

Annotated Bibliography on Public Housing Desegregation Remedies

CASE STUDIES & POLICY RECOMMENDATIONS

Adams, Michelle, "Separate and [Un]equal: Housing Choice, Mobility, and Equalization in the

Federally Subsidized Housing Program," 71 TUL. L. REV. 413 (1996).

Argues that victims of systemic housing discrimination should have both the freedom to leave racially impacted areas and the freedom to remain in a majority-black, enriched environment. Explores both the theoretical rationales and the constitutional and statutory vehicles that might promote that choice.

Boger, John Charles, "Toward Ending Residential Segregation: A Fair Share Proposal for the

Next Reconstruction," 71 N.C. L. REV. 1573 (1993).

Proposes a policy tool, a National Fair Share Act, that would create new market incentives to support integrative housing choices and provide market disincentives to discourage segregative choices.

Cummins, Justin D., "Recasting Fair Share: Toward Effective Housing Law and Principled Social

Policy," 14 LAW & INEQ. 339 (1996)

Suggests improvements to existing Fair Share strategies that would further one of the primary objectives of the Fair Housing Act (FHA)--racial integration--and better advance one of the foremost goals of Fair Share policies--economic integration. Proposes a regional strategy to address residential segregation in the Twin Cities of Minnesota.

Farrell, Margaret G., "The Function and Legitimacy of Special Masters: Administrative Agencies

for the Courts," 2 WIDENER L. SYMP. J. 235 (1996).

Describes one rationalizing technique employed by federal judges to assist them in managing complex mass toxic tort litigation, the appointment of special masters under Rule 53(b) of the Federal Rules of Civil Procedure. Evaluates the ability of special masters to efficiently and fairly meet the extraordinary managerial challenges presented by such lawsuits and their ability to humanize the process. Argues that the flexibility and diversity of special master practice is legitimate in its conformance with the basic constitutional values expressed in Article III and the Due Process Clause of the United States Constitution.

Hirschhorn, James M., "Where the Money Is: Remedies to Finance Compliance with Strict Structural Injunctions," 82 MICH. L. REV. 1815 (1984).

Focuses on the powers available to the federal courts when defendants refuse to comply with structural injunctions due to lack of available funds.

Hughes, Mark Alan, "A Mobility Strategy for Improving Opportunity," 6 HOUSING POL'Y DEBATE 271 (1995).

Three main strategies for confronting inner-city poverty--dispersal, development and mobility--are discussed and compared. The article argues that the mobility approach is the most promising near-term strategy for combating urban poverty.

Keating, W. Dennis, "The Parma Housing Racial Discrimination Remedy Revisted," 45 CLEV.

ST. L. REV. 235 (1997).

Reviews the original decision in *U.S. v. Parma* and its appeal; documents the pitfalls that arose in implementing the original remedy; describes the process by which the original remedy was revised and considers the prospects for success of the most recent remedy.

Luedtke, Carolyn Hoecker, "Innovation or Illegitimacy: Remedial Receivership in *Tinsley v.*

Kemp Public Housing Litigation," 65 MO. L. REV. 655 (2000).

Discusses the receivership as a remedial strategy in the context of the *Tinsley v. Kemp* public housing reorganization case. Argues that a receivership in this case was a resourceful response to the organizational incompetence and dysfunction at the Housing Authority.

Hendrickson, Cara, "Racial Desegregation and Income Deconcentration in Public Housing," 9

GEO. J. ON POVERTY L. & POL'Y 35 (2002).

Makes the case for mobility programs that provide race-conscious counseling and adopt a regional approach to desegregation. Compares the *Gautreaux* remedy to the unmodified Section 8 program, Moving to Opportunity, and HUD's Rule to Deconcentrate Poverty and Promote Integration in Public Housing.

HUD and Urban Institute, *Baseline Assessment of Public Housing Desegregation Cases Vols. I and*

II (April 2000), available at

<http://www.huduser.org/publications/pubasst/baseline.html>.

Evaluates the success of public housing desegregation consent decrees. Specifically considers: *Sanders, Comer, Walker, Young, Hollman, Christian Community Action, Davis and Hawkins*.

Note, "Making Mixed Income Communities Possible: Tax-Base Sharing and Class Desegregation," 114 HARV. L. REV. 1575 (2001).

Proposes a tax-base sharing program in which property taxes for the metropolitan area would be pooled and redistributed on the basis of population size.

Parker, Wendy, "The Supreme Court and Public Law Remedies: A Tale of Two Kansas Cities,"

50 HASTINGS L. J. 475 (1999)

Describes school desegregation remedies implemented in Kansas City, Missouri and Kansas City, Kansas; argues that existing caselaw allows defendants to significantly shape remedial measures, more so than plaintiffs or the court itself; to rectify the plaintiffs' disadvantage, the author proposes that judges define more precisely plaintiffs' rights, focus more particularly on the prospective aspects of the remedy, and recognize their own remedial discretion.

Polikoff, Alexander, "Gautreaux and Institutional Litigation," 64 CHI.-KENT L. REV. 451 (1988).

Detailed background on *Gautreaux* and some of the challenges associated with designing and implementing the *Gautreaux* remedy.

Roisman, Florence Wagman, "Opening the Suburbs to Racial Integration: Lessons for the 21st Century," 23 W. NEW ENG. L. REV. 65 (2001).

The thesis of this article is that economics cannot be used as a proxy for race, that economic remedies cannot be used to solve racial problems, and that steps in addition to the economic remedies are required to promote racial integration in the suburbs. Proposes in particular: (1) a reassertion of state and federal authority vis-a-vis localities with regard to land use decisions; (2) explicit support for residential integration from local, state and federal leadership; (3) collection of data about racial occupancy of government-assistance suburban housing; (4) administration of the LIHTC program in a manner that promotes desegregation; (5) focus on the lowest-income and minority groups in the administration of subsidized housing program.

Rosenbaum, James E., "Changing the Geography of Opportunity by Expanding Residential

Choice: Lessons from the Gautreaux Program," 6 HOUS. POL'Y DEBATE 231 (1995).

Compares employment rates, wage levels, educational outcomes and inter-racial social interactions for urban and suburban movers.

Rosenbaum, James E. and Shazia Rafiullah Miller, "Certifications and Warranties: Keys to

Effective Residential Mobility Programs," 27 SETON HALL L. REV. 1426 (1997).

The authors focus on how best to structure an effective residential mobility program and emphasize the importance of outreach to landlords and neighbors in receiving communities.

Schuck, Peter H., "Judging Remedies: Judicial Approaches to Housing Segregation," 37 HARV.

C.R.-C.L. L. REV 289 (2002)

Compares the remedial approaches of *Mount Laurel*, *Gautreaux*, and *Yonkers*, and argues that *Gautreaux* was the most effective of the three because it relied on 'market-based' strategies such as Section 8 tenant-based assistance instead of encouraging the development of low-income housing in suburban communities.

Tarlock, A. Dan, "Remedying the Irremediable: The Lessons of Gautreaux," 64 CHI.-KENT L.

REV. 573 (1988).

With reference to *Gautreaux*, the author identifies four limitations inherent to remedying deep-seated social problems: (1) the depth of the structural defects of the existing program; (2) the sophistication of the remedy; (3) the comparative advantage of market solutions; and (4) the stickiness and perverseness of political resistance.

Thomas, Suja A., "Efforts to Integrate Housing: The Legality of Mortgage-Incentive Programs,"

66 N.Y.U. L. REV. 940 (1991).

Describes the mortgage-incentive programs instituted by housing authorities in Ohio and Wisconsin and details the history behind and the opposition to decisions to implement these programs. Also introduces a hypothetical mortgage-incentive program designed to provide an example of a constitutionally and statutorily valid program.

Thompson, Timothy L., "Promoting Mobility and Equal Opportunity: *Hollman v. Cisneros*," 5 J.

AFFORDABLE HOUSING & COMMUNITY DEV. L. 237 (Spring 1996).

Discusses the background of *Hollman v. Cisneros*, a public housing desegregation case out of Minneapolis, Minnesota and outlines the various remedial measures imposed through settlement.

Torres, Ciara Carolyn, "Housing in the Heartland: An Examination of the *Hollman v. Cisneros*

Consent Decree, the Politics of Racial Concentration and the Possibilities Offered by Democratic Experimentalism," 17 NAT'L BLACK L. J. 98 (2003)

Presents an overview of the *Hollman* Consent Decree; describes the resistance of public housing activists and Black ministers to the Decree; argues that community-based resistance can be avoided by restructuring desegregation remedies along the lines suggested by Dorf & Sabel's theory of democratic experimentalism.

GENERAL/OVERVIEW

Barkley, Daniel W., "Beyond the Beltway: Equitable Remedies Available in Fair Housing Cases,"

7 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 134 (1998).

Provides a very basic overview of the courts' powers to impose equitable remedies; describes the remedies courts typically use in desegregation cases.

Chayes, Abram, "The Role of the Judge in Public Law Litigation," 89 HARV. L. REV. 1281 (May

1976)

Classic article describing the rise of institutional litigation in federal courts. Acknowledges the legitimacy problems associated with affirmative decrees, but argues that court involvement in public law litigation is workable and inevitable if justice is to be done in an increasingly regulated society.

Coffin, Frank M., "The Frontier of Remedies: A Call for Exploration," 67 CAL. L. REV. 983

(1979).

Judge's perspective on the 'emerging' field of institutional remedial litigation.

Gerwitz, Paul, "Remedies and Resistance," 92 YALE L. J. 585 (1983).

Considers how remedial jurisprudence should be adjusted in the face of local resistance.

Strum, Susan, "A Normative Theory of Public Law Remedies," 79 GEO. L.J. 1355 (1991).

Zaring, David, "National Rulemaking Through Trial Courts: The Big Case and Institutional

Reform," 51 UCLA L. REV. 1015 (April 2004).

This Article reconceptualizes institutional reform lawsuits as the nodes of a nationwide network capable of generating national standards of administration for disparate local institutions. The repeat-playing litigators, parties, and experts who participate in this network facilitate the adoption of common standards by preferring familiar remedies, by valuing interoperability between cases, and by succumbing to the inertial momentum that this can create. The Article also analyzes the sort of law created by the spread of standards, which is low on reasoned elaboration and high on best-practices-style copying. The Article contrasts this view of institutional reform litigation, which focuses on the connections between lawsuits, instead of on the judge or the parties to a particular lawsuit. The Article then draws on the literature of international regulatory cooperation to site this phenomenon, which, consistent with that literature, it dubs "transjudicial administration."

CRITICAL PERSPECTIVES

Epstein, Richard A., "The Remote Causes of Affirmative Action, or School Desegregation in

Kansas City, Missouri," 84 CAL. L. REV. 1101 (1986).

Argues that public law remedies in the desegregation context have been ineffective because they are attempting to rectify wrongs that occurred too far in the past.

Horowitz, Donald, "Decreeing Organizational Change: Judicial Supervision of Public Institutions," 1983 DUKE L.J. 1265 (1983).

Describes the historical and intellectual foundations of structural injunctions; highlights a number of problems associated with affirmative remedies, including the impact on the courts themselves.

Yoo, John Choon, "Who Measures the Chancellor's Foot? The Inherent Remedial Authority of

the Federal Courts," 84 CAL. L. REV. 1121 (1996).

Suggests that public law remedies are unconstitutional because they overstep the limitations on the power of the federal courts as established in Article III of the Constitution.