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The Public Housing Administration and Discrimination in Federally Assisted Low-Rent Housing

The Public Housing Administration is the federal agency primarily responsible for the administration of the federally assisted low-rent housing program.¹ Since the expense of constructing low-rent housing unassisted by federal funds is prohibitive for state or local governments,² this program accounts for practically all low-rent housing in the United States.³ Consequently, PHA has exercised, and continues to exercise, substantial influence on the development of the nation's low-rent housing.

I. INTRODUCTION

The Public Housing Administration has candidly admitted that nearly three-fourths of the housing projects in its program are either all-white or all-Negro.⁴ Although this percentage is considerably less

1. The predecessor of the Public Housing Administration (PHA), the United States Housing Authority, was created in 1937 to administer the United States Housing Act (Housing Act of 1937), 50 Stat. 888 (1937), 42 U.S.C. §§ 1401-36 (1964). Under Reorganization Plan No. 3 of 1947, 61 Stat. 954, 5 U.S.C. § 133y-16, the Authority was renamed the Public Housing Administration and was consolidated with other federal agencies into the Housing and Home Finance Agency (HHFA). The functions of HHFA, which included within it the Urban Renewal Administration (URA), the Community Facilities Administration (CFA), the Federal National Mortgage Association (FNMA), and the Federal Housing Administration (FHA), as well as PHA, were transferred to the Department of Housing and Urban Development (HUD) in 1965. 79 Stat. 667 (1965). As a result, the semi-autonomous status previously enjoyed by PHA has been replaced by direct administrative control of the Secretary of HUD in an attempt to streamline the functions of HHFA, which has been called by Secretary Weaver an "administrative monstrosity." N.Y. Times, Jan. 14, 1966, p. 1, col. 1.

2. A few states have authorized direct aid to their projects. See, e.g., N.Y. UNCONSOL. LAWS §§ 3505-14 (McKinney 1959).

3. There are at present over 550,000 occupied homes in the federal program, housing more than 2¼ million persons. Of those living in public housing, 49% are non-white, 26% are elderly, 48% are receiving public assistance or benefits, and 72% are families with minors. Burstein, *Housing Our Low-Income Population: Federal and Local Powers and Potentials*, 10 N.Y.L.F. 464, 465 (1964).

4. As of March 31, 1963, of all existing projects in the PHA program, 1179 were all-white, 1174 were all-Negro, and 675 were integrated. PUBLIC HOUSING ADMINISTRATION, TRENDS TOWARD OPEN OCCUPANCY, REP'T NO. 12 (1963). Thus, 77.7% of those projects were occupied by members of only one race. In comparison, as of January 6, 1965, 1213 projects were all-white, 942 were all-Negro, and 852 were integrated; thus, 71.8% were segregated. (The 1965 figures do not include projects which were integrated white and other nonwhite (45), segregated within project by building or site (380), mixed occupancy with limitations or segregated patterns (31), all Latin American (10), or unreported (24).) PHA, LOW RENT PROJECT DIRECTORY (1964). For a statistical comparison of January 1965, and July 1965, data, see the appendix at the end of this comment. These percentages, however, are deceptive in several respects. First, since PHA defines a project as "completely integrated" if tenancy includes only one Negro family in an otherwise all-white project, or vice versa, *id.* at v, the number of projects having more than token desegregation is open to question. Second, it must be recognized that a breakdown on a project-by-project basis is also misleading, because integrated projects are generally located in northern metropolitan areas and are usually larger than the segregated projects which are found more often in smaller southern communities. For example,

than the one hundred per cent figure existing at the end of World War II,⁵ it is arguable that any reduction of the figure since that time is attributable to state antidiscrimination legislation rather than to policies implemented by PHA.⁶ Despite its dominant position in the field and despite proscriptions against discrimination contained in the fourteenth amendment, the Executive Order on Equal Opportunity in Housing,⁷ Title VI of the Civil Rights Act of 1964,⁸ the regulations of PHA itself,⁹ and a substantial body of case law,¹⁰ PHA has been unable or unwilling to remedy the extensive discrimination now existent in the projects which it oversees.¹¹

This comment will distinguish segregation and discrimination; it assumes that federal antidiscrimination policies are directed for the most part toward the latter, and will attempt to demonstrate that PHA's actions to date have allowed the perpetuation of intentional segregation by local authorities.¹² The course of action which this

the sixty projects in New York City, 58 of which are integrated and two of which are all-Negro, contain 55,206 units under management. In Georgia, by comparison, the 494 projects, 491 of which are either all-white, all nonwhite or segregated within the project by building or site, contain 31,457 units under management. For a more detailed analysis of geographic considerations, see note 12 *infra*.

5. U.S. COMM'N ON CIVIL RIGHTS, REPORT 160 (1963).

6. For example, New York, the initiator of state antidiscrimination legislation, maintains 92 integrated projects, 13 all-white projects, and 5 all-Negro projects. PHA, LOW-RENT PROJECT DIRECTORY 13-16 (1964). On the other hand, Illinois, which has enacted no private-housing antidiscrimination legislation but has passed a public and urban renewal housing statute without provision for a special enforcement agency, maintains 54 integrated projects, 86 all-white projects and 37 all-Negro projects. *Id.* at 98-111. Georgia, which has enacted no antidiscrimination legislation of any kind, maintains no integrated projects, 204 all-white projects and 194 all-Negro projects. *Id.* at 53-70. As of September 1965, eighteen states and the District of Columbia had enacted legislation prohibiting discrimination in public housing. HOUSING AND HOME FINANCE AGENCY, FAIR HOUSING LAWS 10 (1964); Anti-Defamation League, 1965 State Civil Rights Legislation (1965).

7. Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962).

8. 78 Stat. 252, 42 U.S.C. § 2000d (1964).

9. 30 Fed. Reg. 132 (1965), amending 24 C.F.R. § 1500.6 (1964); 24 C.F.R. §§ 1500.6 (1964). PHA is also bound by the regulations which HHFA has issued pursuant to Title VI, 24 C.F.R. §§ 1.1-12 (1964), most of which are incorporated by reference in 30 Fed. Reg. 132 (1965).

10. See, e.g., *Heyward v. Public Housing Admin.*, 238 F.2d 689 (5th Cir. 1956); *Detroit Housing Comm'n v. Lewis*, 226 F.2d 180 (6th Cir. 1955).

11. Panel on Housing and the Neighborhood, Planning Session for the White House Conference "To Fulfill These Rights" 3 (1965) ("The housing agencies have done practically nothing to implement Title VI as it applies to public housing . . .").

12. See notes 39 and 46 *infra* and accompanying text. PHA maintains that merely because a project is all-Negro or all-white does not necessarily reflect discriminatory tenant- or site-selection procedures on the part of local authorities. This may be true in smaller towns and rural areas in the north and west, since the absence of Negroes in the community will obviously cause a project to be all-white and thus "segregated" in a non-pejorative sense. For example, of the four projects under management in Idaho, three are all-white and the fourth houses both whites and Indians. PUBLIC HOUSING ADMINISTRATION, LOW-RENT HOUSING DIRECTORY 171 (1964). Thus, in this respect the statistics presented in note 4 *supra* should probably be reevaluated and their harshness ameliorated. In the south, however, PHA's position seems patently indefensible,

comment suggests PHA pursue in effectuating present federal anti-discrimination policies is designed primarily to end current and past practices of *intentional* segregation by both local authorities and PHA. The writer thus takes no position on the separate question whether PHA should undertake, or is now able to undertake, a policy of affirmatively encouraging integration, as opposed to desegregation, of low-rent housing projects. Furthermore, this comment will attempt to delineate the historical basis for present discrimination, discuss the methods utilized by PHA thus far to correct the effects of past discriminatory policies, and suggest means by which PHA might better effectuate the duty placed upon it by federal policies against discrimination.

II. HISTORY AND OPERATION OF PHA

The creation of the predecessor of PHA, the United States Housing Authority, to implement the Housing Act of 1937¹³ was the first congressional action aimed principally at the provision of decent, safe, and sanitary housing for those who could not afford to pay for it on the open market.¹⁴ The doubtful constitutionality of direct federal administration of the program¹⁵ and a desire to enhance the attractiveness of the bill to a Congress increasingly conscious of the rapidly expanding powers of the federal government led the sponsors of the bill to place primary responsibility for the administration of the program in the hands of local and state governments and to re-

since the prevalence of segregated site selection is immediately obvious when the placement of projects in each community is examined. The invariable practice is that in those communities which have only one project it is segregated by site or building, in those which have two projects one is all-Negro and the other is all-white, and in those with more than two projects a combination of both methods is present. Moreover, the impact of segregated site selection is not restricted to the south but extends into the larger northern cities as well. See the discussion of New York City's problems, note 45 *infra*.

13. See note 1 *supra*.

14. The Housing Act of 1937, however, had been preceded by federal legislation which, although enacted to satisfy other congressional goals, had indirectly provided shelter for certain segments of the nation. For example, during World War I the United States Shipping Board Emergency Fleet Corporation and the United States Housing Corporation combined efforts to construct housing for workers in war industries; in the early 1930's the National Industrial Recovery Act provided for the construction of low-rent housing in order to increase employment.

15. Lower federal courts had disallowed the exercise of the federal eminent domain power under the NIRA low-rent housing provisions discussed note 13 *supra*, and thus had effectively halted the operation of the federal program. *United States v. Certain Lands*, 9 F. Supp. 137 (W.D. Ky. 1935), *aff'd*, 78 F.2d 684 (6th Cir.), *dismissed on motion of Sol. Gen.*, 294 U.S. 735 (1936). State courts, on the other hand, had extended judicial approval to similar condemnation procedures of state governments. *New York Housing Authority v. Muller*, 270 N.Y. 333, 1 N.E.2d 153 (1936). An interesting analysis of the considerations which led the solicitor general to dismiss the Louisville litigation is found in EBERSTEIN, *PUBLIC HOUSING* 28-56 (1940). The Housing Act of 1937 was eventually held constitutional by the Supreme Court eight years after its passage. *City of Cleveland v. United States*, 323 U.S. 329 (1945).

serve for the federal government a role of advice and approval.¹⁶ This basic approach has, for the most part, been continued to date,¹⁷ although cries of bureaucratic strangulation are frequently voiced by local agencies.¹⁸

In order for a municipality to receive federal funds for low-rent housing, the state legislature must enact enabling legislation providing for the establishment of local housing authorities.¹⁹ When a local authority is created, it seeks preliminary loans from PHA for survey and planning costs.²⁰ Before PHA disburses such temporary loans, it must be satisfied that the local authority has demonstrated that the need for low-rent housing is not being met by private enterprise and that a gap of at least twenty per cent exists between the upper rental limits tentatively set for admission to the projects and the lowest rents which are being demanded on the average for decent housing by private enterprise.²¹ The local authority must also enter into a cooperation agreement with PHA, and the local governing body must authorize the local authority's application for funds.²²

After approval of its tentative program by PHA, the local authority sells temporary notes, secured unconditionally by PHA, to private investors for the early stages of land acquisition and construction. Once development costs can be accurately estimated, however, the local authority foregoes temporary financing and issues to private investors long-term bonds guaranteed by the annual contributions provided under a contract between the local authority and PHA.²³

16. This policy is currently reflected in the first section of the Housing Act of 1937 as amended: "It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (*subject to the approval of the Authority*)" 50 Stat. 888 (1937), 42 U.S.C. § 1401 (1964). (Emphasis added.)

17. See note 16 *supra*.

18. FISHER, TWENTY YEARS OF PUBLIC HOUSING 146-49 (1958).

19. All but three states—Oklahoma, Utah and Wyoming—have enacted such enabling legislation. Burstein, *supra* note 3, at 467.

20. The mere creation of a local authority is insufficient to enable the authority to become eligible for federal funds. The governing body of the locality must adopt a resolution proclaiming the need for low-rent housing and must approve the application of the local authority for preliminary loans. 63 Stat. 422 (1949), 42 U.S.C. § 1415(7)(a) (1964).

21. See 63 Stat. 422 (1949), 42 U.S.C. § 1415(7) (1964).

22. *Ibid.*

23. Statutory limits are placed on the amount which can be expended for dwelling construction and equipment. No specific limits have been placed on acquisition and clearance costs, however, and it has been alleged that local authorities, which are finding it difficult to meet what they consider to be unrealistically low dwelling and construction equipment costs, have juggled funds received under clearance and acquisition loans in order to channel more funds into dwelling construction. The Housing Act of 1965 may alleviate this situation, however, by increasing relevant statutory limits. Cost limitations on each room were raised from \$2000 to \$2500, 79 Stat. 451 (U.S. CODE CONG. & AD. NEWS 2385 (Sept. 5, 1965)), and the aggregate annual contributions were increased \$47,000,000 for the years 1966-68. In any event, PHA does possess a somewhat amorphous ultimate authority to approve the amounts disbursed to local authorities pursuant to

These contributions cover the annual payment for amortization and interest on the permanent financing and assure payment of the full development cost of the project.²⁴ However, the local authority must agree to exempt the property upon which the project is constructed from taxation²⁵ and to provide other governmental services, such as parks and recreational facilities.²⁶ Moreover, if the rents collected from the projects exceed the overhead and administrative costs to which they are applied, the annual contributions are reduced in an amount equal to the excess.

III. INITIAL CAUSES OF DISCRIMINATION IN PUBLIC HOUSING

Because the separate-but-equal doctrine of *Plessy v. Ferguson*²⁷ retained substantial vitality when the first low-rent housing legislation was enacted,²⁸ it appears that little if any consideration was initially accorded to the constitutional propriety of intentionally segregating public housing projects. Moreover, the nearly uniform support for the original public housing legislation by southern lawmakers would probably have vanished immediately if the suggestion of racially mixed housing had been seriously pursued.²⁹ Finally, because the 1937 Act placed primary responsibility for the administration of the program in the hands of local authorities, the projects tended to reflect the segregated living patterns of the communities in which they were constructed, since site selection merely involved placing one project in the Negro neighborhood and one in the white neighborhood.³⁰

the general provision that "economy shall be promoted both in construction and administration." 50 Stat. 895 (1937), 42 U.S.C. § 1415(5) (1964).

24. Because municipal-bond interest is not subject to federal income and most state taxation, financing by this method is substantially more economical than payment of funds by PHA to the local authority directly, since PHA would be forced to borrow the requisite funds from the Treasury at higher interest rates. See Burstein, *supra* note 3, at 475.

25. 63 Stat. 428 (1949), 42 U.S.C. § 1410(h) (1964).

26. These services, and others, constitute the cooperation agreement which the locality must enter into with the local housing authority. See 63 Stat. 422 (1949), 42 U.S.C. § 1415(7)(b) (1964).

27. 163 U.S. 537 (1896).

28. The only case which had shaken the foundations of the *Plessy* decision was *Buchanan v. Warley*, 245 U.S. 60 (1917), which had held that the due process clause of the fourteenth amendment forbade state enactment of racial zoning regulations. The argument could have been made that *Buchanan* prohibited intentionally segregated public housing because in both cases—racial zoning and intentionally segregated public housing—the object of the state's action was to restrict each race to its own living accommodations. See Note, 107 U. PA. L. REV. 515, 517 (1959).

29. See Mulvihill, *Problems in the Management of Public Housing*, 35 TEMP. L.Q. 163, 167 (1962).

30. Several courts upheld the right of states to operate housing developments on a separate-but-equal basis, each in its own neighborhood. See, e.g., *Favors v. Randall*, 40 F. Supp. 743 (E.D. Pa. 1941); *Denard v. Housing Authority*, 203 Ark. 1050, 159 S.W.2d 764 (1942); *Housing Authority v. Higginbotham*, 143 S.W.2d 95 (Tex. Civ. App. 1940).

Because segregation of races was generally accepted in the early years of PHA activity as a legitimate method of operation for both the governmental and private sectors of our society, it is difficult to reproach PHA for initially permitting the establishment of segregated living patterns in public housing. However, the Supreme Court's decisions in *Shelley v. Kraemer*³¹ in 1948 and *Brown v. Board of Education*³² in 1954 made it abundantly clear that governmentally supported segregation would no longer be permitted. Indeed, several lower federal courts during the period from 1948 to 1954 specifically found that the intentional segregation of public housing was intolerable under the fourteenth amendment.³³ Nevertheless, PHA continued to acquiesce in the perpetuation by local authorities of segregated facilities, a phenomenon which may be explained in several ways.

Compared to other federal housing programs which have been accorded general acceptance, low-rent housing has not, until very recently perhaps,³⁴ enjoyed more than an orphan's status. Support of low-rent housing by powerful interest groups has been notably lacking, while opposition has been both vocal and well organized.³⁵ In

31. 334 U.S. 1 (1948).

32. 347 U.S. 483 (1954).

33. See, e.g., *Vann v. Toledo Metro. Housing Authority*, 113 F. Supp. 210 (N.D. Ohio 1953); *Banks v. Housing Authority*, 120 Cal. App. 2d 1, 260 P.2d 668 (Dist. Ct. App. 1953), cert. denied, 347 U.S. 974 (1954). *Contra*, *West v. Housing Authority*, 211 Ga. 133, 84 S.E.2d 30 (1954); *Miers v. Housing Authority*, 266 S.W.2d 487 (Tex. Civ. App.), certified questions answered, 153 Tex. 236, 266 S.W.2d 842 (1954) (questions related to different issues). After the *Brown* decisions every final state and lower federal court decision on the merits has denied the existence of state power to provide separate but equal public housing. See Note, 107 U. PA. L. Rev. 515, 518 (1959).

34. See note 22 *supra*. In addition to the renewed emphasis placed upon low-rent housing by the present Administration, the revival of two often neglected approaches to public housing suggests that the program's aims may soon be accorded greater acceptability. First, more emphasis is now being placed upon integrating public housing with other housing programs, reflected by the creation of HUD, see note 1 *supra*, and by governmental attempts to place low income housing tenants in middle income neighborhoods. N.Y. Times, Jan. 31, 1966, p. 1, col. 6. Second, local authorities are being encouraged to avoid large groupings of public housing projects and to concentrate on smaller, more dispersed units throughout the community. Letter From Herman D. Hillman, Regional Director, Department of Housing and Urban Development, to the N.Y. Times, Feb. 7, 1966, p. 28, col. 3. Although these methods originally met some opposition, that opposition may be waning. Cf. N.Y. Times, Feb. 2, 1966, p. 20, col. 7. It is hoped that in the long run much of the present antipathy expressed toward public housing may be removed since the institutionalization and concentration of lower income families in particular areas of the community will not be as accentuated as it is at present.

35. Although many "liberal" organizations offer lip service to the desirability of public housing, supporters who actively encourage expanded public housing and defend current programs are for the most part either those whose employment is intimately associated with the continuance of such programs, such as the National Association of Housing and Redevelopment Officials (NAHRO) and the National Association of Inter-group Relations Officers (NAIRO), or loose confederations of such "liberal" organizations as the National Committee Against Discrimination in Housing (NCADH). Moreover, even those who support the underlying theory of public housing expend a

fact, between 1949 and 1952 the public housing program barely survived an intensive congressional onslaught;³⁶ it was only the support of southern Democrats which prevented the program's demise.³⁷ As a result, it appears that public housing officials were not eager to attempt a program for removal of existing discrimination which might have alienated the southern lawmakers and thus jeopardized the entire public housing program.³⁸

Moreover, until the issuance of the Executive Order in November 1962 and the enactment of Title VI of the Civil Rights Act of 1964, PHA lacked well-defined authority enabling it to pressure local authorities even if it had so desired. In any event, perhaps the principal explanation for the continuation of discrimination in public housing was that PHA appears to have viewed itself as having carried

substantial portion of their energies criticizing the manner in which public housing is now being operated. See *The Dreary Deadlock of Public Housing*, Architectural Forum, June 1957, p. 139. In addition, labor union support of public housing seems to stem more from the opportunity for "featherbedding" in such projects than from a bona fide desire to provide housing for the indigent. See *The Wall Street Journal*, April 10, 1958, p. 19, col. 2. Furthermore, public housing is often a political plum for politicians. See generally ABRAMS, *PUBLIC HOUSING IN POLITICS* (1950). In contrast, effective political opposition has been conducted by the National Association of Real Estate Boards (NAREB) and the United States Chamber of Commerce. Lobbying pressures are not restricted to the halls of Congress; the attempted establishment of a low-cost housing program in a municipality invariably results in vociferous objections by the local building and real estate interests, supported by the national organizations mentioned above. The members of organizations such as NAREB are generally small businessmen rather than large corporations since the latter, able to submit the lowest bids for housing project construction, are often the primary beneficiaries of the government's housing contracts. See generally Mulvihill, *supra* note 29, at 164-74.

36. During this period three attempts were made to end the federal public housing program, and on two occasions the public housing opponents came within five votes of success. 101 CONG. REC. 12139 (1955). In fact, in 1952 the House voted to end the public housing program for one year. 101 CONG. REC. 12139 (1955). During the Eisenhower administration, the executive department also opposed the extension of public housing. The President's Advisory Committee on Housing, established in 1953, proposed several changes in the federal program which would have drastically affected low-cost housing. See PRESIDENT'S ADVISORY COMMITTEE ON GOVERNMENT HOUSING POLICIES, REPORT OF SUBCOMMITTEE ON HOUSING FOR LOW INCOME FAMILIES 267-73 (1953). Congressional antipathy to public housing has not been restricted to the early fifties. As late as 1961, bills were introduced calling for the abolition of public housing. 107 CONG. REC. 9957 (daily ed. June 19, 1961); 107 CONG. REC. 10123 (daily ed. June 21, 1961). The "Great Society," however, has cast its blessing on public housing. See note 34 *supra*.

37. The disaffection of southern Senators apparently began after several state and federal district courts found that segregation in low-rent housing violated the fourteenth amendment. See, e.g., cases cited note 33 *supra*.

38. Fear of unfavorable congressional reaction apparently has not been the only reason for PHA's inaction. A former administrator of HHFA, Albert M. Cole, was viewed thus by one observer: "As a fighter for public housing, Al Cole has not yet made the lightweight class." Mulvihill, *supra* note 29, at 168. Supervisors within PHA itself apparently were hostile to the public housing program, particularly in the late forties and early fifties, leading Senator Lyndon Johnson to remark: "PHA administrators are dragging their feet on housing and opposing it." *J. Housing*, Nov. 1959, p. 355.

out its responsibilities when it supplied the maximum amount of low-rent housing, whether segregated or integrated.³⁹

IV. ACTION OF PHA SUBSEQUENT TO THE EXECUTIVE ORDER AND TITLE VI

A. *PHA's Interpretation of the Executive Order and Issuance of Regulations*

Although several courts had declared that governmentally supported segregation in public housing was constitutionally impermissible,⁴⁰ it was not until 1962 that a nationwide policy prohibiting discrimination in federally assisted housing was unequivocally established. In that year, Executive Order 11063 recognized that racially discriminatory practices denied Negroes the benefit of housing financed through federal assistance, that such practices produced other forms of discrimination, and that federal assistance to segregated housing was consequently "unfair, unjust, and inconsistent with the public policy of the United States. . . ."⁴¹

Section 101 of the Order directs the appropriate federal agency to take all action necessary to "prevent discrimination" because of race if the contract for federal assistance was entered into after November 20, 1962; section 102 directs the agency to use its good offices and take other appropriate action permitted by law, including the institution of appropriate litigation, "to promote the abandonment of discriminatory practices" if the contract was entered into prior to November 20, 1962.⁴² Pursuant to the Order, PHA issued regulations requiring the inclusion of an antidiscrimination covenant in all annual-contribution contracts initially consummated *after*

39. At one time PHA officially approved the maintenance of separate facilities. Its 1949 Low Rent Housing Manual provided: "The housing provided for all races shall be of substantially the same quality, services, facilities and conveniences with respect to all standards and criteria for planning and designing." PUBLIC HOUSING ADMINISTRATION, LOW-RENT HOUSING MANUAL § 207.1 (1949). This provision has since been deleted.

40. See cases cited note 33 *supra*; Note, 107 U. PA. L. REV. 515, 518 n.23 (1959).

41. Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962). Similarly, Title VI of the Civil Rights Act of 1964 states that "No person . . . shall, on the ground of race . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 78 Stat. 252, 42 U.S.C. § 2000d (1964).

42. Section 101 provides that "all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin . . . provided in whole or in part with the aid of loans, advances, grants, or contributions *hereafter* agreed to be made by the Federal Government . . ." be taken by the appropriate federal agency. (Emphasis added.) Section 102 provides that the federal agency should use its "good offices and take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities *heretofore* provided with Federal financial assistance of the types referred to in Section 101 . . ." (Emphasis added.)

November 20.⁴³ It appears, however, that in several aspects PHA did not fully exercise the power available to it under the Order.

First, it would seem that PHA, like all of the constituent agencies of HHFA, can be charged with interpreting too restrictively the scope of section 102. PHA decided that the phrase "good offices" in section 102 precluded it from taking measures other than those of an informal, conciliatory nature, and thus disregarded the language immediately following that phrase: "other appropriate action permitted by law, including the institution of appropriate litigation if required." PHA also felt that the directive in section 102 "to promote the abandonment of discriminatory practices" was less imperative than the corresponding directive in section 101 "to prevent discrimination," and therefore curtailed the application of the former section. Thus, the Executive Order, as interpreted by PHA's regulations, permitted the federal government to act only against discrimination in those projects where the local authority and PHA had entered into an initial agreement after the effective date of the Order. Consequently, the great bulk of public housing remained unaffected.⁴⁴

Second, PHA restricted the scope of the Order to the tenant-selection procedures of local authorities, thus leaving open the possibility that local authorities would not remedy past discrimination in site selection and might continue to construct projects in either all-Negro or all-white sections of the community. PHA thus rendered the achievement of desegregation in such projects virtually impossible, since it has been demonstrated to be extremely difficult to place whites in projects located in all-Negro neighborhoods.⁴⁵

Third, it appears that local authorities, when constructing projects after November 1962, could satisfy the standards of the PHA regulations by merely including within the annual-contributions contract a covenant assuring PHA that it would not discriminate in its operation of the projects,⁴⁶ since PHA apparently made only negligible efforts to ensure actual compliance.⁴⁷

43. 24 C.F.R. § 1500.6(b)(2) (1964). This regulation, with the exception of one provision, has since been superseded. See note 48 *infra* and accompanying text.

44. See generally Sloane, *One Year's Experience: Current and Potential Impact of the Housing Order*, 32 GEO. WASH. L. REV. 457 (1964); Sloane & Freedman, *The Executive Order on Housing: The Constitutional Basis for What It Fails To Do*, 9 HOW. L.J. 1, 3-5 (1963).

45. See, for example, the problems encountered by New York City when it attempted to situate whites in the Grand House Project near Harlem. N.Y. Times, Feb. 23, 1958, § R, p. 1, col. 8.

46. The alleged fears of the building industry that the Executive Order would cause a drastic retrenchment in home building proved to be unsubstantiated, as were similar fears that southern communities would discontinue their public housing programs. One month after PHA had promulgated its regulations, only five southern communities had cancelled their PHA contracts. Moreover, several small communities in Georgia, Kentucky, Arkansas, Louisiana, and Texas signed final subsidy contracts

At present the regulations are, with the exception of one provision, of historical importance only, since they have been superseded by the regulations issued by PHA pursuant to Title VI.⁴⁸ This exception exists because the Executive Order prohibits discrimination on the ground of creed while Title VI does not. Therefore, any instances of religious discrimination will be resolved under the more narrow confines of the Executive Order regulations rather than under the greater protection afforded by the Title VI regulations.⁴⁹

B. PHA's Interpretation of Title VI and Issuance of Regulations

The coverage of Title VI is much broader than that of the Executive Order, since the title provides that *all* funds disbursed by PHA shall be utilized in a non-discriminatory fashion by the local authorities regardless of the date of the agreement between PHA and the local agency.⁵⁰ Moreover, the regulations promulgated by HHFA, which are binding upon PHA and have been incorporated by reference into PHA's own regulations,⁵¹ are also much more comprehensive. For example, under HHFA's regulations local authorities are required to submit periodic compliance reports and to provide access to all materials which the federal agency may need either for its own use or for the information of a beneficiary of the program. In addition, the federal agency is required to conduct periodic compliance investigations of its own. Consequently, in contrast to the Executive Order, which provided for none of these measures, much of the burden of the enforcement of Title VI falls upon the federal agency rather than upon the individual, although an aggrieved person may also lodge a complaint under the regulations.⁵² Furthermore,

covering over seven hundred units; eighty-five preliminary contracts in the south signed before November 20 were amended by agreement with local authorities to include the antidiscrimination clause. However, the effect of such compliance was for the most part meaningless, according to observers, because the sites of the projects were chosen on a segregated basis. N.Y. Times, Jan. 12, 1963, p. 4, col. 1.

47. The small number of complaints processed by HHFA seems to substantiate this observation. See Sloane, *supra* note 44.

48. 30 Fed. Reg. 132 (1965).

49. "Notwithstanding the provisions of § 1500.6, . . . the procedure prescribed in the HHFA regulations [24 C.F.R. §§ 1.1-.12 (1964)], as implemented by the Public Housing Administration in this § 1500.7 [30 Fed. Reg. 132 (1965)], shall apply with respect to any complaint of discrimination on the ground of race, color or national origin in the low-rent housing program The procedure prescribed in § 1500.6 shall apply only to complaints of discrimination on the basis of creed." 30 Fed. Reg. 132 (1965).

50. Section 2000d of title VI, partially quoted note 39 *supra*, suggests that *all* federal assistance is preconditioned upon the absence of discriminatory practices on the part of the recipient. 24 C.F.R. §§ 1.1-.12 (1964), the regulations issued by HHFA pursuant to title VI, make this explicit by stating that the regulations apply to "Federal financial assistance extended under any . . . program . . . after [Dec. 4, 1964] . . . pursuant to an application approved prior to [Dec. 4, 1964]" 24 C.F.R. § 1.3 (1964).

51. 30 Fed. Reg. 132 (1965).

52. PHA Circular dated December 30, 1964, explaining 30 Fed. Reg. 132 (24 C.F.R.

the Title VI regulations of HHFA guard against both tenant and site discrimination, a matter which was uncertain under the Executive Order regulations.⁵³

It is arguable that PHA did not possess the requisite authority under the Executive Order to end discrimination completely in the projects which it then supervised.⁵⁴ Under Title VI and the regulations issued pursuant to it, however, that authority undoubtedly exists; the remaining problem is how that authority may be best exercised.

C. PHA's Free Choice Plan

Because governmentally supported segregation in public housing appears to have been the result of both discriminatory site selection and discriminatory tenant placement, proper implementation of Title VI and the regulations demands that PHA halt the perpetration of both evils by local authorities. In order to obviate discriminatory tenant placement procedures, PHA has devised what has been termed the "Louisville" or "free choice" plan.⁵⁵ It appears that PHA has not only informed local authorities that such a plan is sufficient to comply with the mandate of Title VI, but has also, in those states which

§ 1500.7), reaffirms Title VI and HHFA's regulations to the extent that all public housing projects are subject to the prohibition of discrimination, but notes that remedies for noncompliance with the regulations may differ depending on the date when the project was initially covered by a financial assistance project. All contracts for annual contributions which *initially* cover a project on or after January 3, 1965, and any preliminary loan contracts must contain a proviso that the local authority will comply with Title VI and the HHFA and PHA regulations issued pursuant to it. (This categorical statement is subject to the exception that PHA will supply the requisite advances to liquidate valid outstanding obligations even though the local authority fails to include the covenant in a preliminary contract entered into before January 3, 1965.) If the local authority fails to comply with the covenant, PHA may treat the authority as if it were in substantial default under the contract and may, at its option, demand that the authority either convey title to or deliver possession of the projects. In contrast, if the annual contributions contract was entered into before January 3, 1965, the local authority, when it next requests funds, must submit a "Statement of Local Authority as to Compliance under Title VI of the Civil Rights Act of 1964." The statement must cover all projects for which funds are to be disbursed and is similar in import to the covenant included in the preliminary loan and annual contributions contracts mentioned above. If the authority fails to comply, PHA may refuse to enter into further financial assistance contracts of various types, may declare a substantial breach or default of the contract, or may take other action authorized by law.

53. See text accompanying note 45 *supra*. Since September 1, 1965, PHA has required that site selections comply with Title VI and that the local authority submit sufficient information to PHA so that a specific determination may be made that the selection is in accordance with the policies established by PHA under Title VI. PUBLIC HOUSING ADMINISTRATION, LOW-RENT HOUSING MANUAL § 205.1 (1949).

54. See notes 43-47 *supra* and accompanying text.

55. It would seem that PHA will have to employ another city as a model for its free choice plan, since Louisville has recently switched to a first-come-first-served approach. The Louisville authority instituted the new plan after it realized that the free choice plan, in conjunction with segregated site selection, had resulted in only minimal desegregation of the public housing projects in Louisville. Louisville Times, Sept. 9, 1965.

do not have more rigorous antidiscrimination policies, recommended it as the most desirable of those plans which may legitimately be adopted.⁵⁶

The free choice plan contemplates that all applicants for public housing in a given locality will be permitted to designate which projects they wish to inhabit and that no tenant will be placed in a project which he has not specified as acceptable. Theoretically, such a plan affords the optimum balance between what some have viewed as two conflicting objectives:⁵⁷ it allows an individual to live near and associate with those he chooses, yet permits the Negro to secure access to all housing accommodations. The assumption underlying the plan is that once the government formally discards its discriminatory tenant-selection procedures, members of both races are freed from the effects of governmentally supported discrimination and thus may choose, as their personal feelings dictate, to live in projects predominantly inhabited by members of their own race, members of the other race, or members of both races in varying proportions. Therefore, the argument continues, if segregation remains after the government assumes a neutral stance, it must be the consequence of private action, reflect the desire of most members of both races to live among their own people, and thus be an improper subject for governmental legislation.

This reasoning, upon which PHA has apparently predicated its support of the free choice plan, seems vulnerable to several objections. First, the free choice plan approved by PHA goes only to the eradication of discriminatory *tenant* selection procedures; it completely neglects and has no effect upon past discriminatory *site* selection methods.⁵⁸ Thus, the neutrality which PHA supposedly offers when it condones implementation of a free choice plan is only a half-measure of neutrality. Free choice in a setting of past governmentally approved segregation, a setting in which PHA now appears to be tacitly acquiescing, would not seem to be a free choice at all. It seems impossible for PHA now to correct directly the discriminatory site selection of the past; the projects obviously cannot be moved, and, regardless of the label which PHA attaches to those

56. Letter From Galen Martin, Executive Director of the Kentucky Commission on Human Rights, to Harold Fleming, Executive Vice President of the Potomac Institute, Oct. 11, 1965, copy on file with the *Michigan Law Review*. The official policy of PHA is not to recommend any particular plan; rather, any plan or method which will assure compliance with Title VI in the opinion of PHA is acceptable. Letter From Joseph Burstein, General Counsel of the Public Housing Administration, to the *Michigan Law Review*, December 3, 1965. This official position is also implicit in PHA Circular, August 27, 1965, describing methods of local administration which will ensure compliance with Title VI.

57. See *OPEN OCCUPANCY VS. FORCED HOUSING UNDER THE FOURTEENTH AMENDMENT* (Avins ed. 1963); Avins, *Anti-Discrimination Legislation as an Infringement on Freedom of Choice*, 6 N.Y.L.F. 13 (1960).

58. See notes 46 and 55 *supra*.

projects, present and potential tenants will view a project constructed by the government in a Negro or white neighborhood as a Negro or white project, respectively. Consequently, if PHA wishes to assume a truly nondiscriminatory position, it seems that it must adopt an affirmative approach in its tenant-placement procedures in order to counterbalance the negative features of governmentally supported segregation in site selection.

A second argument may be directed against the propriety of PHA's free choice plan. One of the underlying premises of present antidiscrimination legislation affecting all phases of society is that government has contributed indirectly to the maintenance of discrimination and that, as a result, the reluctance of the Negro to break through into the white community can be attributed partially to the barriers which the government helped to construct.⁵⁹ Consequently, one objective of antidiscrimination legislation is affirmatively to redress past governmental policies. Therefore, if the individual Negro is now justifiably skeptical about the welcome which would be afforded his arrival in a previously all-white community where past governmental support of prejudicial attitudes was indirect only,⁶⁰ it seems likely that he would be even more dubious of moving into an all-white public housing project in which governmental actions have been directly responsible for segregated living patterns.⁶¹

Various arguments may be raised in defense of the free choice plan. One of the most appealing justifications which PHA might marshal in its favor is that the most "militant" establishment in the executive branch—the Department of Health, Education and Welfare—and the federal courts have approved free choice plans as proper means to accomplish desegregation of southern schools under the mandate of Title VI.⁶² The drawing of such a compari-

59. That such reluctance does exist has been acknowledged by many federal courts in a variety of contexts. See, e.g., *Rachel v. Georgia*, 342 F.2d 336 (5th Cir. 1965); *Dowell v. School Bd.*, 244 F. Supp. 971 (W.D. Okla. 1965). See generally Miller, *Government's Responsibility for Residential Segregation*, in *RACE AND PROPERTY* 58 (1964).

60. See Rubin, *The Negro Wish To Move: The Boston Case*, 15 J. Social Issues No. 4, p. 4 (1959). Studies of those Negroes who have pioneered Negro entry into formerly all-white communities reveal that they decided upon their course of action despite the difficulties which they believed would be encountered. See, e.g., *NORTHWOOD & BARTH, NEIGHBORHOODS IN TRANSITION—THE NEW AMERICAN PIONEERS AND THEIR NEIGHBORS* (1965).

61. See CONNECTICUT COMM'N ON CIVIL RIGHTS, *RACIAL INTEGRATION IN PUBLIC HOUSING PROJECTS IN CONNECTICUT* (1955).

62. The Office of Education of the Department of Health, Education and Welfare (HEW) has fixed minimum standards to be used in determining the qualifications for schools applying for federal financial aid: "The fall of 1967 is set as the target date for the extension of desegregation to all grades of school systems not fully desegregated in 1965-66" A good-faith start requires desegregation of at least four grades for the 1965-66 school year. Office of Education, U.S. Department of Health, Education and Welfare, *General Statement of Policies Under Title VI of the Civil Rights Act of*

son, however, appears untenable for several reasons. Perhaps the most persuasive is that the courts, in fashioning remedies to end discriminatory state action, have accorded a special status to the problem of desegregating the schools.⁶³ The Supreme Court, in the second *Brown* decision,⁶⁴ recognized that unique administrative problems are involved in school desegregation,⁶⁵ and therefore did not require its immediate effectuation. In contrast, in all other areas of state-aided discrimination, the federal courts have noted the absence of these administrative factors and have consequently ordered the state or local officials to desegregate at once.⁶⁶

Furthermore, HEW and the courts do not view the free choice plan as necessarily the final answer to the problem of desegregating the school systems of the South.⁶⁷ The all-too-deliberate speed with which southern school authorities have moved in the decade since *Brown* has caused the courts to view skeptically the proposed efforts of southern educators to desegregate.⁶⁸ Consequently, while per-

1964 Respecting Desegregation of Elementary and Secondary Schools (1965). The Fifth Circuit has "attached great weight" to these standards, and will not accept a lesser degree of desegregation, although in certain instances it may demand more. *Singleton v. Jackson Munic. Separate School Dist.*, Civil No. 22527, 5th Cir., Jan. 26, 1966. See also *Singleton v. Jackson Munic. Separate School Dist.*, 348 F.2d 729 (5th Cir. 1965); 64 MICH. L. REV. 340 (1965); accord, *Price v. Denison Independent School Dist.*, 348 F.2d 1010 (5th Cir. 1965).

63. See *Watson v. Memphis*, 373 U.S. 526, 531-32 & n.4 (1963).

64. *Brown v. Board of Educ.*, 349 U.S. 294 (1955).

65. The Court listed considerations such as "problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." *Id.* at 300-01.

66. The Supreme Court has explicitly rejected the contention that the concept of "all deliberate speed" should be extended to areas other than education in the public schools. See *Watson v. Memphis*, 373 U.S. 526 (1963). The Court has reasoned that "the rights . . . asserted are, like all such rights, *present* rights; they are not merely hopes to some *future* enjoyment of some formalistic constitutional promise . . . [U]nless there is an overwhelmingly compelling reason, they are to be promptly fulfilled. The second *Brown* decision is but a narrowly drawn, and carefully limited, qualification upon usual precepts of constitutional adjudication and is not to be unnecessarily expanded in application." *Id.* at 533. (Emphasis in original.) See generally Greenberg, *Race Relations and Group Interests in the Law*, 13 RUTGERS L. REV. 503 (1959); Hartman, *The Right to Equal Educational Opportunities as a Personal and Present Right*, 9 WAYNE L. REV. 424 (1963).

67. In *Bradley v. School Bd.*, 345 F.2d 310 (4th Cir.), *vacated and remanded on other grounds*, 86 Sup. Ct. 224 (1965) (per curiam), the court allowed the implementation of a free choice plan, but was careful to note that "such freedom [of choice] exists in a practical sense only when a pupil wishing to attend a school with substantial numbers of the other race has an unequivocal and realizable right to do so." *Id.* at 315 n.5; accord, *Felder v. Harnett County Bd. of Educ.*, 349 F.2d 366, 367 (1965) (per curiam). The Supreme Court vacated *Bradley* and remanded the case to the district court for its consideration of the faculty as well as the student desegregation aspects of the school board's desegregation plan. 86 Sup. Ct. 224 (1965) (per curiam); see 64 MICH. L. REV. 692 (1966).

68. See *Goss v. Board of Educ.*, 373 U.S. 683 (1963). The Fifth Circuit has warned

mitting the implementation of free choice plans throughout the South, both the courts and HEW have been careful to note that such plans will be approved only if the choice is in reality a free one and desegregation is actually accomplished within three years.⁶⁹ Where the mere institution of a free choice plan appears insufficient to overcome the multitudinous difficulties inherent in any attempt to desegregate a school system, it seems certain that the plan will not be accorded continued judicial approval.⁷⁰ The trial which is to be given free choice plans in the schools, however, has already been granted public housing projects for approximately three years, with patently unsatisfactory results. Consequently, if a comparison is to be drawn between PHA's policies and those of HEW and the courts, it appears that PHA should discard the free choice plan and adopt a substitute which will more effectively meet the mandates of the Executive Order and Title VI.

recalcitrant school boards that "the later the start, the shorter the time allowed for transition." *Lockett v. Board of Educ.*, 342 F.2d 225, 228 (5th Cir. 1965); *accord*, *Singleton v. Jackson Munic. Separate School Dist.*, 348 F.2d 729 (5th Cir. 1965). See generally 64 MICH. L. REV. 340 (1965).

69. *Bradley v. School Bd.*, 345 F.2d 310 (4th Cir.) (concurring opinion), *vacated and remanded per curiam on other grounds*, 86 Sup. Ct. 224 (1965). Judges Sobeloff and Bell emphasized that the court viewed the free choice plan as an experiment to end existing discrimination, not as the final answer to the problem. Where the free choice plan is "merely a strategic retreat to a new position behind which the forces of opposition will regroup," the free choice plan will be found insufficient. *Id.* at 322. *Accord*, *Kemp v. Beasley*, 352 F.2d 14 (8th Cir. 1965). The Fifth Circuit, moreover, although approving the free choice or free transfer plans suggested by HEW, has strongly intimated that such plans will be suitable only if they in fact attain *integration* of the schools: "In retrospect, the second Brown opinion clearly imposes on public school authorities the duty to provide an integrated school system. Judge Parker's well known dictum ('The Constitution, in other words, does not require integration. It merely forbids discrimination.') in *Briggs v. Elliot*, 132 F. Supp. 776, 777 (E.D.S.C. 1955), should be laid to rest. It is inconsistent with Brown and the later development of decisional and statutory law in the area of civil rights." *Singleton v. Jackson Munic. Separate School Dist.*, 348 F.2d 729, 730 n.5 (5th Cir. 1965); *accord*, *Kemp v. Beasley*, 352 F.2d 14, 21 (8th Cir. 1965). In addition, HEW's enchantment with the free choice plan appears to be evaporating. A force of two hundred investigators and mediators is now being readied to secure full compliance with the agency's antidiscrimination requirements, and new guidelines are being prepared to deal particularly with "so-called 'freedom of choice' plans that many Southern school districts have adopted as a means of token integration while avoiding full-scale desegregation." N.Y. Times, Feb. 8, 1966, p. 24, col. 4.

70. In *Dowell v. School Bd.*, 244 F. Supp. 971 (W.D. Okla. 1965), the court took judicial notice that resistance existed in all-white communities to Negroes who seek to obtain housing there, that discrimination was practiced by some realtors and financial institutions, and that Negroes, on the average, were economically restricted to a smaller housing market. It then concluded that such factors contributed to the Negroes' inability to exercise a substantial freedom of choice in determining their place of residence and that the resulting residential segregation caused similar patterns of segregation in the schools. As a result, the court found that the city school board, by adopting a neutral free transfer plan rather than an affirmative policy to desegregate, was in a negative fashion contributing to increased segregation within the city. Consequently, it ordered the school board to take clear, affirmative, and aggressive action to bring about desegregation of the schools. *Id.* at 982.

V. POSSIBLE PHA PROCEDURES FOR ENSURING AT LEAST MINIMAL COMPLIANCE WITH THE EXECUTIVE ORDER AND TITLE VI

Because PHA has approved the intentional placement of public housing projects in segregated neighborhoods, because little can be done about such placement at present, and because the free choice plan of tenant selection has proved insufficient to erase the imprimatur of discrimination placed upon site selection by PHA, a more affirmative antidiscriminatory tenant-placement policy must be adopted by PHA. Several localities⁷¹ have instituted the first-come-first-served plan, which appears to meet both the minimal requirements of federal policy⁷² and the need for administrative simplicity. The plan requires that all applications for housing be filed in the central office of the local agency. Applicants are then placed in existing vacancies in any of the projects under the jurisdiction of the local authority in the order of application, without regard to race.⁷³ Handling of the applications from a central office rather than on a project-to-project basis seems essential to the success of the plan. If an individual-project approach is utilized, then the first-come-first-served plan may in substance revert back to a free choice plan, since both whites and Negroes would probably tend to apply only for those projects inhabited by members of their own race.

In public housing projects today the annual tenant turnover averages approximately twenty-five to thirty per cent. Thus desegregation of all projects under the first-come-first-served plan would theoretically take place in three to four years, which is roughly the length of time during which PHA has advocated the ineffective free choice plan. This time span is approximately equal to the period which HEW and the federal courts contemplate will be necessary for the total implementation of the free choice plans in the southern schools. Thus, in terms of the length of time necessary to achieve the ultimate goal of desegregation of governmental facilities, it seems that the first-come-first-served plan in housing and the free choice plan in schools are closely parallel.

In addition, while the free choice plan only ensures that tenant-selection procedures may proceed on a nondiscriminatory basis, the first-come-first-served plan guarantees that the effects of past discrimi-

71. See the discussion of the change in Louisville's public housing program, note 55 *supra*. Jersey City has recently implemented a similar plan. N.Y. Times, June 19, 1964, p. 12, col. 1.

72. See note 50 *supra* and accompanying text.

73. If a local authority institutes a first-come-first-served plan, PHA requires that the plan shall provide for one of the following dispositions if an applicant refused to accept the offered vacancy on any ground: that he remain in first place on the application list; that he remain in first place but if he rejects suitable vacancies on a stated number of occasions (two or three, for example) he be moved to last place; or that he be moved to last place. PHA Circular, August 27, 1965.

nation in both tenant- and site-selection procedures will be substantially mitigated, since tenants will be placed in all projects without regard to race. Thus the tendency of both whites and Negroes under the free choice plan to view projects as white or Negro and to "choose" accordingly is considerably reduced by the first-come-first-served plan.

Various practical arguments have been offered in opposition to the first-come-first-served plan. It has been asserted that many local authorities are nearing the brink of financial disaster and that implementation of the plan would cause impending insolvency to become a reality.⁷⁴ It has been demonstrated that on the average rents paid by white tenants in public housing projects are higher than those paid by Negroes;⁷⁵ consequently, it is contended that if Negroes move into formerly all-white projects, or unwilling whites are forced into previously all-Negro projects, then the whites will move out of public housing entirely, more Negroes will move into the projects in their place, and the resulting decrease in rental income will spell the authority's financial doom.

The foregoing argument, however, would appear susceptible to several objections. Although it seems fairly well established that whites may rebel against the introduction of Negroes into their midst if previous interracial contact has been negligible,⁷⁶ studies conducted in public housing projects have concluded that personal interracial association after Negroes enter formerly all-white projects causes prejudicial attitudes to diminish considerably.⁷⁷ Moreover, there appears to be a positive correlation between the amount of interracial exposure and the degree of tolerance and acceptance manifested by each race for the other.⁷⁸ Therefore, it may be doubted whether an exodus of whites from public housing projects would result from the establishment of racially mixed projects. Furthermore, it appears

74. See Mulvihill, *supra* note 29, at 175-78.

75. *Ibid.*

76. See notes 60 and 61 *supra* and accompanying text.

77. DEUTSCH & COLLINS, *INTER-RACIAL HOUSING: A PSYCHOLOGICAL EVALUATION OF A SOCIAL EXPERIMENT* (1951); WILNER, WACKLEY & COOK, *HUMAN RELATIONS IN INTER-RACIAL HOUSING* (1955); CONNECTICUT COMM'N ON CIVIL RIGHTS, *op. cit. supra* note 61; Spiegel, *Tenants' Intergroup Attitudes in a Public Housing Project With Declining White Population*, 21 *PHYLON* 30 (1960).

78. See authorities cited note 77 *supra*. Two particular difficulties arise when these studies are evaluated. First, the projects investigated were all located in the North, with the possible geographic exception of Baltimore. However, the city of Baltimore has recently been noted for its racial harmony. See *Bradley v. School Bd.*, 345 F.2d 310, 322 (4th Cir. 1965) (concurring opinion). Therefore, the conclusion of these studies that intermixing of the races lessens prejudice might hold true only in northern communities. Second, the investigators interviewed only those whites who had remained in the projects after integration had been introduced. It is therefore plausible that part of the apparently increased acceptance of Negroes by whites may be attributable to the fact that the more prejudiced whites simply moved out of the project before the investigations were initiated.

inappropriate that the duty of PHA to oversee the desegregation of public housing should depend on the amount of money necessary to its accomplishment. If the financial stability of a local agency would be imperiled by racial heterogeneity, it would seem that the answer should be increased funds rather than continued discrimination.⁷⁹

It has also been alleged that the implementation of the first-come-first-served plan, if it does not lead to the financial ruin of local authorities, will at least cause whites to withdraw from public housing projects. As a result, public housing would be as segregated after the institution of the plan as before and present segregation would thus be perpetuated rather than ended. It seems doubtful that the first-come-first-served plan would cause one hundred per cent Negro tenancy of public housing projects;⁸⁰ if such a result seemed possible, however, the local authority might consider methods which would maintain integrated housing facilities. For example, the New York City Housing Authority now "encourages" applicants to enter projects where they would provide better racial balance.⁸¹ Moreover, the utilization of affirmative programs to accomplish integration in other areas of state action⁸² suggests that approaches similar to the use of benign quotas may now be accorded a less hostile judicial reception than in the past.⁸³

VI. CONCLUSION

The failure of PHA to achieve more than token desegregation of the nation's public housing program seems traceable to its reluctance to undertake action which would effectively offset its own past discriminatory site- and tenant-selection practices as well as those of local authorities. If PHA is to remove the discrimination which now taints the nation's low-rent housing programs, and present federal

79. The Housing Act limits annual contributions to an amount "equal to the annual yield, at the applicable going Federal rate plus 1 per centum, upon the development or acquisition cost of the low-rent housing or slum clearance project involved." 50 Stat. 891 (1937), 42 U.S.C. § 1410(b) (1964).

80. See authorities note 77 *supra*.

81. N.Y. Times, Jan. 27, 1964, p. 16, col. 7.

82. See, e.g., *Balaban v. Rubin*, 14 N.Y.2d 193, 250 N.Y.S.2d 281, 199 N.E.2d 375, *cert. denied*, 379 U.S. 881 (1964), where the New York Court of Appeals held that a local school board, in establishing school attendance lines, may attempt to redress racial imbalance in the schools caused by residential segregation. *Cf. Vetere v. Allen*, 15 N.Y.2d 259, 206 N.E.2d 174 (per curiam), *cert. denied*, 86 Sup. Ct. 60 (1965). *But see Wanner v. County School Bd.*, 245 F. Supp. 132 (E.D. Va. 1965).

83. To date three courts have considered the issue of benign quotas. *Compare Taylor v. Leonard*, 30 N.J. Super. 116, 103 A.2d 632 (1954), and *Banks v. Housing Authority*, 120 Cal. App. 2d 1, 260 P.2d 668 (1st Dist. 1953), *cert. denied*, 347 U.S. 974 (1954), *with Favors v. Randall*, 40 F. Supp. 743 (E.D. Pa. 1941). The subject of benign quotas has been accorded extensive treatment in the law reviews. Two of the better articles are Bittker, *The Case of the Checker-Board Ordinance: An Experiment in Race Relations*, 71 YALE L.J. 1387 (1962); Navasky, *The Benevolent Housing Quota*, 6 How. L.J. 30 (1960).

antidiscrimination policies strongly suggest that it must, then it seems that PHA should consider implementing the following suggestions. First, it should ensure that future low-rent housing projects are placed in racially mixed neighborhoods or are dispersed in smaller units throughout the community.⁸⁴ The adoption of such an approach, however, will not affect the bulk of low-rent housing already constructed in homogeneous neighborhoods. Second, since the free choice plan now extolled by PHA has proved inadequate in removing the stigma of past discrimination, PHA should discard it, and demand that local authorities institute a first-come-first-served plan. Through these methods PHA should be able to guarantee open access to *all* public housing projects, not merely to those labeled "Negro" or "white."

Jordan D. Luttrell

84. See notes 34 and 53 *supra*.

APPENDIX

The following data have been compiled from the two latest Public Housing Administration's Low Rent Housing Directories of December 31, 1964, and June 30, 1965, containing statistics as of January 6, 1965, and July 6, 1965, respectively. The purpose of the table below is to offer a statistical comparison of the racial composition of all projects currently under management in the federally administered low-rent housing program according to the definitions formulated by the Public Housing Administration. The analysis of the statistics should give the observer an indication of the effect of Title VI and of the HHFA regulations issued pursuant to it during the first six months in which the regulations were in operation.

Region	Racial Composition of Project*																	
	0		1		2		3		4		5		6		7		9	
	1/65	6/65	1/65	6/65	1/65	6/65	1/65	6/65	1/65	6/65	1/65	6/65	1/65	6/65	1/65	6/65	1/65	6/65
New York	304	326	2	2	1	2	3	3	0	0	21	21	75	79	0	0	6	8
Philadelphia	137	143	4	4	4	4	16	15	0	0	100	103	59	63	0	0	11	11
Atlanta	9	15	6	6	225	248	0	0	0	0	610	621	636	656	0	0	4	4
Chicago	164	177	5	8	9	9	8	8	0	0	75	74	138	155	0	0	1	2
Fort Worth	51	56	3	3	141	158	2	4	0	0	126	132	215	239	9	9	2	2
San Francisco	187	190	25	27	0	0	2	2	1	1	10	13	90	93	1	1	0	0
Total	852	907	45	50	380	421	31	32	1	1	942	964	1213	1285	10	10	24	27

DEFINITIONS OF RACIAL COMPOSITION:*

- 0—Integrated (white and more than one nonwhite, including at least one Negro family)
- 1—Integrated, white and other nonwhite
- 2—Segregated within project, by building or site
- 3—Mixed occupancy—with limitations or segregated patterns
- 4—Not defined
- 5—All nonwhite
- 6—All white (with or without Latin-American)
- 7—All Latin-American
- 9—Not Reported

STATES INCLUDED IN EACH PHA REGION†:

- New York—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, and Rhode Island.
- Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
- Atlanta—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
- Chicago—Illinois, Indiana, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.
- Fort Worth—Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.
- San Francisco—Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

* As defined by Public Housing Administration in its Low-Rent Housing Directory.

† Includes only those states which have projects actually in operation.