

2004

Without Due Process of Law: Deprivation and Gentrification in Chicago

Kelli Dudley

Supervising Attorney of the Chancery Advice Desk, Circuit Court of Cook County, Chicago, IL

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>

 Part of the [Civil Rights and Discrimination Commons](#), and the [Housing Law Commons](#)

Recommended Citation

Kelli Dudley, *Without Due Process of Law: Deprivation and Gentrification in Chicago*, 9 Pub. Interest L. Rptr. 11 (2004).
Available at: <http://lawcommons.luc.edu/pilr/vol9/iss3/10>

This Feature is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Without Due Process of Law: Deprivation and Gentrification in Chicago

By Kelli Dudley*

I. Introduction: From Currency Exchanges to Starbucks

Chicago is an aggressively changing city. Chicago has long been known as the "city that works." However, at least of late, Chicagoans also shop, guzzle Starbucks lattes, and enjoy gastronomical delights at a pace similar to that of residents of other world-class cities.

Despite the rapid growth enjoyed by many Chicago neighborhoods, some see the latte cup as half-empty. A map developed by Brigid Rauch of the University of Illinois illustrates the distribution of Starbucks coffee shops and currency exchanges in the Chicago area.¹ Starbucks coffee shops, where a coffee beverage can cost around five dollars, tend to be concentrated in affluent neighborhoods.² In contrast, currency exchanges, stores that offer services such as check-cashing in exchange for fees to people who do not have traditional bank accounts, tend to make their home in areas with relatively higher poverty rates.³ Rauch observes that, "The far south side, which is the poorest area of Chicago, apparently doesn't even qualify for a currency exchange."⁴

The introduction of new Starbucks coffee shops is ever increasing as Chicago neighborhoods are transforming through gentrification. Gentrification is the process by which new development replaces old housing and business stock in a neighborhood. Gentrification has an impact on the cost of housing and, as a result, the income level of people who can afford to live in a gentrified area. This reality is understood on an instinctual level. Rauch observes this with a link from her map that asks, "What happens when a CHA housing project is torn down?"⁵ When one follows the link, one sees a Starbucks sign in the foreground of a photograph that shows demolition equipment at work on a housing project.⁶

People who are displaced by gentrification must seek affordable housing, often beyond the "old neighborhood."

II. Displacement of Neighborhood Residents

The impact of gentrification on affordable housing is borne out by economic analysis. One example is the transformation of the Chicago Housing Authority's Cabrini-Green development into a "mixed income" model as the area that surrounded Cabrini-Green gentrified.⁷

At its height, the Cabrini Green public housing development on Chicago's near north side had 3,591 units in 55 high-rise, low-rise and townhouse structures. By 1999, there were only 3,193 units, a reduction of 398 units or 11 percent. The complex now has 1,436 vacant units, a 44.4 percent vacancy rate. The population of Cabrini-Green is 99 percent African-American. In 1997, the average income for all households in Cabrini-Green was \$10,402. In 1997, nearly half the households (49.4 percent) received income from the existing welfare program. 323 household or 16.6 percent included employed members.

Cabrini-Green, located less than a mile from the beaches of Lake Michigan, is surrounded by one of the most affluent and desirable neighborhoods in the city. Its residents are white. This fact made Cabrini-Green a prime development to begin the destruction of the

public housing program in Chicago.⁸

Using figures including the City of Chicago's projections, David Ranney and Patricia Wright show that the plan to transform Cabrini-Green into a mixed-income development will include only 350 units, or 15 percent, for families with incomes under \$27,000 per year.⁹ Half will be "market rate," with no income limits, and another segment will be classified as "affordable" for families earning over \$44,000 annually.¹⁰ Fully 70 percent will be affordable only for those making \$44,000 or more.¹¹ In contrast, the authors' study shows that in 1997, about half the families living in Cabrini-Green quali-

Gentrification, continued on page 12

Gentrification, *continued from page 11*

fied for welfare assistance.¹² Therefore, the City of Chicago's plan left no room for the vast majority of those who had made their homes in Cabrini-Green.

People who are displaced by gentrification must seek affordable housing, often beyond the "old neighborhood." Many turn to the suburbs, where access to services to address basic needs, such as transportation, is limited. Others may go to neighborhoods deemed "less desirable" within the city.



Photo Courtesy of Brigid Rauch

Affordable housing in Chicago is a premium, with 36 percent of households spending more than 30 percent of their income on housing costs.¹³

This lack of affordable housing pushes those who seek affordable housing into less desirable living conditions and creates a cycle in which the non-working impoverished are crowded out by the working poor.

The decline of affordable housing is part of a broader global strategy that aims to cheapen production costs through mobile capital. The elimination of living wage jobs has meant that housing is no longer affordable to large numbers of people. Displaced workers have either moved into public housing or have occupied units once inhabited by people who were even lower on the economic ladder, driving up housing costs. This has left the old urban poor without options and has created a group of "new urban poor" who are crowding into the lowest end of the housing market. At the same time, the "new world order" (economic programs to which the authors attribute an emphasis on private market deregulation, privatization, and mobility of goods,

services, and capital) programs have added to the wealth of a segment of the U.S. population who are claiming choice urban space for themselves. Public housing and other affordable housing units have occupied this space in Chicago and other U.S. cities. Pushing the lower income workers and the poor out of these areas not only meets the needs of the wealthy for choice land, but also sets up a "market" that is highly profitable to politically connected urban land speculators. U.S. housing policy has facilitated this process.¹⁴

III. Mechanisms for Displacement: Governmental Complicity and "Takings"

Gentrification requires that one use of property, such as for moderately priced housing, give way to a different use. Often this entails a shift away from residential use by poor or working-class people to use as commercial property or luxury residences. People do

not usually leave their homes voluntarily. In rental properties, such as those discussed above, renters may be priced out by rent increases. However, homeowners, with a vested property right in their homes, are not displaced without a modicum of legal process. Litigation or implementation of public policy designed to deprive people of their homes is fraught with conflict and illustrates the nexus of private property rights and law.

The U.S. Supreme Court recently agreed to hear *Kelo v. City of New London*.¹⁵ This case addresses whether the government may take private property to benefit private developers.¹⁶ This is a departure from the Court's traditional focus where the takings clause is concerned.¹⁷ In those cases, the court has usually considered whether a taking has occurred,¹⁸ whether a given taking is compensable,¹⁹ and how much compensation is just.²⁰

The issue in *Kelo*, whether private property may be taken by the government for the benefit of private developers, is significant for the future of neighborhoods that are potential targets for gentrification. If the court decides that governmental pow-

Gentrification, *continued on page 13*

Gentrification, *continued from page 12*

ers may be used in this way, the effect could be devastating for people living in the communities targeted for gentrification. For many people, the compensation offered when the government takes private property may not offset the personal value of the property. For some, sentimentality may cause the individual owner to value a family home more than the appraised value reflects. More importantly, families who have a great deal of equity in their home may not be able to purchase a similar home with proceeds from a taking. Families may be living in homes purchased by prior generations or purchased when home values were very low in the given area. Even using money given when the government exercises its eminent domain powers as a down payment, the family may not qualify for a mortgage or otherwise be able to purchase a home in the same area because of the increase in property values as areas gentrify. Such a homeowner may be forced into rental housing or be a likely victim of predatory lending practices as she seeks to replace her home.

The "taking" of private property for promotion of a gentrification project may not be through a formal condemnation proceeding. The City of Chicago is known to issue many "code violations" to a property owner, then offer the owner accused of the violations a dismissal of the housing court charges if the owner will sell to another private entity at a price far below the market value. This scheme does not

This lack of affordable housing pushes those who seek affordable housing into less desirable living conditions and creates a cycle in which the non-working impoverished are crowded out by the working poor.

yet appear to have been challenged in court, but it seems to carry possible takings clause and criminal implications.²¹

IV. Gentrification as Positive Development²²

Proponents of gentrification dispute the assertion that gentrification produces household displacement through rent and property prices, community conflicts, racial tensions, lower population concentrations, and landlord harassment. On the

contrary, notwithstanding the usual arguments that gentrification improves city tax revenues and increases property values, advocates also assert that "upgrading" produces a more equitable social mix, improvements to local services and an enhanced attention to the physical environment.²³

Gentrification supporters challenge the idea that gentrification displaces community residents. They argue that investing in poverty-stricken areas produces quite the opposite result. Proponents claim market conditions that increase housing production provide renters the option of owning their own homes.²⁴ This new sense of ownership will motivate residents to pay closer attention to their community and will influence new laws and ordinances producing improvements to local services and an enhanced attention to the physical environment.²⁵

In addition, as production of new housing increases and former renters become new owners, their old rental spaces will be freed up for a new group of renters who either will move from less desirable units or come into the neighborhoods for the first time.²⁶ This will enable many renters to move up the housing ladder into more desirable apartments. This "circular flow" of living spaces diminishes the notion that gentrification produces household displacement.

Advocates also contend that the production of high-income homes, another controversy in the discussion of gentrification, is essential to an upgrading community.²⁷ In fact, they assert the absence of high-income housing hinders economic groups from moving up the housing ladder by encouraging suburban sprawl that, in turn, produces static in community housing as a whole.²⁸ Conversely, proponents argue that new high-income housing will open up former spaces for groups wishing to enter into communities better than the one they currently inhabit.²⁹ This mixture of new high-income housing will create a more equitable social mix consisting of groups of all economic levels and of all racial representation.³⁰ As such, supporters believe that the negative aspects of gentrifications are outweighed by these positive factors they project will result as wealthy people move into communities they had once abandoned in favor of far-flung suburbs.

Gentrification, *continued on page 14*

Gentrification, continued from page 13**V. Foreclosure: "Private" Takings**

Perhaps the greatest land-grab since the 1800s has developed in the past two decades. Unlike the great governmental land giveaways that facilitated westward expansion, the new land is a change in the ownership of primarily urban, developed properties. Two commonalities with the westward expansion remain: There is land to be had at bargain rates, and a social agenda is advanced.

The modern land-grab is mortgage foreclosure. This is an equitable court remedy that allows a lender to force the sale of a defaulting borrower's property to repay the mortgage debt. Foreclosure was rarely used before the 1980s. Foreclosures in Cook County, Ill., have increased from under 6,000

a good vehicle, from the perspective of developers and banks, to transfer home ownership from those who have traditionally lived in a neighborhood to land developers. After a foreclosure, homes are typically sold at a judicially mandated sale. There is no minimum bid required. As a practicality, the lender comes to the sale and bids the amount of its lien on the property, ensuring that the property will not be sold for less than the amount of the foreclosure judgment. The lender, therefore, often becomes the owner of the property. In other cases, the property is purchased by a third-party, usually a developer. The properties may be developed immediately, or they may be boarded up to await resale at a higher price as the community gentrifies.

Absent a marked shift in policy and in statute, it is likely that gentrification in Chicago will continue without any accommodation of the needs of those displaced.

in 1993, to more than 12,000 in 2001, and to about 20,000 in 2002.³¹

The increase in mortgage foreclosure rates has taken place in the same period when sub-prime lending, including predatory lending, has flourished. A sub-prime loan is a loan with an interest rate and other features that are less favorable to the borrower than those associated with traditional, or prime, loans. Sub-prime loans are credited by some with having caused credit to be available to borrowers who would not otherwise have been eligible for a prime loan.

Predatory loans are a type of sub-prime loan. While there is no statutory definition of "predatory loans," such loans may be characterized by a very high interest rate, high finance charges, mandatory fees paid at the inception of the loan, and by extension of the loan with no expectation on the part of the lender that the borrower will be able to repay the loan.³²

While overall mortgage foreclosure rates have increased, foreclosure rates on sub-prime and predatory loans are particularly high. Sub-prime and predatory loans are more prevalent in neighborhoods with lower incomes and higher numbers of minority residents. These neighborhoods have correspondingly high interest rates.

It stands to reason that predatory lending is

V. Conclusion

Supporters of gentrification view this process as one that beautifies a community. They point to the positive aspects of gentrification and argue that these outweigh the negative effects that gentrification has on long-time residents. Job increases, property value increases, and the shift from renting to ownership solidify proponents' support of gentrification.

A much different perspective comes from opponents of gentrification. From the perspective of poor and working poor residents of Chicago, it matters little whether the government or a lender causes them to lose their home. To end this cycle, at least two separate policy shifts appear to be required.

First, to address elimination of affordable housing by overt governmental action, a shift in policy to preservation of affordable housing is necessary. This would mean that the government would not take or facilitate the taking of private property for use by developers, and would also mean that the decimation of the Chicago Housing Authority would cease. Second, a change in the market behavior of lenders is required. While Illinois recently enacted its High Risk Home Loan Act, reforms must go deeper. While current laws place additional regulations on

Gentrification, continued on page 15

Gentrification, *continued from page 14*

loans with particular characteristics, there is no law in Illinois that forbids a high-interest loan or a loan made without an expectation that the homeowner can repay it.

Changes in the courts are also required. Foreclosure currently requires only that a form pleading be submitted. Since few defendants appear in court, there is rarely a meaningful challenge to the foreclosure. Moreover, the standard to which lenders are held is very low. The lender typically submits an affidavit attesting to the amount of money owed by the allegedly defaulting borrower and the amount of costs incurred. The mortgage foreclosure law does not, on its face, require the judge to make any sort of detailed factual inquiry or look at all to the reason for the default. The result is that it is relatively easy for a bank to foreclose upon any borrower who allegedly did not pay his or her mortgage.

Absent a marked shift in policy and in statute, it is likely that gentrification in Chicago will continue without any accommodation of the needs of those displaced.

*Kelli Dudley is the supervisory attorney of the Chancery Advice Desk at the Circuit Court of Cook County (Daley Center) in Chicago. This desk is run in conjunction with the Chicago Legal Clinic, Inc., the Office of the Clerk of Court, the Chancery Division, and the Office of the Chief Judge. About 90 percent of her cases involve defending borrowers from mortgage foreclosures. She also works as a solo practitioner in her firm, Law Offices of Kelli Dudley, in Evergreen Park, Ill.

1. Brigid Rauch, *The Non-Adjacent Spaces of Wealth and Poverty in Chicago: The Distribution of Currency Exchanges and the Distribution of Starbucks Coffeeshouses*, (no publication date), at www.uic.edu/orgs/kbc/maps/Starbucks.html (last accessed Dec. 13, 2004).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. David C. Ranney and Patricia A. Wright, *Race, Class, and The Abuse of State Power: The Case of Public Housing in Chicago*, Nathalie P. Voorhees Center for Neighborhood and Community Improvement (March 2000), at

www.uic.edu/cuppa/voorheesctr/racepaper.htm (last accessed Dec. 13, 2004).

8. *Id.* at 14.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. 2000 U.S. Census.

14. Ranney and Wright, *supra*, at 6,7.

15. *Kelo v. City of New London*, 843 A.2d 500 (Conn. 2004), *cert. granted*, 73 U.S.L.W. 3204 (U.S. Sept. 28, 2004) (No. 04-108).

16. *Id.*

17. U.S. CONST. amend. V (portion of the Bill of Rights prohibiting governmental taking of life, liberty, and property without due process of law and just compensation). The Fourteenth Amendment to the United States Constitution makes the Fifth Amendment applicable to the states.

18. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (finding a compensable taking where owners of large buildings were required to allow the installation of a cable that occupied approximately one foot and did not otherwise interfere with the use of the building).

19. *Penn. Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978) (holding a compensable taking did not occur when a governmental entity declared a building a historical landmark, foiling the owner's plans to develop a high-rise office complex atop it. The Court reasoned that the owners were not deprived of all economic value because they could use the land in some other economically beneficial way. The Court did not directly address whether the permissible usage was equal in value to the planned development that had been forbidden.)

20. Andrea L. Peterson, *The Taking Clause: In Search of Underlying Principles, Part 1, A Critique of Current Takings Clause Doctrine*, 77 Cal. L. Rev. 1299 (1989).

21. This section is an observation from the author's own litigation experience.

22. This section was written by Glen N. Raj. Glen is a third-year law student at Valparaiso University School of Law. He has his 7-11 license and currently works for the Chicago Legal Clinic.

23. Dr. Rowland Atkinson, *Does Gentrification Help or Harm Urban Neighborhoods? An Assessment of the Evidence - Base in the Context of the New Urban Agenda*, at <http://neighbourhood-centre.org.uk> (last accessed Dec. 13, 2004).

24. Todd Harvey et al., *Gentrification and West Oakland*, at <http://comm-org.utoledo.edu/papers2000/gentrify/gentrify.htm#ch2key> (last accessed Dec. 13, 2004).

25. *Id.*

26. *Id.*

27. Lisa Chamberlain, *Exploding the Gentrification Myth: Columbia Prof's Surprising Findings*, N.Y. Observer, available at www.observer.com/pages/story.asp?ID=8156 (last accessed Dec. 13, 2004).

28. *Id.*

29. *Id.*

30. At least one study has shown that low-income households seem less likely to move out of gentrifying neighborhoods than from other communities: Frank Braconi, *The New York Gentrification Study by the Citizens Housing and Planning Council of New York*, cited in Chamberlain, *supra*, n. 27.

31. Cook County Clerk of Court at www.cookcountyclerkof-court.org.

32. Daniel P. Lindsey, a supervisory attorney of the housing preservation project at the Legal Assistance Foundation of Metropolitan Chicago.