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Valuing Grief: A Proposal to Compensate Relocated Public Housing Resident for Intangibles

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Valuing Grief: A Proposal to Compensate Relocated Public Housing Residents for Intangibles

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I. Introduction

Since the 1960s, academics have been measuring the grief effects associated with relocation efforts. These theories of relocation have been applied more recently to the displacement of public housing project residents who suffer relocation-related effects as a result of being moved.3 While the Uniform Relocation Assistance and Real Property Acquisition Policies Act4 (URA) mandates relocation assistance for these displaced residents, the Act does nothing to compensate for intangible losses, including loss of community, neighbors, familiarity with place, etc. As a result, litigators seeking compensation for displaced public housing residents are left to employ alternative legal theories in hopes of recovering for the losses suffered. The authors chronicle the efforts of the lawyers at Three Rivers Legal Services of Alachua County to recover for the loss of intangibles, among other claims, for intentional infliction of emotional distress or IIED

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by the residents of Kennedy Homes in Gainesville, Florida.\(^5\) This paper seeks to understand the difficulties in measuring the impacts of relocation on those displaced from public housing in an effort to identify possible compensation schemes that are appropriate in the case of such substantiated losses.

II. **Relocation Grief and the Difficulties in Measuring its Impact**

Since the 1960s, planning scholars have discussed the impacts of relocation efforts on the poor. Gans deemed the process “uncivilized,” decrying the loss of neighborhood and neighbors as an undefined cost of urban renewal.\(^6\) This line of research has led to a number of efforts to create methodologies for calculating the degree of loss suffered by those who are displaced.\(^6\)

In an early study, Fried developed a simple methodology to measure the psychological distress resulting from relocation.\(^7\) Respondents were asked four questions:

- Did you feel sad or depressed when you moved?
- Describe how you felt?
- How long did these feelings last?
- How did you feel when the buildings were torn down?\(^8\)

\(^{5}\) To prevail in an IIED case, the plaintiff must demonstrate: (1) the wrongdoer's conduct was intentional or reckless; (2) the conduct was outrageous and intolerable; (3) there was a causal connection between the wrongdoer's conduct and the emotional distress; and (4) the emotional distress was severe. **Citation needed?** Also, this footnote seems out of place here – might be more appropriate when IIED claim is discussed under IV - How Courts Compensate Displaced Litigants.


\(^{8}\) *Id.*
Fried posed these questions to a group of working class residents who were displaced as a result of an urban renewal effort in the West End of Boston in the early 1960s.9 He divided their responses into three categories of grief: minimal, moderate, and severe. Fried then developed a series of typologies which sought to describe the factors which may have been responsible for variations in grief levels.10 Fried concluded that “the more an individual knows about and has experiences in an area, the higher his or her grief response will be.”11

Fried’s methodology inspired members of the planning academy to consider the effects of urban renewal efforts on the displaced. Generally, scholars agree that relocation has some negative effects on those who are displaced by urban revitalization projects. What varies in this continued scholarship, however, is the level of grief experienced by residents. For example, Fellman’s study of displacement in the Brookline-Elm neighborhood of Cambridge, Massachusetts demonstrates that not all displaced residents have negative feelings about being relocated.12 Fellman’s interviews with neighborhood residents revealed that a quarter of the respondents were positively anticipating the relocation, and nearly a third reported that they would generally like to move.13 Fellman suggested that those who thought positively about the move were mobile and saw relocation as a chance to find a better neighborhood.14 Here, the mobile

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9 Id.
10 Id.
11 Id.
13 Id.
14 Id.
residents saw urban renewal as an opportunity. These findings were reinforced by a study performed by Klienhaus in 2003. Klienhaus found that the housing conditions of the displaced were improved as a result of displacement, further suggesting that relocation can be a great opportunity if properly executed. These findings were also supported by Jourdan in her study of pre-relocation grief as a result of efforts by the Atlanta Housing Authority to redevelop the McDaniel Glenn public housing community. Jourdan’s study suggests that relocation-related grief may be substantially reduced if the displaced are kept informed and involved in redevelopment activities.

While some scholars have noted the positive benefits of relocation, others have provided counter evidence. Specifically, Rubenstein indicates relocation is a lose-lose endeavor. He points out that moving residents can destroy social relationships, and not moving them leads to a further concentration of the ghetto. His study of relocation in Baltimore shows that while it is useful in placing residents in financially better neighborhoods, it does little for racial integration. Despite the predicted decline in grief effects experienced by displaced persons overall, the grief effects predicted by Fried appear to remain high amongst certain populations of people. According to Heller,

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15 Id.
17 Id.
18 Jourdan, supra note 3.
19 Id.
20 Id.
21 Id.
certain people are more prone to experience grief effects including: children and the elderly, those in poor physical health, the mentally ill, women, and the economically poor. Relocation has had significant grief effects on African American communities, according to Fullilove. Fullilove presents evidence that relocation grief triggers the onset of illnesses and aggravates existing conditions. In addition, as a result of relocation efforts, many African Americans have found new homes in poorer neighborhoods that expose residents to disease causing factors.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URLA), enacted by Congress in 1970, reflects, at least in part, the legislature’s understanding of the impacts of relocation on families displaced by federally financed urban renewal activities. The goal of the Act is to ensure that “displaced persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.” The URLA seeks to reduce relocation grief by helping residents find housing of a similar type, cost, and location, if they so choose. This Act is complimented by remedial provisions in the Fair Housing Act which seek to ensure that

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24 Id.
25 Id.
27 James J. Kelly, Jr., “We Shall Not Be Moved”: Urban Communities, Eminent Domain, and the Socioeconomics of Just Compensation, 80 ST. JOHN'S L. REV. 923 (Summer, 2006).
assistance is provided to the dislocated. While the URLA provides moving assistance to displaced residents, it does little to compensate residents for the loss of intangibles, like attachment to home, neighbors, community, etc. Residents seeking compensation for the loss of intangibles must pursue alternative legal strategies in order to recover for losses beyond the cost of moving to a new home, as exemplified in the case study outlined in Section III of this paper.

III. Kennedy Homes Case Study

When the Kennedy Homes apartment complex, which provided federally subsidized low-income housing, first opened in 1968, Gainesville residents heralded it as a “showcase,” as it was one of the first projects in the city built under new codes requiring indoor plumbing and heating. Almost forty years later, by August 2007, the City of Gainesville had demolished the complex, an action that one resident of an adjacent neighborhood called “a relief.” The demolition had been preceded by years of residents’ complaints of substandard living conditions, a congressionally commissioned task force to investigate those complaints, and a devastating fire caused by electrical and gas line problems. The damage caused by the October 6, 2003 fire—as well as the serious code violations that it exposed and a series of transactions made between Gainesville, Kennedy Homes’ private owners, and the Department of Housing and Urban Development—have left the property on which the apartment complex once sat.

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32 Id.
uninhabited. As for the 172 families that once lived in Kennedy Homes, they have been displaced, relocated, and placed in a state of limbo that has exceeded five years, as Gainesville slowly redevelops the property into a mixed-income subdivision.

Kennedy Homes was first developed in 1968 as a 172-unit apartment complex located in southeast Gainesville, Florida. Kennedy Homes was developed with subsidies authorized by Section 221(d)(3) of the National Housing Act, 12 U.S.C. §17151(d)(3), in an effort to provide affordable housing to very low income families. At a later date, Kennedy Homes also became the subject of a Housing Assistance Payments (HAP) project-based subsidy contract under Section 8 of the United States Housing Act, 42 U.S.C. § 1437f. Kennedy Homes’ Section 8 assistance guarantees affordable rental housing for its residents by calculating each units’ rent based on approximately 30% of a resident’s income. The federal government then pays the property owner the difference between the residents’ share of the rent and fair market value for the units.

HUD administers both the Section 221(d)(3) and Section 8 programs. Additionally, the owners entered into contractual agreements with HUD which imposed, among other

34 Davis complaint need copy of complaint to complete cite
36 Davis complaint, p. 2. Need copy of complaint
37 Id.
38 Plaintiffs’ Motion for Preliminary Injunction and Memorandum in Support, p. 2, 022-1 need copy of motion to correct cite
39 Id.
40 Id.
things, a requirement that Kennedy Homes be maintained in a decent, safe, and sanitary condition.\footnote{Memorandum of Law in Support of HUD Defendants’ Motion to Dismiss Plaintiffs’ Complaint, p. 3. Need copy to correct cite}

In 1999, Kennedy Homes was purchased by Kennedy Homes Limited Partnership (KHLP), a subsidiary of Apartment Investment and Management Company (AIMCO), a private corporation.\footnote{Davis complaint, p. 3.} Since that time, Kennedy Homes was operated by NHP Management Company, another subsidiary of AIMCO.\footnote{Id.} As such, tenants of Kennedy Homes entered into rental agreements with NHP Management.\footnote{Id., p. 4.} A key component of the Kennedy Homes rental agreements was a provision setting forth a contractual right to continuous lease renewal for tenants who remained financially eligible and did not breach their rental agreements.\footnote{Id. at 6.} Paragraph 10 of the rental agreement required NHP Management to “maintain the common areas and facilities in a safe condition” and “make necessary repairs with reasonable promptness,” among other things.\footnote{Adelson, \textit{supra} note 31.}

Despite these contractual obligations, both with its tenants and HUD, it appears that NHP Management continued a trend of mismanagement that plagued Kennedy Homes throughout its history. Although a source of optimism at the time of its development, the apartment complex became known as a slum, with poor maintenance and drug and crime issues.\footnote{Adelson, \textit{supra} note 31.} In 1994, a group of community activists attempted to

In response to the myriad of problems at Kennedy Homes, public officials took notice. In the summer of 2003, U.S. Rep. Corrine Brown commissioned a taskforce to investigate living conditions at the apartment complex.\footnote{Davis complaint, p. 6; Plaintiffs’ Response to Defendants’ Motion for Summary Final Judgment on Count V for Intentional Infliction of Emotional Distress, p. 2.} On September 2, 2003, a group of about 20 people—including Gainesville officials, lawyers, NAACP representatives, and the news media—toured Kennedy Homes and observed cracked ceilings, leaking toilets and tubs, and stuck doors.\footnote{Need copy to complete cite} Additionally, residents reported rat infestations, \textit{broken} water heaters, gas leaks, unusable bathrooms, collapsed ceilings numerous building and fire code violations, and a faulty electrical system.\footnote{Need copy to complete cite}
These problems seemed to come to a tragic head on October 6, 2003. At 1:43 am that morning, a fire was reported at Kennedy Homes. While no one was physically hurt by the fire, which began in a second story apartment in the southeastern section of the complex, several units were damaged by fire and many were damaged by smoke and water. The initial cause of the fire was determined to be an electrical wall outlet that emitted sparks and ignited a nearby sofa. Subsequent investigations suggested that leaky natural gas lines may have accelerated the fire. Investigators later discovered evidence of electrical problems in all four of the complex’s buildings.

The day of the fire, eight units were uninhabitable as a result of the damage and 30 residents were displaced. On October 7, 2003, the day after the fire, 50 more residents were displaced because pipes in the building in which the fire occurred failed tests to ensure that there would be no leaks, in violation of city code. The displaced residents were placed in emergency housing at a nearby motel which was also in the process of permanently closing as a result of poor conditions.

Post-fire inspections by the City of Gainesville found both leaks in the gas supply system and problems with the electrical system to be complex-wide. Therefore, the city required AIMCO, NHP Management’s parent company, to conduct further inspections by

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57 Id.
60 Rowland, *supra* note 59.
62 Id.
63 Id.
October 21, 2003 and make repairs by November 14.\textsuperscript{64} AIMCO failed to make the requisite repairs to Kennedy Homes by the deadline. On December 4, 2003, the tenants of Kennedy Homes received a letter from AIMCO informing them that the apartment complex would be boarded up and tenants would be denied entry.\textsuperscript{65} By December 10, 2003, virtually all residents of Kennedy Homes had been displaced from their rental apartments and relocated to hotels in Gainesville.\textsuperscript{66}

Starting in January 2004, some of the former Kennedy Homes residents received vouchers from HUD that allowed them to obtain affordable rental housing elsewhere.\textsuperscript{67} However, while residents did not have to pay for utilities at Kennedy Homes, the new arrangements did not include subsidized payment of utilities.\textsuperscript{68}

In addition to AIMCO’s post-fire interactions with the City of Gainesville, the company engaged in important dealings with HUD after the October 6, 2003 fire. On November 12, 2003, AIMCO and HUD entered into a Use Agreement, effective until October 1, 2009, whereby AIMCO agreed that the Kennedy Homes property would be “used solely as rental housing for Very Low Income Families.”\textsuperscript{69} Additionally, AIMCO agreed to maintain Kennedy Homes “in good repair and condition and in compliance with all applicable state and local building and health codes.”\textsuperscript{70} The Use Agreement stipulated that it runs with the land. However, on November 13., 2003, HUD issued a Notice of Default of the Section 8 HAP Contract with AIMCO because AIMCO had

\textsuperscript{64} PIERCE KELLEY, KENNEDY HOMES: AN AMERICAN TRAGEDY. (iUniverse Inc. 2009)
\textsuperscript{65} Id. at 10.
\textsuperscript{66} Id.
\textsuperscript{67} Memorandum of Law in Support of HUD Defendants’ Motion to Dismiss Plaintiffs’ Complaint, p. 4.
\textsuperscript{68} See, e.g., Declaration of Deloris Moore in Support of Plaintiffs’ Motion for Injunction.
\textsuperscript{69} Use Agreement, p. 3
\textsuperscript{70} Id. at 7.
“failed to maintain [Kennedy Homes] in decent, safe and sanitary condition.” HUD gave the company 30 days to correct all of its physical deficiencies at Kennedy Homes. When AIMCO failed to comply, HUD terminated the federal subsidization of Kennedy Homes.

In June 2005, the Gainesville City Commission endorsed a plan to revitalize the area around Kennedy Homes that called for the city to purchase the property, raze the apartment complex, and invite private developers to build a mix of uses on the site, including affordable housing. On February 1, 2007, the city purchased the Kennedy Homes property for a price of $1.95 million. The restrictions of the HUD Use Agreement required the site to be used solely for “very low income,” housing until 2009. While the Kennedy Homes residents hoped they might be allowed to return, at least temporarily, this was never the City’s intention.

Despite the abundance of problems at Kennedy Homes—from crime to disrepair—it is clear that the apartment complex had value to its residents and that they lost much of that value because of their displacement and relocation. One former resident described the negative feelings associated with her displacement and relocation to be as high, if not higher, than that associated with living in a poorly maintained apartment complex that caught on fire. Several other former residents stated, “If Kennedy Homes was renovated and repaired so that it was safe for me and my family to

71 Memorandum of Law in Support of HUD Defendants’ Motion to Dismiss Plaintiffs’ Complaint, p. 4.
72 Id.
73 Adelson, supra note 31.
74 Id.
75 Id.
76 Davis complaint, “Plaintiff Sandra Johnson’s First Amended Complaint, p. 12
live in, I would very much want to return there with the same rental assistance that I had when I left.”  

IV. How Courts Compensate Displaced Litigants

In 2004, Three Rivers Legal Services, along with Southern Legal Counsel, filed a six count lawsuit against AIMCO including claims for: (1) Breach of the lease agreement; (2) Breach of the use agreement; (3) Breach of the warranty of habitability; (4) Violation of the Fair Housing Act; (5) Intentional Infliction of Emotional Distress; and (6) Negligence per se. Pierce Kelley, a litigator with Three Rivers Legal Services, chronicles the strength and weaknesses of each count in his book, Kennedy Homes: An American Tragedy. With respect to the IIED claim, Kelley writes: “The attorneys decided to file a count for Intentional Infliction of Emotional Distress, with full knowledge that it would be an extremely difficult case to prove.” In IIED cases, he explains, “…the burden of proof … is exceedingly high. A plaintiff is generally required to prove that the conduct complained of was so egregious that it went ‘beyond the bounds of human decency’ and was such as to ‘shock the conscience’ of a judge or jury, and that ‘severe emotional distress’ resulted from such ‘outrageous’ conduct.” Attorneys pursue this legal theory because it allows for the recovery beyond pure economic losses and also for punitive damages in cases of outrageous conduct.

In an effort to provide the evidence necessary to sustain the IIED claims, the lawyers for Three Rivers Legal Services worked diligently to outline AIMCO’s

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77 See, e.g., Declaration of Deloris Moore in Support of Plaintiffs’ Motion for Injunction.
78 PIERCE KELLEY, KENNEDY HOMES: AN AMERICAN TRAGEDY. (iUniverse Inc. 2009).
79 Id. at 59-65.
80 Id at 63.
81 Id.
82 Id.
outrageous conduct and the dimensions of emotional distress experienced by their clients as a result of being relocated from Kennedy Homes. The litigants were deposed and asked a series of very basic questions regarding how the fire and resulting relocation had effect their lives. The information that follows was gleaned from the plaintiffs’ pleadings:

Ms. Johnson

Ms. Johnson was that night [when the fire occurred] and continued to be for months extremely anxious—where were she and her children going to go, how would they live, what would they eat, how would her children get their homework done? Ms. Johnson felt she was on an emotional roller-coaster. Ms. Johnson was pregnant at the time of the fire. She was due to deliver in February, 2004. She developed high blood pressure which she had not had previously during this pregnancy and had never had during any other pregnancy. She delivered her baby on November 13, 2003, several months prematurely. Because she had no where to live, no clothes, no security—Ms. Johnson had to drop out of school. Not only did this make her depressed, she continued to owe the school for that semester’s tuition.83

Ms. Buggs:
In October 2003, Ms. Buggs was involuntarily forced to move into a room at the University Center Hotel, Gainesville, Florida. She was forced to remain at the hotel for four months. Ms. Buggs suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. Again, while Ms. Buggs did not have problems with her unit, being relocated to a hotel room was extremely stressful. Ms. Buggs felt “like a slave” - someone was telling her when she could eat, what she would eat, that she could not talk to people in the hallway of the hotel. Ms. Buggs had trouble sleeping at the hotel. Ms. Buggs, who has been a diabetic for 28 years, only developed high blood pressure when she was forced to move into the hotel.

Ms. Palmer:
In October 2003, Ms. Palmer was involuntarily forced to vacate her apartment at Kennedy Homes and move into a single room at the University Center Hotel, Gainesville, Florida. She was forced to remain at the hotel for three months. Ms. Palmer has suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. Ms. Palmer suffers from rheumatoid arthritis, including in her knees…At the hotel, Ms. Palmer had to stay on the third floor. There were times that the elevator was not working or when there were

83 First Amended Complaint (p. 12).
false fire alarms that Ms. Palmer had to hobble down the many flights of stairs which was painful. Ms. Palmer is also diabetic. The food provided at the hotel did not accommodate diabetics and she had to spend money she did not have to buy the type of food she needed. This resulted in money problems for her and she had to borrow money from others. Ms. Palmer prided herself in being self-sufficient and was embarrassed to borrow money.

Mr. Demps:
In early December, 2003, Mr. Demps was involuntarily forced to vacate his apartment at Kennedy Homes and move into a single room at the University Center Hotel, Gainesville, Florida with his daughter. He had remained at Kennedy Homes for approximately two months without gas or hot water because his daughter's babysitter was at Kennedy Homes and Mr. Demps could not maintain his job without reliable child care. He had to remain at the hotel for four months. In 2004, Mr. Demps received a Section 8 voucher from Gainesville Housing Authority. Mr. Demps's voucher subsidized his rent similarly to how his rent was subsidized at Kennedy Homes. However, unlike the situation at Kennedy Homes, the voucher did not cover the cost of his utilities. Mr. Demps suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. While living at Kennedy Homes, Mr. Demps's sleep was often disrupted by palmetto bugs that would crawl on him at night and bite him. What caused Mr. Demps the most emotional distress was worrying about his daughter. Though she had had a piece of ceiling fall on her head and bruise her while in the bathtub at Kennedy Homes, overall Mr. Demps's daughter had been a normal, well-adjusted two year old while living at the complex. When they had to relocate to the hotel, her behavior changed markedly. She stopped eating vegetables and developed low iron. Her appetite decreased overall. She started having nightmares. She would beg to “go home” and could not understand why they could not go home. All of these things caused severe emotional distress to Mr. Demps.

Ms. Henry:
In October 2003, Ms. Henry was involuntarily forced to vacate her apartment at Kennedy Homes and move into the University Center Hotel, Gainesville, Florida. She was forced to remain at the hotel for four months. In 2004, Ms. Henry received a Section 8 voucher from Gainesville Housing Authority. Ms. Henry's voucher subsidized her rent similarly to how her rent was subsidized at Kennedy Homes. However, unlike the situation at Kennedy Homes, the voucher did not cover the cost of her utilities. Ms. Henry has suffered severe emotional distress and loss of enjoyment of life as a result of the Defendants' conduct. The conditions of Mrs Henry's apartment made her extremely worried about her health. She was concerned about the effect the rusty water would have on her health. Mrs. Henry is a diabetic and not having a stove interfered with her ability to cook proper foods and created stress for her. The conditions in the hotel created the most distress for Ms. Henry. The food provided was not appropriate for diabetics and Ms. Henry's health suffered. In addition, she found the hotel
extremely noisy and it interfered with her sleep. Ms. Henry's health deteriorated until she was finally hospitalized.

**Ms. Davis:**
In October 2003, Ms. Davis was involuntarily forced to vacate her apartment at Kennedy Homes and move into a single room at the University Center Hotel. She was forced to remain at the hotel until approximately February, 2004. In approximately February, 2004, Ms. Davis received a Section 8 voucher from Gainesville Housing Authority. Ms. Davis's voucher subsidized her rent similarly to how her rent was subsidized at Kennedy Homes. However, unlike the situation at Kennedy Homes, the voucher did not cover the cost of her utilities and Ms. Davis has suffered the cost of extraordinary utility bills. Ms. Davis has suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. In particular, Ms. Davis found life in the hotel very stressful. Her hotel room had lots of mold which was nasty to look at and affected her allergies. The hotel was loud and rowdy and Ms. Davis found it disruptive. Ms. Davis is a vegetarian and there were no vegetarian meals provided. In fact, often the vegetable side dishes had meat in them. Ms. Davis found it offensive and stressful that someone would dictate to her when she ate and how she would eat. Some days, she was permitted to take her meal to her room, other days she could not. Ms. Davis found these restrictions particularly stressful for a woman who lived on her own and made her own decisions.

**Ms. Jenkins:**
In October 2003, Ms. Jenkins was involuntarily forced to vacate her apartment at Kennedy Homes and move into a single room at the University Center Hotel. She was forced to remain at the hotel until February, 2004. In February 2004, Ms. Jenkins received a Section 8 voucher from Gainesville Housing Authority. Ms. Jenkins's voucher subsidized her rent similarly to how her rent was subsidized at Kennedy Homes. However, unlike the situation at Kennedy Homes, the voucher did not cover the cost of her utilities and Ms. Jenkins has suffered the cost of extraordinary utility bills. Ms. Jenkins suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. Ms. Jenkins became so afraid of using her bathroom that she began to use restrooms in convenience stores or in a neighbor's apartment. She worried about her health and her child's health because of the rat and roach droppings. Ms. Jenkins found life in the hotel “horrifying.” The toilet in her room had continual problems; the entire hotel was not being maintained. There was no place for children at the hotel and her son would cry from frustration. Overall, she felt that the hotel staff treated the Kennedy Homes residents like they were ‘nobodies,’ like they were ‘nothing.’

**Ms. West:**
After the fire on October 6, 2003, Ms. West attempted to remain in her apartment. She used a hot plate on which to boil water and cook since the gas lines had been shut off. However, in November 2003, Ms. West was involuntarily forced to vacate her apartment at Kennedy Homes and move into a room at the University
Center Hotel, Gainesville, Florida with her son. Her niece went to live elsewhere. Two days later, Ms. West was moved to the Ramada Inn, Gainesville, Florida with her son. She was forced to remain at the hotel for two months. In 2004, Ms. West received a Section 8 voucher from Gainesville Housing Authority. Ms. West's voucher subsidized her rent similarly to how her rent was subsidized at Kennedy Homes. However, unlike the situation at Kennedy Homes, the voucher did not cover the cost of her utilities. Ms. West has suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. Ms. West was afraid of rats. When rats and roaches would come into her bedroom, she would be unable to sleep. Ms. West was worried that her children's health would be affected by the gas leak in her home. She was afraid that her water heater would explode again. She was afraid every time she had to light the pilot on her stove. Ms. West found living in the hotel to be very difficult. She did not think she should have to share one room with her son. She did not like having the eating times dictated to her. She wanted the flexibility that one normally has over one's eating. Her son would often not get home from school in time to make the scheduled meals. She had to try to keep food in her room but had no facilities for cooking.

Ms. Woods:
In October 2003, Ms. Woods was involuntarily forced to vacate her apartment at Kennedy Homes and move into the University Center Hotel. She was forced to remain at the hotel for three months. In January, 2004, Ms. Woods received a Section 8 voucher from Gainesville Housing Authority. Ms. Woods's voucher subsidized her rent similarly to how her rent was subsidized at Kennedy Homes. However, unlike the situation at Kennedy Homes, the voucher did not cover the cost of her utilities and Ms. Woods has suffered the cost of extraordinary utility bills. Ms. Woods suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. Ms. Woods had trouble sleeping while living in Kennedy Homes because she could hear the rats running in the walls and/or her youngest would jump in her bed because he was frightened of the rats. She was too ashamed to invite people over because a rat might come into view while company was there. Life in the hotel was “miserable.” She and four children had to share two beds. They were too crowded and there was not enough food served at the hotel for her children.

Ms. Boston:
In October 2003, Ms. Boston was involuntarily forced to vacate her apartment at Kennedy Homes and move into a single room at the University Center Hotel, Gainesville, Florida. She was forced to remain at the hotel for three months. In 2004, Ms. Boston received a Section 8 voucher from Gainesville Housing Authority. Ms. Boston's voucher subsidized her rent similarly to how her rent was subsidized at Kennedy Homes. However, unlike the situation at Kennedy Homes, the voucher did not cover the cost of her utilities. Keeping one's utilities turned on is a condition of keeping the voucher. Ms. Boston has suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants.
Ms. Boston was extremely afraid of the rats and roaches. She was ashamed to be living with “those things.” The leaking pipes would cause pools of water on the floor and she was afraid she would fall, especially at night. The leaking water wrecked a carpet in her living room and caused the veneer on her furniture to peel. The noise at the University Center Hotel affected her sleep. The hotel did not feel like home and she did not sleep well there. She found life at the hotel difficult because she could not have the food she likes to eat and did not like that she could not eat when she wanted to eat - someone told her when to eat.

**Ms. Roberson:**
In October 2003, Ms. Roberson was involuntarily forced to vacate her apartment at Kennedy Homes and move into the University Center Hotel. Ms. Roberson had already been on the waiting list for a Section 8 voucher which was awarded to her in October 2003. Ms. Roberson's voucher subsidized her rent similarly to how her rent was subsidized at Kennedy Homes. Ms. Roberson has suffered severe emotional distress and loss of enjoyment of life as a result of the conduct of the Defendants. Ms. Roberson was extremely distressed about the raw sewage that would back up in her bathtub; she worried about the effect it could have on her children's health. The smell of the raw sewage made her nauseous. Ms. Roberson felt that Defendants treated her and her family “like the rats they had to live with.” Ms. Roberson found living in the hotel very stressful - 3 children and 1 adult in a single room, day in and day out. The children fought continually. The mold and the mildew in the hotel affected her asthma.

The deposition testimony reveals that life at Kennedy Homes was not easy for any of the residents. Kennedy Homes was considered, by many, as a last stop before homelessness. However, life after displacement appears to have been even more difficult for those who were relocated, particularly for residents who were sheltered for multiple months at a local multi-story hotel as the result of slowed efforts to revitalize Kennedy Homes. The Kennedy Homes litigation sought to ensure that those parties responsible for failure to maintain the public housing complex in a safe and habitable condition, as well as the failed relocation effort, compensated the litigants fully for the resulting grief.
AIMCO settled with the Kennedy Homes litigants in 2009. The terms of the settlement agreement were sealed. As such, the resolution of this case does not provide the opportunity to assess the fairness of the outcome or, in the alternative, to discuss the question of equity with the litigants. In the absence of the terms of this settlement, the authors seek to propose a theoretical compensation scheme for relocation grief cases.

V. How Courts Should Compensate the Displaced

There is a noticeable lack of jurisprudence with respect to the question of whether public housing residents are entitled to compensation when displaced and, if so, what levels of compensation are appropriate in such cases of displacement. However, the sense of loss experienced by these individuals and families when forced to leave their homes is very real. The most obvious option for reducing the grief effects suffered as a result of relocation is to limit and or prevent such displacements from occurring. However, this strategy is not realistic given the poor conditions of some of the nation’s public housing communities, as well as Federal initiatives, like HOPE VI, which seek to deconcentrate poverty.

Compensation schemes from eminent domain activities provide one model of ascertaining the value of what is lost when government initiatives displace families from their homes. In a long line of cases, the U.S. Supreme Court has adopted the position that compensation is just as long as it reflects the fair market of the property on the date the

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84 Pierce Kelley, Kennedy Homes: An American Tragedy. (iUniverse Inc. 2009).
85 One of the conditions of the settlement agreement is that the litigants may not discuss the terms of the settlement agreement. Need cite?
property is taken. While eminent domain case law most commonly applies in instances where a landowner has a full entitlement to a parcel of property, the law recognizes the rights of displaced renters as well. Specifically, renters are entitled to relocation assistance in the form of finding a similarly priced unit and to moving expenses. This model of compensation is not workable when individuals, like those living at Kennedy Homes, with lesser entitlements are displaced. It would have been impossible to relocate the Kennedy Homes residents to other housing in Gainesville where rents were as low.

In the case of Kennedy Homes, the majority of the residents were paying some amount of rent less than $100.00 per month. There was not an equivalently priced option for them anywhere else in the city. Most of the displaced residents from Kennedy Homes could not afford to make the monthly payments at other public housing complexes in the City. A fortunate few of the displaced Kennedy Homes residents qualified for Section 8 vouchers from HUD. While these vouchers widened the amount of available affordable housing in the city for the select few eligible to receive them, those in the Section 8 program would now be responsible for paying utility bills, an added expense that most were not prepared to absorb.

Even if the relocated residents of Kennedy Homes could have afforded the rent and/or utility bills associated with living in other affordable housing in the city, many did not want to. The residents’ deposition testimony reflects a real affection for the neighborhood in which Kennedy Homes was located and the other individuals who had inhabited this public housing community. The residents of Kennedy Homes new their

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neighbors, some of whom were family members. Their children played together and looked out for one another. Their neighbors stepped in when they needed a helping hand. These residents knew how to navigate the City’s bus systems from stops in the neighborhood. They were familiar with the markets and other commercial enterprises in the neighborhood. Their units, while substandard, held memories that could not be packed and moved to other locations in the City. The eminent domain compensation scheme does not compensate for these intangible aspects of living. Unlike those homeowners that receive fair compensation for their homes, renters, particularly those living in public housing, do not receive just compensation. The disruption of community experienced by those living at or below the poverty line is far greater than the compensation such individual receive when relocated.

The grief effects of displacement experienced by displaced public housing residents require an alternative standard of compensation. An alternative proposed by Rachel Godsil and David Simunovich is based on three equity-centered philosophical values: compensatory justice, efficiency maximization, and distributive justice. In defining compensatory justice, Godsil and Simunovich maintain that the market value fails to reflect the total loss to property owner and/or occupier. Market value does not contemplate the subjective losses born by the displaced, including, among other factors, attachment to place, surroundings, and neighbors. It is only to the degree that a compensation scheme seeks to value such losses that it will be deemed just under the theory of compensatory justice.

88 *Id.* at 977.
The authors also turn to economic theory to support their alternative compensation schemes. Citing the principle of efficiency maximization, the authors argue that if the government’s compensation schemes fail to internalize all the costs of a given project, the projects produced as a result of the takings will be externality ridden and inefficient. The theory of distributive justice is the final theory offered as a basis for developing alternative compensation schemes. At the heart of this theory is the notion that it is the most vulnerable classes who are at risk of being inadequately compensated.

If courts were to adopt one or all of these alternative values schemes, what is deemed to be just compensation, particularly when compensation is due as a result of the displacement of the residents of public housing communities, would need to be reformulated. At the heart of this modification lies the need to recognize that the residents of public housing have some entitlement to compensation for damages suffered as a result of relocation. Alexandre suggests that payments compensating displaced public housing residents for the projected difference between new and old rents may be a necessary first step. While this accommodation makes sense as rents in other areas of the city may be higher, this compensation scheme does not address the need to ascribe value to the sorts of intangibles lost by those in situations like that chronicled in the Kennedy Homes litigation.

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89 Id.  
90 Id.  
91 Id.  
Alexandre suggests that we require developers to compensate those displaced based on projected post-development profits.\footnote{Id.} The notion behind this proposal for just compensation is the goal that urban revitalization will result in a substantial growth in property values as the economic vitality in the previously disenfranchised areas grows. In the case of public housing residents, it may be possible for the developers building residential units in these gentrifying neighborhoods to estimate the anticipated rents of the new developments. Renters could be compensated based on a percentage of these estimates. This model only works well when public housing is converted to public housing or housing that is mixed-use, like that produced as a result of HOPE VI Revitalization Grants.

In the alternative, displaced public housing residents could be invited to return to these revitalized areas in subsidized units once redevelopment has occurred. While costs associated with relocation grief would still be present in this scenario, such effects might be minimized by the excitement and anticipation of returning to a beloved neighborhood that, while changed, is still home. Rather than providing compensation, this approach seeks to minimize grief effects by making the relocation temporary, like the strategy employed as a part of the HOPE VI program. The HOPE VI program seeks to demolish distressed public housing, replacing it with mixed use, mixed income units. Residents who are relocated as a part of this federally mandated process receive relocation assistance and the right of first refusal to return to units in the newly constructed development. It is important to note, however, that the HOPE VI program has been widely criticized for failing to provide enough units for all previous residents to return, as
Others suggest the use of variable compensation plans.\textsuperscript{94} Under these plans, the level of compensation to which a displaced person is entitled would vary on the basis of the public use that displaces them. Compensation levels could be set lower in areas where the public use was the strongest, i.e. the construction of a school or public roadway. However, a higher level of compensation would be mandated in cases where the public interest was lesser, i.e. urban development projects where developers stand to reap significant financial gain from participation. For example, a developer of a private enterprise that is likely to reap a substantial return would pay a higher degree of compensation than would be required of a City who condemns property to build a necessary public use, like a school.

Other proposed solutions relate to governance. Jourdan’s study of the revitalization of the McDaniel Glenn public housing community in Atlanta described an intergenerational planning process where residents and the public housing authority worked together to design the new community and to plan for the relocation period.\textsuperscript{95} The findings of this study reveal that genuine citizen participation efforts may reduce relocation grief, helping residents prepare in advance for what is coming and giving them a true sense of pride and interest in returning to the redeveloped community.\textsuperscript{96} Allowing the residents of Kennedy Homes to participate jointly in their relocation may have been a good first step in reducing the anxiety related to the forced move.

\textsuperscript{94} Godsil and Simunovich, supra note 89 at 982.
\textsuperscript{95} Jourdan, supra note 3.
\textsuperscript{96} Id.
VI. Conclusion

The act of moving, even in circumstances when those relocating have chosen to do so, is a stressful occurrence. Forced relocation may result in grief effects. While in some circumstances the law provides assistance to those being displaced, the level of compensation mandated may not be enough to accommodate the grief-related effects borne, as was the case in the Kennedy Homes litigation. Alternative forms of compensation may be appropriate in cases where relocation assistance does not sufficiently compensate the displaced for intangible losses.