

THE LEGACY OF BUFFALO'S LANDMARK
HOUSING DESEGREGATION CASE,

COMER V. KEMP

By Scott W. Gehl



About the Author

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Front and back cover photos: detail from WPA-era sculptures at Willert Park Court.

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Many Americans know the name *Brown v. Board of Education*.

That 1954 unanimous decision by the United States Supreme Court held that racially segregated public schools were inherently unequal in violation of the Fourteenth Amendment to the Constitution. While 65 years later we are still grappling with implementation of *Brown*, there can be no doubt that the decision profoundly affected and advanced the struggle for civil rights.

Many fewer people are familiar with another important case, *Gautreaux v. the Chicago Housing Authority*, which challenged the then common practice of building public housing in communities characterized by racial segregation and concentrated poverty. Among the remedies ordered by the court were construction of smaller-scale developments in more diverse neighborhoods as well as the provision of housing vouchers permitting members of the protected class to lease private housing in more socio-economically diverse neighborhoods. In a related case, *Hills v. Gautreaux*, the U.S. Supreme Court ruled in 1976 that HUD was liable for the Chicago Housing Authority's actions because it had continued to fund the authority despite knowledge of its discriminatory acts.

These same issues came into play in Buffalo, New York in a 1989 class-action suit, *Comer v. Kemp*, which would eventually change the face of government assisted housing and patterns of racial segregation which dated back to the first years of the Twentieth Century.

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A City of Few Illusions

At the juncture of a Great Lake and the Mighty Niagara, many would describe Buffalo as a beautiful city. Tree-lined boulevards run through sections of the city linking a system of parks designed by Frederick Law Olmsted. Buildings by the giants of American architecture in the early years of the last century—when Buffalo was the eighth largest city in the nation and host of the 1901 World's Fair, the Pan American Exposition—still stand and have even given rise a new Twenty-First Century industry, cultural tourism.

But times have changed. The St. Lawrence Seaway doomed Buffalo's status as the nation's largest inland port, foremost grain milling center and, after Chicago, second largest railroad hub. Steel mills, which once employed tens of thousands of residents—generations of some families—are gone as is much of the heavy industry which once fueled the local economy. The city itself, whose population in 1950 topped 580,000, has lost more than half its people. Even the two-country Buffalo-Niagara metropolitan statistical area has lost population.

While Buffalo—which sent two presidents (Fillmore and Cleveland) to the White House, assassinated a third (McKinley), and inaugurated a fourth (Teddy Roosevelt)—once made a good many national "top ten lists", today it can claim only two: the fourth poorest large city in the United States, and the sixth most racially segregated metropolitan area in the nation.

The seeds of segregation were planted long ago.

Increasing Racial Isolation

As in many northern cities, Buffalo's African-American community was relatively small until the 20th Century, in 1930 comprising only about 2.4 percent of the city's population. During the decade between 1950 and 1960, the number of African-Americans doubled to nearly 71,000 and increased to more than 13 percent of the total. By 1990 there were more than 100,000 African-Americans in Buffalo; because of population loss fueled by White

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flight, blacks comprised nearly 31 percent of the city's population. By 2010 African-Americans comprised nearly 39 percent of Buffalo's population.

Like many ethnic groups before them, Buffalo's small African-American community originally clustered in one area of the city, the Ellicott District. However, government policies involving urban renewal and the construction of public housing combined to rob the Ellicott District of its racial and ethnic diversity. And resistance to fair housing effectively restricted African-Americans to a relatively few city neighborhoods—separating them from communities of greater opportunity in the city and surrounding suburbs.

But, sadly, Buffalo's experiences are not unique.

Victims of Social Engineering

While conservative critics of affirmative actions intended to promote racial equity often dismissively label such measures as “social engineering”, in fact the opposite is true: racial segregation is the product of deliberate government decisions. In his seminal work *The Color of Law*, historian Richard Rothstein catalogues those decisions by federal, state and municipal governments which hardened the silos of segregation and separated African-Americans from opportunities enjoyed by other Americans.

Two hundred and fifty years of slavery may have been ended by a presidential proclamation and three constitutional amendments, but efforts to assure Black citizens their rights began to slip away following compromises made to assure that the centennial election of 1876 was won by Rutherford B. Hayes. In order to secure disputed electoral votes for their candidate, leaders of the “Party of Lincoln” agreed to compromises which effectively ended military measures which had shielded African-Americans from the domestic terrorism of the Ku Klux Klan and other efforts by southern Whites to disenfranchise black citizens only recently added to voting rolls.

Freed from the threat of federal intervention, southern states gradually drove African-Americans into segregated enclaves. Some communities advertised themselves as “sundown towns” where no blacks were welcome to live or even be safe after sunset. Municipalities with significant African-American populations sought to adopt laws which restricted blacks to limited areas. It was not until the United States Supreme Court issued its 1917 decision in *Buchanan v. Warley* that explicit racial zoning was outlawed; even afterwards some cities sought to covertly continue legal segregation.

More insidious were systemic efforts by the federal government to promote discrimination. In 1921 then Commerce Secretary Herbert Hoover chaired a national advisory committee on zoning which urged municipalities across the nation to enact local laws which segregated cities economically and created limits on multi-family housing. Participating in that advisory committee were leaders of the National Association of Real Estate Boards (forerunner of the National Association of Realtors) which had previously adopted a code of ethics prohibiting member firms from introducing into a community any race or nationality who would be detrimental to property values.

Amid the economic devastation of the Great Depression, the federal government sought to jumpstart a moribund housing industry by creating the Home Owners Loan Corporation and the Federal Housing Administration. Both agencies used a system of property appraisals which characterized predominantly black or even integrated neighborhoods as unstable and vulnerable to decline. The FHA went so far as require borrowers to use restrictive covenants limiting future ownership of houses to members of the white race, a practice which continued by FHA even after the Supreme Court in 1947 outlawed government enforcement of such covenants. Following World War II, the FHA—whose lending financed suburban growth—explicitly refused to guarantee loans to developers who sought to build housing for purchasers who were not white.

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Meanwhile, the federal government's efforts to develop public housing for low and middle-income families who could not find decent and affordable housing were also tainted by racial prejudice. Public housing was legally segregated by race, with relatively few opportunities created for African-Americans. Even "temporary" housing created for those workers who labored to make America "the arsenal of democracy" was segregated—often leaving black defense workers to fend for themselves in overcrowded racially restricted neighborhoods.

Across the nation, localities used zoning requirements to restrict the construction of multi-family housing and built highways to eliminate blighted areas and isolate communities of color. Schools were built and attendance districts constructed in a way to separate students by race. In some communities, law enforcement even turned a blind eye to the illegal acts of mob violence intended to keep people of color with their own kind.

A "City of Good Neighbors"?

In his book *Race, Neighborhoods, and Community Power* political scientist Neil Kraus writes of the effect of government policies on Buffalo's African-American community and how those policies—frequently formulated without participation by black citizens—contributed to the Twentieth Century hyper-segregation which has survived into the Twenty-first.

During Buffalo's first century as a city, its African-American community had been relatively small, comprising less than three percent of the city's population. Like many ethnic groups, black families tended to live with others they knew in a particular section of the city, the Ellicott District, a community then shared with recent Italian and Jewish immigrants. It was government policy which would make that section of the city into a neighborhood designated for African-Americans.

When public housing came to Buffalo in the late 1930s, the first developments, Kenfield (built on vacant land in the northeast corner of the city) and Lakeview (on the west side) had been reserved for whites. In response to over-crowding in the geographically circumscribed black community, a third development, Willert Park Courts, was constructed in the racially diverse of the Ellicott District. Willert Park's 172 units were designated for blacks. Among those displaced by construction were Italian and Jewish residents of Ellicott.

As World War II raged in Europe and the Pacific, America sought to ramp up preparedness and Buffalo became a major center of war-related industry. To house new workers drawn to the city, the federal government built temporary housing segregated by race; housing for white workers presented no problem, but housing for black workers was another matter entirely.

Proposed sites in North Buffalo and the Town of Cheektowaga (just over the city line) fell victim of community opposition. A third proposed site in South Buffalo (near the massive Bethlehem and Republic Steel plants) prompted large scale organized protests, marches on City Hall, and a petition of protest signed by nearly 10,000 residents sent to federal officials and members of Congress. Finally—despite higher costs resulting from condemnation of existing housing and displacement of families—the Buffalo Municipal Housing Authority agreed to build 300 additional units of housing for black residents at Willert Park. The construction of Willert Park Courts and the Willert Park Extension were only the first government actions which would effectively designate the Ellicott District as Buffalo's black community.

In 1951 BMHA sought funds from the State of New York to construct 1700 units of additional public housing in north Buffalo, south Buffalo and the Ellicott District. Community opposition from whites in north and south



Barren lawns and boarded-up windows at the predominantly black Kenfield Apartments, left, contrast sharply with the tree-shaded yard at the all-white Mullen Manor.

1987 (part of Heaney Buffalo News series)

Buffalo eventually confined construction to three sites on the city's east side, including two in the Ellicott District. The Ellicott Mall and Talbert Mall consisted of more than 1200 housing units in 20 high rise buildings situated on opposite sides of a large parcel of land cleared of other housing. Virtually all residents of these two new developments were black.

At the same time, Buffalo sought to take advantage of the new federal program created by the National Housing Act of 1949. Urban Renewal provided resources for municipalities to acquire large tracts of land (and the properties



Willert Park housing project, Buffalo, NY. From the US Housing Authority, Source: Library of Congress (1939)

on them) for clearance and redevelopment. One of the nation's larger designated urban renewal areas was planned for Buffalo's Ellicott District. Between 1959-61, thousands of families were displaced from the Ellicott District. While white families moved to other city neighborhoods, most geographically restricted black families went to Willert Park or the newly constructed Ellicott and Talbert Malls. Ironically wrangling between Republican Mayor Chester Kowal and the Democratically controlled Common Council ultimately delayed construction of new housing in the Ellicott District until 1966—leaving a vast swath of land empty for years, save for 20 high-rise public housing buildings.

Stalled Efforts to Assure Equal Opportunity

Racial discrimination in the private housing market was the rule rather than the exception in New York State until Governor Nelson Rockefeller signed the Metcalf-Baker Act in 1963. However, that statute—like the federal Fair Housing Act of 1968 passed in the week following the assassination of Dr. Martin Luther King—exempted two-family owner-occupied housing, which comprised much of Buffalo's rental housing stock. Accordingly, in 1968 Masten District Councilman Horace "Billy" Johnson proposed a Buffalo fair housing law. Despite the support of Mayor Frank Sedita, the fair housing bill was defeated in the Common Council by a vote of 5-10.

By 1979 the number of African-Americans in Buffalo had grown, comprising 26 percent of the city's population; discrimination in the private housing market severely limited their housing choice. Three local organizations (the Buffalo Area Metropolitan Ministries, Catholic Charities, and Housing Opportunities Made Equal) brought forth a new proposal for a comprehensive fair housing law. Eleven years after the first proposal was defeated, this one too came up short—failing in the Common Council by a vote of 6-9. However, fair housing proponents took to heart objections raised by opponents: deleting "record of arrest or conviction" from the proposed protective classes, adding a new section on the rights of landlords, and even exempting owner-occupants aged 62 and older. For

the first time, the Common Council passed a fair housing law by a vote of 9-6; regrettably this measure was vetoed by Buffalo's new mayor, James Griffin, and the veto over-ride fell short by a single vote.

James D. Griffin had become mayor of Buffalo in 1978, elected the preceding November in a bruising contest which saw Griffin (running on the Conservative Party line) defeat an African-American candidate, Arthur O. Eve (running on the Democratic and Liberal Party lines). In the view of most observers, race figured prominently in Griffin's first victory as it seemed to underlay many decisions of his administration. Griffin would go on to win re-election three times and become, by 1993, the longest serving mayor in Buffalo's history.

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In 1988 Housing Opportunities Made Equal assembled a coalition of civic and religious organizations to propose another comprehensive fair housing law which would prohibit discrimination for the protected classes of state and federal law plus two more: sexual orientation and lawful source of income (directed against families deriving some income from government assistance). Again including a section on the rights of landlords, proponents also included a provision exempting two-family owner occupied housing which was rented without advertising.

Opposing this broad civil rights proposal, Mayor Griffin and his political allies claimed that passage of a fair housing law would be a "death knell" for Buffalo. Councilmembers reported receiving upwards of 100 letters and calls each—the vast majority from frightened elderly whites urging defeat of the legislation. One veteran city hall reporter said that this fair housing proposal generated more controversy than any legislative measure in nearly two decades. Finally in March of 1989, the law was passed by a vote of 7-5. After staging a dramatic public hearing ostensibly to help him decide what to do, Mayor Griffin followed with his anticipated veto; the furor of opponents was so intense that two councilmembers who had voted in favor of the fair housing bill then reversed course, voting to sustain the mayor's veto. Fair housing effectively became "the third rail" of Buffalo politics for the remainder of the century.

It would not be until 2006—38 years after Councilman Johnson's first proposal—that the Common Council finally passed a fair housing law, which—as *Buffalo News* editorial writers noted—had exemptions broader than those of New York State law. Although signed into law by Buffalo's first African-American mayor, another decade would pass before the city moved to enforce its own law.

BMHA Segregation in the 1980s

While racial segregation in public housing had been outlawed by New York State in the late 1950s, it continued in Buffalo for an additional 35 years.

In 1986 Housing Opportunities Made Equal refocused attention on the troubled housing authority, and investigative reporter James Heaney engineered a five-part series published by the *Buffalo News* in July of 1987 which documented the extent of segregation: nine of BMHA's 27 developments were 90 percent or more African-

American and Hispanic, while nine others were 92 percent or more white. As of 1987 some public housing developments in Buffalo had never had a single tenant of color.

The *News* series (which was later nominated for a Pulitzer) also described the tremendous disparities in housing conditions at predominantly minority and white developments. Further, it reported that at the same time more than 3,000 households remained on BMHA's waiting list, the authority had more than 2,000 vacant apartments. Lastly, the series asserted that the Housing Authority has become a leading source of patronage hiring for the Griffin administration.

In response to the *Buffalo News* series, United States Senator Daniel Patrick Moynihan called on the Department of Housing and Urban Development to investigate. Newly appointed HUD Secretary Jack Kemp—who had previously represented Buffalo and Western New York as a Member of Congress (and as the starting quarterback of the championship Buffalo Bills)—ordered his department to investigate the Housing Authority. By April of 1989 HUD concluded that BMHA had discriminated against minority tenants in violation of Title VI of the Civil Rights Act—and presented the Authority with the choice of entering into a voluntary compliance agreement to remedy the discrimination or going without federal operating subsidies. Reversing the old advertising slogan, BMHA decided it would rather switch than fight.

HUD ordered BMHA to end its practice of maintaining project specific wait lists, but then proposed only modest measures to overcome the decades of racial segregation it had allowed. HOME, appointed to an advisory panel on fashioning the compliance agreement, offered a more comprehensive plan, which the *Buffalo News* called a “master plan to desegregate the troubled housing authority”. Included were economic incentives to promote desegregation, compensation for minority families steered into older developments (in the form of access to Section 8 housing subsidies, accompanied by support services), and a proposal to use freed-up units to create magnet housing developments, especially adjacent to diverse city neighborhoods. HOME contended that only by vastly improving the quality of housing could BMHA successfully market developments to a diversity of tenants.

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After considering HOME's proposal for six months, HUD sent the nation's chief fair housing official, Assistant Secretary Gordon Mansfield, to Buffalo to meet with the advisory panel, which had also endorsed HOME's plan. Assistant Secretary Mansfield declared that due to budgetary constraints HUD was not prepared to provide additional resources to BMHA “unless so ordered by a federal court”. In response, HOME labeled HUD's compliance agreement a “cruel hoax intended only to extricate HUD from the morass at BMHA—not to make life better for the people who live in public housing”.

Tenant leaders also weighed in calling for increased federal investment at BMHA. The Buffalo Common Council passed a resolution asking Secretary Kemp to personally intervene; *Buffalo News* editorial writers concurred, appealing to Kemp's ties to Buffalo.

Despite the clamor of calls for a greater federal investment in remedying the dysfunction at BMHA, HUD refused to take additional actions. Fortunately, housing advocates had pursued a parallel course.

Origins of the Class-Action Lawsuit

While HOME was leading efforts to bring pressure on HUD and the City of Buffalo to remedy problems at the Buffalo Municipal Housing Authority, attorneys from Neighborhood Legal Services and the Greater Upstate Law Project were contemplating a broader challenge to a variety of government housing programs.

In addition to the evidence of public housing segregation, advocates pointed to a pattern of discriminatory administration of the Section 8 voucher program, with Buffalo and the RAC limiting participants to using their vouchers within Buffalo and failing to conduct adequate outreach to landlords in areas not characterized by racial

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segregation and concentrated poverty. At the same time, the suburban Section 8 administrator, Belmont was charged with adopting a residency preference which—due to the high degree of racial segregation in the metropolitan area—had the effect of discriminating against people of color, regardless of their application date.

In December 1989 a class-action suit was filed on behalf of the Buffalo League of Public Housing Tenants and eight individual plaintiffs against HUD, BMHA and eight other defendants alleging discrimination in a variety of federal and state housing programs. HOME, which had participated in planning the suit, ultimately elected not to be a plaintiff due to concerns that the breadth of the suit would delay resolution and relief for the 10,000 “victims of public housing”.

The case, *Comer v. Kemp*, was assigned to U.S. District Court Judge John T. Curtin. Attorneys for the plaintiffs included Michael Hanley, Barbara Kavanaugh, Alice Brown, Ellen Yacknin, James Morrissey, and Joseph Kelemen from the Greater Upstate Law Project, the NAACP Legal Defense Fund, and Neighborhood Legal Services. Due to the multiplicity of issues involved, Judge Curtin directed that attorneys sever public housing issues from those alleging discrimination in the Section 8 program. While housing advocates and elected officials jostled with HUD and BMHA winning marginal gains for public housing tenants, attorneys for the plaintiffs overcame initially adverse decisions to establish standing and class certification in the U.S. Court of Appeals.

In 1993 newly elected President William J. Clinton named former San Antonio Mayor Henry Cisneros as Secretary of HUD. Following years of negotiation, the parties reached agreement and in September of 1996 the Court approved separate consent decrees resolving the public housing and Section 8 complaints. The two consent decrees represented a victory of historic proportions for low-income residents of Buffalo and Erie County.

Public Housing Decree

With the mechanisms which had permitted racial segregation already removed by the HUD-BMHA compliance agreement, focus of negotiations shifted to remedial actions— some of which had been suggested year’s before in HOME’s so-called “master plan”. In an effort to bring about deconcentration of poverty at older predominantly minority developments, Buffalo and BMHA agreed to the demolition of 502 units of public housing at the



Commodore Perry housing project, Buffalo, NY, circa 2010. Source: Buffalo News

Commodore Perry, Lakeview and A.D. Price (formerly the Willert Park) developments. These would be replaced by construction of 50 new units of public housing in non-poverty concentrated neighborhoods and 450 Section 8 housing vouchers. Additionally, HUD agreed to provide a special allocation of 300 equal opportunity vouchers for minority families then living in racially segregated BMHA developments.

Families obtaining housing vouchers were to be assisted by a newly established Community Housing Center, tasked with helping those families take advantage of the full range of housing opportunities available in the Buffalo metropolitan area. The CHC would also act as a central repository of information on all government-assisted housing.

Lastly, the City of Buffalo, BMHA, and State of New York agreed to decrease the concentration of high-rise low-income housing at Frederick Douglas Towers (formerly the Talbert Mall) and the Ellicott Mall and to commit to spending \$9 million dollars over a five-year period on redevelop the surrounding community.



Glenda and Claude Fletcher, residents of the Commodore Perry housing project, Buffalo, NY. Source: Buffalo News (1987)

Section 8 Decree

Defendants in the Section 8 case included HUD, the City of Buffalo, the Rental Assistance Corporation (which operated Buffalo's Section 8 program), the Town of Amherst (lead municipality in a consortium of suburban communities which ring the City of Buffalo), and Belmont Shelter Corporation (which operated the suburban Section 8 program).

Under the consent decree, HUD agreed to provide 800 additional Section 8 vouchers. RAC agreed to end its practice of geographically limiting use of its housing vouchers to the City of Buffalo and Belmont agreed to expand its local residency preference to include all of Erie County. For a period of years, both Section 8 administrators agreed to effectively merge their wait lists.

Although decades of discrimination seemed finally to be resolved by the consent decrees, operation of the Community Housing Center would become a fresh battleground.

Because plaintiffs' counsel understood that families of color often used Section 8 vouchers to lease better housing in neighborhoods where they already lived—where their support networks were and where they knew they would be accepted—provision of mobility counseling was an important component of the *Comer* consent decrees. Although decades of discrimination seemed finally to be resolved by the consent decrees, operation of the Community Housing Center would become a fresh battleground.

RFP for Conflict

Because the CHC was to play a central role in providing relief for victims of discrimination, the consent decrees had outlined a detailed process for selecting a qualified operator—with HUD given the final authority to invalidate the choice if “none of the applicants were qualified to operate the CHC”. After an eight-week national search and five weeks of review of applications, in September of 1997 the City of Buffalo recommended selection of the detailed proposal jointly submitted by Housing Opportunities Made Equal and the Rental Assistance Corporation. However, five unsuccessful applicants raised objections to the selection and one had sufficient political influence to call both HUD headquarters and the White House. As a result, six weeks later HUD invalidated the selection, and headquarters staff set about revising the City's RFP.

In response to the second RFP, HOME—which had played so prominent a role in first focusing public attention on discrimination and abuses at BMHA a dozen years before and participated in the planning of *Comer*—partnered with the respected Buffalo Federation of Neighborhood Centers as well as four other not-for-profit subcontractors. The HOME-BFNC proposal garnered 108 of a possible 120 points (while three other applications earned between 56 and 94 points) and, what's more, was the unanimous first choice of the five-member evaluation committee.

When the Greater Buffalo Community Housing Center opened its doors to clients in April of 1999, HOME had already hired and trained staff and assembled a Mobility Library with information about every community in Erie County. Beginning that date, CHC staff provided presentations at every Belmont and RAC Section 8 orientation

session—explaining the protections of fair housing law, services of the CHC, and the potential benefits of housing mobility.

Interested clients were invited to sign up for a small group session at the HOME offices to watch a video on housing mobility, learn how to identify quality housing and meet landlord selection criteria, and discover how to navigate the administrative requirements of Section 8 program. Clients were then invited to sign-up for individual mobility counseling to obtain information about communities of interest to them (from the Mobility Library) and housing listings in those communities. If mobility clients needed transportation, counselors would schedule to drive them to appointments with prospective landlords and afterwards be available to help complete rental applications.

Families choosing to locate in opportunity communities (characterized by neither concentrated poverty nor racial segregation) would have access to moving assistance payments and an interest-free loan to pay security deposits. HOME would also refer those families to the case management program to be operated by the Buffalo Federation of Neighborhood Centers.

BFNC would help families acclimate to their new communities by providing linkages to schools, childcare, employment, and a range of specialized services intended to promote greater self-sufficiency. HOME would remain available to resolve landlord-tenant issues and to provide assistance should clients encounter problems with their new neighbors.

While most services of the CHC would be available only to Section 8 participants, HOME would also serve as a clearing-house for all government assisted housing in Erie County—providing help to all low-income residents of the metropolitan area in securing decent and affordable housing. HOME also sought to play a larger role with municipalities—seeking to assist them in their efforts to administer federal funded programs in a manner which “affirmatively furthered fair housing”.

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COMER’S Impact

It has been nearly 25 years since Judge Curtin approved the Comer consent decrees. Judge Curtin, then the senior judge in the Western District of New York, concluded a long and distinguished judicial career on senior status and died in the spring of 2017. Others integral to the case have also died (including Senator Daniel Patrick Moynihan and HUD Secretary Jack Kemp) or retired or left Western New York. While it is difficult to prove causality, we can go back to the way things were—the circumstances and conditions which gave rise to *Comer*—and compare with the conditions today.

The Public Housing Decree

Due to population loss and political reapportionment, the Ellicott District—which by government action became the center of Buffalo’s African-American community—is geographically larger than it once was. The two public

housing developments, Ellicott Mall and Talbert Mall (the latter renamed Frederick Douglass Towers), that once dominated the landscape with 20 high-rise buildings on opposite sides of a vast expanse of open land cleared by urban renewal are smaller now.

Nine of the 12 towers at Frederick Douglass were taken down and the remaining buildings have seen extensive modernization. There are newly constructed low-rise rowhouses along Jefferson Avenue and lining new streets (which bear the names of prominent Ellicott District activists) extending west toward downtown. The Frederick Douglass development is still run by the Buffalo Municipal Housing Authority, which has built a new community center near the corner of Clinton & Jefferson.

Four of the eight high-rises of the Ellicott Mall survive. They were extensively redeveloped by a private firm, Norstar Development, and are today owned by not-for-profit corporations controlled by the nearby First Shiloh Baptist Church; all are privately managed. Among them are interspersed new two-story townhouses, which are individually owned. Residents of both the Ellicott Mall and Frederick Douglas live within walking distance of employers in downtown Buffalo. It is a new day.

A few blocks to the north lie A.D. Price Courts, which under the name Willert Park had been the first public housing development designated for African-American tenants. While a newly built multi-family building and rowhouses run along Jefferson Avenue, behind them stand vacant and boarded buildings which had once comprised Willert Park. When completed in 1939, Willert Park was hailed by the Museum of Modern Art as a leading example of the school of architecture known as Modernism and called one of the finest public housing projects in the



A.D. Price Courts, *Buffalo, NY, circa 2015*. Source: Buffalo Municipal Housing Authority (BMHA)



Willert Park, Buffalo, NY, circa 2018. Source: National Trust for Historic Preservation

nation. Despite this historical and architectural significance, BMHA has opposed efforts to add the development to the National Register—instead requesting permission to demolish the buildings and replace them with new housing. Some have suggested that BMHA has embarked on a strategy of demolition by neglect.

In May of 2019 A.D. Price Courts was named to the National Trust for Historic Preservation’s list of 11 most endangered historic places in the United States. Reversing course, BMHA’s new executive director agreed to work with Preservation Buffalo Niagara to evaluate whether the development could be saved and brought back to life as public housing.

Two other public housing developments were specifically mentioned in the *Comer* decree: Lakeview and the Commodore Perry Homes.

As implied by its name, Lakeview is on Buffalo’s west (water) side, but separated from a view of the Niagara River by the I-190 expressway and adjoining LaSalle Park. Buffalo’s second oldest public housing development was completely demolished, replaced by multifamily mid-rise structures and attractive rowhouses constructed with funding from HUD’s Hope VI program augmented by resources provided by the State of New York. Today Lakeview is operated by the private company which redeveloped the project.

Commodore Perry—located between downtown Buffalo and the city’s gentrifying Larkinville neighborhood—was to be reduced by 300 units as a result of the *Comer* consent decree. Today 740 units remain: 326 apartments in six renovated high-rise buildings, 84 newer (1956 vintage) rowhouse units, and 330 rowhouse units dating back to 1939. While the high-rises are almost fully occupied, the newer rowhouses have an occupancy rate of about

85 percent; fewer than one-in-five of the older rowhouses have tenants. Although many of these older rowhouses stand vacant and boarded, due to an outdated heating system BMHA still heats hundreds of vacant units each winter.

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In 2011 BMHA obtained a quarter-million dollar Choice Neighborhoods planning grant to redevelop Commodore Perry. BMHA retained the University at Buffalo's Center for Urban Studies, which formulated a plan for retaining the Perry high-rises, demolition of rowhouse apartments, and construction of 900 units of assisted and market-rate housing—in conjunction with a variety of neighborhood-based services.

Although scoring well in the competition for a \$30 million implementation grant, Buffalo's submission was ultimately not successful. Some contend this result was in part due to a lack of unqualified support from City Hall.

The Section 8 Decree

The Rental Assistance Corporation of Buffalo had administered Buffalo's Section 8 program since its inception. As the result of a HUD-approved local residency preference for city residents, an over-whelming majority of the families RAC assisted were African-American or Hispanic. Because the limitation on use of housing vouchers to city neighborhoods had been requested by City Hall with the full knowledge of HUD, it had never occurred to administrators that this policy—which effectively limited use of vouchers to housing within Buffalo—would have a discriminatory effect. Accordingly, RAC administrators were surprised to be named as defendants in *Comer*.

Today Belmont Housing Resources for Western New York (formerly the Belmont Shelter Corporation) still administers the Section 8 program for the consortium of suburban communities which ring the City of Buffalo. Reportedly, it had been HUD which first suggested that the suburban consortium adopt a local residency preference (as had RAC for Buffalo residents), so it was not illogical for them to assume that this practice complied with federal law.

Leaders of Belmont believed that the litigation was misdirected, and should have targeted HUD rather than Belmont and the Consortium. Additionally, because Belmont had long been active in local fair housing initiatives (among them the Fair Housing Coalition of Western New York and even Housing Opportunities Made Equal) the public accusation of housing discrimination in the *Comer* complaint was especially stinging.

The Section 8 consent decree provided 800 additional housing vouchers for the Buffalo area, at a time when new vouchers were rarely granted—allowing administrators to assist significantly more families. In the wake of the settlement, both agencies amended their residency preferences to include all residents of Erie County and, for a time, effectively merged their lengthy wait lists. Whereas prior to *Comer* Belmont and RAC had worked in parallel, afterwards they consulted on issues like inspections, payment standards and exception rents. To this day the

agencies do not take unilateral action without consulting their colleagues across Main Street. And fair housing—always a concern—came to occupy a more prominent place on both agencies’ horizons.

Lastly, both Belmont and RAC came to embrace the services of HOME’s Greater Buffalo Community Housing Center. For nine years, representatives of the CHC appeared at every group orientation session for new Section 8 applicants—explaining to participants their rights under fair housing law and the benefits of housing mobility.

The Community Housing Center

While the *Comer* settlements brought major changes to public housing in Buffalo and revolutionized administration of local Section 8 programs by eliminating barriers and providing additional housing vouchers, ultimately much of fate of housing opportunity was to be vested in a brand-new entity: the Community Housing Center. HOME’s victory in the protracted battle to design and administer the CHC had a major impact on the opportunities afforded to the beneficiaries of the class-action suit.

Under the consent decrees, HUD committed \$2.5 million (to be paid over five years) for operation of the CHC while the City of Buffalo pledged an additional \$500,000 (also over five years). These monies went to HOME, the Buffalo Federation of Neighborhood Centers and four subcontractors to provide client services; significantly more than 40 percent of each year’s \$600,000 allocation was budgeted to pay security deposits and moving assistance payments for mobility clients.

Within the first five years of operation, HOME had helped 2,400 families lease housing in communities of their choice—68 percent of whom chose to do so in opportunity communities (characterized by neither racial segregation nor concentrated poverty). Additionally, 1,524 families received funds for security deposits and 1,155 received moving assistance payments. All these numbers substantially surpassed expectations and contract goals.

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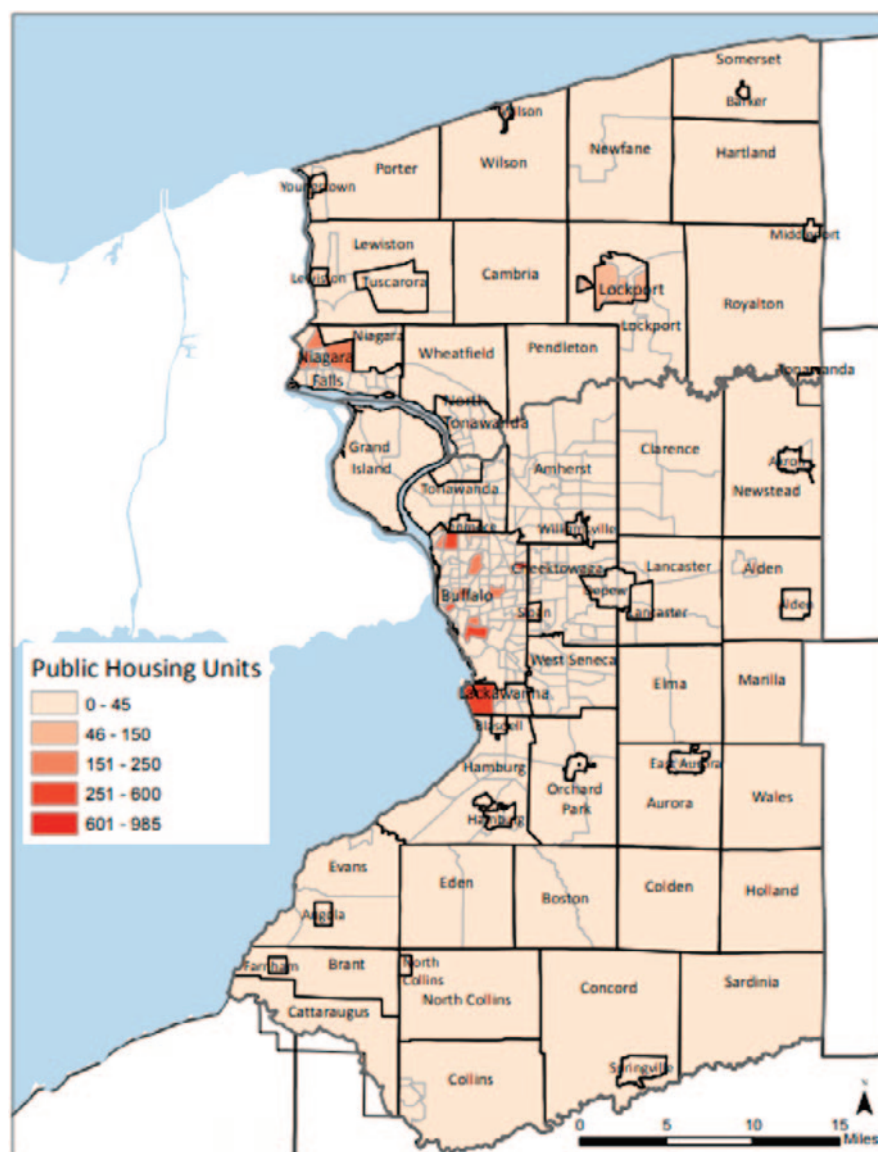
But in 2004 the bottom fell out. While seeking to resolve an unexplained funding discrepancy, HOME discovered that the City of Buffalo had never fulfilled its obligation to contribute to the operation of the CHC. Confronted with this omission, the City proposed to belatedly fulfill its obligation with funds already allocated to HOME for fair housing education and enforcement. Plaintiffs were compelled to return to federal court to ask the Judge Curtin to compel the city to comply with his consent decree. Under these circumstances, the Buffalo Federation of Neighborhood Centers made a reasonable business decision and decided to withdraw from the CHC.

HOME was left in an untenable situation—with the loss of its partner agency and simultaneous reduction in annual funding for the CHC. Additionally, the City of Buffalo reduced HOME’s fair housing contract (which dated back more than 25 years to the inception of the Community Development Block Grant program) by more than 60%—despite the fact that HOME had consistently exceeded its contractual goals. Although HUD’s Assistant Secretary had come to Buffalo only months before to present HOME with its Pioneer of Fair Housing Award, HUD now declined to intercede in the face of Buffalo’s significant and retaliatory reduction in fair housing efforts.

By 2005 housing mobility had become more than an interesting experiment to HOME; it was now a proven mechanism to increase opportunity for low-income families of color who had been consigned to communities of crime and isolation in the sixth most racially segregated metropolitan area in America. Accordingly, HOME staff

Funders came to grasp the importance of opportunity to a viable Western New York, and to share HOME's determination not to let a good idea die.

and volunteers set about reconfiguring eligibility standards and program incentives in order to save the Community Housing Center. HOME also reached out to local foundations, obtaining critical support from the Community Foundation for Greater Buffalo and the John R. Oishei Foundation. These and other funders came to grasp the importance of opportunity to a viable Western New York, and to share HOME's determination not to let a good idea die.



Although operating with vastly diminished resources, HOME continued the work of the Greater Buffalo Community Housing Center through 2019, distributing information and assisting a smaller number of voucher families who choose to relocate to opportunity communities and providing mobility assistance for the Town of Hamburg. In 2017 M. DeAnna Eason became the fourth executive director of HOME, succeeding the director who had designed, birthed, guided and preserved the CHC. Ms. Eason first came to HOME in 2000 as a young mobility counselor. She is perhaps one of the better unintended consequences of *Comer*.

HUD Picture of Subsidized Household, 2012 Source: UBRI

Continued Poverty Concentration In The Housing Choice Voucher Program And The Launch Of The New Housing Mobility Program In 2020

In January of 2019 the Center on Budget and Policy Priorities and the Poverty & Race Research Action Council issued a report, by researchers Alice Mazzara and Brian Knudsen, entitled “Where Families with Children Use Housing Vouchers: A Comparative Look at the 50 Largest Metropolitan Areas”. Researchers compared the locational choices of families with Section 8 vouchers with the location of voucher-affordable units using three measures: rate of poverty, access to opportunity (based upon a HUD generated opportunity index), and the share of residents who are people of color.

The report described a disturbing pattern of Housing Choice Voucher concentration across the country – but highlighted Buffalo as a particularly extreme case, with the highest levels of voucher concentration among the fifty largest metro areas in the U.S.

One takeaway from the report was the importance of reinstating a larger housing mobility program in Buffalo. As recent research in Seattle and other cities has confirmed, low income families have a difficult time using their vouchers in lower poverty communities without affirmative landlord recruitment, housing mobility counseling, and addressing barriers like high security deposits and high suburban rent levels.



Housing Opportunities Made Equal (HOME) offices on Main Street, Buffalo, NY, 2013. Source: HOME

In the Buffalo-Niagara MSA, according to the study, 61 percent of voucher-assisted families with children live in high-poverty communities despite the fact that only 35 percent of voucher-affordable units exist in those same

By the fall of 2020, the new Greater Buffalo Mobility Assistance Program was fully staffed, and (in spite of challenges posed by COVID), staff began working cooperatively with the three Housing Choice Voucher agencies in Erie County – the Rental Assistance Corporation (RAC), Belmont Housing Resources, and the Buffalo Municipal Housing Authority, all original defendants in the landmark *Comer* case.

neighborhoods. Buffalo had both the highest percentage of voucher-assisted families in high poverty communities of any of the 50 metropolitan areas studied and the largest disparity between the percentage of families and the percentage of voucher-affordable units.

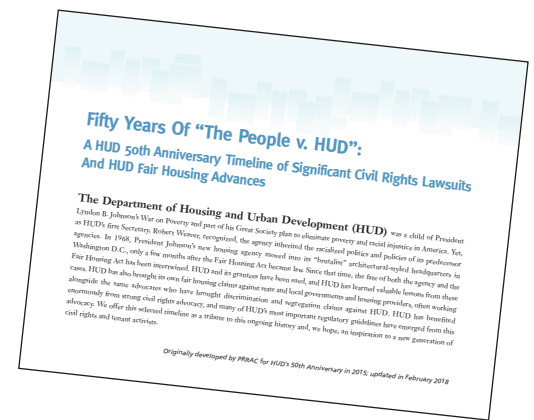
Fortunately, in late 2019, Enterprise Community Partners brought in additional funds to re-launch a fully staffed housing mobility program in Buffalo, as part of a drive to support new housing mobility programs in three areas of the state – Long Island, New York City, and Buffalo. In Buffalo, Enterprise selected HOME, which had run the original successful *Comer* mobility program, and which was still supporting a small program with part time staff. By the fall of 2020, the new Greater Buffalo Mobility Assistance Program was fully staffed, and (in spite of challenges posed by COVID), staff began working cooperatively with the three Housing Choice Voucher agencies in Erie County – the Rental Assistance Corporation (RAC), Belmont Housing Resources, and the Buffalo Municipal Housing Authority, all original defendants in the landmark *Comer* case.

In the meantime, HOME's attention had also focused on the growing problem of source of income discrimination in Erie County – if landlords are free to refuse voucher families who can pay the rent, then any efforts to expand housing choice will be doubly difficult. The issue of voucher discrimination galvanized the attention of member agencies of the Erie County Fair Housing Partnership, which expanded its focus from education and ceremonial events to drafting legislation and then campaigning for an Erie County Fair Housing Law. Taken up by Legislators Betty Jean Grant and April N.M. Baskin, the measure was finally passed and signed into law by County Executive Mark C. Poloncarz, who is intent on using it as a tool to increase opportunity for all Erie County residents.

All of these positive developments are the legacy of Buffalo's own landmark civil rights case, *Comer v. Kemp*, a case that concluded over 20 years ago, but which is not forgotten.

WHERE DOES THE COMER CASE FIT INTO THE HISTORY OF CIVIL RIGHTS AND HOUSING IN THE U.S.?

See our timeline, *Fifty Years of “the People v. HUD”* at PRRAC.org



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