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Stealth Capture: The Civil Rights Movement and the Implementation of Medicare

David Barton Smith

July 1, 2016 marks the 50th Anniversary of Medicare's inauguration. After Lyndon Johnson's landslide victory in 1964, the passage of the Medicare Act in 1965 surprised no one. The surprise, concealed and never fully acknowledged, came with its implementation. Rather than the typical pattern, the regulatory process was captured not by the industry being regulated but by a social movement seeking to transform it. Almost overnight the nation's hospitals were transformed from our most racially and economically segregated private institutions into our most integrated ones. I tell that story in *The Power to Heal: Civil Rights, Medicare and the Struggle to Transform America's Health System* (Vanderbilt University Press, 2016). I summarize this story and lessons it offers for current efforts to expand access to care and assure greater equity here.

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American Hospitals at the Time of Medicare's Passage

Even though it involved a massive infusion of federal dollars, no one expected the implementation of Medicare to fundamentally change the patterns of racial and economic segregation in the nation's hospitals.

While Title VI of the Civil Rights Act of 1964 prohibited racial segregation and discrimination in institutions receiving federal funding, its implications were never mentioned in the deliberations over the passage of Medicare in 1965. Title VI relied on complaints but provided no funding for the investigation of complaints and imposed no reporting requirements. In 1965 it had already proved ineffective in changing racially segregated patterns of care in hospitals that had received federal Hill-Burton funds for construction and in the allocation of Elementary and Secondary Education Act of 1965 funds to public schools.

Racially and economically segregated patterns of medical care had existed in the United States ever since the beginning of modern medicine. In the Jim Crow South Blacks were mostly relegated to separate and unequal accommodations in basement wards, racially separate facilities or excluded altogether. In most northern cities, with the more invisible result of residential segregation, racially exclusionary privileging of medical staffs and informal understandings about admitting practices, hospital care was just as racially segregated as in the South. The economic segregation of that care further exacerbated its racial segregation.

Public hospitals provided much of the care for the indigent and private voluntary ones concentrated on attracting patients that were privately insured or could otherwise pay for their care by providing attractive private accommodations well removed from the stark open wards offered the indigent. Many even provided three sets of china, silverware and menus to help reinforce their preference for private paying patients and the stigma associated with receiving indigent care.

Patterns of use reflected these separate and unequal arrangements. Those

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with higher incomes and more private insurance received more care, whether it was visits to doctors, hospital stays or other related services. Differences in patterns of use were even greater between Blacks and whites. Indeed, such differences had existed unchanged throughout a half century of the development of the nation's modern health care system, contributing to consistently higher morbidity and mortality rates for lower income populations and blacks. The amount of care one received was directly related to one's income and race and inversely related to one's need for that care. Such patterns of use made a mockery of professed hospital and medical ethical obligations to serve those in need. Yet, few could conceive of such patterns of use ever changing.

Unlike in most other developed countries, the majority of hospitals in the United States were private, nonprofit entities designed to be well insulated from any public accountability for more equitable patterns of use. Only as a result of a landmark court decision in 1964 were these institutions redefined as essentially public entities with the same obligations for racial integration imposed by the *Brown* decision on public schools a decade earlier.

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Almost all of these hospitals had received federal funds for construction made available by the Hill-Burton Act of 1946, which explicitly permitted the use of federal funds for the construction of racially segregated facilities. The *Simkins v. Cone* decision ruled that: (1) hospitals by virtue of the use of these funds as part of a state plan were an "arm of the state" and essentially public institutions and that (2) the provision of the Hill-Burton Act allowing for use of federal funds to construct segregated hospitals was unconstitutional. (*Simkins v. Cone*, 323 F.2d 959 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964)). This ruling helped seal the inclusion of Title VI in the pending Civil Rights Act of 1964, prohibiting the allocation of any federal funds to racially discriminatory institutions.

Most politicians and hospital leaders just assumed that the racial desegregation of hospitals would proceed with the same "all deliberate speed" of public schools—providing token paper concessions but postponing any real desegregation indefinitely.

Anxious to receive the new infusion of federal dollars promised by the Medicare legislation, hospitals were unconcerned about any threat Title VI posed to receiving that money. No one anticipated that its vague prohibition of discrimination, dependent on local complaints from vulnerable patients and their families, unsupported by any funding to staff a response, engage in enforcement, levy penalties or even to collect information from hospitals would do much.

Indeed, the issue of the Title VI requirement never came up in the congressional discussions around Medicare's passage. For those in the Social Security Administration that had long prepared for the responsibility of implementing such a program, the new Title VI requirement presented, at best, an unanticipated and unwelcome last-minute complication. Most politicians and hospital leaders just assumed that the racial desegregation of hospitals would proceed with the same "all deliberate speed" of public schools—providing token paper concessions but postponing any real desegregation indefinitely.

The federal track record throughout 1965, the year of Medicare's passage, certainly supported such a prediction. The Johnson administration faced many pressing matters that seemed more urgent (e.g., the Voting Rights Act, the Watts riots, a growing white backlash and the escalation of the Vietnam War). Medicare became a backburner issue and one more technical than political in nature, best left to the Social Security Administration (SSA) and the Department of Health, Education and Welfare (HEW) to work through.

For its part, HEW had little to show for its efforts in trying to enforce Title VI. Their initial attempts to encourage voluntary compliance weren't working and they were uncertain what, if any, more forceful actions were feasible. That summer and fall, HEW had been deluged with more than 300 Title VI complaints about Hill-Burton funded hospitals from local civil rights groups, but had been able to do little to resolve them. Even in March 1966 when a special office was finally set up to certify hospital Title VI compliance for Medicare funding, it had a skeleton staff of five, and about six thousand hospitals to certify in less than four months. It was also still unclear if anything more than pro forma paper compliance would be backed up the chain of command.

In October 1965, in HEW's first attempt to enforce Title VI of the Civil Rights Act of 1964, it had held up the distribution of Elementary and Secondary Education Act funds to the Chicago Public Schools pending a review of a Title VI complaint brought by local civil rights groups. Johnson over-

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Major Environmental Justice Title VI Agreement Reached in Corpus Christi

Joseph D. Rich

On December 17, 2016, a multi-million dollar settlement was entered resolving a Title VI environmental justice complaint filed by residents of the Hillcrest and Washington-Coles neighborhoods in Corpus Christi, Texas against the Texas Department of Transportation concerning what is known as the Harbor Bridge project. Dr. Robert Bullard, Dean of the School of Public Affairs at Texas Southern University, and known as the father of environmental justice, heralded this as a landmark agreement. Given the historic lack of effective implementation of the 1994 Executive Order No. 12898 addressing "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 Fed. Reg. 7629 (February 16, 1994)), this is an important step forward in addressing environmental justice at a time when the Flint water crisis has highlighted the severe adverse environmental impact suffered by low-income and minority communities.

Introduction

Implementation of Executive Order No. 12,898 and Title VI of the Civil Rights Act, 42 U.S.C. § 2000d *et seq.*, as a tool for achieving environmental justice has long been found wanting, particularly at the U.S. Environmental Protection Agency (EPA). In 2003 the U.S. Commission on Civil Rights found that EPA and four other federal agencies had not fully implemented the Executive Order and Title VI in the environmental decision-making context. (U.S. Comm'n on Civil Rights, Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice (2003), available at http://www.usccr.gov/pubs/envjust/ej0104.pdf.) The report found that "[o]f 124 Title VI complaints filed with EPA by January 1, 2002, only 13 cases, or 10.5 percent, were processed by the agency in compliance with its own regulations." *Id.* at 57.

Particularly egregious is EPA's demonstrated record of noncompliance with the regulatory deadlines.

Despite the findings and recommendations of the Commission, the record of delay continued. Particularly egregious is EPA's demonstrated record of noncompliance with the regulatory deadlines, a record that has caused real harm to communities burdened by the effects of environmental harm and deprived of environmental benefits. According to a 2011 Deloitte Report of EPA's enforcement record, only six percent of the 247 Title VI complaints since 2001 were timely accepted or dismissed within the 20-day time frame, and 50% took over a year for acceptance. *Id.* at 19, 25. Case law provides examples of even worse delays. A recent investigation by the Center for Public Integrity summed up two decades of EPA's delay as follows:

> [A review of] 265 complaints filed from 1996 to 2013 shows that the EPA has failed to adhere to its own timelines: On average, the office took 350 days to decide whether to accept a complaint and allowed cases to stretch 624 days from start to finish. A consultant's report, which examined cases from 1993 to 2010, found that the agency accepted or rejected just 6 percent within the allotted time period. Half took a year or more to be adjudicated. (Talia Buford, Thirteen Years and Counting: Anatomy of an EPA Civil Rights Investigation, Ctr. for Pub. Integrity, Aug. 7, 2015, http://goo.gl/qGpYBS.)

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Don Nakanishi

We are dedicating this issue to our late board member **Don T. Nakanishi** (1949-2016, Professor Emeritus at UCLA). In the words of PRRAC Board Chair Jack Boger:

"Don was a remarkable pioneer in the field of Asian American studies, building UCLA's exemplary program at a time when many national universities had barely begun to recognize its importance for our national self-understanding. Despite his towering scholarly accomplishments (over 100 books and articles) and his academic leadership roles, Don was so modest in manner that many didn't immediately recognize what a great soul he was. Don lived his beliefs as well, not simply studying and refining them. I remember his actions taken to strengthen LA metro communities, including the East LA of his childhood. He was a faithful PRRAC supporter, and his death comes far too suddenly and too soon. We'll all miss him dearly."

More about Don's life and academic work can be found at www.aasc.ucla.edu/people/dnakanishi.aspx.

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However, the processing and response of the Federal Highway Administration (FHWA) to the Title VI environmental justice complaint filed by residents of the Hillcrest and Washington-Coles neighborhoods in Corpus Christi, Texas in 2015 provides an example of progress in this increasingly important area of civil rights enforcement. The process that FHWA followed in investigating and working out a settlement of this matter contrasts with the major shortcomings in the EPA enforcement of Title VI that have been raised repeatedly for over 15 years and provides a model for improved environmental justice enforcement.

The Title VI Complaint

The Corpus Christi Title VI complaint was filed by the Texas RioGrande Legal Aid and University of Texas Law Environmental Clinic on behalf of low-income and minority residents from the Hillside and Washington-Coles communities. (Attorneys for the complainants are preparing an article for the *Clearinghouse Review* concerning this matter and will provide it to the Commission when it published. The Texas Low Income Housing Information Service, headed by John Henneberger, assisted these attorneys throughout the process and the Lawyers' Committee provided input during the negotiation of the settlement.)

The complaint alleged that a major bridge replacement, known as the Harbor Bridge Project, which had been proposed by the Texas Department of Transportation (TxDOT) to be financed in part by federal funding from the Department of Transportation, violated the civil rights of residents of the Hillcrest and Washington-Coles neighborhoods as a result of a proposed road to be built as part of the project that would cause unacceptable disparate harmful impacts to residents of these neighborhoods, including isolation, noise, air pollution, and other impacts.

The Hillcrest and Washington-Coles neighborhoods are surrounded by oil refineries, the Port of Corpus Christi, and highways. Residents live with air pollution, noxious odors, sirens, and industrial flares.

The current Harbor Bridge is located at the mouth of the Corpus Christi ship channel. The plan for the new bridge is to move it further up the channel and raise it by 68 feet to allow the larger ships that can pass through the new Panama Canal to access the Port of Corpus Christi. The highway that connects to the bridge would be relocated away from downtown Corpus Christi and would bisect the Hillcrest and Washington-Coles neighborhoods, Corpus Christi's historic Black communities. These neighborhoods have a long history of past discrimination preceding the Harbor Bridge project stretching back to the days of Jim Crow segregation of African Americans. This history represents a classic example of environmental degradation of a predominantly minority neighborhood.

The Hillcrest neighborhood was first platted in 1916 and developed in the 1930s and 40s, along with the Washington-Coles and other nearby neighborhoods, prior to the industrialization of the Corpus Christi Ship Channel. At that time, Washington-Coles was specifically designated as the neighborhood for Black residents. In 1944, the City Council allowed Black homeowners to move into the Hillcrest neighborhood after being informed that Washington-Coles had no more room for new residents. Over the next two decades, Hillcrest transformed from a predominantly white community to a predominantly Black community.

The Port of Corpus Christi opened in 1922 and primarily shipped cotton. With the discovery of oil nearby in the 1930s, the construction of several refineries soon followed. In 1958, as industrial growth encroached on Hillcrest and Washington-Coles from the north, Interstate 37 was constructed on their south side, isolating them from the rest of residential Corpus Christi and leaving them surrounded by industry. Today the Corpus Christi ship channel is home to six refineries, numerous petrochemical and energy companies, and the eighth-largest port in the country. The Hillcrest and Washington Coles neighborhoods are surrounded by oil refineries, the Port of Corpus Christi, and highways. Residents live with air pollution, noxious odors, sirens, and industrial flares. Industrial accidents have caused evacuations as well as "shelter-in-place" warnings, and residents live the con-

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The FHA Scandal in Philadelphia and the Lessons of Federal Intervention in the Inner-City Housing Market (1967-72)

Zane Curtis-Olsen

Despite recovery following the 2008 recession and the continued influx of affluent professionals into U.S. cities, the lack of quality, affordable housing remains a significant and worsening urban problem as rents continue to accelerate while incomes stagnate. A recent study by the Urban Institute found that only 28 adequate and affordable units are available for every 100 renter households with incomes at or below 30 percent of the area median income (Leopold 2015). While local, state, and federal governments wrestle with this problem, it is important to remember the lessons of past attempts to provide or encourage the development of decent housing for the low-income, and the necessity of community input in addressing waste, fraud, and abuse. Despite its good intentions, the Section 221(d)(2) mortgage insurance program and Section 235 homeownership assistance program remain underreported yet disastrous interventions by the federal government in Civil Rights-Era urban housing policy that was only uncovered and addressed due to the tireless efforts of journalists, public-interest attorneys, and aggrieved community members.

In the wake of uprisings in Philadelphia, Watts, and Newark, the Department of Housing and Urban Development attempted to reverse decades of redlining by supporting and expanding programs to insure those who lent money to potential homeowners in low-income neighborhoods. A cadre of local speculators and politicians took advantage of the loopholes and lack of oversight in the programs to cycle collapsing homes through the hands of poor families while skimming money from the federal government. The programs were most egregiously abused in Philadelphia, where politicians, real estate speculators, and their financial associates ended up foreclosing on thousands of properties. Despite supposed concern from the government, the abuses were only uncovered when local journalists worked together with the defrauded to reveal the corruption running through the program. The story of the FHA Scandal remains a powerful lesson in the need for effective oversight in federal housing programs, particularly those that subsidize the market rather than directly support the tenant or build and manage affordable housing.

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A cadre of local speculators and politicians took advantage of the loopholes and lack of oversight in the programs to cycle collapsing homes through the hands of poor families while skimming money from the federal government.

As decades of disinvestment, deindustrialization, and redlining impoverished minority neighborhoods and fueled urban unrest in the 1960s, the federal government enacted programs to encourage and promote inner-city investment. One such directive was the expansion of Section 221(d)(2) of the National Housing Act, a little-known program that authorized HUD to insure private lenders against loss from default on mortgage loans made to finance the purchase, construction, or rehabilitation of low-cost, one- to four-family homes. The Housing and Urban Development Act of 1968 also amended the National Housing Act to add another program called Section 235. This provision authorized the Secretary to provide subsidies to reduce mortgage interest rates to as low as 1 percent and authorized a new credit assistance homeownership program for lower-income families who were unable to meet the credit requirements generally applicable to FHA mortgage insurance programs.

Though these programs were meant to increase the access of Black families to capital, mortgage-banking interests, speculators (generally real estate brokers who created their own lending institutions), and local politicians took advantage of Sections 221(d)(2) and 235 to further sell substandard properties in inner-city neighborhoods at an incredible markup. Though there were incidents of fraud throughout the country, the worst abuses occurred in Philadelphia and would permanently scar the city. In Philadelphia, politically connected brokers bought properties with serious structural failures from landlords bailing out of properties they had never repaired, sheriff and estate sales, or white families moving out of Black neighborhoods. In each of these cases, the houses—generally 75 to 90 years old—had been left vacant for weeks or even months and were often vandalized. The speculator then made superficial repairs to the property, generally nothing more than applying wallpaper and a fresh coat of paint, and sold them as "FHA approved." By illegally advertising the property as "FHA approved," speculators created the false impression that their properties were sound.

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As reports of fraud in Philadelphia mounted, they caught the attention of *Philadelphia Inquirer* investigative reporters Don Barlett and Jim Steele. Barlett and Steele had just started working together at the *Inquirer* after years working for other papers. The two became an investigative team united in the belief that people should be treated equally, government should not favor one group over another, and that the private sector should be watched as closely as the public sector. The two were some of the first reporters to use computers to better assess large data sets. The FHA Scandal was their first assignment (Dygert 1976). When they followed up on reports of fraud tied to Sections 221(d)(2) and 235, they found 23 of 24 houses they investigated had no building, plumbing, or electrical permits for renovations as required by city code. Still, these properties were approved and appraised as if they had been fully repaired (Barlett and Steele 1971a).

Speculators targeted people who had never owned or maintained a house before, since they did not know what to look for when buying a home. The most common targets were poor, Black single mothers and newly immigrated Latino families. In one case, a real estate agent sold Lucas Velazquez and his wife Iris a property 18 months after they moved to Philadelphia from Puerto Rico. Velazquez, unemployed at the time, was looking to move with his wife and three kids from his brother-in-law's apartment to somewhere more spacious. According to Lucas, his real estate agent pushed him to buy: "I don't speak English too well and it was an emergency… The real estate man, he told me it was easy to buy a house because it is your house and I said OK…" Lucas and his family bought an FHA-insured five-room, 13-foot wide row house in North Philadelphia for $5,800. Shortly after moving in, the family found that their house had an uneven bathroom floor, a broken oven, and was missing a front gate (which they had been told would be installed before they moved in). The real estate agents who sold these properties were operating on the directives of a handful of local speculators (Barlett and Steele 1971a).

Theodore Clearfield was one of the first speculators exposed by Barlett and Steele. In one case, Clearfield bought a two-story North Philadelphia row house for $1,550 and sold it to Francetta Jenkins—a 26-year-old Black mother of three living on public assistance—four months later for $4,300. Within weeks of moving in, Jones faced drafty windows, insect infestation, and water that leaked through the roof whenever it rained. When Jenkins called Clearfield about these problems, his only response was "It's your problem now." In 1970, Clearfield purchased twenty-five houses for $222,000 and sold all but six of them for $603,000 under Section 221(d)(2). Because the properties were covered under this program, if the prospective homeowner refused to pay the mortgage or defaulted, ownership went back to Clearfield while the FHA reimbursed the mortgage lender (Stranahan 1973).

Collusion among the FHA, private mortgage brokers, and investors in Philadelphia led to the highest echelons of power.

Another speculator, African-American William L. Tucker, used his real estate firm—Tucker & Tucker Real Estate—to sell properties owned by his investment firm Penn National Investments, Incorporated. United Brokers Mortgage Company generally provided the mortgages for these homes. In one case, Tucker sold an FHA house for $9,200 that included a decayed rear wall that eventually caved in. When asked about the wall, Tucker called it "one of those things that happens." Tucker's wife, C. DeLores Tucker, served as Secretary of the Commonwealth of Pennsylvania and a member of Governor Milton Shapp's cabinet. At the time, C. DeLores Tucker was the highest ranking Black official in any state government, and her wide range of responsibilities (including state oversight of real estate brokers) caused many Black Pennsylvanians to regard her as "their governor." Though her financial statements did not claim any interest in her husband's business, she did admit to owning fifteen shares of stock in United Brokers Mortgage Company.

Barlett and Steele further investigated the deep-seated connections that enabled this fraud, aided by aggrieved community members. After being sold a $9,000 house that was promised as "FHA approved" under Section 221(d)(2), West Philadelphia resident Carmel McCrudden found herself personally responsible for thousands of dollars in repairs. McCrudden reached out to the press and Community Legal Services of Philadelphia—the legal-aid arm of the War on Poverty—to connect with 650 other defrauded families. McCrudden and these families—largely led by African-American women—formed the Concerned 221(d)(2) Homeowners of Philadelphia. The Concerned Homeowners joined 367 other grassroots organizations around the country to form the National People's Action on Housing, a coalition "representing the white, Black, and brown people victimized by the conspiracy between real estate brokers, mortgage lenders, insurance companies, and FHA" through demonstrations, pressure, court actions, and, eventually, testimony before Congress. Newly-recruited Community Legal Services attorney George Gould represented over 1,000 defrauded homeowners in lawsuits against the FHA and local mortgage brokers between 1970 and 1972 (House 1972a).

Collusion among the FHA, private mortgage brokers, and investors in Philadelphia led to the highest echelons of power. Hugh Scott, senior Senator from Pennsylvania and Senate Minority Leader since 1969, was a close personal friend of United Brokers Mortgage Company president, Louis Bank. Scott's law firm, Obermayer,

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Postindustrial Cities and Urban Inequality

Tracy Neumann

In 2013, Carnegie Mellon University invited three hundred urban specialists from North America and Europe to Pittsburgh to discuss the future of postindustrial cities at the "Remaking Cities Congress." The Congress was held to promote the city's much-lauded "25-year transformation from an industrial economy to a knowledge economy," but it also marked the twenty-fifth anniversary of the similarly-named Remaking Cities Conference, which brought British and American planners and economic development officials to Pittsburgh in 1988 to discuss common problems facing their industrial centers. Their solutions pointed toward postindustrialism, which was by the time of the conference entrenched as an urban development model for North Atlantic manufacturing centers (Davis, 1988).

Popular narratives tend to portray the decline of basic industry and the regions in which that decline took place as a historical inevitability—an unfortunate by-product of natural business cycles and neutral market forces. But the story is not so simple. Growth coalitions composed of local political and business elites set out to actively create postindustrial places as public resources dwindled in the 1970s and 1980s. Postindustrialism included a pervasive ideology that privileged white-collar jobs and middle-class residents, as well as a set of pragmatic tactics designed to remake urban space, including financial incentives, branding campaigns, and physical redevelopment, typically carried out by public-private partnerships. Growth coalitions narrowly focused on creating the jobs, services, leisure activities, and cultural institutions that they believed would attract middle-class professionals back to central cities. They made harsh calculations about whose needs they would no longer meet, rather than seeking to better meet the needs of all residents.

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In the U.S., public officials made decisions about how to allocate resources in a way that exacerbated inequality and sacrificed the well-being of large portions of urban populations in order to "save" cities.

From the vantage point of the 1980s, postindustrialism had looked to some like a rising tide that would lift all boats. Three decades later, the disparity embedded in postindustrial redevelopment models was indisputable. As manufacturing centers were transformed into postindustrial cities, they came to be characterized by an ever-deepening inequality among urban residents and uneven development within metropolitan areas. Pittsburgh's postindustrial transformation between the late 1960s and turn of the twenty-first century benefitted corporations and middle-class and elite residents, but the region's economic transition was not kind to blue-collar workers or the urban poor. Most of the mills were gone, and so were most of the people who had worked in them: many had long ago moved to find work, some had aged into government pensions, and still others had died. Several of Pittsburgh's mill towns remained as economically devastated under the Obama administration as they had been under Reagan.

Yet to the planners and public officials who attended the Remaking Cities Congress in 2013, Pittsburgh remained a potent symbol of postindustrial rebirth. To them, the city was a phoenix that rose from the ashes of the steel industry with a revived downtown; a lively cultural district; expansive university, medical, and technological complexes; and vibrant residential neighborhoods. The tension between boosters' urban visions and residents' interests came into sharp relief at Alan Mallach's Congress address. Mallach, a senior fellow at the National Housing Institute and the Center for American Progress, had participated in the 1988 Remaking Cities conference and returned in 2013 for the Congress. In contrast to 1988, he said, the pressing question for the twenty-first century was no longer whether manufacturing centers would survive—they had, and many had thrived. Instead, Mallach urged policymakers to ask, "for whom?" "We are not only creating a society with vast inequalities, we are institutionalizing these inequalities into the very fabric of American society," he argued. "That is part and parcel of the revitalization story. Can we somehow change [this] progressive institutionalization of inequality" (Mortice, 2013).

One way to imagine alternatives to what Mallach described as the "institutionalization of inequality" through urban revitalization schemes is to look beyond national borders. Postindustrialism was popular as a planning model throughout North America and Western Europe, but redevelopment looked different from city to city and nation to nation. In the U.S., public officials made decisions about how to allocate resources in a way that exacerbated inequality and sacrificed the well-being of large portions of urban

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populations in order to "save" cities. This was certainly the case in Pittsburgh, an international model for postindustrialism. But just across the border in Canada, growth coalitions with similar postindustrial ambitions worked to balance the needs of diverse constituents. Hamilton, Ontario, a steel town approximately 300 miles north of Pittsburgh and part of the same transnational Great Lakes region, provides a case in point. What accounted for different outcomes in cities that tried to implement the same kind of revitalization tactics? Which political and institutional factors mattered? And what lessons do the stories of postindustrial redevelopment in the 1970s and 1980s hold for cities today?

Different Contexts, Different Outcomes

In declining manufacturing centers in North America, the ability of local political and civic leaders to form partnerships that could provide a broad range of public subsidies for private development was key to postindustrialism. Such partnerships flourished in US cities like Pittsburgh in the 1950s and 1960s, but emerged more slowly in other parts of the world.

Canadian municipalities, for instance, were slow to adopt U.S.-style partnerships. Historically, Canadian urban policy emphasized collective over individual good, while a stronger culture of privatism in the United States meant that urban policy was more commonly designed to encourage private consumption and corporate gain. This was due in part to different constitutional understandings of property rights: in the United States, property rights lay with the individual, while in Canada, property rights were vested in the Crown. One result was that Canadian cities were comparatively more public than U.S. cities.

Growth coalitions composed of politicians and businessmen in Pittsburgh and Hamilton pursued similar postindustrial planning strategies, but though their objectives were the same, the outcomes of their activities were significantly different. National policy orientations and local politics shaped political and civic leaders' abilities to adopt redevelopment models that they believed would allow them to realize their goals. In Pittsburgh, entrepreneurial mayors and university presidents, corporate elites, state government officials, local foundations, and community development corporations formed a public-private partnership to pursue a shared vision for an expansive postindustrial transformation that was facilitated by state and federal policy. In Hamilton, municipal officials partnered instead with small business owners and the local Chamber of Commerce on an ad hoc basis to carry out limited development projects, and the city's growth coalition could not control the activities of urban planners to the same extent as its better-organized counterpart in Pittsburgh, where collaboration between political and business elites limited political contestation. Although Hamilton's municipal officials sought to reproduce Pittsburgh's partnership structure and its public subsidies for private developers, they were largely unsuccessful in achieving either goal because the province barred municipal financial incentives for private development. As Hamilton's public officials planned for a postindustrial future, they were also constrained by a provincial growth policy that required the city to remain a manufacturing center and by the continued presence of heavy industry near the downtown core.

In a striking example of the city's postindustrialism, the South Side's mill eventually became a mall.

The Pittsburgh Case

In 1944, Pittsburgh financier Richard King Mellon and the heads of the city's major corporations formed the Allegheny Conference on Community Development to revitalize the city after postwar reconversion. The Republican Allegheny Conference members worked with Democratic Mayor David Lawrence to direct the "Pittsburgh Renaissance," as the city's urban renewal program became known. This early example of a public-private partnership improved Pittsburgh's environmental conditions through smoke, pollution, and flood controls. The Allegheny Conference's corporate members built skyscrapers downtown, and city officials undertook massive slum clearance projects in African-American neighborhoods.

By the early 1970s, however, Pittsburgh was exemplary of the emerging Rust Belt—the city's infrastructure was collapsing, working-class neighborhoods were rundown, and waterfront industries were starting to close up shop. Seeing the writing on the wall, after becoming mayor of Pittsburgh in 1977, Richard Caliguiri announced that he would revive the city through a second Renaissance. Caliguiri pinned his hopes for Pittsburgh's post-steel future on new headquarters buildings, a cultural district, boutiques and restaurants, and high technology and service-sector jobs. To ensure that these things took shape, he provided a wide array of public incentives for private development.

Likely with community backlash to urban renewal programs in the 1960s in mind, Caliguiri wanted to both legitimate and help finance his postindustrial plans by working with neighborhood groups (primarily community development corporations, or CDCs); the University of Pittsburgh and Carnegie Mellon; and the foundation sector, especially those of the Mellon, Scaife, Heinz, and Hillman families. The Allegheny Conference did not wield the nearly unlimited power to control the physical development of the city in the last quarter of the twentieth century that it held in its 1950s heyday, but its influence remained significant. The CEOs who guided decisions about plant closures were also instrumental in determining

the urban and economic development agenda of the city's growth coalition. By 1984, Caliguiri had used public funds to subsidize private investment in projects important to Allegheny Conference members, which included a convention center; commercial, hotel, and retail space; and new corporate headquarters for Allegheny International, Pittsburgh Plate Glass, and Mellon Bank. Together with earlier headquarters buildings for Westinghouse and U.S. Steel, the new construction ensured that skyscrapers rather than smokestacks dominated Pittsburgh's skyline and projected an urban form associated with a headquarters city rather than with a steel town.

CEOs were Caliguiri's most important partners, and downtown occupied most of his attention, but it was the inclusion of community development corporations that allowed Caliguiri to claim broad-based public support for the growth partnership's plans. In return, neighborhood organizations were able to influence and in some cases control development within their neighborhood boundaries. By the mid-1980s, the working-class neighborhoods adjacent to Pittsburgh's urban steel mills—the South Side and Hazelwood—were, like downtown, in the throes of a decades-long post-industrial rebirth. Led by the South Side Chamber of Commerce, business owners and arts organizations remade the working-class South Side as a regional destination for shopping, dining, and nightlife, and the young professionals that city officials and civic leaders were so desperate to attract flocked to the neighborhood for its historic character. In a striking example of the city's postindustrialism, the South Side's mill eventually became a mall—the literal transformation of a site of production into a site of consumption. Across the river in Hazelwood, on the site of the other urban steel mill, city and state officials laid the cornerstone for a high technology center—a joint initiative of the University of Pittsburgh and Carnegie Mellon—designed to signal Pittsburgh's postindustrial rebirth, and they congratulated themselves for transitioning Pittsburgh from the "steel age" to the "space age."

The Hamilton Case

Hamilton was a different story. Hamilton's city officials, too, were eager to implement a downtown urban renewal program in the early 1960s, but they did not do so through a public–private partnership like Pittsburgh's. In 1962, Vic Copps made downtown revitalization a central feature of his mayoral campaign. Within months of taking office, he made overtures to local businessmen and corporate leaders to ensure their cooperation with his redevelopment plans. Federal funding priorities, however, hindered his plans: in 1962, Canada only subsidized low- and moderate-income housing, not commercial development.

"Give people a shopping center, cultural and institutional uses in the center of the city, and they'll move back in."

For Copps, downtown and mill neighborhood redevelopment went hand-in-hand, and Copps had targeted Hamilton's North End, a working-class residential neighborhood adjacent to the harbor industrial area, for urban renewal. Planners wanted to restore the North End's once-grand Victorian homes to their former splendor, plotting out new housing, parks, community centers, and schools. They also planned a wholesale remaking of downtown around a new civic square. Pointing to back-to-the-city movements in Toronto and US cities, Hamilton's urban renewal commissioner expressed confidence that the North End, with its proximity to a revitalized downtown and the waterfront, would once again attract middle-class homeowners. "Give people a shopping center, cultural and institutional uses in the center of the city, and they'll move back in," he assured Hamiltonians (Coleman, 1969).

By the time the Canadian government amended its urban renewal legislation to include commercial development in 1964, Copps had established a congenial relationship with Hamilton's businessmen. Yet Hamilton's corporate and business leaders, unlike their Pittsburgh counterparts, were not particularly concerned with urban planning or economic development in the 1960s. This may have been in part because Ontario precluded local governments from offering wide-ranging economic incentives for industrial or commercial expansion, preferring instead to coordinate those activities at the provincial level. Copps also lacked a private-sector partner with the stature of Pittsburgh's Richard King Mellon or an Allegheny Conference-style civic organization with which to work.

When the first phase of Jackson Square, the civic square that was the centerpiece of Copps' urban renewal plans, was completed in 1977, it included services for a variety of constituents, including existing residents, hoped-for residents, suburbanites, and tourists. City officials and local businessmen expected the new leisure and cultural facilities to draw tourists away from Toronto. They also anticipated that a shopping center anchored by Eaton's department store would lure urban residents as well as suburban shoppers away from suburban malls. A new public library and relocated public market would largely serve Hamilton residents. For the city's growth coalition, three new office buildings signaled Hamilton's emerging importance as a commercial center.

Hamilton's public officials, like Pittsburgh's, spoke openly of a post-steel era by 1980: "We have got to diversify our economic base, we can't continue to rely on the steel industries," Regional Economic Development Director John Morand told the *Hamilton Spectator* in 1980. Morand

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promised Hamiltonians that the regional government was dedicated to changing Hamilton's position in Southern Ontario, stating, "there is a perception now that this community is on the move" (Toulin, 1980). Hamilton's elected officials and business leaders, however, lacked several of the elements that made Pittsburgh's postindustrial redevelopment successful. Most importantly, steel production flourished in the 1980s, even as automation allowed Stelco to eliminate blue-collar jobs. Provincial programs designed to promote research and development did not funnel public money for high technology through universities, as did those sponsored by the Commonwealth of Pennsylvania. Hamilton's location, a mere forty-five miles southwest of Toronto, made attracting a critical mass of corporate headquarters an untenable prospect. Thirty-five years after Hamilton's planners enshrined post-steel development strategies in the city's official plan, heavy industry continued to dominate the harbor, and Hamilton's conversion to postindustrial urban forms remained incomplete.

Lessons from Pittsburgh and Hamilton

Civic leaders and public officials in declining manufacturing centers shared common visions for postindustrial development, but Pittsburgh's and Hamilton's growth coalitions had disparate capacities to realize similar goals due to differences in the two cities' institutional frameworks, positions in their regional economies, participation of local business elites in planning processes, and approaches to meeting the needs of existing residents. Pittsburgh's growth coalition, which functioned in a federal, state, and local policy environment that promoted corporate welfare and fostered mayoral entrepreneurialism, increasingly understood local corporations as its most important constituency. Public officials and civic leaders replaced services that catered to existing residents with services for imagined new residents or a regional (and, in the case of financial services, national or international) clientele. Hamilton's leaders, too, imagined their steel town remade as a headquarters city, dominated by service- and finance-sector activities, but they were impeded by provincial policies that prevented the city government from providing the sort of corporate financial inducements that were essential to Pittsburgh's postwar downtown redevelopment. They were also constrained by provincial planning guidelines that consigned Hamilton to the position of a regional center in which commercial activity was supposed to support, rather than compete with, Toronto's role as Southern Ontario's finance and corporate center. One result was that, in contrast to Pittsburgh, Hamilton's growth coalition continued to accommodate the needs of the city's residential working class, even as it worked to create services that might attract new residents and suburban and regional clients.

The persistent inequality that has taken root in North America since the 1980s is not limited to Rust Belt cities, of course, but it is in former manufacturing centers where the depths of the problem may be the most visible.

A similar story played out in the neighborhoods surrounding the cities' urban steel mill. When the mills remained in service, Pittsburgh's growth coalition largely ignored the neighborhoods around them; when the mills shut down, city officials set out to erase evidence of the industrial past from the urban landscape. The South Side gentrified, and Hazelwood's residential and commercial areas declined even as the neighborhood's former mill site became a seminal site of Pittsburgh's high-tech transformation. In Hamilton, however, city officials and civic leaders remained committed to the steel industry in its reduced form and to the workers who remained.

In manufacturing centers in the throes of a postindustrial rebirth, like Pittsburgh and Hamilton, growth coalitions made hard choices about whose interests they intended to serve. They did so with little apparent anguish over the social costs to those neighborhoods and populations that did not receive increasingly scarce resources. Pittsburgh's elected officials and civic leaders were desperate to attract middle-class residents and white-collar jobs. Caliguiri and his private-sector partners cooperatively undertook large-scale projects designed to meet the needs of new, rather than existing, residents. In Hamilton, however, elected officials struggled in their persistent efforts to form a durable partnership with local business leaders. While this may have frustrated mayors with postindustrial ambitions, it meant that business leaders had exerted control over urban and economic development—business interests were merely one set among many which city officials felt compelled to address. Far more than in Pittsburgh, Hamilton's public officials continued to treat all residents as citizens with a right to a voice in the future of the city, rather than position corporate citizens as the only ones who mattered.

The stories of Pittsburgh and Hamilton highlight the primacy of local place in understanding how postindustrialism was worked out on the ground, but they also demonstrate why it is important to look at local cases in national and transnational contexts. Here, looking beyond national borders reveals that the vastly unequal outcomes embedded in the US model of postindustrialism, which has contributed to the urban inequality we see in major American cities today, was not the natural or inevitable result of market forces. A different set of politics can—and did—produce a different set of outcomes. Pittsburgh and Hamilton also help us think about how to assess the success or failure of postindustrial redevelopment models. In pursuing postindustrialism, Pittsburgh's local growth coalition chose to allocate resources in a way that exacerbated inequality and sacri-

ficed the well-being of certain groups of residents in order to "save" the city. Yet from the perspective of mayors and civic leaders, Pittsburgh became—and remains today—an international model for postindustrial cities: it was a success story. By contrast, in Hamilton, postindustrialism was halting and incomplete. A more pluralistic political culture sustained competing claims from business elites and working-class residents, and public officials worked to accommodate the interests of both groups. Hamilton's mayors and civic leaders did not fully abandon social welfare goals in favor of corporate handouts, and its growth coalition sought to balance the needs of the residents they already had with the ones they hoped to attract. From the vantage point of the mid-1990s and the perspective of blue-collar workers and the urban poor, Hamilton's postindustrialism might have been the real success story.

By looking at Hamilton in the 1980s, then, we see possibilities for a more just and equitable distribution of resources, one that accommodated social and economic transitions without sacrificing certain types of residents. Even as growth coalitions sought to make postindustrial places, they did not neglect the interests of working class residents as did their counterparts in Pittsburgh. But more recent evidence suggests that as Canada became more like the US in the 1990s and 2000s, Hamilton's pluralism was unsustainable. Ontario Common Front (OCF), an organizing campaign against austerity and retrenchment founded in 2010 by the Ontario Federation of Labor and a coalition of ninety labor and community organizations, reported in 2012 that Ontario, among all Canadian provinces, had the fastest-growing rates of poverty and income inequality and spent the least on public programs and social services. The OCF blamed provincial and federal tax policies that privileged corporations and wealthy individuals over the commonweal (Ontario Common Front, 2012). Local leaders were pleased that Hamilton's unemployment rates were lower than provincial and national averages, but their statistics masked the fact that 30,000 of the city's half-million residents were part of the "working poor"—employed, but not earning enough to live without public assistance. A quarter of Hamilton's children and almost half of its recent immigrants lived below the poverty line (Mayo and Pike, 2013).

In Pennsylvania, income gaps widened even as the state's economy grew in the 1990s and early 2000s. There, as elsewhere in the United States, the incomes of the wealthy rose while middle-class incomes and those of the working poor stagnated or fell. Between 1979 and 2013, productivity in Pennsylvania increased by 61 percent while wages languished. Over the same period, median wages increased only once, between 1995 and 2000. In 2010, nearly a quarter-million residents of the Pittsburgh metropolitan area lived below the poverty line, though the region's 12 percent poverty rate was three points lower than that for the United States as a whole. Poverty rates and unemployment levels, as they had been in the 1980s, were higher outside the city limits than within them and higher for African Americans than for whites. After the 2008 recession, Pittsburgh had the highest rate of poverty among working-age African Americans in the forty largest metropolitan areas in the United States, and more than 25 percent of the region's African Americans lived below the poverty line (Price, Herzenberg and Neumann, 2013). The persistent inequality that has taken root in North America since the 1980s is not limited to Rust Belt cities, of course, but it is in former manufacturing centers where the depths of the problem may be the most visible. These lessons are just as relevant today as they were two decades ago: as plant shutdowns continue in North America and Western Europe, and are getting started in Asia, workers whose skills do not match the high-technology, high-finance "new economy" are increasingly shut out of jobs with living wages and benefits and pushed toward persistent unemployment or poorly compensated service-sector positions. ❑

Resources: Postindustrial Cities

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ruled that decision, insisted on the immediate release of the funds and removed the HEW official responsible for it. Most assumed a similar fate lay in store for any Title VI attempts to withhold Medicare funds from hospitals.

Stealth Capture

"Regulatory capture" is typically used as a critique of government regulation whereby the industry being regulated captures the regulatory process and uses it to insulate itself from external control. "Stealth capture" involves the clandestine capture of a regulatory process by an external group making changes possible that would not have happened if all parties had been aware of the attempt.

In this rare and perhaps unique case, well-hidden below the surface, an amorphous coalition of civil rights advocates in the HEW bureaucracy and grass roots movement activists in local communities seized control of the Title VI Medicare certification process for hospitals. That seizure caught hospitals, legislators, and many top government officials by surprise. The participants in this vertically and horizontally integrated takeover included Black medical professionals and civil rights groups that brought the original the legal challenges against segregated hospitals.

These physicians, along with representatives from the Medical Committee for Human Rights, the National Medical Association, the NAACP Legal Defense Fund, Urban League, Student Nonviolent Coordinating Council and Southern Christian Leadership Council, participated in the training sessions for hospital inspectors and later served as consultants to the office responsible for directing the certification process. Key insiders, staff in the HEW Secretary's civil rights office, shared the general consensus of the movement that Medicare's implementation offered a golden opportunity to push for the full desegregation of the nation's hospitals that should not be lost. Derrick Bell, for example, recruited directly from the NAACP Legal Defense Fund, served as legal counsel to this office.

The guidelines they approved for Title VI certification of hospitals for Medicare were concrete, specific, wiggle proof. They insisted that no hospital would be certified to receive Medicare funds without full compliance with all of them. There would be no "all deliberate speed" for hospitals. Many up the chain of command probably doubted the wisdom of such insistence. Yet, with the clock ticking and many other matters to attend to, no-one ever challenged them. John Gardner, who had become Secretary of HEW a few weeks after Medicare's passage, was a willing participant in this takeover. He redefined HEW as a civil rights organization in a memo at the end of December 1965. Title VI compliance, he argued, was too important and sufficient staffing was essential for its success. He ordered HEW's agencies to assist in arranging the necessary temporary transfers to staff the effort. The home agencies would pay the salaries and travel costs of these temporary transfers and the "real" budget of the compliance effort would remain invisible.

As the deadline drew near, perhaps only when it was clear that there could be no turning back, Johnson and his White House staff got fully on board.

As a result, the legislative oversight committees, many controlled by southern legislators, would be left in the dark. The success of this subterfuge would depend on getting sufficient transfers capable of carrying out this difficult assignment while keeping it as low key and invisible as possible to prevent the development of any organized opposition. Almost 1,000 civil servants volunteered for this temporary reassignment. The volunteers included a motley collection of public health service officers, bench scientists, VD inspectors and local Social Security office staff united only by a passionate commitment to its mission. Many had already participated in civil rights activities as private citizens and welcomed the opportunity to do it as a part of their day job. An additional sixty similarly motivated medical students were hired for temporary summer jobs to assist in fleshing out the field inspection teams. With at most two days of training they were sent into the field to complete a transformation that seemed, given the time constraints, impossible. No hospital would be cleared for Medicare funding if there were any distinctions by race in how beds were assigned, where patients sat in waiting rooms, who was employed, where employees ate their lunches or changed or in the awarding of hospital privileges to physicians.

The final arbiters were those in an even more secret army of local hospital workers and civil rights activists that served without compensation and assumed the most risks as the boots on the ground gatherers of intelligence. They made it impossible for hospitals to conceal noncompliance. The unity and fierceness of this coalition and the rapidity of the takeover cowed critics, both in the federal government and the hospital industry, into silence. While many were fearful of disaster it was too late to turn back. The dice had been rolled in the highest stakes gamble in domestic policy history.

As the deadline drew near, perhaps only when it was clear that there could be no turning back, Johnson and his White House staff got fully on board. A Medicare "war board" map went up at Social Security headquarters identifying potential trouble spots. A crisis team, including the Attorney General, Director of the Veteran's Administration and military brass met at the White House in the last days before Medicare's implementation. The National Guard and military helicopters were placed on alert and VA and mili-

tary hospitals prepared for a potential influx of Medicare patients denied access to local hospitals.

What Happened?

Medicare went into effect with 97% of the acute hospital beds in the United States compliant with Title VI and participating in the Medicare program. No National Guard helicopters and transfers to federal facilities were required. As Johnson noted on the occasion, Medicare "is a test for all Americans—a test of our willingness to work together.... I believe July 1, 1966 marks a new day of freedom for our people." However imperfect, it marked a watershed, one that nothing in more recent times has been able to reverse.

Hospitals were, as a result, soon transformed from our most racially and economically segregated private institutions into our most integrated ones. Many Black and public hospitals closed or were converted to other purposes in this racially and economically integrated system of care. The welfare wards and wooden bench charity clinics disappeared. Even in private medical practices in the Deep South, separate colored waiting rooms disappeared soon after similar arrangements had been forced closed in hospital-based clinics.

Medicare patients whether Black or white, had choices where they received care and both physicians and hospitals got paid the same generous amounts without racial distinctions. Patterns of use of hospital care and most other services are now higher for Blacks and low-income populations, making care for the first time actually related to medical needs and the ethical obligations of health professionals.

Racial differences in infant mortality and life expectancy narrowed in the first twenty years after Medicare and Medicaid's implementation. The remaining differences in morbidity and mortality have since been redefined as "disparities," differences that all providers share a responsibility to eliminate and whose elimination their professional associations have set as a goal. No one could now argue that the high stakes and, some might argue, high handed gamble in the implementation of the Medicare hadn't paid off.

Whose Success Was It?

Success claims many parents while failure remains an orphan. What is clear from reviewing the surviving records of this effort and interviews with participants is that it followed no consciously developed plan and no carefully calculated decision at the top was ever made on how to proceed. Just as in the civil rights movement that captured it, it involved mostly seat of the pants improvisation, little centralized control, guided by gut instincts on the ground. The effort, indeed, had many parents.

Much credit must also be given to the leaders in the vast majority of hospitals that quietly integrated their accommodations, often never even creating a ripple in the local communities they served.

The implementation of Medicare became the culmination of 20 years of effort by Black medical activists that had challenged racial exclusions. They had shaped the creation of Title VI and their professional association, the National Medical Association, served as the only organized medical group advocating for the passage of the Medicare legislation. (Indeed the leader of this effort, Montague Cobb, was the only medical or hospital professional invited to attend the signing of the bill at the Truman Library). Five participants in these efforts served as consultants to HEW's Title VI Medicare certification effort, insistent on assuring that race could play no role in hospital practices if they were to receive Medicare dollars.

Certainly Lyndon Johnson and Secretary of HEW, John Gardner, deserve credit. Johnson, during the last six months, never wavered in his general support for the effort and did some of his famous arm twisting toward the end. Without Gardner's insistence on the transfers and willingness to conceal their number and budget implications, the initiative could never have been mounted.

The volunteer temporary transfer field inspectors were the nameless heroes. In completing this assignment they were subjected to all the difficulties of civil rights workers faced in general: jailing on trumped up charges, bullets fired at their rental cars, high speed chases to outrun local Klan groups, and, in at least two cases, crosses burned on their front lawns. The real heroes of the field effort, however, were the hospital and civil rights workers that assisted in providing the intelligence. All risked retaliation and the loss of their jobs. Several had their homes bombed and one may have even been murdered.

Much credit must also be given to the leaders in the vast majority of hospitals that quietly integrated their accommodations, often never even creating a ripple in the local communities they served. Their insulation from local retaliation as private voluntary hospitals now worked to the advantage of accomplishing this transformation. "I am so glad," one administrator observed after the certification was complete. "I only have to run one hospital now."

Yet, for all the difficulties and the risks, for most of the participants in this effort it was one of the most fulfilling times in their lives. "We were really doing something," one of the volunteer civil service inspectors said later. It was something larger than what could be done just in careers as medical professionals, civil servants or administrators.

The Lessons

So much has changed but so much is the same.

Today, just as then, money is more

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important than individual or group racial and ethnic prejudices. Similar federal funding restrictions, encouraged by the success of the hospital desegregation effort, eliminated almost as quickly most sex segregated colleges and the male dominance of admissions to medical, law and business schools. The question in the end was never "what does my organization feel most comfortable doing?" but, "how do we get the money?" The challenge continues to be how to design the answer to that question in ways that assures greater racial and economic equity.

"Freedom of choice" was the last defense offered by hospitals that resisted and wanted to remain segregated. Hospitals were integrated not by changing people's attitudes or feelings but by eliminating choices. One door replaced the "colored" and "white" entrances and one waiting room and cafeteria replaced similarly labeled facilities. The message of the Medicare inspectors to the hospitals and their patients was, you don't have to participate in the Medicare program or receive care in a hospital that Medicare pays for. However, if you choose to do so, everyone has to be treated the same. Universal entitlements are not free market goods.

The Medicare program, at least in how it was implemented, was the gift of the civil rights movement. It said for the first time that everyone is all in it together. Everyone, at least every senior, will get the same benefit, same providers and those providers will all get paid by the same rates. It said, through the way it was implemented, that we have the power to heal. ❑

(TITLE VI AGREEMENT: Cont. from p. 4)

stant fear of a major accident or pollution release. The Harbor Bridge Project exacerbates these problems.

The FHWA's Processing of the Title VI Complaint

The processing of the Corpus Christi Title VI complaint by the FHWA stands in stark contrast to the enforcement record and practices of the EPA and is instructive for any federal agency's Title VI environmental justice enforcement program. The complaint was received by FHWA on March 13, 2015. FHWA began its investigation immediately and issued a letter accepting the complaint and beginning the investigation on April 3, 2015.

The FHWA Office of Civil Rights staff were responsible for the investigation and immediately initiated a proactive investigation, making visits to Corpus Christi several times and meeting with residents in the impacted neighborhoods several times to explain the status of the investigation and possible outcomes. FHWA also put the Harbor Bridge Project on hold during the investigation which created time and leverage for the investigation and negotiations to occur in a timely matter.

The FHWA's application of Title VI's disparate impact standard in this environmental justice setting is instructive. Historically, EPA has been unwilling to find a civil rights violation unless one of the standards set by EPA pursuant to the environmental protection statutes it enforces has been violated. In fact, it has applied a presumption that Title VI is not violated if there is compliance with the environmental standards set by these statutes. This practice often results in ignoring other important factors, including the big picture of all of the burdens a community has to bear, how those burdens compare to those of other communities and the history of discrimination in the community impacted. When Title VI compliance is found based on this narrow presumption, it does not mean that minority populations are not adversely affected by federally funded programs when there is no violation of environmental laws. Indeed, most of the environmental standards that exist don't consider cumulative impacts of multiple pollutants and sources of pollution and don't consider other burdens the community may experience that make the negative impacts of pollution on that population more likely. In short, relying on environmental standards to determine Title VI compliance does not fully capture the harms to public health and way of life of minority populations affected by an environmental hazard.

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Although FHWA never issued formal Title VI findings of a violation in the Harbor Bridge matter, it is the understanding of the attorneys who represented and assisted the complainants that FHWA avoided this kind of cramped analysis of the Title VI disparate impact analysis. Applying disparate impact analysis in an environmental context can be difficult. Therefore, complainants reached out to both the Department of Housing and Urban Affairs (HUD) and EPA, asking them to confirm the disparate impacts of the bridge on the minority communities. FHWA was helped in this regard by drawing on the Department of Justice's civil rights expertise in applying a disparate impact analysis to its determination of Title VI compliance. Especially important, FHWA appeared to consider the cumulative impact of the project on the community as well as the likely impacts on the community, regardless of whether any environmental standards were violated.

Especially important to the FHWA's successful processing of this complaint was its involvement of the complainants and members of the Hillside and Washington-Coles communities in the Title VI investigation and discussions of a remedial plan designed

to settle the complaint. FHWA sought input from complainants and members of the Hillside and Washington-Coles communities from the time of the initial investigation through negotiations concerning the settlement agreement entered on December 17, 2015. (Failure to involve the community has been another major shortcoming of EPA Title VI environmental justice enforcement. The worst example of this is found in the *Angelita C. v. California Department of Pesticide Regulation*. After a delay of twelve years before EPA concluded that there was sufficient evidence to make a preliminary finding of a Title VI violation, EPA failed to inform complainants of this finding. It then proceeded to negotiate a settlement agreement with absolutely no involvement of the complainants in the negotiating process.) Community involvement in the negotiations made it apparent that there would be neighborhood-wide impacts from the project beyond the right-of-way and resulted in discussions of a broad remedy that would address impacts to an entire neighborhood.

Moreover, FHWA involved other federal agencies in the process. Even before the Title VI complaint was filed, EPA and the Department of Housing and Urban Development (HUD) had filed comments about the project echoing concerns being expressed by the affected community about the addition of air pollution and soil contamination to an already overburdened community, noise impacts, reductions in property values, and impacts to nearby subsidized housing residents. During negotiations of the settlement agreement, complainants and the FHWA sought input from HUD and EPA to assist in crafting a settlement. The Department of Justice also played a role in trying to coordinate the actions of these agencies through the Civil Rights Division's Federal Coordination and Compliance Section. This Section is tasked with ensuring that all federal agencies consistently and effectively enforce civil rights statutes and Executive Orders that prohibit discrimination in federally conducted and assisted programs and activities and is especially well-suited for promoting this kind of coordination.

It was also clear early in the negotiating process that a satisfactory neighborhood-wide settlement could not be reached and funded unless a number of parties who were not directly involved in the Title VI complaint participated, including: (1) the Port of Corpus Christi, which had a direct interest in seeing the Harbor Bridge constructed; (2) the Corpus Christi Housing Authority, responsible for the public housing that would be directly impacted by the bridge project; and (3) the City of Corpus Christi. Each of these entities contributed to the settlement and the contribution of the Port, which is funding $20 million of the settlement, was crucial to the settlement. In sum, FHWA's willingness to include other federal and local agencies in settlement discussions was critical to a successful outcome.

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The multi-million dollar settlement resulted from a collaborative effort by the Port of Corpus Christi, City, the Housing Authority of Corpus Christi; the Federal Highway Administration (FHWA); and the Texas Department of Transportation (TxDOT). Specifically, the agreement focuses on enhanced mitigation options for affected residents and includes:

- A voluntary relocation program for homeowners and renters to relocate to a comparable home in a healthy environment, including relocation assistance by a relocation counselor, moving costs for both homeowner and renters, title and closing costs, appraised value of the original home and the comparable home;
- Financial assistance for neighborhood churches, small businesses, and owners of rental properties that choose to relocate to comparable properties;
- A city liaison in the neighborhood for four years to provide information on their options pursuant to the settlement and to connect residents to City services such as weatherization and home improvement pro-

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PRRAC Update

- PRRAC welcomes new Research Associate **Brian Knudsen**. Brian worked most recently at the National Association of Counties, and holds a Ph.D in Public Policy & Management from Carnegie Mellon. We are also hosting four summer interns: undergraduate **Evan Delgado** (Princeton), and law students **Heather Smitelli** (Georgetown), **Priyanka Vashisht** (George Washington), and **Zeb Johnson** (Columbia).
- PRRAC Board member **Demetria McCain** has been appointed as President of the Inclusive Communities Project in Dallas. Former ICP president **Elizabeth Julian** will continue as Founder/Senior Counsel. ICP was the plaintiff in *ICP v. Texas*, which prevailed last summer in the U.S. Supreme Court, and in addition to their civil rights advocacy, provides housing mobility counsel and supports housing development in high opportunity communities in the Dallas region.
- PRRAC Board member **David Hinojosa** has published "Race-Conscious' School Finance Litigation: Is a Fourth Wave Emerging?" in the *University of Richmond Law Review*, 50 *U. Rich. L. Rev.* 869 (2016).

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grams;

- Improved parks, including a new historic park, to be designed with input from a community advisory board, that will recognize the unique history and contributions of Corpus Christi's historic Black neighborhoods;
- Mitigation of construction impacts, such as noise, dust, air pollutants, and traffic; and
- Relocation of tenants in a public housing property impacted by the project.

Going forward, FHWA will monitor and enforce the agreement through quarterly reports and a community advisory board. Representatives of Hillcrest and Washington-Coles communities will also actively participate in this monitoring.

Conclusion

The resolution of the Harbor Bridge complaint provides an example of creative Title VI environmental justice enforcement. There are several positive aspects to FHWA's handling of this matter. In particular, the timeliness of the investigation and resolution of the matter and involving complainants and affected communities, as well as other federal agencies and local governmental entities, in the Title VI process should be standard practice for all Title VI enforcement. Environmental justice matters have a broad impact and typically raise complex factual and legal issues. Reaching out for assistance and coordination is important in fully addressing these issues.

At the same time, there are areas of this process that could have been improved. First, while it is our understanding that FHWA sought assistance from the Department of Justice in applying a disparate impact analysis to this matter, explicit standards and guidance for analyzing disparate impact in the environmental justice context is badly needed, not only for EPA but for all agency Title VI programs. Second, it is not clear that the Department of Justice's Federal Coordination and Compliance Section has played the type of coordinating role in other environmental justice matters that it did in the Harbor Bridge matter. It should increase this role in the future. Third, while complainants were consulted in negotiating the settlement agreement, they were not permitted to be signatories to the settlement agreement and this will complicate any future enforcement of the agreement that may be necessary. It is not clear if this is standard practice of federal agencies in all Title VI enforcement matters. But as third party beneficiaries of such settlements, complainants should be signatories to them. Indeed, in an early Title VI enforcement matter by the Department of Transportation, it appears that complainants were part of the settlement agreement. See: http://www.fhwa.dot.gov/environment/environmental_justice/case_studies/case3.cfm and https://www.dropbox.com/s/8nbx2ns3prf9x6h/North%20Carolina%20Title%20VI%20Article%2022 ClearinghouseRev4422.pdf?dl=0.

Finally, this case provides an example of the need for close coordination with HUD in the enforcement of many environmental justice matters. Much of the agreement is directed at finding housing opportunities for the Hillcrest and Washington-Coles residents and it is important to incorporate the requirements of the Fair Housing Act into such reviews. The Fair Housing Act not only broadly prohibits discrimination in all aspects of housing, but also requires federal agencies involved in housing and urban development and recipients of federal housing assistance to affirmatively further fair housing by taking steps to remedy residential segregation and its harms, including adverse environmental health effects. (42 U.S.C. 3608; 24 C.F.R. 5.154(d).) Therefore, in any Title VI review in which housing issues arise, reaching out to HUD for coordination and advice should be routine. ❑

(PHILADELPHIA: Continued from p. 6)

Rebmann, Maxwell & Hippel, handled United's legal work and Scott had served as counsel to the company. United's entire staff worked overtime calling and mailing postcards out to prospective voters for Scott's campaigns.

Senator Scott—who campaigned for re-election in 1970 on the slogan "the most powerful senator Pennsylvania ever had"—used his power and connections in Washington to insinuate Banks and his colleagues into federal housing policy. In December of 1969, the Philadelphia Redevelopment Authority, on HUD orders, appointed United Brokers exclusive servicing agent for all housing rehabilitation loans. In 1970, HUD Secretary George Romney appointed Bank to the twenty-member advisory committee of the Government National Mortgage Association, and eastern Pennsylvania FHA director Thomas J. Gallagher made United Brokers Mortgage the first mortgage company permitted to handle their own FHA inspections. Barlett and Steele exposed these connections in the *Inquirer* on December 13, 1971. That day, Senator Scott's personal aide Edward E. Pilch was on a $50,000 Caribbean cruise with forty Philadelphia real estate brokers and their wives paid for by United Brokers.

The government's response to the efforts of the *Inquirer* and their allies in the community was slow and incomplete. The FHA initially responded to the *Inquirer* investigation by suspending 160 fee appraisers who worked for private real estate firms. Despite this, HUD refused to reveal the names of individual appraisers involved in suspicious transactions and the *Inquirer* had to sue for the information. Amid a bevy of such scandals around the country, George Romney took particular notice of the "faults, iniquities, and profiteering" in Philadelphia under the 221(d)(2) program and sent a team of investigators from the HUD Washington office alongside representatives from the Internal Revenue Service, Federal Bureau of Investigation, and two assistant U.S. at-

torneys. While the Senate subcommittee on antitrust and monopoly conducted an investigation on FHA fraud in Boston, committee chairman Hugh Scott chose to ignore Philadelphia.

On September 25, 1971, the district attorney issued twelve criminal complaints against Theodore Clearfield for failing to obtain housing code certifications covering his properties. Next month, a federal grand jury returned indictments against Clearfield and four building tradesmen for aiding and abetting the submission of false certifications to the FHA about the conditions of eight houses.[1] Clearfield was further indicted for falsely representing that houses had been endorsed, authorized, inspected, or appraised and approved by the FHA. By the beginning of 1972, the grand jury had indicted 35 real estate speculators, contractors, and salesmen. Seventeen real estate agents in Philadelphia were convicted or plead guilty. Clearfield was eventually convicted on seven charges of filing false house certifications with the FHA, had his real estate license revoked, and was given a 30-day suspended sentence in prison.

It took another two years, but the United Brokers Mortgage Company became the first company indicted by the federal government under the Truth-In-Lending Act. The Act, passed in 1968, was meant to ensure that private lenders honestly disclosed all of their terms and conditions both to the government and to their consumers. A federal grand jury in May 1973 indicted United Brokers on 50 violations of the Act for certifying to home buyers that the FHA had a valid first lien on properties with outstanding liens, submitting false statements to the Government National Mortgage Association substantially understating the company's default rates, and making unauthorized profits on extension fees, credit reports, and photographs. With the indictment, the federal government finally suspended all business with United Brokers. In the case, assistant U.S. Attorney Malcolm L. Lazin called United Brokers' actions "a financial rape" of the low-income community. The company pleaded guilty to 30 counts and was fined $160,000, the maximum penalty under the law. No officials within United Brokers were indicted. William L. Tucker, his wife, and Hugh Scott also avoided consequences for their involvement in the scandal.

The FHA Scandal of 1967-1972 is a lesson in the dangers of poorly planned and implemented federal affordable housing policy.

Individually, many of the low-level real estate speculators, government officials, contractors, and FHA appraisers involved in the scandal were imprisoned, fined, or, at minimum, forced out of the real estate business. Yet these punishments did nothing to address the impact of their actions. To quote Concerned Homeowners Chairwoman Carmel McCrudden:

> There are realtors who are deliberately panic peddling and discriminating in sections as scattered and far apart as Germantown, Kensington, North Philadelphia, South and West Philadelphia. You can see in almost every neighborhood of the city how the opportunity for quick money and real estate speculation has contributed to the decay of the inner city. (Senate 1972)

From 1968 through mid-1971, there were over 2,848 foreclosures in Philadelphia, more than the total number of foreclosures for the previous 33 years. By the end of that year, there had been over 2,100 defaults in Philadelphia under Section 221(d)(2), making up 10 percent of all such defaults in the country (Boyer 1973).

Barlett and Steele's report on the FHA scandal started a long and successful career in investigative journalism. The two would continue to report for the *Philadelphia Inquirer* until 1997, when they moved on to Time Inc. and, later, *Vanity Fair*. In 1975, they won a Pulitzer Prize for a series titled "Auditing the Internal Revenue Service" on the unequal application of federal tax laws to wealthy and poor people. In 1988, they won a second Pulitzer (the only reporting team to do so for newspaper reporting) for a series on the tax breaks for the wealthy written into the 1986 Tax Reform bill. In 1991, they would produce a nine-part series detailing the devastating impacts of Washington corruption and Wall Street greed on the U.S. middle class titled "America: What Went Wrong?" They later won two National

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[1]Also named in the indictment: Clayton Kelley, a roofer; Edward Good, a plumber; Bruce Hammer, an electrician; and Ben Johnson, another plumber. Good and Hammer were acquitted. Kelley pleaded guilty of filing false certifications and agreed to testify against Clearfield.

New on PRRAC's Website

PRRAC Testimony to U.S. Commission on Civil Rights: "The nexus between school funding, school segregation, and housing" (May, 2016)

Policy Brief: "The National Housing Trust Fund: Promoting Fair Housing in State Allocation Plans" (May 2016)

Coalition comment letters on HUD Assessment of Fair Housing tool for public housing agencies, state governments, and local governments (May 2016)

Fair Housing Comments on the Capital Magnet Fund Interim Rule (May 2016)

PHILADELPHIA: Continued from p. 17)

Magazine Awards reporting on corporate welfare and campaign finance. For Barlett and Steele, their reporting on the FHA began a long career of investigating the ways in which government policy increasingly benefited a wealthy elite at the expense of the American people (Barlett and Steele 2012). George Gould continued to work for Community Legal Services of Philadelphia and advocate for tenants in cases of mortgage foreclosure prevention, public housing, landlord/tenant law, and childhood lead poisoning up to the present day.

In 1973, President Nixon's moratorium on federal public housing construction brought a temporary end to Section 235, as it targeted federally-administered subsidy programs alongside direct public housing construction. Section 235 had regulations placed upon it to try to prevent misuse in 1976, and was terminated entirely by the Housing and Community Act of 1987. HUD discontinued Section 221(d)(2) in 2000. Rampant fraud and abuse had cut off this particular form of federal intervention in the inner-city housing market.

The FHA Scandal of 1967-1972 is a lesson in the dangers of poorly planned and implemented federal affordable housing policy. In an attempt to reverse the negative impacts of decades of disinvestment from minority neighborhoods facilitated by the policy of redlining, the government insured speculators as they further devastated these neighborhoods. Without proper oversight, appraisers, lenders, speculators, and their political allies were able to buy dilapidated properties, sell them as "FHA approved" to poor Black women and newly immigrated Latino families, claim FHA insurance on the mortgage after the homeowners inevitably walked out on their collapsing properties, and then repeat the process until the buildings were uninhabitable. The kind of oversight such programs require—particularly transparency and outside observation of mortgage lending—only came after local journalists, attorneys, and activists exposed the abuse. Though there is an extensive literature critiquing federal attempts to directly address the need for affordable housing by building and managing public housing, this story illustrates that efforts to provide housing by influencing the market and subsidizing developers can be equally counterproductive and destructive. As the need for affordable housing only increases, planners should recognize the potential for abuse inherent in any plan to subsidize housing at the point of real estate development or speculation, and the need for community engagement to understand and combat that abuse. ❑

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