 347 U.S. 974 (1954).

3. U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1955, at 787 (1955).

4. For general reviews of the non-white housing picture, which support this statement, see U.S.—HHFA, HOUSING OF THE NON-WHITE POPULATION, 1940 to 1950 (1952); S. Doc. No. 14, 82nd Cong., 2nd Sess. (1953). For reports on specific areas which reinforce these conclusions see ILLINOIS COMMISSION ON HUMAN RELATIONS, NON-WHITE HOUSING IN ILLINOIS (1953); Statement of New York State Committee on Discrimination in Housing in *Hearings Before the House Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess., pt. 1, 251-254 (1955); Statement of William Gray, representing the Committee on Democracy in Housing of the Philadelphia Fellowship Commission, *id.* at 531-534. See also Comment, *Race Discrimination in Housing*, 57 YALE L. J. 426, 427 (1948).

Most available statistical data report separate figures for white persons and all other persons. The latter are identified as non-white. Since Negroes comprise more than 95% of the non-white group, the data for non-white persons as a whole reflect predominantly the characteristics of Negro housing.

5. See AMERICAN FRIENDS SERVICE COMMITTEE, EQUAL OPPORTUNITY IN HOUSING—A NATIONAL STUDY (1955), reprinted in *Hearings Before the House Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess., pt. 1, 534-554 (1955); PHILADELPHIA HOUSING ASSOCIATION, FACTS ON HOUSING (1955), *id.* at 600.

many live in homes lacking basic facilities.⁶ Overcrowding in urban dwellings occupied by non-whites is four times as high.⁷ A generally lower economic standard of living complicates the problem of improving the housing position of non-whites.⁸

Low Rent Public Housing

The low rent public housing program seeks to alleviate these conditions for all groups by providing suitable units of rental housing for families whose incomes are so low that they cannot compete in the private housing market.⁹ The construction and administration of housing projects is in the hands of local authorities, authorized by appropriate state statutes, and operating under the supervision of the Federal Public Housing Administration.¹⁰ Through PHA, the federal government makes loans and annual contributions toward the cost of the local projects.¹¹ Eligibility for public housing is determined primarily by income.¹²

Since Congress voted down proposed amendments which would have expressly barred segregation in public housing,¹³ PHA has left de-

6. See the comments in *Hearings Before the House Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess., pt. 1, 539 (1955).

7. Statement of the American Council on Human Rights printed in *Hearings before the House Committee on Banking and Currency on Housing Amendments of 1953*, 83rd Cong., 1st Sess., 192-202 (1953).

8. U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1955, at 301 (1955).

9. The term "families of low income" is defined to mean "families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use." 50 STAT. 888 (1937), 42 U.S.C. § 1402 (2) (1952).

10. The Federal Public Housing Administration shall hereinafter be referred to as PHA. Housing authorities have been established pursuant to state law in 43 states, the District of Columbia, Alaska, Hawaii, Puerto Rico and the Virgin Islands. States without such legislation are: Iowa, Kansas, Oklahoma, Utah, and Wyoming. As of March 31, 1953, there were 887 authorities serving 1,228 localities. PRESIDENT'S ADVISORY COMMITTEE ON GOVERNMENT HOUSING POLICIES AND PROGRAMS, RECOMMENDATIONS ON GOVERNMENT HOUSING POLICIES AND PROGRAMS Appendix 3, Exhibit 6 (1953). The Indiana statute is typical. IND. ANN. STAT. §§ 48-8101-8128 (Burns 1950).

11. 50 STAT. 891 (1937), as amended, 42 U.S.C.A. § 1410 (Supp. 1955); 50 STAT. 893 (1937), as amended, 42 U.S.C. § 1411 (1952).

12. Public Housing units are available solely for families whose net income, less an exemption of \$100 for each minor member, does not exceed five times the annual rental of the dwellings to be furnished. 50 STAT. 888 (1937), as amended, 42 U.S.C. § 1402 (1) (1952). Among eligible applicants first preference is to be given to families displaced by public housing projects, slum clearance, or other public action. Among both displaced and non-displaced families, preference is given first to families of disabled veterans, second to deceased veterans' families, and third to families of other veterans and servicemen. 50 STAT. 891 (1937), as amended, 42 U.S.C. § 1410(g) (Supp. 1955).

13. It is difficult to determine from the available legislative history what Congress intends to be the effect of its continued rejection of nondiscrimination amendments to the public housing statute. When such an amendment was first introduced in 1949 Senators Thye and Taft both opposed it. They felt that the program was fairly ad-

cisions on segregation to local authorities, except for a requirement that equitable provision be made for all racial groups.¹⁴ Local authorities have been allowed to segregate whites and non-whites on the basis of a neighborhood pattern of occupancy.¹⁵ The local authority first makes a survey of blighted housing in the community to determine the ratio of whites to non-whites. This ratio is then applied to the total number of public housing units which the authority plans to build.¹⁶ Because it does not take into consideration the fact that non-white blighted housing is generally in a worse condition than that occupied by whites, the equity of the neighborhood pattern formula may be questioned.¹⁷

Prior to the recent United States Supreme Court opinion on segregation in the schools, the judicial reaction to the use of the neighborhood pattern had been mixed.¹⁸ One point of view was represented by a fed-

ministered and that, since the statute did not require discrimination, the administrator could operate the program fairly. See 95 CONG. REC. 4797 (1949).

There was considerable evidence that the nondiscrimination amendment was introduced at this time by opponents of public housing to secure the defeat of the legislation. This fact was alluded to by Senator Douglas, who led the floor discussion in opposition to the amendment. He pointed out that adoption of the amendment would mean defeat for the bill, and that non-white housing would, in the long run, benefit more from the adoption of the legislation without the amendment. *Id.* at 4851, 4856. He was also careful to point out that congressional rejection of the nondiscrimination amendment was intended as a postponement of a solution to the issue rather than condonation of segregation in public housing. *Id.* at 4855. In debate on a similar amendment in the House, comments similar to those of Senator Douglas were made by Representative Buchanan. *Id.* at 8657. However, in view of the political background to the nondiscrimination amendments at this time—the House amendment was introduced by one suspected of communist sympathies—not too much credence can be given to public expressions of legislative intent.

The legislative picture is further complicated by the action of the United States Supreme Court in denying certiorari in a California case which seemed to point the way toward the elimination of segregation in public housing. See the discussion in the text, *infra* at p. 504. In view of this decision, Senator Maybank moved to strike all provisions in the housing bill then being debated which pertained to public housing. He took the Supreme Court action to mean that segregation in public housing was outlawed. 100 CONG. REC. 7618 (1954). However, his amendment was rejected without further discussion. *Id.* at 7619. Query?

14. Low rent housing projects, "in order to be eligible for PHA assistance, must reflect equitable provision for eligible families of all races determined on the approximate volume and urgency of their respective needs for such housing." U.S.—PHA, LOW RENT HOUSING MANUAL § 102.1 (Feb. 21, 1951).

15. This is attested by the appearance of this approach in the public housing cases, apparently with PHA sanction.

16. Inequities necessarily arise while the projected housing program is being completed. A community usually decides that a proposed number of units shall be built. Actual building of the units is often contemplated over a long period of time. When a project is finished, it is designated as either white or non-white, temporarily distorting the occupancy ratio until another project can be completed for the other group.

17. In view of these considerations, perhaps the neighborhood pattern formula disregards the requirement of the Housing Act that "urgency of need" must be considered in the selection of tenants. 50 STAT. 895 (1937), 42 U.S.C. § 1415 (8) (c) (1952).

18. In *Jones v. City of Hamtramck*, 121 F.Supp. 123 (S.D. Mich. 1954), the only public housing project in the city was closed to Negroes. The court found a violation

eral district court in *Woodbridge v. Evansville Housing Authority*.¹⁹ In that case public housing had been projected in segregated units on approximately a 50-50 basis.²⁰ Non-whites had applied for and had been refused occupancy in a project designated for whites. The court held, under the equal protection clause of the United States Constitution, that segregation in public housing was unconstitutional²¹ and that *Plessey v. Ferguson*,²² and its doctrine of separate but equal facilities, had been overruled at least as applied to the ownership and occupancy of real property.²³ In *Banks v. Housing Authority of City and County of San Francisco*,²⁴ the California court, while not overruling *Plessey*, invalidated a neighborhood pattern of occupancy on similar constitutional grounds. The *Banks* decision was considered by the United States Su-

of the federal constitution in the absolute denial of equal facilities anywhere in the community.

19. Civil No. 618; S.D. Ind., 1953.

20. A survey of the community had shown that the number of whites in substandard housing outnumbered by non-whites was generally in worse condition.

21. The court also concluded that the right to lease property was protected under the Civil Rights Statute, 14 STAT. 27 (1866), 8 U.S.C. § 42 (1943), which provides as follows:

"All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." However, another federal district court has refused to so interpret this statute. *Heyward v. Public Housing Administration*, 135 F. Supp. 217 (S.D. Ga. 1955). The constitutionality of this provision has never been tested. See *United States v. Morris*, 125 Fed. 322 (E.D. Ark. 1903).

With the Evansville case compare *Taylor v. Leonard*, 30 N.J. Super. 116, 103 A.2d 632 (1954). Segregation within a housing project was held to be in violation of the state constitution and the public housing enabling act, both of which prohibited racial discrimination. Without discussion, the court held that the due process clause of the federal constitution had also been violated.

22. 163 U.S. 537 (1896).

23. This holding appears to be a justified inference from the restrictive covenants and related cases, which definitely imply that, at least as to housing, no legal impediment predicated on race is to be placed in the way of ownership and occupancy. In *Shelley v. Kraemer*, 334 U.S. 1, 20, 21 (1948), the leading restrictive covenants case, the court held that covenants restricting the sale of land to whites would not be enforced in the courts. See also *Buchanan v. Worley*, 245 U.S. 60 (1917); *City of Birmingham v. Monk*, 185 F.2d 859 (5th Cir. 1950), *cert. denied*, 341 U.S. 940 (1951) (zoning ordinances requiring segregation held unconstitutional). Some of these cases were relied upon by the California court which struck down the selection of tenants for public housing projects under a neighborhood pattern formula. See note 24, *infra*. Cf. *Barrows v. Jackson*, 346 U.S. 249 (1953) (award by state court of damages against covenantor for breach of the restrictive covenant constituted state action and deprived non-white of equal protection).

24. 120 Cal. App.2d 1, 260 P.2d 668 (1953), *cert. denied*, 347 U.S. 974 (1954). Noted, 8 MIAMI L. J. 640 (1954), 15 U. PITT. L. REV. 373 (1954). This case held that the housing authority could not apply a neighborhood racial pattern based on 70% occupancy by whites and 30% by non-whites. The basis for the court's conclusions is not too clear. While it discussed the separate but equal facilities cases at length, their application to the public housing situation would seem to compel a different result. The facilities provided each group are purportedly met by adherence to the neighborhood pattern formula.

preme Court at the same time that it had before it the school segregation case in which *Plessey* was specifically overruled as applied to education.²⁵ For this reason, the denial of certiorari in the *Banks* case compels more than the usual speculation. Perhaps the Court felt that the answer was so clear, in view of the school case, that consideration of the same issue in housing was not necessary. The view has also been advanced that, under the customary interpretation of a denial of certiorari, the Supreme Court stands uncommitted on the issue of segregation in public housing.²⁶ Indeed, two cases decided prior,²⁷ and one decided subsequent²⁸ to this recent Supreme Court action have held segregation in public housing constitutional under a literal application of the separate but equal rule.

It is to be hoped that those judicial decisions which have invalidated segregation in public housing will compel a more enlightened administrative policy on both federal and local levels. In a few instances, statutes and ordinances have been adopted prohibiting segregation; this method of bringing about favorable administrative action locally commends itself.²⁹ Integration of occupancy in public housing has, in some instances, diminished antagonisms between racial groups, and has been found to have beneficial effects on interracial relations in the rest of the commu-

25. *Brown v. Board of Education*, 347 U.S. 483 (1954).

26. See the Address by Charles Abrams, 23rd Annual Meeting of the National Housing Conference, June 7, 1954, on File in Indiana University Law Library.

27. In *Favors v. Randall*, 40 F. Supp. 743 (E.D. Pa. 1941), the court held that the neighborhood pattern provided a reasonable plan for occupancy. It found that "proper segregation" and "equal facilities" met the test of the fourteenth amendment. This case antedates the restrictive covenants cases. In *Miers v. Housing Authority*, 266 S.W.2d 487 (Tex. Civ. App. 1954), the Texas court found that the separate units "are alike and are equally well located." 266 S.W.2d at 490. Segregation in public housing in Savannah, Georgia, was upheld in an apparently unreported case before a federal judge in the District of Columbia, AMERICAN JEWISH CONGRESS, CIVIL RIGHTS IN THE UNITED STATES, 1953, at 108 (1954).

In *Kankakee Housing Authority v. Spurlock*, 3 Ill.2d 277, 120 N.E.2d 561 (1954), decided subsequent to the denial of certiorari in the *Banks* case, the Illinois court refused to consider the constitutional question raised on the ground that the authority's plans did not show an official decision that race segregation would be compelled. This conclusion, however, appears to be a rather strained interpretation of the facts.

28. *Heyward v. Public Housing Administration*, 135 F. Supp. 217 (S.D. Ga. 1955). There was no reference to the *Banks* litigation. In *West v. Housing Authority*, 211 Ga. 133, 84 S.E.2d 30 (1954), the court held that the question of discrimination had not been properly raised.

29. For typical statutes see CONN. GEN. STAT. § 3257d (Supp. 1955); MASS. ANN. LAWS c. 121, § 26FF (Supp. 1955); WIS. STAT. § 66.40(2m) (1955). For the texts and citations to municipal ordinances and resolutions, as well as state statutes, requiring open occupancy in public housing see U.S.—PHA, OPEN OCCUPANCY IN PUBLIC HOUSING (1952). See also U.S.—PHA, NON-DISCRIMINATION CLAUSES IN REGARD TO PUBLIC HOUSING (1952). See also U.S.—HHFA NON-DISCRIMINATION CLAUSES IN REGARD TO PUBLIC HOUSING AND URBAN REDEVELOPMENT UNDERTAKINGS (1953), as supplemented to January, 1954. As for the constitutionality of such provisions, see note 64, *infra*.

nity.³⁰ Where there has been a failure to integrate, the traditional antipathies have continued.³¹

Urban Redevelopment

Closely related to public housing is the urban redevelopment program³² under which federal loans and grants are made available to clear blighted residential areas for redevelopment. State enabling acts place the actual work of slum clearance and demolition in the hands of local authorities operating under the supervision of the Urban Renewal Administration.³³ Cleared areas may be redeveloped for residential or non-residential uses; private enterprise has the first opportunity to undertake this work.³⁴ Relocating the families displaced is the difficult problem of the redevelopment program.

When blighted residential areas are to be cleared, the federal act provides that no contract for federal financial aid shall be executed unless the families displaced from the slum area are properly relocated. The

30. For a study of integrated public housing reaching these conclusions see DEUTSCH & COLLINS, *INTERRACIAL HOUSING, A PSYCHOLOGICAL STUDY OF A SOCIAL EXPERIMENT* (1951). The authors feel that a reasonable balance should be maintained between the number of white and Negro occupants in any given project. Perhaps an informal quota system might even have desirable effects.

In this connection, the recent case of *Taylor v. Leonard*, 30 N.J. Super. 116, 103 A.2d 632 (1954), where the setting aside of a segregated section of a particular project for Negroes based on their proportion to the total city population was enjoined. Use of the quota system was held to be invalid and unconstitutional for the reasons outlined in the discussion of this case in Note 21, *supra*. The Mayor of Philadelphia has stated that, based on local experience, it is impossible to maintain non-segregated units if the project is more than 50% non-white. Statement of Joseph S. Clark, Jr. in *Hearings Before the House Committee on Banking and Currency on the Housing Amendments of 1955*, 84th Cong., 1st Sess. 174 (1955).

31. Integration has not always been successful. In Chicago, Illinois, 360 policemen were once assigned to permanent duty at Trumbull Park Homes, a public housing project where eight of the 466 families are Negroes. The detail of police was necessitated by the continuance of sporadic violence resulting from the introduction of Negroes into the project. See N.Y. Times, July 25, 1954, § 1, p. 50, col. 3. See ABRAMS, *The Segregation Threat in Housing*, in STRAUSS, *TWO-THIRDS OF A NATION*, 210, 227 (1952).

32. The federal statute makes loans and grants available to localities for projects in an "urban renewal" area, which is defined as "a slum area or a blighted, deteriorated or deteriorating area." The program undertaken by the locality in such an area may involve slum clearance and redevelopment, or rehabilitation, or conservation. 63 STAT. 380 (1949), as amended, 42 U.S.C.A. § 1460(c) (Supp. 1955). This article will deal with redevelopment alone, although under the statute redevelopment is now really but a phase of urban renewal.

33. See ADMINISTRATOR'S REORGANIZATION ORDER #1 (December 23, 1954). The functions of the Urban Renewal Administration are described in U.S.—GSA, *UNITED STATES GOVERNMENT ORGANIZATION MANUAL* 1955-56, at 431 (1955).

34. For definitions of permissible urban redevelopment projects see 63 STAT. 380 (1949), as amended, 42 U.S.C.A. § 1460(c) (Supp. 1955). The statute provides that private enterprise is to have the "maximum opportunity, consistent with the sound needs of the locality as a whole," to carry out the redevelopment project after the land is cleared. 63 STAT. 416 (1949), as amended, 42 U.S.C. § 1455(a) (Supp. 1955).

families must be placed in an area "not generally less desirable in regard to public utilities and public and commercial facilities." Rents and prices in the new location must be within the financial means of the families and the dwellings must be "decent, safe, and sanitary" and reasonably accessible to their places of employment.³⁵

Discrimination has been practiced in the administration of this program on the local level. Federal administrative regulations interpreting the federal statutory relocation requirements add little to the statute in the way of more specific policies which might prevent discrimination.³⁶ What appears to be the most recent federal pronouncement authorizes the transference of the neighborhood pattern of occupancy formula to new housing in a redevelopment area.³⁷ The federal agency considers the requirements of the federal statute to have been met in any case in which a family relocates "voluntarily."³⁸

35. 63 STAT. 416 (1949), as amended, 42 U.S.C. § 1455(c) (Supp. 1955). Additional importance was attached to the necessity for adequate relocation by congressional adoption in 1954 of the requirement that every locality, as a prerequisite for federal aid for redevelopment, have approved by the federal agency a "workable program" for the elimination and prevention of urban blight. 63 STAT. 414 (1949), as amended, 42 U.S.C.A. § 1451(c) (Supp. 1955). This provision has been interpreted administratively to require in part an adequate program of relocation, and therefore is cumulative of the statutory provision. U.S.—HHFA, SLUM CLEARANCE AND URBAN REDEVELOPMENT PROGRAM, MANUAL OF POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES, Part 2, Chapter 6, § 1, 2; Part 3, Chapter 4, § 6.

Furthermore, relocation provisions are found in some state statutes authorizing urban redevelopment, *E.g.*, ARK. STAT. ANN. § 19-2059 (1947); CONN. GEN. STAT. § 484d (Supp. 1955); DEL. CODE ANN. tit. 31 § 4523 (1953); MASS. ANN. LAWS c. 121, § 26LL(c) (1949); MICH. STAT. ANN. § 5.3058(4) (3g) (1949); MO. ANN. STAT. § 99.420(11) (Supp. 1955); N.C. GEN. STAT. c. 160, § 463(b) (9) (1952). Communities participating in the federal program must of course comply with the relocation provisions of the federal law even in the absence of a local statute.

36. See U.S.—HHFA, SLUM CLEARANCE AND URBAN REDEVELOPMENT PROGRAM, MANUAL OF POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES, Part 2, Chapter 6, § 4. Special note is taken of the problems of non-whites.

37. The directive authorizing use of the neighborhood pattern is "Procedures which have been Developed in Carrying Out (1) The Slum Clearance and Community Redevelopment Program and (2) The Low Rent Public Housing Program to Assure that such Programs will not Result in Decreasing the Total Living Space Available in any Community to Negro or Other Racial Minority Families," issued as U.S.—HHFA, L.P.A. Letter No. 16 (1953), on file in Indiana University Law Library. This letter adds that an off-site redevelopment plan must, in certain cases, receive the approval of representative local Negro leadership. Even though issued before the Urban Renewal Administration was established, this letter is still in effect. Letter from C. E. Herdt, Director, Relocation Branch, U.S.—HHFA, to the *Indiana Law Journal*, March 29, 1956, on file in Indiana University Law Library.

38. U.S.—HHFA, SLUM CLEARANCE AND URBAN REDEVELOPMENT PROGRAM, MANUAL OF POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES, Part 3, Chapter 4, § 5. If the unit is not "decent, safe, and sanitary" the local agency is to offer further assistance, but the probability of another move by the family would seem to be in doubt in the ordinary case. The manual recognizes that some families will disappear and cannot be traced. Some "voluntary" relocation is inevitable, and the agency regulation cannot be criticized on that score. The point is that the nature of the housing market will mean that many voluntary relocations will be to substandard housing.

Insofar as effecting equitable treatment of all races, these policies in practice will probably result in an inadequate relocation program. By far, the majority of the families displaced from urban redevelopment sites are non-whites.³⁹ Some, if not all of the non-whites presently living in these areas will be forced to find new accommodations outside. If the area is to be redeveloped for commercial or industrial uses no housing will be provided on the project site. Even if the cleared area is to be redeveloped in whole or in part for housing uses, population density will be reduced.⁴⁰ Housing that is provided may not be available to the non-white because of excessive cost⁴¹ and because of racial restrictions imposed under the permitted neighborhood plan formula.

When non-white slum-dwellers look elsewhere, they will find that their housing need cannot be met in the terms set forth by the federal statute. Their incomes, even though low, may disqualify them for public housing,⁴² and because of cost and segregation⁴³ factors, the private housing available to them may be as inadequate as that they have just left. If they are eligible for public housing, they may find that an inadequate number of public housing units is available for persons in their eco-

39. In 44 projects approved at the end of March, 1954, 69.9% of the families being relocated from project areas were non-whites. U.S.—HHFA, RELOCATION OF FAMILIES 3 (1954).

40. A survey of the first redevelopment area in Indianapolis showed that while 339 families moved out of the area only 162 moved in after replacement of demolished housing. Though 206 families had yet to be relocated at the time of the survey the total reduction of density was from 545 to 398. COMMUNITY SURVEYS, INC., REDEVELOPMENT: SOME HUMAN GAINS AND LOSSES 4, 5 (1956).

41. Of the 545 families originally living in the first Indianapolis project area only five have moved into replacement housing. Even though the new owner-occupied homes in the area are "self-help" homes, the survey concluded that such homes were for the few. The rental housing constructed in the area is considered to be available only to those socially and economically in the top rank of the former inhabitants. The survey states, "Most of the people . . . could not afford to make such a great improvement in their living conditions." *Id.* at 115-124.

42. In 99 projects approved by 1949 only 28,501 of 55,030 families had income low enough to make them eligible for public housing. PRESIDENT'S ADVISORY COMMITTEE ON GOVERNMENT HOUSING POLICIES AND PROGRAMS, RECOMMENDATIONS ON GOVERNMENT HOUSING POLICIES AND PROGRAMS 186 (1953). In 1955, 23,443 of 51,683 families in project areas were ineligible for public housing. *Hearings before the House Committee on Banking and Currency on the Housing Amendments of 1955*, 84th Cong., 1st Sess. 43 (1955).

43. For a discussion of the segregation problem see notes 66-68, *infra*. For a discussion of the cost problems facing low income groups not eligible for public housing, see Senate Committee on Banking and Currency, Subcommittee on Housing and Rents, *Housing for Middle Income Families*, 81st Cong., 2nd Sess. 14-17 (1950). The report indicated that the median monthly housing cost for a middle income family or two or more persons in an urban area should be \$69.00. Statistics then indicated, however, that families in this group which purchased homes insured by the Federal Housing Administration were having to undertake a total monthly housing cost of \$83.00 per month. But the house available at this price was often too small for the average family.

By 1954, the situation was little changed. The increase in disposable personal income by this date would indicate a monthly housing cost of \$75.90. See U.S. DEPARTMENT OF

nomic situation.⁴⁴ Segregation policies in public housing may further aggravate this situation.

Confirmation of this prognosis may be found by examining relocation problems in those projects which have reached the demolition point. The experiences of the Indianapolis Redevelopment Commission in its first major redevelopment project are typical. The Indianapolis Commission does not operate under the provisions of the federal statute, and the enabling act⁴⁵ from which it derives its powers contains a relocation provision which is much less specific than that of the federal law.⁴⁶ The Commission has, however, attempted to relocate displaced families to better housing. It has not always been successful in so doing.⁴⁷ This partial failure is undoubtedly due to the fact that most of the families involved were non-whites.⁴⁸

As expected, redevelopment reduced the density of the population

COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1955, at 289, Table 342 (1955). However, 66% of the apartments available under the FHA multiple dwelling program in this year were to rent for \$80.00 or more, while 81% had two bedrooms or less. See 8 HHFA ANN. REP. 185-191, 245-261 (1955).

Using the standard of 25% of income for housing, a monthly housing cost of \$80 requires a monthly income of \$320. However, 62% of the non-white population have incomes lower than \$2,500 per year and only 8% have incomes over \$5,000. See note 8, *supra*. See also Hauser & Jaffe, *The Extent of the Housing Shortage*, 12 LAW AND CONTEMP. PROB. 3 (1947).

44. Dr. William L. C. Wheaton, consultant for the National Housing Conference, has estimated that 300,000 low-rent housing units are needed each year to meet the needs of the low income groups. He states that this need is not being met by the private building industry. *Hearings Before the Senate Committee on Banking and Currency on the Discussion of Federal Housing Programs*, 84th Cong., 1st Sess. 56 (1955). However, Congress has authorized the annual construction of only 45,000 or less new units in recent years. Cf. 50 STAT. 891 (1937), as amended, 42 U.S.C.A. § 1410(i) (Supp. 1955).

It has been estimated that public housing can take care of 20 to 35% of people that have to be relocated. Meltzer, *Relocation of Families Displaced in Urban Redevelopment: Experience in Chicago*, in *URBAN REDEVELOPMENT: PROBLEMS AND PRACTICES* 431 (Woodbury ed. 1953). Because of the comparatively inferior supply of non-white housing, relocation of non-whites displaced from redeveloped areas, even when carried out effectively, will only reduce the limited amount of good housing available to other non-whites who need it. For an article analyzing the difficulties in relocating Negroes displaced from urban redevelopment projects, which supports the conclusions presented in the text, see Nesbitt, *Relocating Negroes from Urban Slum Clearance Sites*, 25 LAND ECONOMICS 275 (1949).

45. IND. ANN. STAT. § 48-8501-8527 (Burns 1950). This statute applies only to first class cities. Another has been enacted for other cities and towns. IND. ANN. STAT. § 48-8541-8567 (Burns Supp. 1955).

46. The Indiana statute states that in determining the location and extent of an area proposed for redevelopment the commissioners "shall give consideration to transitional and permanent provisions for adequate housing for the residents of such area who will be displaced by the redevelopment project." IND. ANN. STAT. § 48-8513 (Burns 1950).

47. COMMUNITY SURVEYS, INC., *REDEVELOPMENT: SOME HUMAN GAINS AND LOSSES* (1956).

48. *Id.* at 16.

on the project site.⁴⁹ Many of those relocated did improve their housing status,⁵⁰ although frequently this was accomplished only by increasing housing costs beyond an amount that could be afforded.⁵¹ Some of those who left the area moved into housing equally undesirable.⁵² Many of those remaining in the area cannot relocate without financial assistance.⁵³ Due to the limited amount of good non-white housing in the city,⁵⁴ relocation will become increasingly more difficult with each project. Information about relocation experience in other cities seems to confirm the Indianapolis findings.⁵⁵

49. See note 43, *supra*.

50. Though the relocated families encountered a greater number of negative experiences they emphasized their positive experiences. Of these families 1 in 6 went to an existing public housing project, 1 in 4 purchased homes, and 1 in 5 went to private rental property. Almost all agreed they were better off in their new locations. COMMUNITY SURVEYS, INC., REDEVELOPMENT: SOME HUMAN GAINS AND LOSSES 98-114 (1956).

51. Even the residents moving to public housing found their housing costs higher than in their old homes. Many have made great sacrifices to obtain private housing—some by using all their savings, others by putting all the members of the family (husband, wife, children and parents) to work. *Id.* at 79-81, 92, 93.

52. One in 10 of the families in the Indianapolis project area moved into other slums equally as bad. One-third of the families which have left the area could not be located and we may assume that many of these are similarly situated. *Id.* at 5, 29.

53. The 206 families remaining in the area have been grouped in three classes. In Class 1 are those who relocated in the area. Three moved into new self-help homes and 2 into new rental property in the redeveloped area. Class 2 consists of families able to leave but unwilling to lose the low rent. Some are saving to buy a home, some maintain a "squatter" attitude stating they will stay until forced out. Still others, especially older people, have a sentimental attachment to the neighborhood and their old ways.

Class 3 represents families who are unable to leave without some sort of financial assistance. Several suggestions have been made to give greater aid to these families to enable them to find and move into other quarters out of the slum area. *Id.* at 125-138, 32-42.

54. *Id.* at 29.

55. In Philadelphia, 45% of the families living in redevelopment areas are non-whites (48,841). Authorities there fear that, unless suitable housing is provided for these dislocated families, redevelopment may result in a total decrease in living space available to Philadelphia's non-whites. From 1946 to 1955, of 140,000 private housing units constructed, only 1,044 were available to non-whites. Thus, only about 2% of the displaced non-whites had new private housing available. In addition the cost of new housing averaged \$90 per month, and size was limited. Only 61 rental units had three bedrooms, and most of the houses built for sale to non-whites had only 60% of the floor space of the average white housing. PHILADELPHIA HOUSING ASSOCIATION, PHILADELPHIA'S NEGRO POPULATION, printed in *Hearings Before the House Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess., pt. 1, 554, 563-582 (1955).

A study in the New York City area found that 40% of the families displaced by slum clearance in one area, who are not eligible for public housing, have literally no place to go. In the Harlem and North Harlem project areas started in 1952, 1,400 Negro families have yet to be relocated. Many who have moved have gone into private housing worse than that from which they were forced to move. Similar experience has occurred throughout New York City, to such an extent that in some quarters urban renewal is called Negro clearance. Statement of the New York State Committee on Discrimination in Housing, *id.* at 251-254.

For accounts of earlier experiences of the same character see Haar, Book Review, 48 Nw. U. L. Rev. 790, n. 6 (1954); address by Alderman Robert E. Merriam, City

Judicial consideration of the problems involved in relocation has been limited. In only one opinion, decided by a New York trial court, have the relocation provisions of the federal act been considered. There is little merit in an argument that the federal statute confers no right to relocation on the inhabitants of the project area, and that it is therefore within the discretion of the federal and local administrative authorities to determine whether the terms of the statute had been met.⁵⁶

The federal relocation provisions, as administered, cannot be squared with the guarantees of the fourteenth amendment. If the redevelopment program is administered by local authorities to deny equal facilities to non-whites its execution would appear to be enjoined.⁵⁷ By condemning his home the local authority forces the non-white to look for other accommodations in a housing market in which the non-white housing supply is known to be inferior to that available to whites. Relatively inferior housing, forced upon a non-white by government action, is a denial of equal protection.

The possibilities for legal controls on this constitutional ground are presently limited. Although the courts might require that private housing to be built on a project site be operated in a nondiscriminatory manner, on-site private housing, even though the recipient of a government subsidy, must be considered sufficiently an arm of the state in order to be subject to the fourteenth amendment.⁵⁸ Even if it were decidedly a

Club of Chicago, October 26, 1953, on file in Indiana University Law Library, Indianapolis Division.

56. This was, however, the opinion of a New York trial court in *Hunter v. City of New York*, 121 N.Y.S.2d 841 (Sup. Ct. 1953). Plaintiffs had sought to enjoin the execution of a redevelopment program on the grounds that housing conditions in New York City made it impossible for the local agency to carry out proper relocation.

57. This principle is well-established. *People v. Van de Carr*, 199 U.S. 552 (1905). For an application of this principle to discrimination against Negroes in jury selection see *Ex parte Virginia*, 100 U.S. 339 (1880).

58. On this point the landmark case is *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 87 N.E.2d 541 (1949), *cert. denied*, 339 U.S. 981 (1950). This was an action to prevent defendant, a private New York housing corporation, from excluding Negroes from consideration as tenants of the corporation's project. Acting under statutory provisions designed to encourage slum clearance, the City of New York had entered into a cooperation agreement with the corporation under which it agreed, most importantly, to condemn the land necessary for the project and to grant a tax exemption. However, the full cost of construction and land acquisition was to be borne by the corporation. The aid rendered by the city was considered insufficient to make the corporation an arm of the state.

Whether private housing developments on project sites would fall in this category is problematical since, under the federal statute authorizing urban redevelopment, two-thirds of the cost of land acquisition is to be borne by government funds, part federal, part local. See 63 STAT. 416 (1949), as amended, 42 U.S.C. § 1455(a) (Supp. 1955).

Furthermore, a private redeveloper must enter into agreements with the local redevelopment authority respecting the use to which it can put the property. 63 STAT. 416 (1949), as amended, 42 U.S.C. § 1455(b) (Supp. 1955). Cf. 104 U. P. A. L. REV. 547 (1956).

state function, the separate but equal problem posed by the *Banks* case would again become crucial.

Congress, as indicated, has been reluctant to intervene with a positive requirement of nondiscrimination.⁵⁹ No suggestion seems to have been advanced that Congress provide for judicial review of the factual basis of administrative decisions taken under the federal relocation section. Such a provision should be helpful.⁶⁰ The effectiveness of state statutes is limited due to their local operation and to possible constitutional doubts, slight though they may be, regarding their impingement on the operation of a federal program.⁶¹ Immediately, then, only a fed-

59. See note 13, *supra*. Thus, in *Johnson v. Levitt & Sons*, 131 F. Supp. 114 (E.D. Pa. 1955), the court refused to compel the builder of a large housing project under FHA-VA auspices to sell to Negroes, and refused to enjoin the government from insuring his mortgages. It based its opinion on the failure of the federal statutes to prohibit discrimination in the operation of these programs, and on the point that the builder was not an arm of the government.

60. Such a provision finds precedent in United States Supreme Court cases holding that the Court is not bound by the findings of trial courts in cases involving claimed invasions of federal rights, but may make an independent examination of the facts. See the cases cited in the dissenting opinion of Mr. Justice Black in *Feiner v. New York*, 340 U.S. 315, 321 (1951). It has been suggested that the sanctions of the Sherman Anti-Trust Act be applied to sellers and lenders who discriminate against Negroes in the private housing field. Comment, *Application of the Sherman Act to Housing Segregation*, 63 YALE L. J. 1124 (1954).

61. The New York statute is typical. It prohibits discrimination of all types in any "publicly assisted housing accommodation" and authorizes appropriate equitable relief (together with an action for damages) to prevent such discrimination. N.Y. CIVIL RIGHTS LAW §§ 18-c, 18-d (Supp. 1955). The term "publicly assisted housing accommodation" is clearly defined to include any private housing constructed on a redevelopment project site. N.Y. CIVIL RIGHTS LAW § 18-b(3)(b) (Supp. 1955). Under a 1955 amendment the law also applies to any housing offered for private sale which is built under an FHA-insured mortgage, provided the housing is in a multiple dwelling or in a subdivision of ten or more units. N.Y. CIVIL RIGHTS LAW § 18-b(3)(e) (f) (Supp. 1955).

There is authority that a federal public housing project constructed by the federal government on federally-owned land is not subject to the provisions of a local ordinance relating to licenses, bonds, and inspections, *Oklahoma City v. Sanders*, 94 F.2d 323 (10th Cir. 1938); *accord*, *United States v. City of Philadelphia*, 56 F. Supp. 862 (E.D. Pa. 1944), *aff'd*, 147 F.2d 291 (3rd Cir.), *cert. denied*, 325 U.S. 870 (1945). These cases turned in part on the fact that the land on which the housing was being constructed had been ceded to the federal government and had become federal "territory." Any objection to the provisions of the New York law discussed above would have to turn on the fact that the state nondiscrimination provisions substantially impede the operation of the slum clearance subsidy and insurance operations of the federal agencies involved. On this point, the cases involving attempted state control of national banks may furnish convenient analogy. See *Easton v. Iowa*, 188 U.S. 220 (1903) (Iowa criminal statute penalizing fraudulent receipt of deposits held inapplicable to national banks). See, generally, Note, 15 SO. CALIF. L. REV. 247 (1942). Statutes like those in New York also apply to federally-aided public housing, which now is locally constructed and operated. There is some indication of congressional intent that the problem of discrimination in such projects is to be handled locally. See note 13, *supra*. It seems inconceivable, however, once the issue is raised, that a federal court would permit the FHA program to be conducted in a discriminatory manner. A private developer would probably not have standing to raise the issue and the federal agency probably never will.

eral executive order would be certain to secure the operation of this and other federal housing programs on a nondiscriminatory basis.⁶²

The most important limitation on the use of legal machinery lies in the nature of the problem involved. Adequate relocation of non-white families requires, fundamentally, a substantial change in the character of the private housing market for non-whites though to some extent the problem would be alleviated by a policy of open occupancy in public housing. Not only have non-whites often been confined to the older areas of the city, where not enough housing is available,⁶³ but only an infinitesimal portion of new housing seems to be offered to them.⁶⁴ Underwriting practices of the Federal Housing Administration, which insures mortgages on the construction and sale of residences, have tended to aggravate this situation.⁶⁵

62. The American Friends Service Committee has recommended a sweeping executive order providing that government housing benefits must be offered on a non-discriminatory basis. The order would apply to mortgages insured by FHA and VA (Veterans' Administration). *Hearings Before the Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess. 549 (1955).

63. The Philadelphia experience is illustrative of this point. Of their 2 million population, 400,000 are non-whites. Of 140,000 new housing units constructed in recent years only 1,000 have been available for non-white occupancy. The result is that even the relatively well-to-do are being confined to the congested areas, making the blight and slum problems worse by continued and increased overcrowding. Even the used homes of whites who have moved out are available only on the toughest mortgage terms to middle-income families who usually are unable to raise the large cash down-payment. Statement by Joseph S. Clark, Jr., Mayor of Philadelphia before *Hearings of the House Committee on Banking and Currency on Housing Amendments of 1955*, 84th Cong., 1st Sess. 157-167 (1955).

64. These conclusions are based on experience under the FHA program. From 1935 to 1950 almost 3 million housing units received FHA insurance. Of these only 2%, or 50,000 units were built for Negro occupancy. However, since half of this number was built for racially-designated defense housing, actually only 1% of the normal FHA operations were of benefit to the 10% of our population which is non-white. *Hearings Before the House Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess. 537, 538 (1955).

Thus, although the housing supply has improved in recent years, broad differentials in the housing supply still exist between whites and non-whites. U.S.—HHFA, *HOUSING OF THE NON-WHITE POPULATION, 1940 to 1950* (1952).

65. The question of race has not been ignored by the FHA in its underwriting policies. The FHA Underwriting Manual contains criteria for determining eligibility for FHA insurance benefits. Until 1945 this manual actually contained a model racial restrictive covenant and recommended that such covenants be included in all contracts of sale. It further warned against insuring property not protected against occupancy by inharmonious racial groups which the FHA felt would lessen the stability of a neighborhood. Actually, these requirements brought about governmentally a directed segregation which seems to fall within the ban of *Buchanan v. Worley*, 245 U.S. 60 (1917) (zoning ordinance requiring segregation held unconstitutional).

In 1947 the FHA Underwriting Manual was revised to eliminate the model restrictive covenant and most references to race. In 1950 a new requirement was included that the mortgagor and mortgagee must certify that they would not file for record any racial restrictions upon sale or occupancy of the mortgaged property. However, appraisals and valuations were still affected by racial patterns. An announcement in 1951 stated that thereafter all repossessed FHA housing would be administered on a non-

In recent years Congress and the federal housing agencies have taken steps to secure an improvement in the relocation of non-whites.⁶⁶ The "workable program" requirement had as one of its purposes the improvement of relocation efforts.⁶⁷ While the federal officials seem satisfied with the operation of this requirement,⁶⁸ it has been criticized for not having fulfilled its objectives in this area.⁶⁹

Congress, in 1954, added two sections to the FHA statute to facilitate the provision of private housing for persons displaced from a redevelopment project site. Under Section 220⁷⁰ of the FHA statute mortgage insurance is made available on more favorable terms for hous-

segregated basis. However, by 1954 only 1.4% of FHA insured mortgages had been foreclosed and thus this proviso has had little effect on the overall housing picture.

FHA publications issued in 1953 pointed out the sizable non-white housing market and called upon builders to fill the needs of these minorities. Successful Negro housing developments were also the subject of FHA articles. Furthermore, the encouragement of minority and open occupancy housing was outlined in a program of reorientation in 1954.

Regardless of the advances made by these pronouncements, the FHA has not positively banned racial discrimination. Even today the underwriting manual permits questions of race to be considered in appraisals by stating that the presence of incompatible groups tends to lessen the appeal of owner-occupancy in the neighborhood. Valuations are also affected by the homogenous character of the area. For a detailed history of this experience see *Hearings Before the House Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess., pt. 1, 545-546 (1955). Part of the problem, as indicated in this report, lies in the lack of mortgage money for Negro housing.

66. Because most of the persons displaced from project sites are Negroes, and because the economic status of non-whites is less favorable than that of whites, it has been recognized that the crucial problem in redevelopment is presented by this group. See, e.g., Statement of Albert M. Cole, HHFA Administrator, as reported in *The Washington Post*, January 19, 1954, p. 31, col. 4; *id.*, February 12, 1954, p. 14, col. 2.

67. The Senate Committee report on the housing amendments of 1954 indicates that the Congress was attentive to the relationship between adequate relocation and the workable program requirement and other provisions added to the statute in that year. See S. REP. NO. 1472, 83rd Cong., 2nd Sess. (1954), reprinted in U. S. Code Congressional and Administrative News 2723, 2762-2764 (1954).

68. HHFA Administrator, Albert M. Cole, stated "no need exists for changing the basic approaches taken" to accomplish the objectives of slum clearance and prevention. *Hearings Before the Committee on Banking and Currency on the Housing Amendments of 1955*, 84th Cong., 1st Sess. 6 (1955).

69. The New York State Committee on Discrimination in Housing has stated that the "workable program" requirement has been no more than promises and intentions, and that the programming of projects has continued on a piecemeal basis. *Hearings Before the House Committee on Banking and Currency on the Investigation of Housing*, 1955, 84th Cong., 1st Sess. 253 (1955).

70. 68 STAT. 596 (1954), as amended, 12 U.S.C.A. § 1715(k) (Supp. 1955). The provisions of this section are also applicable to the rehabilitation of dwellings in an area marked for renewal and rehabilitation by the locality. For a description of the program see S. REP. NO. 1472, 83rd Cong., 2nd Sess. (1954), reprinted in U.S. Code Congressional and Administrative News 2723, 2746 (1954). This insurance is referred to as "Section 220" insurance because this is the number of the section as related to the original Federal Housing Administration Act, as added by the 1954 amendment.

ing in the project area, while under Section 221⁷¹ equally favorable insurance is available for the construction or rehabilitation of housing elsewhere in the community. However, the maximum mortgage limits under these sections may be too low in view of building costs in urban areas.⁷² In fact, by May, 1955, no loans seem to have been made under either section.⁷³

Though urban redevelopment was primarily motivated by a desire to improve substandard housing, it should be evident that non-white housing may be worsened by the program as a result of the inability of local authorities to carry out effective relocation as prescribed by the federal statute. If this is to be avoided, additional measures to alter the present character of the private housing market for non-whites must be undertaken. Apart from the issue of segregation, sufficient quantities of adequate new and existing housing will have to be made available.

In view of the less favorable economic position of non-whites, measures to increase the availability of low cost housing will have a particularly beneficial effect on this group. Temporarily, more liberal financing and higher cost limits under Section 221,⁷⁴ or direct loans to self-help cooperatives which would be able to achieve economies in the construction of housing⁷⁵ would be desirable. A more permanent solu-

71. 68 STAT. 599 (1954), as amended, 12 U.S.C.A. § 1715(1) (Supp. 1955). The Senate Committee report acknowledges that, without some provision of this sort, many of those displaced from redevelopment projects would not be able to find decent housing because of their low incomes. S. REP. NO. 1472, 83rd Cong., 2nd Sess. (1954), reprinted in U.S. CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS 2723, 2748 (1954). On new housing occupied at the time of the loan 95% loans are permitted, with a maximum mortgage obligation of \$7,600 (\$8,600 in high-cost areas). On housing to be built, acquired, repaired, or rehabilitated for sale to an owner eligible for a § 221 mortgage 85% loans are permitted with a maximum mortgage obligation of \$6,800 (\$7,650 in high-cost areas). See the description of this program in 8 HHFA ANN. REP. 89, 90 (1954).

72. Mr. Harry Held, representing the National Association of Mutual Savings Banks, when asked whether any substantial number of homes could be built under the provisions of § 221, replied: "I doubt very much in and around urban centers . . . because of the high land costs." *Hearings Before the Senate Committee on Banking and Currency on the Housing Act of 1954*, 83rd Cong., 2nd Sess. 1551 (1954).

73. Housing Administrator Cole told the House Committee on Banking and Currency in 1955 that no loans had been granted under either § 220 or § 221. He stated that the reason is primarily that land previously acquired by sponsors had increased in value and that this prevented FHA insurance from being issued under these provisions. *Hearings Before the House Committee on Banking and Currency on Housing Amendments of 1955*, 84th Cong., 1st Sess. 97 (1955).

74. The original recommendations for this program carried comparable cost limits on housing to be insured, but recommended 100% loans. PRESIDENT'S ADVISORY COMMITTEE ON GOVERNMENT HOUSING POLICIES AND PROGRAMS, RECOMMENDATIONS ON GOVERNMENT HOUSING POLICIES AND PROGRAMS, 44, 45 (1953).

75. For a study of housing cooperatives, see U.S.—HHFA & DEPT. OF LABOR, HOUSING COOPERATIVES IN THE UNITED STATES (1951). Section 213 of the FHA statute provides for insurance on loans to housing cooperatives. 64 STAT. 54 (1950), as amended, 12 U.S.C.A. § 1715(e) (Supp. 1955). However, the program has not stimulated a significant amount of true owner-initiated cooperatives. For this reason, it

tion requires the achievement of substantial cost reductions in housing by the building industry, coupled with a general improvement in standards of living of non-whites and others in the lower economic groups.

Conclusion

The inadequacies of this nation's present housing supply brought forth the housing programs of the federal government. At least as to the non-white, these programs may well be self-defeating. In public housing, the use of the neighborhood pattern of occupancy formula merely ratifies the existing inequities in the present housing market in which there is a greater proportion of non-white substandard housing than white. This practice, together with an unfavorable private housing market for non-whites, seriously complicates the problem of relocation in urban redevelopment.

FEDERAL INCOME TAXATION OF SUBDIVIDED REALTY—THE IMPACT OF SECTION 1237 ON CAPITAL ASSET CHARACTERIZATION

The imposition of a federal income tax on gains from the sale of capital assets has created serious problems of categorization.¹ Because capital gains are taxed at a lower rate than ordinary income, courts have frequently been confronted with the difficulty of identifying a particular asset as capital or non-capital. During the last few decades an apparent

has been suggested that the federal government authorize a program under which direct loans can be made to housing cooperatives. See Recommendations of the National Housing Conference on Housing for Families of Middle Income in *Hearings Before the House Committee on Banking and Currency on Housing Amendments of 1955*, 84th Cong., 1st Sess. 330, 331 (1955).

1. Shortly after the adoption of the Sixteenth Amendment, the argument was advanced that gains from the sale of property were accretions in value and therefore not income. MORONEY AND MOSER, *CAPITAL GAINS AND LOSSES, FUNDAMENTALS OF FEDERAL TAXATION 1* (Practising Law Institute, Griswold and Warren eds. 1946). The Supreme Court, however, soon held that these profits were income and were taxable. *Merchants Loan and Trust Co. v. Smietanka*, 255 U.S. 509 (1921).

There has been more controversy over the capital gains issue than over any other single feature of the revenue system. TAX INSTITUTE, *CAPITAL GAINS TAXATION 1* (1946). American writers have differed widely in their views on the economic validity of the capital asset concept. See generally SELTZER, *THE NATURE AND TAX TREATMENT OF CAPITAL GAINS AND LOSSES* (1951); SIMONS, *FEDERAL TAX REFORM* (1950); TAX ADVISORY STAFF OF THE SECRETARY, UNITED STATES TREASURY DEPARTMENT, *FEDERAL INCOME TAX TREATMENT OF CAPITAL GAINS AND LOSSES* (1951); TAX INSTITUTE, *CAPITAL GAINS TAXATION* (1946); P. Miller, *The "Capital Asset" Concept: A Critique of Capital Gains Taxation*, 59 YALE L.J. 837 and 1057 (1950).