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In Search of a Just Public Housing Policy Post-Katrina

by Stacy E. Seicshnaydre

The post-Katrina New Orleans housing market, most agree, is characterized by a gross lack of affordable housing. But although our collective appreciation for affordable housing may have reached an all-time high, what has not changed is the collective resistance to having any of it, particularly near us. It might be tempting, given the magnitude of the current scarcity, to see Hurricane Katrina as the singular force behind the current affordable housing crisis. But it would be a mistake to fail to recognize the other, enduring forces that have worked to limit and segregate affordable housing throughout most of this century and the last. This fundamental contradiction in community interests—the acknowledged need for affordable ("workforce") housing versus the desire to keep it out of particular neighborhoods—has helped to ensure, since the creation of federally-assisted housing programs, that affordable housing would be limited, isolated and racially segregated.

Remedying Public Housing Segregation Post-Katrina

This historic segregation is exemplified by New Orleans' conventional public housing program. Virtually all of the over 5,000 households occupying public housing in New Orleans prior to Katrina were African-American. This segregation in public housing, advocates have argued, is not the result of random, free-market decision-making by public housing consumers, but rather is a vestige of government-sponsored policies and practices reinforced by discrimination in the private market.

Given the history of public housing in New Orleans, which mirrors that of the country generally, the question of how to use public housing to address the affordable housing crisis post-Katrina is particularly thorny. Whereas a fair housing approach to affordable housing development post-Katrina would seek to increase the housing choices of African Americans and avoid the historic isolation that has plagued public housing programs for decades, the current plan to demolish public housing in New Orleans and redevelop it into mixed-income housing will be years in the making. This extreme makeover will prolong, and arguably make permanent, the displacement of thousands of families who oc-

(Please turn to page 4)

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Oliver W. Hill and Irene W. Kirkaldy

We dedicate this issue of *P&R* to the life and good works of Oliver W. Hill and Irene W. Kirkaldy, important civil rights activists who died in August.

Hill, 100 at the time of his death, was a key member of the legal team (with Charles Hamilton Houston, Spottswood Robinson III and Thurgood Marshall) that won *Brown v. Board of Education*, the Supreme Court case that incorporated the earlier Virginia case (plus four others) for which he was a lead lawyer. After graduation from Howard Law School, he moved back to his native Richmond, where in 1948 he was the first Black person elected to the City Council in 50 years. Hill's life was devoted to civil rights, including voting rights and redlining issues—at one point, he had 75 civil rights cases pending, and is estimated to have won $50 million in better pay and infrastructure needs for the state's Black teachers and students during his career. In 1999, Pres. Clinton awarded him the Presidential Medal of Freedom, the nation's highest civilian honor.

Kirkaldy, as the *Wash. Post* Aug. 13 obituary noted, "quietly changed history in 1944"—11 years before Rosa Parks' similar act in Montgomery, AL—when she, a 27-year-old mother of 2, just recovering from a miscarriage and wanting a comfortable seat for her lengthy ride home to see a doctor, was jailed for refusing to give up her seat to a white couple on a crowded Greyhound bus, traveling from her home in Gloucester, VA to Baltimore. The landmark Supreme Court decision in her case (*Irene Morgan* [her name then] *v. Commonwealth of Virginia*), challenging Virginia's segregation laws for black passengers, outlawed as unconstitutional segregation in interstate transportation and sparked the first Freedom Ride in 1947, testing the decision (see "Freedom Riders," the lead article in the July/Aug. 2006 *P&R*, the précis of Raymond Arsenault's great history, *Freedom Riders: 1961 and the Struggle for Racial Justice* [Oxford Univ. Press].) In 2001, Pres. Clinton awarded her the Presidential Citizens Medal.

(HOUSING: Continued from page 3)

cupied public housing in New Orleans pre-Katrina and who have suffered most from the vestiges of government's great segregation experiment.

Perhaps what makes the road from segregated housing to mixed-income housing so rocky is the staggering loss in absolute numbers of affordable housing units along the way. The public housing redevelopment agenda is essentially a density-reduction, mixed-income, privately-managed housing agenda. If fewer units are built back onto the original public housing site, if a majority of these units are designated as market-rate units, and if the subsidized units are subject to restrictive eligibility criteria, the redeveloped public housing community can be made virtually unusable by its former residents.

The False Dichotomy

Despite the historic proportions of the displacement that Katrina has wrought and the temptation to treat the choices as unprecedented, the housing policy considerations that have arisen in the aftermath of the storm are eerily familiar. Much like in the early days of affordable housing development, we confront a false dichotomy that would have us choose between affordable housing that is supplied on a segregated basis or none at all.

False Option 1: Get the Segregated Housing Now

The notion that segregated public housing is the most expeditious and feasible form of federal housing assistance available is not new. Arnold Hirsch, in his incisive assessment of federal housing policy in the New Deal and Cold War eras (" 'Containment' on the Home Front," published in Vol. 26 of the *Journal of Urban History*-2000), describes the way in which members of Congress opposed to the massive New Deal public housing program used an anti-segregation amendment (the Bricker-Cain Amendment) to scuttle the legislation. Many New Deal-era, civil rights-minded legislators opted to save the public housing portion of the 1949 Housing Act by agreeing to help defeat the ban on segregation. The anti-segregation amendment failed.

Choosing between affordable housing supplied on a segregated basis or none at all is a false dichotomy.

The get-the-housing-now approach in the 1940s and 1950s helped facilitate the federal policy that has been dubbed "Negro containment"— referring to the operation of public housing for African-American residents solely in neighborhoods deemed appropriate for African Americans. This policy assumes, and in some ways concedes, private market and zoning barriers that deny African Americans neighborhood choice.

The get-the-housing-now mindset resurfaced when remedies were sought for racial segregation in federally-assisted housing programs in the 1970s, 1980s and 1990s. Elizabeth Julian and Michael Daniel (in their article "Separate and Unequal," published in Vol. 23 of *Clearinghouse Review*—1989) made the following characterization of this pernicious argument:

> Racial segregation in publicly funded low-income housing is an evil, but, given the vast number of low-income African-Americans who do not even have the benefits of segregated public housing, our efforts should be expended on increasing the total amount of subsidized housing available and ensuring that African-Americans receive at least their proportional share of that housing. Once we get the housing, we will deal with the discrimination.

Julian and Daniel point out that, rather than faring better under the get-the-housing-now approach, African Americans arguably fare worse, because segregation permits vast racial disparities in the quality and quantity of housing, services and facilities. Consider, for example, the way in which federal housing programs have largely "locked" families of color in the urban core while government mortgage subsidies have increased the housing mobility and homeownership levels of white middle-class Americans.

The get-the-housing-now arguments resound in post-Katrina New Orleans, most vividly demonstrated by the filing of a federal class action (*Anderson v. Jackson*) seeking to reopen public housing to those who occupied it before the storm. What is most urgent about the argument is the fear that if segregated public housing is lost, then no other housing in New Orleans will take its place. People then will lose not only their housing, but their right to return home. Being essentially blocked from returning to one's roots or home community is possibly the greatest deprivation of "choice"—ar-

Witt Internship

We are still accepting applications for PRRAC's 2007 Edith Witt Internship grant, "to help develop a new generation of community activists." The fund, established by her family, friends and co-workers, honors the memory of a wonderful human rights activist in San Francisco. To apply: send or email (to Chester Hartman at PRRAC, chartman@prrac.org) a letter from the sponsoring organization, describing the organization's mission and outlining the work to be done by the Edith Witt Intern; and a personal statement (250-500 words) from the proposed intern and her/his resume. Pass the word to relevant grassroots groups.

guably a first principle among fair housing advocates.

False Option 2: Redevelopment as Blight Removal

If we reject the status quo of segregation in our public housing developments, the fallacy goes, then our only other alternative is to adopt a redevelopment strategy that severely limits, if not virtually eliminates, affordable housing as we know it. This 21st century public housing redevelopment agenda has been focused on removing blight and attracting market-rate tenants to formerly blighted neighborhoods. Any benefits that trickle down to the few former residents who are able to reoccupy these developments are, as we say in New Orleans, pure *lagniappe*. Never mind that the public subsidies allocated to these redevelopment programs are pitched as primarily benefiting low-income individuals.

The blight-removal approach echoes the federal policy of the 1940s and 1950s, dubbed by Hirsch as "negro removal." In the 1940s and 1950s, this referred to the removal of African Americans from areas that might already have achieved some racial integration or from areas targeted for other development. Today, a policy of "minority clearance" would be furthered by a public housing redevelopment agenda focused primarily on blight removal. Here today, gone tomorrow, good luck, and good riddance. This policy represents an if-we-don't-build-as-much-of-it, they-won't-come strategy.

The cynical use in 1949 of the desegregation principle as a foil to advance a more sinister anti-public housing agenda perhaps lingers in the consciousness of modern-day public housing residents and their advocates. In a post-civil rights era, public housing residents might see the anti-public housing and desegregation rationales as one and the same. As such, the deconcentrating-poverty rationale would serve merely as political cover for persons seeking massive reductions in the number of housing units subsidized for the community's poorest residents or, worse, massive reductions in poor African Americans in a post-Katrina New Orleans.

A Just Public Housing Policy

We face this false dichotomy—take the segregated housing or leave it—not only in post-Katrina New Orleans, but in every major city where public housing redevelopment has been or is being contemplated. Neither policy can possibly further fair housing. Site-based, mixed-income redevelopment is, by itself, an inadequate response to the displacement of thousands of low-income families, many of them working, from our community and our economy. But a return to the status quo of public housing pre-Katrina raises the following questions: Was public housing *a* choice or the *only* choice for each and every family who occupied it pre-Katrina? And to what extent did public housing represent a concrete ceiling—rather than a ladder of opportunity—for poor families? We at least have something that our forebears lacked in 1949. We have a Congressional mandate under the Fair Housing Act "to provide, within constitutional limitations, for fair housing throughout the United States."

A just public housing policy would be resident-driven.

The following features would be required for a just public housing redevelopment policy — centered not on blight removal, but on furthering fair housing.

1. *Resident-Conscious*. A just public housing policy would be remedial and, as such, would be resident-driven and focused on the residents who lived in public housing before the makeover. It would focus on where the residents live during the makeover, through provision of housing assistance that does not perpetuate segregation. And it would focus on maximizing the success of the maximum number of former residents after the makeover, whether inside the redevelopment or outside, through management and other policies designed to help public housing residents succeed in the housing of their choice, including mixed-income housing.

2. *One-for-One Replacement*. A just public housing policy would not be "reverse redistributionist" in the sense of shifting more of the federal subsidy away from low-income African Americans towards middle- or upper-income whites. This would be the precise result if redevelopment were focused on reduction in overall numbers of units on the redeveloped site and reduction in the percentages of subsidized units on site (to achieve a mixed-income development), with no corresponding replacement units built off-site. No just redevelopment of public housing can occur without off-site replacement occurring at or near a one-for-one basis.

3. *Inclusionary Zoning*. A just public housing policy would not proceed without addressing—*and eliminating*—the myriad of zoning and market barriers restricting the mobility and neighborhood choice of former public housing residents, such as the ones that have arisen in post-Katrina New Orleans. The debate about mixed-income housing has focused far too heavily on the removal of low-income people from areas of concentrated pov-

(Please turn to page 6)

Towards a Transformative Agenda Around Race

This **Nov. 30-Dec. 2** conference, sponsored by the Kirwan Inst. for the Study of Race & Ethnicity at Ohio State Univ. (headed by PRRAC Board member john powell), will be held in Columbus. Inf. from Hiram José Irizarry Osorio, 614/688-4498, irizarry-osorio1@osu.edu, www.kirwaninstitute.org

(HOUSING: Continued from page 5)

erty. Any honest and balanced discussion about public housing redevelopment must also focus on how to create greater neighborhood choice and access for the low-income people displaced by redevelopment. This neighborhood choice and access would require HUD to actually enforce its requirement that local jurisdictions receiving federal funds use these funds to further fair housing. Exclusionary zoning practices would be considered antithetical to HUD fair housing policy and would constitute grounds for HUD to withhold federal funds. It is also time for developers and all others who benefit from public housing redevelopment to clear the path for displaced residents by demanding a more inclusive neighborhood vision on the part of the city's private and public sectors and citizenry.

4. *Voucher and Project-Based Replacement Housing*. A just public housing policy would not seek to replace demolished units subsidized for low-income individuals solely through the use of the Section 8 voucher program. Voucher programs can, with the proper counseling and support networks, be a powerful means of achieving housing mobility and neighborhood choice. But those counseling and support networks do not currently exist for displaced New Orleanians. Even if they did, they would be of limited utility in New Orleans because of the dearth of housing alternatives generally and rental housing stock specifically. Further, as we have seen with the post-Katrina housing assistance programs, these subsidies can be eliminated abruptly, without adequate notice or explanation, and in the absence of sufficient unsubsidized, market-rate alternatives.

Conclusion

It is time to reject false dichotomies and embrace a just public housing policy that is resident-conscious. The pre-Katrina status quo represented a system whereby residents lacked true housing choice and were locked into segregative decisions made decades earlier. The efforts proposed by government agencies post-Katrina to "remedy" the failed policies of the past, however, are focused on blight removal. These efforts instead must be focused on the long-suffering residents in whose name redevelopment funding is procured, whose lives will be on hold during the redevelopment, and who are desperately needed to help restore New Orleans and its soul. ❑

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expressly allow "disparate impact" lawsuits would make a significant difference in strengthening access to the courts for disadvantaged communities—and not just in transportation policy. While this civil rights fix has been proposed, more advocacy on this issue is needed.) The regulations also "expect" recipients to take affirmative action, and prohibit recipients from denying persons the opportunity to participate in planning, advisory or similar bodies. In the transportation context, these protections apply to any recipient of money from FHWA, and the regulations impose specific civil rights obligations on state highway agencies.

In addition to these regulations, in 1994, President Clinton issued Executive Order 12898, *Federal Actions to Address Environmental Justice (EJ) in Minority Populations and Low-Income Populations*. While the Environmental Justice Order does not itself create rights enforceable in a court, it is based upon Title VI. The Order is also useful in public education and in advocating for changes in the planning process—and the products that come out of that process.

The Environmental Justice Order requires that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income population federal agencies…." Environmental Justice applies to entities that receive funding from the federal government—not just to the federal agencies themselves. While the national administration has changed, the Environmental Justice Order still exists. (However, it is important to note that, ten years after its adoption in 2004, the EPA's Office of the Inspector General concluded that the agency still had largely failed to implement its requirements.)

Governmental disregard of transit strands low-income persons and communities of color.

In compliance with the Executive Order, the FHWA issued its own Environmental Justice Order. It imposed requirements on the transportation planning process, including requiring local planners to "provid[e] public involvement opportunities and consider the results thereof," "provid[e] meaningful access to public information concerning the human health or environmental impacts," and to "solicit input from affected minority and low-income populations in considering alternatives during the planning and development of alternatives and decisions." The FHWA Order also requires extensive data collection on race and income.

But the Environmental Justice Order also encompasses outcomes, not just processes. It requires those who receive federal funds to discuss the steps to be taken to "guard against disproportionately high and adverse effects on persons on the basis of race, or national origin." The Order's list of possible adverse effects is long, and goes well beyond what many persons think of when they hear the term "Environmental Justice":