

PRRAC Researchers Report

Sanders v. HUD: A Multi-Faceted Remedy for Housing Segregation

by Thomas J. Henderson and Stacy E. Seicshnaydre

In December 1994, the federal district court in Pittsburgh approved a settlement that will provide an estimated \$58 million in public housing and community development funding, designed to desegregate public and assisted housing and the private housing market in Allegheny County, Pennsylvania, and to provide for community and economic development activities in seven Allegheny County municipalities where African-American and assisted housing populations are concentrated. The settlement in this case, *Sanders et al. v. HUD et al.*, C.A. 88-1261 (W.D.Pa.), represents perhaps the most comprehensive and multifaceted remedy regarding residential segregation and disinvestment in minority communities. This remedy was made possible, in large part, by a PRRAC grant, which supported research and analyses by Dr. Joe Darden of Michigan State University and Yale Rabin of M.I.T. regarding segregation in federally assisted housing and urban renewal activities and its relationship to residential segregation generally in Allegheny County.

The litigation in *Sanders* had its genesis in a proposal by the Allegheny County Housing Authority (ACHA) and HUD to demolish a segregated African-American project and to construct replacement housing in the same segregated African-American community—a community that had experienced enormous disinvestment and decay and that was only able to operate under conditions equivalent to bankruptcy. The basic allegations of the complaint were (1) that HUD, Allegheny County and the Housing Authority had established *de jure* segregated public housing from the inception

of that program in the early 1940s and that this segregation had never been disestablished; (2) that residential segregation was exacerbated by urban renewal projects which removed African-Americans from white communities and relocated them, by race, into segregated public or private housing; (3) that privately owned, federally assisted housing had been developed according to the same segregated patterns as the *de jure* public housing; (4) that HUD and Allegheny County community development block grant

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funds had been spent in a manner that reinforced residential segregation, rather than affirmatively furthering fair housing; and (5) that the effects of the various federal and local policies and activities had served to exacerbate and increase residential segregation in the private housing market. Thus, from the outset, the litigation was designed not simply to desegregate public housing, but to place discrimination and segregation in public housing, private federally assisted housing, urban renewal and community development activities in the context of overall patterns of residential segregation in the housing market, and to identify and remedy federal and local policies that created

and entrenched that residential racial segregation.

Examining the Historical Record

A major project undertaken during the discovery phase of the case was examination of the historical records of HUD and its predecessor agencies to unearth the elaborate network of federal policies that mandated or promoted segregation in public and federally assisted housing programs and urban renewal activities. As well, extensive research and investigation were done at the local level to retrieve archival material documenting the explicitly segregative actions of the local government and its authorities and the segregative effects of their implementation of federal policy. This resulted in the compilation of a substantial amount of material documenting the federal policies of segregation and the interrelationship of a variety of federal policies, and between federal and local policy. That material was collected and summarized for presentation to the court, and is available to other advocates.

In summary, Darden examined the concentration and isolation of African-Americans from whites in Allegheny County from 1930 to 1990, and particularly noted that residential segregation and the isolation of African-Americans in only a few communities had increased over that period of time. He also tested the proposition that racial segregation could be attributed wholly or substantially to economic segregation. Examining the relationship be-

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tween racial residential segregation and rental rates, housing values and family incomes, Darden concluded that these factors accounted for only between 5 and 10% of racial segregation, leaving 90-95% of racial residential segregation in the County unexplained by these factors. He also examined the relationship between the racial composition of municipalities and census tracts and the location of segregated housing projects in those municipalities or census tracts, concluding that there was a higher rate of growth of the African-American population in those tracts and municipalities where segregated African-American housing projects were located.

Rabin examined patterns of segregation within Housing Authority projects, and concluded that its policies limited Black tenants to projects in areas of Black population concentration, excluded white tenants from areas with even modest Black population, and excluded Black tenants from areas of overwhelmingly white population. He also examined the impact of urban renewal policies, documenting the elimination of substantial portions of Black population from white communities and their placement in segregated

public or private housing. Rabin concluded that public and Section 8 housing followed and reinforced patterns of racial distribution within the County housing market; that every type of housing assistance was concentrated in the few municipalities that, for over 50 years, have housed a majority of all African-Americans in the County; and that this pattern of residential segregation was further reinforced by urban renewal activities.

A Negotiated Settlement

The case did not go to trial. Instead, the parties negotiated a comprehensive Consent Decree providing three basic remedial approaches. First, the Decree mandates that new public and federally assisted housing will be developed in predominantly white moderate- and upper-income communities and provides 450 Section 8 certificates and a

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mobility counseling program to promote the use of Section 8 certificates by African-Americans in these communities. Second, the Consent Decree provides a variety of activities to desegregate not only public housing, but privately assisted housing and Section 8 programs throughout Allegheny County. Third, the Decree requires that for the next seven years, 25% of the County's community development budget (approximately \$28 million) be expended on community and economic development projects in the seven municipalities with the highest concentration of African-Americans and federally assisted housing. These projects are to be planned and approved by the parties to the litigation, with community development corporations and other com-

munity-based organizations participating in the planning and implementation process.

With regard to the first remedial objective, the Decree provides for the construction of 100 new public housing units to replace those units of the demolished project, and governs the siting in Allegheny County of new and additional replacement public housing units generally. All new units will be scattered site and will be constructed in locations that will provide class members with desegregative housing opportunities in white communities from which African-Americans have been excluded. Countywide public housing development is ensured by terms of the Decree that require Allegheny County, rather than individual municipalities, to execute cooperation agreements with the ACHA. The parties will oversee the selection of sites for all new and replacement units of family public housing during the life of the Decree.

The Decree also provides for waiting list measures designed to achieve desegregated public and assisted housing developments and for counseling to all applicants for public and Section 8 housing about all available housing opportunities throughout the County. The Decree provides for a housing mobility program to be run by a non-profit Fair Housing Services Center (FHSC). The FHSC will perform marketing, outreach and counseling services; make offers to all ACHA applicants; and monitor assisted low-income housing providers. The FHSC will also counsel class members in the utilization of the 450 desegregative Section 8 certificates.

With regard to the second remedial objective, the Decree provides incentives for all HUD-assisted housing providers to fill their units from a single waiting list through the FHSC. Those that choose to fill their units in this way will receive a safe harbor from HUD monitoring of their compliance with affirmative fair housing marketing obligations. Heightened compliance monitoring and strategic HUD enforcement regarding assisted housing providers will be implemented.

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PRRAC San Francisco Meeting Report Available

The first day of PRRAC's San Francisco Spring Board meeting was a "mini-conference," to which we invited some two dozen California researchers, activists, policymakers and funders to meet with PRRAC Board members for a discussion of the national and California implications of immigration, affirmative action and social budget cutback issues. An 11-page report summarizing the conference is available from us with a SASE (55c).

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With regard to the third remedial objective, the Decree provides that representatives of the parties will plan for and approve the expenditure of community and economic development resources targeted to neighborhoods in which historically or identifiably African-American public housing exists and municipalities in which high concentrations of Section 8 tenant-based assistance are utilized by African-Americans. The federal and local governments are required to identify and utilize all other available resources in this effort. All of these resources will be used to leverage public and private reinvestment in those identified communities and enhance the capacity of local community development corporations.

The desegregation strategies in the Consent Decree require that existing housing resources that traditionally have been unavailable to class members, such as privately owned, federally assisted housing, Section 8 funding and conventional public housing in white neighborhoods, be offered to them. This expansion of housing opportunity for the class will be unaffected by changing levels of federal subsidy. Much, if not all, of the funding for the 100 replacement units and the 450 Section 8 certificates provided in the Decree has been set aside. To the extent new housing resources come on line, they must be used to accomplish desegregation. For example, new, scattered-site public housing must be located in neighborhoods from which African-Americans have been excluded. New public housing units could include replacement units built as a result of demolition of obsolete units in segregated neighborhoods. Twenty-five percent of the CDBG budget for Allegheny County set aside under the Consent Decree will be used to leverage additional public and private resources, which will be used for additional affordable housing units and community and economic development programs. The Decree also provides that in the event the Defendants are unable to comply with any funding obligations,

they must notify the Plaintiffs so that comparable relief may be sought.

Our experience in *Sanders* indicates that additional research is required in order to complete a comprehensive historical analysis throughout the country showing how federal policies mandated or promoted segregation in public and federally assisted housing programs and urban renewal activities and their cumulative effect on racial residential segregation in this country. The need to clearly document this history and its present consequences is made more urgent by the impending

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program staff, with the responsible political appointees, would give serious time and attention to the issues we had been raising for years about the Section 8 allocation process and residency preferences.

Due largely to the efforts of Achtenberg, Asst. Secretary for Public Housing Joseph Shuldiner and then Deputy General Counsel for Fair Housing Elizabeth Julian (recently promoted to replace Achtenberg, who resigned in order to run for mayor of San Francisco), truly significant changes were made by HUD in the current NOFA, ending the discrimination against large city housing agencies that had resulted from the four key factors discussed above, each of which was significantly revised or eliminated (see the March 3, 1995 *Federal Register*). In addition, the Field Office policy of applying a 50-subsidy maximum regardless of housing agency size was eliminated for the FY94 decisions, so that the BHA received 117 additional subsidies, and the EOCD Boston regional agency received 119, rather than the prior year's 25 each.

To make this victory real and sustained, two key things must happen: sufficient political support for the tenant-based Section 8 program must exist, in order to ensure that there are additional funds to distribute; and the voices of fairness must prevail over the voices of prejudice on the issue of residency preferences.

changes in HUD's role and expenditures.

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Barbara Sard is the Senior Managing Attorney of the Housing Unit of Greater Boston Legal Services. The Appgar-Herbert study, "Fair Housing Access to Housing Assistance Resources: An Examination of the Allocation Process for Section 8 Vouchers & Certificates," is Working Paper W94-2, available (\$10) from the Joint Center for Housing Studies, 79 JFK St., Cambridge, MA 02138. □

Answers The Welfare Quiz

1. The AFDC program consumes 1% of the federal budget and 2% of the average state budget. (Source: 1994 *Green Book*, U.S. House of Representatives Committee on Ways and Means.)
2. In 1992, the average number of children in an AFDC family was 2. (Source: 1994 *Green Book*.)
3. 1.4% of AFDC claims are fraudulent. (Source: Quality Control Division, Administration for Children & Families, U.S. Department of Health & Human Services.)
4. B. (Source: 1994 *Green Book*.)
5. C. (Source: 1994 *Green Book*.)
6. D. (Source: 1994 *Green Book*.)
7. C. (Source: 1994 *Green Book*.)
8. D. (Source: 1994 *Green Book*.)
9. A. (Source: Tufts University Center on Hunger, Poverty & Nutrition Policy, citing Joint Center for Political & Economic Studies.)
10. A. (Center on Hunger, Poverty & Nutrition Policy, citing Bureau of Labor Statistics, U.S. Department of Labor.)