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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. Starbucks coffee shops, where a coffee beverage can cost around five dollars, tend to be concentrated in affluent neighborhoods. 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. Rauch observes that, "The far south side, which is the poorest area of Chicago, apparently doesn't even qualify for a currency exchange."

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?" 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.

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.

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 some 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.

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. Half will be "market rate," with no income limits, and another segment will be classified as "affordable" for families earning over $44,000 annually. Fully 70 percent will be affordable only for those making $44,000 or more. In contrast, the authors' study shows that in 1997, about half the families living in Cabrini-Green quali-
Gentrification, continued from page 11

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

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.

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. This case addresses whether the government may take private property to benefit private developers. This is a departure from the Court's traditional focus where the takings clause is concerned. In those cases, the court has usually considered whether a taking has occurred, whether a given taking is compensable, and how much compensation is just.

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 from page 12

ers may be used in this way, the effect could be dev-
astating for people living in the communities target-
ed for gentrification. For many people, the compen-
sation 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, fam-
ilies 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 val-
ues 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 for-
mal condemnation proceeding. The City of Chicago
is known to issue many "code violations" to a prop-
erty owner, then offer the owner accused of the vio-
lations 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
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 dis-
placement through rent and property prices, com-
munity 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 environ-
ment.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 pro-
duction 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 ordi-
nances producing improvements to local services
and an enhanced attention to the physical environ-
ment.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 wish-
ing 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 proj-
ect will result as wealthy people move into commu-
nities they had once abandoned in favor of far-flung
suburbs.
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 in 1993, to more than 12,000 in 2001, and to about 20,000 in 2002. 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. 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 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.

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 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.

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2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
8. Id. at 14.
9. Id.
10. Id.
11. Id.
12. Id.
14. Ranney and Wright, supra, at 6,7.
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.)
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.
25. Id.
26. Id.
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.