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# THE THREAT TO CITIZEN PARTICIPATION IN MODEL CITIES

*Barlow Burke, Jr.†*

Citizen participation has been advocated as an essential feature of urban antipoverty programs. Ideally, such participation can serve both individual and societal goals. It can provide self-realization and develop personal competence in participants. It can also promote substantively better decisions for government, integrate alienated groups into the governmental process, make government more visible, and gain consent and confidence for a program from the citizenry.

All too often, however, bureaucracy has retained a great deal of control over the participatory aspects of governmental programs. The resultant overregulation has stifled the potentially creative role that citizens might have played and destroyed program credibility. There are indications that this is now happening in the Model Cities Program funded by the Department of Housing and Urban Development (HUD). History can forewarn us of the dangers that program now faces.

## I

### CITIZEN PARTICIPATION IN FEDERAL PROGRAMS SINCE THE 1930's

The earliest example of citizen participation in the 1930's was the Tennessee Valley Authority (TVA).<sup>1</sup> Created by federal statute,<sup>2</sup> the TVA widely publicized its programs of electric power production, fertilizer manufacturing, land-use planning, and land acquisition as being administered at the grass-roots level. By this, TVA meant joint administration of its programs with existing citizen groups and local governments. The TVA staff saw participation as the "cooptation" of voluntary groups and local governments; that is, "the process of absorbing new elements into the leadership or policy-determining structure of an organization as a means of averting threats to its stability or

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<sup>1</sup> The following summary of the TVA's approach is based on P. SELZNICK, *TVA AND THE GRASS ROOTS: A STUDY IN THE SOCIOLOGY OF FORMAL ORGANIZATION* (1949). This book has become a classic in the area of citizen participation.

<sup>2</sup> Tennessee Valley Authority Act of 1933, 16 U.S.C. §§ 831-31dd (1964).

existence."<sup>3</sup> The Authority's grass-roots doctrine provided some justification for its existence as a governmental agency uniquely concerned with regional development and was useful in facilitating acceptance of its programs. Since TVA seldom investigated the depth of support and democratic character of the groups and governments with which it sought to cooperate, it was never assailed by the many doubts that plagued later citizen participation programs.

The Subsistence Homesteads Division (SHD) of the Department of the Interior was created in 1933 to deal with the redistribution of the "overbalance of population" thought to exist in our industrial centers. People were to be moved into the country and given "subsistence homesteads."<sup>4</sup> In an attempt to avoid the delays and paternalism inherent in the Washington bureaucracy, the Division's Director, M. L. Wilson, convinced Secretary Ickes to establish the Federal Subsistence Homesteads Corporation which, through local subsidiary corporations manned largely by people in project areas, would serve as the governing body for projects undertaken by the Division.<sup>5</sup> At first, the Division's staff operated with considerable independence of the Secretary's office, but this situation did not last more than a year. After a series of conflicts with the SHD staff over administrative procedures, Ickes abolished the subsidiary corporations in March 1934 and SHD was assigned the duty of directing local projects through its field agents.<sup>6</sup>

The Farm Security Administration (FSA) was the most reform-minded of all the New Deal agencies created to deal with rural problems. The Bankhead-Jones Farm Tenant Act of 1937,<sup>7</sup> which created FSA, emphasized programs to aid non-owner farmers who were poverty-stricken. Committees of local farmers were to administer a series of loan programs to help tenants buy land, purchase equipment, and increase yields. Despite the belief of some House leaders and officials in the Department of Agriculture that delegating administrative responsibility to such committees was a "dangerous diffusion of executive responsibility" and "an invitation to amateur incompetence,"<sup>8</sup> the measure was enacted. Once its program was underway, FSA encouraged

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<sup>3</sup> P. SELZNICK, *supra* note 1, at 13.

<sup>4</sup> Authority to encourage such redistribution was provided by the National Industrial Recovery Act, ch. 90, § 208, 48 Stat. 205 (1935).

<sup>5</sup> S. BALDWIN, *POVERTY AND POLITICS: THE RISE AND DECLINE OF THE FARM SECURITY ADMINISTRATION* 69-73 (1968).

<sup>6</sup> *Id.* at 73.

<sup>7</sup> Act of July 22, 1937, ch. 517, 50 Stat. 522 (codified in scattered sections of 7, 18 U.S.C.).

<sup>8</sup> S. BALDWIN, *supra* note 5, at 183. See also Maddox, *The Bankhead-Jones Farm Tenant Act*, 4 LAW & CONTEMP. PROB. 434, 441-46 (1937).

formation of agricultural groups to take advantage of its developing group services program. "More discreetly, the leaders of the agency hoped that such associations would significantly promote a sense of social and political solidarity among the clientele, and weld them into a politically more formidable power base for the FSA itself."<sup>9</sup>

Winning World War II required much citizen cooperation. On V-J day in 1945, there were 275,000 volunteers working in the consumer education, rationing, and price control programs of the Office of Price Administration (OPA). The New Dealers early foresaw that any program assuming extensive control over the American economy would have to be supported by the public at large or it would surely fail. OPA's volunteer program was the result.<sup>10</sup> Initially, volunteers worked as consumer educators. After Pearl Harbor, it quickly became apparent that rationing was going to be necessary, and, in 1942, OPA created boards manned by volunteers, sometimes assisted by paid clerks, to ration the products of industries affected by the war. Eventually, the whole system of ration books was administered by local boards. All of these boards had the same purpose—to gain support for the program among its constituents.<sup>11</sup> Boards began their activities with most members recruited from industries whose products were rationed early in the war. Although membership was expanded by adding individuals from other occupations and minority groups, the unrepresentative character of the boards was never fully overcome.<sup>12</sup> Furthermore, in 1943, when price control became a major aspect of national policy, there was a quick professional upstaffing in OPA and an eventual about-face in policy; the local volunteer boards lost control of the overall program administration and thereafter merely assisted in policing community-wide price lists for retail products.<sup>13</sup>

The Selective Service System (SSS) is a program which originated before World War II in which volunteer citizens, serving on local draft boards around the country, still have considerable power. They implement policies that are very generally worded, and have great discretion in doing so. In 1940, it was thought that the only way the draft could gain popular acceptance was to have it locally administered. Another rationale was that only local people would know the registrant and also understand the community's needs for certain occupational

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<sup>9</sup> S. BALDWIN, *supra* note 5, at 204.

<sup>10</sup> I. PUTNAM, *VOLUNTEERS IN OPA* 3 (1947).

<sup>11</sup> *Id.* at 15-22.

<sup>12</sup> Williams, *Minority Groups and OPA*, 7 *PUB. AD. REV.* 123 (1947).

<sup>13</sup> I. PUTNAM, *supra* note 10, at 143-49.

deferments. Thus, citizen participation was the price to be paid for meeting the manpower needs of the military.

The actual result of this local participation has been a serious lack of uniformity in deferment policy,<sup>14</sup> long tenures in office for volunteers, and serious doubt as to the representative character or fairness of local boards.<sup>15</sup> On the other hand, the result has been an inexpensive and reasonably efficient system of induction, one that by all measurable standards produces a high sense of satisfaction and feeling of usefulness among those who participate on the boards.<sup>16</sup>

Urban Renewal (UR) began the decade of the 1950's as a clearance program authorized by the Housing Act of 1949.<sup>17</sup> Citizens were not consulted unless, as we have seen in many prior programs, the aims of more "efficient" administration would also be served.<sup>18</sup> Citizens' advisory committees existed in many cities after 1954, but only to serve the ends of local programs: favorable publicity and liaison with business interests. The most effective citizen participation consisted of strong outside protests over relocation requirements and displacement of individuals and small businesses; such citizen concern ultimately helped the government recognize a need for more direct participation.<sup>19</sup>

Until the 1960's, then, citizen participation had been justified primarily in administrative terms as an instrument of cooptation of local government (TVA), building a bureaucracy's client group and adjusting a program to the client's needs (FSA), ensuring citizen sup-

<sup>14</sup> J. DAVIS & K. DOLBEARE, *LITTLE GROUPS OF NEIGHBORS: THE SELECTIVE SERVICE SYSTEM* 223 (1968).

<sup>15</sup> The positions are appointive, filled by the President from a list of nominees submitted by the governor of the state in which the member will serve. Military Selective Service Act of 1967, § 1(8), 50 U.S.C. App. § 460(b)(3) (Supp. V, 1970).

Businessmen and government employees, in that order, constitute the two largest occupational categories on the boards. J. DAVIS & K. DOLBEARE, *supra* note 14, at 57-67. Whether the members of local boards represent a broad section of the public is questionable. One study has found that of the 16,638 males serving on local boards, roughly two-thirds were veterans, one-half were over 60 years of age, and one-half had served on the board for over 10 years. Moreover, 30% of board members held college degrees and 40% were retired. Finally, only 1.3% of the total were Negroes, with some Southern boards having no Negro members. *Id.* at 57-58.

<sup>16</sup> J. DAVIS & K. DOLBEARE, *supra* note 14, at 221. The system also seems to have the confidence of local elites, whose sons are less likely to be drafted, and the antipathy of the draft-prone lower socio-economic and non-white strata. *Id.* at 233.

<sup>17</sup> 42 U.S.C. §§ 1401-86 (1964).

<sup>18</sup> See J. LOWE, *CITIES IN A RACE—WITH TIME: PROGRESS AND POVERTY IN AMERICA'S RENEWING CITIES* 420-21 (1967).

<sup>19</sup> Note, *Citizen Participation in Urban Renewal*, 66 COLUM. L. REV. 485, 498-500 (1966).

port (OPA), providing low operating costs (SSS), or publicizing the program (UR). The list of administrative justifications could be extended in each case were the nuances of these programs to be discussed, but the point is essentially the same: when bureaucracy had some previously formulated program to implement, marginal citizen involvement could serve administrative ends.

The War on Poverty of the mid- and late-1960's and the establishment of the Office of Economic Opportunity (OEO)<sup>20</sup> with its funding of Community Action Programs (CAP) in the various pockets of poverty throughout the country, represented a fundamental shift in outlook toward citizen participation. In a real sense, participation became an end unto itself rather than a means for bureaucrats to simplify the administration of specific programs. The establishment of OEO-CAP was meant to give the poor a voice in government; just as the Departments of Labor and Commerce had been created to represent interest groups within the government, the poor were to have OEO.<sup>21</sup> On the local level, OEO funded antipoverty groups directly, by-passing city hall.<sup>22</sup> At both levels, the rationale was one of "countervailing power" rather than an attempt to work within existing structures.<sup>23</sup> So when city hall, fearing the rising expectations of the poor, applied political pressure to CAP groups in an effort to restrict their independence, OEO offered task forces of experts to local groups experiencing trouble,<sup>24</sup> and increasing amounts of money were spent to strengthen the programmatic expertise of local groups and thus increase political power at the neighborhood level.<sup>25</sup>

It is important to keep in mind that both OEO-CAP and Model Cities grew out of the confluence of ideas and desires—aimed at ameliorating poverty and decentralizing government—which gripped the social service professions during the 1960's. The latter program built upon the former in the sense that its framers had the benefit of hindsight; but in Model Cities there was a conscious effort to avoid the shortcomings of OEO. How and why this effort failed is the story that follows.

<sup>20</sup> Economic Opportunity Act of 1964, 42 U.S.C. §§ 2711-2981 (1964).

<sup>21</sup> R. KRAMER, *PARTICIPATION OF THE POOR: COMPARATIVE COMMUNITY CASE STUDIES IN THE WAR ON POVERTY* 13-14 (1969).

<sup>22</sup> See Hallman, *The Community Action Program: An Interpretive Analysis*, in *POWER, POVERTY AND URBAN POLICY* 285 (W. Bloomberg & H. Schmandt eds. 1968).

<sup>23</sup> R. KRAMER, *supra* note 21.

<sup>24</sup> In the first year of this program, 22 "Technical Assistants" visited 37 projects. OEO, *STAP: SPECIAL TECHNICAL ASSISTANCE PROGRAMS 1967-68*, at 3 (1969).

<sup>25</sup> Hallman, *supra* note 22, at 294.

## II

## CITIZEN PARTICIPATION UNDER THE DEMONSTRATION CITIES ACT

In the early 1960's, "citizen participation" was a rallying cry for social planners employed by private foundations and the federal government.<sup>26</sup> No matter what each wanted to do to get the poor out of poverty, most agreed that as a first step it would be a good idea to consult the poor themselves. Everyone agreed that the poor could at least describe their problems to those who were capable of tackling them;<sup>27</sup> some also believed that the poor might be able to articulate solutions. A dearth of program ideas at the federal level ultimately clinched the argument in favor of participation.<sup>28</sup> Moreover, the creation of a national policy for a myriad of localities seemed an impossible task because variables at the local level were too many and too complex. Local planning was thus substituted for federal program selection.<sup>29</sup>

Many reasons were given for having citizen participation in the molding of programs. Some planners wanted to build "community competence" in the poverty sector.<sup>30</sup> Participation was a way to train local leaders, to help people articulate their views, and to build a communal self-confidence among the poor. Others wanted to gain public support for antipoverty programs by developing a constituency for them. This tactic of cooptation, they thought, would guarantee that the

<sup>26</sup> See generally P. MARRIS & M. REIN, *DILEMMAS OF SOCIAL REFORM: POVERTY AND COMMUNITY ACTION IN THE UNITED STATES* 29-32 (1967). Certain material in the following section is taken from Burke, Foster & Nash, *Urban Public Policy Participation Networks*, 3 *URBAN & SOCIAL CHANGE REV.*, Spring 1970, at 15, and is reprinted with permission.

<sup>27</sup> D. MOYNIHAN, *MAXIMUM FEASIBLE MISUNDERSTANDING: COMMUNITY ACTION IN THE WAR ON POVERTY* 21-59 (1969).

<sup>28</sup> The failure of so many programs in the War on Poverty also contributed to the conviction that more citizen participation was needed in the Model Cities program. Cf. Wilson, in *Comments on the Demonstration Cities Program*, 32 *J. AM. INST. PLANNERS* 366, 367 (1966).

<sup>29</sup> As it turned out, local planning meant putting together, hopefully in a unique local mix, a combination of prepackaged federal programs. See Arnstein, *A Ladder of Citizen Participation*, 35 *J. AM. INST. PLANNERS* 216 (1969). However, this did not necessarily imply that new bureaucracies were to be created on the local level. OEO tended to create "separate and parallel" organizations in the period 1964-67. On the other hand, Model Cities policy created separate organizations "only as a last resort." Interview with H. Ralph Taylor, former Assistant Secretary of HUD for Model Cities, in Washington, D.C., March 19, 1970.

<sup>30</sup> This was a major argument of the 1966 task force that formulated the ideas of the Model Cities program, but it turned out to be an interim goal. Once started, the process of building such competence led to demands for "citizen and community control." Telephone Conversation with Grace Milgram, former Staff Member, Presidential Task Force on Model Cities, New York City, Nov. 14, 1969.

participatory program would effect some permanent social change. Still others hoped to expand representation in a pluralistic political system to include the poor and disadvantaged, and the political establishment was asked to adapt its structure to deal more effectively with the poor. Finally, some social planners believed that since the 1930's federal programs had been the victims of so-called administrative expertise; thus, democratization of the bureaucracy was needed in order to make programs more effective.<sup>31</sup>

The institutional pattern to serve all of these social theories evolved during the early 1960's.<sup>32</sup> The Ford Foundation's "gray areas" program in several cities was an attempt to involve broad segments of the poverty-sector community in public programs affecting their lives.<sup>33</sup> New York City's Mobilization for Youth sought to focus the attention and efforts of the whole community on the problems of education.<sup>34</sup> A similar issue-oriented approach to mobilizing community involvement was incorporated into government in 1962 with the inception of the juvenile delinquency programs in the Department of Justice under Attorney General Robert Kennedy; the Washington staff for these programs was drawn from many departments of the federal government as well as the private sector.<sup>35</sup> These intellectual strains combined to form OEO's Community Action Program in 1964, and, the next year, Model Cities.

In the latter part of 1965, a nine-member presidential task force was appointed by President Johnson to recommend a comprehensive city planning program to deal with urban slums.<sup>36</sup> Robert C. Wood, then Professor of Political Science at Massachusetts Institute of Technology, was named its chairman. Initially, the work involved staff preparation of papers to supply background materials to the task force. One, originally drafted by Hans Spiegel, then of Columbia University's Department of City Planning, was entitled "Community-Wide Citizen Participation."<sup>37</sup> This paper posed the question "Why Citizen Participation?" and answered in terms of a "need to gain local public

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31 See Sundquist, *Origins of the War on Poverty*, in *ON FIGHTING POVERTY: PERSPECTIVES FROM EXPERIENCE* 6, 9-18 (J. Sundquist ed. 1969).

32 P. MARRIS & M. REIN, *supra* note 26, at 27-32.

33 *Id.* at 27; D. MOYNIHAN, *supra* note 27, at 35-36.

34 D. MOYNIHAN, *supra* note 27, at 38-59.

35 *Id.* at 63-65.

36 Interviews were conducted with members of this task force, and they form the basis of much of this section. The author was also given access to the papers of the staff.

37 Spiegel, *Community-Wide Citizen Participation*, in *Presidential Task Force on Model Cities, Staff Papers* 114 (Jan. 1966).



acceptance of the social and physical planning programs."<sup>38</sup> This would be accomplished by educating the electorate, who, Spiegel reasoned, would not thereafter pressure their political leaders to veto subsequent planning programs. Public support, once gained, would become "an effective framework for action."<sup>39</sup> Spiegel pointed out that it takes no more time to consult people early in the planning process than it does to present them with definitive proposals that would, in all probability, have to be returned to the staff for reconsideration. Moreover, participation would provide planners with a forum to float "trial-balloon proposals." "The solution to the problem of delay is not to avoid citizen participation, but rather to develop effective participation . . . ."<sup>40</sup>

Reaffirming the early goal of OEO's participatory programs, Spiegel called for all-sector participation in the planning. The "entire spectrum of citizen interests" must be represented, corporate executives as well as poverty-level citizens. Yet this participation was to be monitored: "Experience indicates that effective citizen participation in physical and social planning matters requires some degree of professional staff assistance at both the district and city-wide levels."<sup>41</sup> A two-level organization for participation, similar to the combination of Community Action Boards and Target Area Organizations in OEO programs, was proposed. A city-wide coordinating group was to provide a forum to "consider citizen action on broad policies and programs" and to "provide direct community organization services and . . . specialized staff services to citizen groups" on the neighborhood level.<sup>42</sup> These coordinators would essentially be drawn from the community-organizing professions.

The final task force report, written by Wood, discussed citizen participation in some detail. As Wood later put it, the choice was between Montesquieu and Rousseau and he chose the former. The report rejected the idea of funding a "direct democracy" of the poor, as some OEO programs had done. Instead, it substituted a "general will" filtered through local government and thereafter expressed by a joint government-citizens' coordinating group in broad, consensus terms. This body would seek, in contrast to OEO-CAP, to work within the existing structure of local government. The operational concept underlying this was that of "shared power," embodied in a "brokerage

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<sup>38</sup> *Id.* at 115.

<sup>39</sup> *Id.* at 116.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 117.

<sup>42</sup> *Id.* at 121.

style of politics." This meant two things: (1) the community was to share power among its strata and sectors, and (2) professional planners and urban experts were to share power with lay citizens.<sup>43</sup>

In October 1965, those task force members appointed to make recommendations and draft the Model Cities legislation began their deliberations in Washington.<sup>44</sup> The question of citizen participation was raised and appropriate language was inserted in the legislation as a matter of course.

Once drafted, the bill passed quickly through Congress. The President sent it to Congress on January 26, 1966. The House Banking and Currency Committee's Subcommittee on Housing held public hearings on the bill<sup>45</sup> in late February and early March 1966.<sup>46</sup> The first witness to appear on its behalf was Robert C. Weaver, Secretary of Housing and Urban Development. His testimony stressed the importance and novelty of the programs being "planned, developed, and carried out by local people," without spelling out from which segments of the "local" community they might be drawn.<sup>47</sup> In his prepared statement he discussed the groups that might serve on the boards of local programs: "Citizens of the [target] area may be represented by the chairmen or directors of representative neighborhood organizations serving as members."<sup>48</sup> He saw target-area citizen participation as a possibility, but apparently as only one of many relevant sources of public opinion.<sup>49</sup>

In the Senate, the Subcommittee on Housing, assisted by HUD counsel, redrafted the bill in executive session in August.<sup>50</sup> That bill

<sup>43</sup> Interview with Robert C. Wood, former Undersecretary of HUD, in Cambridge, Mass., Dec. 19, 1969. See Wood, *Citizen Participation: A Call for Return to Community*, 51 PUB. MANAGEMENT, July 1969, at 3, 8.

<sup>44</sup> This group was directed by Chester Rapkin and was composed of five additional members. Rapkin was a sociologist with extensive teaching and consulting experience in city planning matters.

<sup>45</sup> H.R. 12341, 89th Cong., 2d Sess. (1966).

<sup>46</sup> *Hearings on H.R. 12341 Before the Subcomm. on Housing of the House Comm. on Banking and Currency*, 89th Cong., 2d Sess., pts. 1-2 (1966).

<sup>47</sup> *Id.*, pt. 1, at 33.

<sup>48</sup> *Id.* at 48.

<sup>49</sup> One witness before the subcommittee who had supported heavy citizen involvement in the city planning process was Paul Davidoff, then a professor of city planning at Hunter College in New York City. His testimony, however, contains no reference to the participatory aspects of the program. *Id.* at 467-502. Nor did any of the big-city mayors who testified discuss these aspects. *E.g., id.* at 222-43 (testimony of John V. Lindsay). The existence of OEO had perhaps conditioned Congress to accept citizen participation as a component, but no one wanted to analyze in depth the problems raised. The question may have been too controversial.

<sup>50</sup> S. 3708, 89th Cong., 2d Sess. (1966). The following chronology is taken from

was debated, amended, and passed on August 19, 1966. Senator Muskie, the floor manager of the bill, stressed the experimental nature of the local programs without discussing who the "locals" were.<sup>51</sup> The House passed its version of the bill on October 14. A conference committee met several days later and the President signed the final bill on November 3.

The House report on the bill spoke at length of "local" programs and initiatives for dealing with the physical and social problems of the city:<sup>52</sup> "This is to be a local program, planned and carried out by local people and based on local judgment as to the city's needs and its order of priorities in meeting these needs."<sup>53</sup> The report went on to state that "[t]he ultimate success of this new program rests upon the ability of local people to assess their own most pressing problems and devise their own solutions to those problems. The cities themselves, by their actions, will determine which of them participate in this program."<sup>54</sup> Of coordination with existing OEO programs, the report said: "Many of the educational and social services which must be part of the demonstration program can be provided under community action programs supported by the Office of Economic Opportunity . . . ."<sup>55</sup> In fact, OEO's programs with all of their emphasis on citizen participation became a significant component in many Model Cities areas.

As enacted, the Demonstration Cities and Metropolitan Development Act of 1966<sup>56</sup> expresses a somewhat cautious, careful concern for citizen participation and community action:

(a) A comprehensive city demonstration program is eligible for assistance under . . . this title only if—

(1) physical and social problems . . . are such that a comprehensive city demonstration program is necessary . . . ; [and]

(2) the program is of sufficient magnitude . . . to provide . . . widespread citizen participation in the program, maximum opportunities for employing residents of the area in all phases of the program, and enlarged opportunities for work and training.

. . . .  
(b) In implementing this subchapter the Secretary shall—

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SENATE COMM. ON BANKING AND CURRENCY, 89TH CONG., 2D SESS., SUMMARY OF ACTIVITIES 49-50 (1966). Final passage in the Senate was by a vote of 38 to 22. 112 CONG. REC. 27359 (1966). The House vote was 142 to 126. *Id.* at 28139.

<sup>51</sup> 112 CONG. REC. 20028 (1966).

<sup>52</sup> H.R. REP. NO. 1931, 89th Cong., 2d Sess. (1966).

<sup>53</sup> *Id.* at 6.

<sup>54</sup> *Id.* at 14.

<sup>55</sup> *Id.* at 10.

<sup>56</sup> 42 U.S.C. §§ 3301-74 (Supp. V, 1970).

(1) emphasize local initiative in the planning, development, and implementation of comprehensive city demonstration programs; [and]

(2) insure . . . prompt response to local initiative, and maximum flexibility in programing, consistent with the requirements of law and sound administrative practice . . .<sup>57</sup>

To implement the programs, the Secretary of Housing and Urban Development was "authorized to undertake such activities as he determines to be desirable to provide, either directly or by contracts or other arrangements, technical assistance to city demonstration agencies . . ."<sup>58</sup>

### III

#### CITIZEN PARTICIPATION IN THE ADMINISTRATION OF THE ACT

In the summer of 1966, another task force was assembled to draw up criteria for evaluating applications for first-round, one-year planning grants.<sup>59</sup> Participation was not heavily emphasized in the guidelines that emerged. Instead, the need for "comprehensiveness" in, and local commitment to, the programs was stressed. A program's likelihood of success was also considered, but judgments made here turned out to have no predictive value, and were dropped on the second round. Rather than create new institutions for popular involvement, the program was premised on the notion that local government could still be used as a vehicle of reform for dealing with urban slums.<sup>60</sup>

This does not mean that citizen participation was totally ignored. It was encouraged to some degree: "Unless the citizens have a major and meaningful role in the development of the plan itself, rather than simply being asked to approve or veto, then citizen participation does not mean very much."<sup>61</sup> Through informal assistance rendered to applicants, federal officials indicated that each application should contain a section on the participatory aspects of the total program. The

<sup>57</sup> *Id.* §§ 3303(a)-(b).

<sup>58</sup> *Id.* § 3306.

<sup>59</sup> Much of the following material was gathered from interviews with former officials of the program. Interview with Robert C. Wood, *supra* note 43; Interview with H. Ralph Taylor, *supra* note 29; Interview with Walter Farr, former Director, Model Cities Administration, in New York City, April 6, 1970.

<sup>60</sup> Some federal officials realized that local government would have to "stretch" its capabilities to reach into the black slums of our cities. Interview with H. Ralph Taylor, *supra* note 29. In a sense these officials were searching for programs that promised more than they could provide for the next several years. A "high sights" policy was encouraged.

<sup>61</sup> HUD Press Release (April 18, 1966).

point is that the men who developed and administered Model Cities were urban experts who wanted very much to distinguish themselves and their program from "the OEO approach."<sup>62</sup> They did not want to create new local bureaucracies except as a last resort. Their original concept was one of sharing power between citizens and local government. It quickly went awry.

It is not easy (indeed, it may be impossible for the best empirical researchers) to reconstruct the process by which the community participation components of the programs were formed. The program proposals forwarded to HUD spoke of citizen participation as something to be organized in the future. Perhaps the best example of the type of rhetoric involved was contained in a proposal for the city of Oakland, California. It spoke of a one-year planning grant "to provide people in the area with an equity position in their environment . . . [that is,] the creation of a variety of legal entities through which the residents of the area will be provided a collective equity position in the development process."<sup>63</sup> Joint ownership of common spaces was to provide a basis for "stimulating community participation."<sup>64</sup> A block-by-block organization, interspersed with planning offices, was also proposed in order to develop an indigenous trained staff. Block leaders were to be salaried.<sup>65</sup>

Thereafter the organizational structure of many of the 150-odd Model Cities projects around the country reflected the confusion and conflicts in ideology among program administrators.<sup>66</sup> A task force approach was often used, conforming to the agency structure of local government and resulting in a committee to plan or run each program, with overall supervision by a board of directors.<sup>67</sup> This produced more decentralization than exists in most OEO-CAP pro-

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<sup>62</sup> Interview with Robert C. Wood, *supra* note 43.

<sup>63</sup> Oakland Redevelopment Authority & Gans-Kaplan Associates, Oakland: A Demonstration City 43 (undated) (on file, HUD Library, Washington, D.C.).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 93-96. The Gary, Indiana, submission likewise proposed a block-by-block organization; it emphasized communication in a community that the planners called a way-station or "temporary" home for many residents. But it also spoke of participation as a process not presently existing but which was to be developed. City of Gary, Indiana, Application to HUD for a Model Cities Grant 72-75 (April 27, 1967) (on file, HUD Library, Washington, D.C.). Dayton, Ohio, emphasized organizing the community as a first step. City of Dayton, Ohio, Model City Plan (undated) (on file, HUD Library, Washington, D.C.). In the author's opinion, applications varied greatly in quality and sophistication.

<sup>66</sup> Interview with H. Ralph Taylor, *supra* note 29.

<sup>67</sup> See Warren, *Model Cities First Round: Politics, Planning, and Participation*, 35 J. AM. INST. PLANNERS 245, 247 (1969).

grams, and also a more fluid organization. As a result of conflicts between administrative guidelines, however, the organization of these programs may change in the future. These guidelines seem to confuse the idea of expanding the basic capacities of local government with control of the program. The former purpose, controlling in the Act, may still require citizen input and preclude mayoral control. To establish whether this is so or not may require litigation, but first these guidelines must be examined.

Written guidelines on citizen participation initially emerged after the "first generation" of Model Cities planning grants. HUD Technical Assistance Bulletin (TAB) No. 3,<sup>68</sup> promulgated in December 1968, expanded a 1967 version of City Demonstration Agency (CDA) Letter No. 3,<sup>69</sup> and was the first attempt by Washington to deal with the realities of the program's orientation at the local level. TAB No. 3 was premised on the supposition that residents of poor neighborhoods distrust city government; they wanted "action" from the city without understanding that its political power was fragmented among many agencies and offices.<sup>70</sup> Likewise, the "model neighborhood" was often viewed by the city as a "misleading abstraction"; in fact, it seldom comprised a unified social system and was not identifiable to any of its residents as a "neighborhood."<sup>71</sup> With this in mind, the authors suggested a checklist of questions which would indicate the program's viability in the area. This checklist of questions included: (1) whether the organizational structure of the program allowed a decision as to who could best represent the target-area and develop a continuing process of participation; (2) whether the representation was broad enough; and (3) whether the program established regular lines of communication between the city and the citizens.<sup>72</sup> The "key to the partnership" between city and citizens was found to be technical assistance:

Citizens' distrust of public officials can neither be argued nor rationalized away. Public agencies' procedures, styles, and skills cannot be changed solely by admonition or the carrot of new Federal programs. Years of partnership may be necessary to compensate for generations of distrust.

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The most promising means of ensuring that the CDA-citizen

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<sup>68</sup> Citizen Participation in Model Cities, HUD Technical Assistance Bulletin No. 3, MCGR 3110.3 (Dec. 1968) [hereinafter cited as TAB No. 3].

<sup>69</sup> Citizen Participation, HUD City Demonstration Agency Letter No. 3, MCGR 3100.3 (Nov. 30, 1967) [hereinafter cited as CDA Letter No. 3].

<sup>70</sup> TAB No. 3, at 22.

<sup>71</sup> *Id.* at 22-23.

<sup>72</sup> *Id.* at 24-25.

participation achieves [this objective] is the provision of technical assistance to citizens. . . . [T]echnical assistance involves CDA assignment of acceptable personnel and resources to the neighborhood citizens organization in order to ensure that the citizens are able to obtain access to the knowledge and information necessary to enable them to make informed, intelligent contributions to the planning and implementation of each city's program.<sup>73</sup>

To carry out this idea, TAB No. 3 went on to suggest that the neighborhood group affiliated with the program hire a staff independently and then combine it with the city's:

This strategy of technical assistance is not an "either/or" alternative, a choice between either independent or public agency staff. Experience indicates that technical assistance to the neighborhood is most effective when it is a combination of both staff they control and city staff, and when citizens accept and use both.<sup>74</sup>

This is a remarkable document, considering the usual language of federal bureaus. Its ideas came out of a series of committee meetings in the summer of 1968, attended by representatives of OEO, HEW, HUD, and the Department of Labor.<sup>75</sup> The concept of independent technical assistance for citizens' groups was taken from a draft, written in the early fall by HUD's Sherry Arnstein. Her basic idea was that citizens be allowed to employ their own planning staffs. OEO wanted a more detailed document, while the Labor Department opposed the whole idea.<sup>76</sup> This conflict was resolved in a final draft, which was then reviewed by HUD contacts on the executive staffs of the Conference of Mayors and the National League of Cities. Still officially the view of the Department in 1971, over two years after its issuance, its current effect on programs is slight. It has not been rescinded, but additional guidelines have diluted its practical effect.

During the winter of 1968-69, the regional offices in HUD began to formulate some guidelines, then largely unwritten, for giving mayoral appointees more control over the programs around the country.<sup>77</sup> At first, this meant that appointees of the mayor should sit on Model Cities boards. To some already involved in local programs, this move was seen as an attempt at "political control." Also stressed was the need to eliminate all "conflicts of interest" from programs. That is,

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<sup>73</sup> *Id.* at 17-18.

<sup>74</sup> *Id.* at 19.

<sup>75</sup> Interview with Walter Farr, *supra* note 59.

<sup>76</sup> Interview with H. Ralph Taylor, *supra* note 29.

<sup>77</sup> This has produced significant litigation in the Philadelphia program. Text accompanying notes 98-123 *infra*.

Model Cities planning groups should not carry out their own proposals, and the planning, operation, and evaluation functions should be separate from each other. Taken together these policies were an attempt to diminish the impact of the program on the existing political structure of the community and to maintain the original position of Model Cities as a *city* program.

These guidelines were largely codified by the Nixon Administration in CDA Letter No. 10A.<sup>78</sup> This document represents more than a reversion to the original intent of the legislation: it emphasizes the need for coordination with existing city agencies and officials,<sup>79</sup> and it concurrently deemphasizes the need for reforming existing agencies and “stretching” the capacities of local government through exposure to target-area citizens.<sup>80</sup> The Letter requires that “[t]he chief executive . . . shall assume early, continuous, and ultimate responsibility for the development, implementation, and performance of the Model Cities Program.”<sup>81</sup> Further, he must use “his administrative authority and political leadership” to support the program by coordinating public and private agencies, establishing priorities and allocating resources, and providing the CDA director with “operational access to his office.”<sup>82</sup> Emphasis is also placed on the performance by the city of its “planning, coordinating, and evaluating role” where city agencies administer projects under the program.<sup>83</sup>

HUD did, however, offer a later but separate statement of its policy on citizen participation in CDA Letter No. 10B,<sup>84</sup> issued jointly

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<sup>78</sup> Administrative Performance and Capability, HUD City Demonstration Agency Letter No. 10A, MC 3135.1 (Dec. 1969) [hereinafter cited as CDA Letter No. 10A].

<sup>79</sup> *Id.* at 1.

<sup>80</sup> *Id.* at 2; Interview with H. Ralph Taylor, *supra* note 29.

<sup>81</sup> CDA Letter No. 10A, at 2.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* These quotations suffice to make clear that, by its failure to mention how citizen participation is to be reconciled with the policies expressed, new priorities are being set for the programs around the country. This being a more recent regulation than CDA Letter No. 3 (and TAB No. 3, written under its authority) it has precedence over those documents as statements of policy. Indeed, CDA Letter No. 10A is explicit on this point. *Id.* at 1.

<sup>84</sup> Joint HUD-OEO Citizen Participation Policy for Model Cities Programs, HUD City Demonstration Agency Letter No. 10B, MC 3135.1 (March 1970) [hereinafter cited as CDA Letter No. 10B].

This policy has been communicated to local officials and programs workers in different ways. Philadelphia officials learned of these rules in a letter from Floyd Hyde (who replaced H. Ralph Taylor as Nixon's Assistant Secretary for Model Cities). Changing the local program to conform to the new guidelines has been made a precondition for receiving any operating funds beyond the planning stage. Text accompanying notes 102-03 *infra*. New Haven officials learned of the new requirements in a letter from



with OEO. Without dealing with the question of how to reconcile this Letter with CDA Letter No. 10A, it provided:

The citizen participation component must be actively and continuously involved in planning, monitoring, evaluating, and influencing the Model Cities program. It is the city's responsibility, in good faith deliberation with its citizen participation component, to define clearly and set forth the responsibilities and authority of the citizen participation component in these areas.<sup>85</sup>

Among the criteria established for "meaningful citizen participation" is the "availability of adequate resources by which citizens can receive assistance in understanding" the program and can communicate the needs of the citizens to the government.<sup>86</sup> Included in the list of resources necessary to achieve this aim is "independent technical assistance,"<sup>87</sup> but one has the sense that the idea has been downgraded somewhat.

How it is that the concept of citizen participation was first expanded beyond the legislative intent in the administration of Model Cities and then subsequently contracted is not easy to explain. A spot-check of initial program proposals made it clear that residents of the target-area were to be organized as a result of local programs. But use of existing neighborhood groups was not precluded. Indeed, the pattern of most programs was to be a separate organizational structure appended to the existing local government.<sup>88</sup> In 1967, however, something unexpected happened: OEO-CAP "radicals" left that agency and became HUD employees, causing a considerable shift in personnel from OEO regional offices to the HUD regional desks.<sup>89</sup> As a result, HUD lost control of some of its regional offices.

At the same time that this shift in personnel took place, the vocabulary of black politics was changing rapidly in local debates to "black power" and "community control." The dynamics that had earlier broadened the base of CAP programs were again at work, but this time

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the New York HUD regional office to New Haven Mayor Bartholomew Guida. *New Haven Reg.*, March 17, 1970, at 44, col. 1.

<sup>85</sup> CDA Letter No. 10B, at 2.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Warren, *supra* note 67.

<sup>89</sup> Interview with Robert C. Wood, *supra* note 43. A notable example was the turnover in Region VI, the San Francisco Region.

There were several reasons for this turnover. CAP and OEO were just then coming under congressional scrutiny, and some personnel thought they had played out their roles within OEO's organization. Moreover, HUD fundings and the scope of the program were very alluring, particularly since that was a time of budgetary tightness for OEO. Also, the first Director of OEO, Sargent Shriver, was then thinking of leaving his post and a change at the top with all of its consequences looked imminent.

in an atmosphere of urgency; 1967 and 1968 had been years in which American cities erupted in riot. The Model Cities Program, then, was formulated just prior to a major shift in the temperament of urban politics. It had to adapt somewhat or not participate in these new debates, and its adaptation was hastened by the presence of former OEO employees. In this way, Model Cities programs became a kind of safety valve for citizen complaints needing immediate outlet, and the programs adopted participatory components that made them look like the "poverty sector open forums" of the CAP programs. All this was unintended and unanticipated when the program was devised.<sup>90</sup>

With the capture of Model Cities by the "OEO attitude" came the expanded concept of participation. As in 1967 OEO had responded to city hall pressure by providing special task forces of experts, so in response to similar pressure in 1968 HUD authorized Model Cities groups to hire their own technical advisers.<sup>91</sup> In the end, the mayors seem to have won out over OEO, and CDA Letter No. 10A represents a similar step in that direction for Model Cities.

At present, however, with all of these contradictory regulations and standards outstanding, and with the conflicts administratively unresolved, it is impossible to predict what the future of participation in Model Cities will be.<sup>92</sup> Because the success of one aspect of participation has made the poor aware of litigable rights and because the recently expanded concept of standing has made it easier for citizen beneficiaries to challenge governmental programs in federal courts,<sup>93</sup> that future may, in large measure, be determined by the courts.

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<sup>90</sup> *Id.* Despite these changes at the local level, however, the federal view of participation remained one of "shared power" throughout the Johnson Administration. In order to implement this idea, federal officials always insisted that the city formally receive the grant and be legally responsible for it. Interview with H. Ralph Taylor, *supra* note 29. Sometimes this was only a pro forma arrangement, as in the case of New Haven where a neighborhood corporation handled the program virtually on its own. Even there, however, when the planning grant was approved, the Assistant Secretary wrote to the city's Redevelopment Director stating his opinion that the proposed city-corporation liaison would not work. *Id.*

<sup>91</sup> TAB No. 3, at 18-19.

<sup>92</sup> It is difficult to fathom the purpose of HUD in allowing this situation to develop. Any one of several conclusions may be reached: (1) HUD wants administrative flexibility to apply these standards on a program-by-program basis; (2) HUD wants local programs to burn themselves out trying to meet all of these conflicting standards; or (3) HUD wants to minimize conflict on the local level. A presidential task force on Model Cities, headed by Edward Banfield of Harvard University, has criticized federal agencies for overregulating the program and for providing inadequate support. PRESIDENT'S TASK FORCE ON MODEL CITIES, MODEL CITIES: A STEP TOWARDS THE NEW FEDERALISM 14 (1970).

<sup>93</sup> *E.g.*, *Barlow v. Collins*, 397 U.S. 159 (1970).

## IV

## PARTICIPATION IN THE COURTS

The earliest precedent on the validity of citizen participation in federal programs is a case sustaining the constitutionality of the Tennessee Valley Authority. *Tennessee Electric Power Co. v. TVA*<sup>94</sup> upheld the activities of a federal agency that dealt directly with its clientele, for TVA in a sense by-passed state governments. Although many of the issues in the *TVA* case have been glossed over by the increased federal presence in local affairs, the problems of federalism it presents are at the root of more recent controversies.

The case of *Benson v. Minneapolis*<sup>95</sup> is indicative of the drift toward decentralized government in the 1960's. This case arose when HUD offered Minneapolis a Model Cities planning grant early in the local planning process. Mrs. Benson, a resident of a proposed Model Cities area, sought to bring a class action as a federal taxpayer attacking the validity of the Demonstration Cities Act. Ruling on her motion for a three-judge court, the opinion dismissed, without much discussion, seven constitutional objections as insubstantial and not requiring the convening of a three-judge panel.<sup>96</sup>

Although *Benson* was not primarily concerned with the concept of "widespread citizen participation," Judge Lassen wrote approvingly of the notion:

The court agrees that the Act of Congress requires widespread citizen participation. This participation is required at a time later than the time we are concerned with here. The Court will judicially notice the fact that there has already been substantial and extensive and widespread participation by citizens in that part of Minneapolis to be benefited by the Model Cities legislation.<sup>97</sup>

The action was brought prematurely, however, and the court quite properly refused to consider it as a test of the participatory process.

A plaintiff in a more recent case, *North City Area-Wide Council, Inc. v. Romney*,<sup>98</sup> was a non-profit corporation created to administer the Model Cities program in Philadelphia. Its membership comprised

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<sup>94</sup> 21 F. Supp. 947 (E.D. Tenn. 1938), *aff'd*, 306 U.S. 118 (1939).

<sup>95</sup> 286 F. Supp. 614 (D. Minn. 1968).

<sup>96</sup> The court held that Mrs. Benson was the right kind of taxpayer to bring this litigation but still lacked standing to sue "at this time" because she had shown no "specific constitutional limitations . . . upon the exercise of Congressional taxing and spending powers." *Id.* at 619.

<sup>97</sup> *Id.* at 618-19.

<sup>98</sup> Civil No. 69-1909 (E.D. Pa. Nov. 10, 1969), *rev'd*, 428 F.2d 754 (3d Cir. 1970).

neighborhood groups "organized in the target area from a large number of existing organizations . . ." <sup>99</sup> The history of conflicts between the city and this citizens' group spanned two years. <sup>100</sup> In the fall of 1966, Philadelphia officials learned that the city would probably get a grant under the Model Cities program. The Mayor appointed a task force to draft an application for funds, hoping to get this application to Washington the following March. A Washington lobbyist was appointed chairman and a member of the Philadelphia Human Relations Commission was made a member of the group. It was the latter who pushed for more citizen representation, and gradually the task force committees opened their membership to the affected community. As finally written, the application contained broad promises of citizen input.

Since the city officials (and some citizens) were confident that the 350-page application would be accepted by HUD, negotiations with the city began immediately over the internal structure of the Area-Wide Council (AWC), as the citizens' group came to be called. Conflicts quickly developed. AWC supported some student groups protesting the city's school system; one protest developed into a student-police confrontation in front of the school administration building. After that, the city's development coordinator demanded that the AWC stick to planning. The level of funding was also in dispute. The question concerned the amount of the city's Model Cities grant that would go to support staff for AWC.

On August 21, 1967, AWC and the city of Philadelphia entered into a contract under which the city designated the organization as the "citizen's participation component of the City's Model Cities Program" and agreed that the AWC would assist in planning and developing such a program. <sup>101</sup> On December 31, 1968, the city applied to HUD for more planning money and funds to implement a plan that AWC had helped devise. HUD officials returned this plan because of the large amounts requested. No objection was made at that time to the application's proposed organizational scheme, which called for implementation of the plan through a series of non-profit corporations substantially controlled by AWC members. The city and AWC thereafter

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<sup>99</sup> North City Area-Wide Council, Inc. v. Romney, 428 F.2d 754, 756 (3d Cir. 1970) (footnote omitted).

<sup>100</sup> Much of the following background material is taken from Arnstein, *Maximum Feasible Manipulation*, 4 *CITY*, Oct-Nov. 1970, at 30. This article is an edited statement of the plaintiffs' version of the facts in *Area-Wide Council*.

<sup>101</sup> Originally, this contract was to run for one year, but subsequent amendments extended it to June 30, 1969. Stipulation, North City Area-Wide Council, Inc. v. Romney, Civil No. 69-1909, at 1 (E.D. Pa. Nov. 10, 1969).

scaled down their requests for funds and resubmitted the application.<sup>102</sup>

On May 27, 1969, the Assistant Secretary of HUD for Intergovernmental Relations, Floyd H. Hyde, informed the city that HUD found a "conflict of interest" in the fact that AWC would become both planner, implementer (through the various non-profit corporations), and, in effect, evaluator of its own work in the field. Moreover, HUD stated that the involvement of the city was insufficient and required that no more than one-third of the initial board of directors was to come from the organization.<sup>103</sup> Prompted by these objections, the local Model Cities Administrator promulgated the following regulations on June 9, 1969, without consulting AWC: (1) that the citizens' organization would designate "not more than one-third of the incorporators" and "Board of Directors"; (2) that the city was to designate the remainder of the incorporators, and, where more than one-third of the directors were to be community representatives, they were to be appointed from membership lists of other community groups, in consultation with the city but with the Administrator's decision as final; and (3) that the city would regularly review the organization's personnel policies and manning tables. These new regulations were submitted to Washington as part of an amended application.<sup>104</sup>

As the city and its citizens moved toward their courtroom showdown, hindsight reveals three primary causes of distrust. First, personnel turnover was high on both sides of the partnership. The Model Cities Administrator who finally brought the issues into the open was the fourth such Administrator. The leadership of AWC had turned over twice in the same time. The city seldom consulted before appointing new liaison officials, and city audits of AWC offices "harassed" the community. Second, the city was working under self-imposed deadlines that the neighborhood did not understand. AWC felt pressured into designing a work program that the city believed would appeal to HUD, and it thought that the deadlines set by the city were unrealistic. The city wanted to design a program of action that would receive a "Letter to Proceed" from HUD officials before the Democrats left office in January 1969. After that, there would be a hiatus that would delay HUD action while the new officials set policy and direction for the agency. Finally, the city, starting in January 1969, wanted to cut the AWC staff in size from fifty-five to twenty-two. At this, AWC was naturally enraged.<sup>105</sup>

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<sup>102</sup> Complaint, *North City Area-Wide Council, Inc. v. Romney*, Civil No. 69-1909, at 7-8 (E.D. Pa. Nov. 10, 1969) [hereinafter cited as *Complaint*].

<sup>103</sup> *Id.*, exhibit D.

<sup>104</sup> *Id.*, exhibit G.

<sup>105</sup> Arnstein, *supra* note 100, at 35.

In the suit, a class action brought by AWC and a number of area residents, plaintiffs charged that the effect of the regulations of June 9, 1969, was to violate the "widespread citizen participation" requirement of the Demonstration Cities Act. They also contended that the application, as amended, no longer reflected their planning and development and that various HUD regulations had been violated.<sup>106</sup> Averring that the city "intends to organize . . . a new group to represent the citizens of the target area . . .," plaintiffs sought to preserve the status quo.<sup>107</sup> Among other things, the court was asked to order: (1) that the federal defendants were not to use the requirements laid down in HUD's 1969 letter to the city as criteria in evaluating the city's application; (2) that an injunction should issue barring the city from contracting with another citizens' group without court approval; and (3) that the city be required to maintain AWC at its prelitigation funding level so that the organization could remain intact.<sup>108</sup>

The district court dismissed the complaint on motions for summary judgment by HUD and the city, ruling that the citizen plaintiffs lacked "standing" to contest the actions of the city.<sup>109</sup> Then the court noted that, assuming plaintiffs did have the requisite standing, the complaint would fail. The court stated that participation had not been diminished: the more people involved, whether appointed or elected, the more "participation" there would be.<sup>110</sup> Finally, it ruled in favor of the city and the Model Cities Administrator, approving the rule that mayoral appointees have at least one-third of all seats on the operating boards.<sup>111</sup>

The district court said the dispositive issue was

whether the action of the city, in forwarding a supplementary statement, without the participation, review or indorsement of AWC and the subsequent acceptance of said supplementary statement was violative of the Model Cities Act in that it did not provide for wide-spread citizen participation.<sup>112</sup>

But having said that the city's actions were on trial, it then held that the Act's requirement of administrative coordination between various city agencies<sup>113</sup> made this question irrelevant: the established political

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<sup>106</sup> Complaint 13.

<sup>107</sup> *Id.* at 16. On June 30, 1969, the city ceased to employ AWC in the program. A subsequent offer was made to recontract subject to the new regulations, but AWC's board rejected it. *Id.* at 13, 15.

<sup>108</sup> *Id.* at 17-19.

<sup>109</sup> Civil Action No. 69-1909, at 6 (E.D. Pa. Nov. 10, 1969).

<sup>110</sup> *Id.* at 10.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 9.

<sup>113</sup> 42 U.S.C. § 3304(b)(2) (Supp. V, 1970).

structure could, under the guise of effecting coordination, fill seats on the operating boards. Finding that the plaintiffs misconstrued the notion of citizen participation, the court said, in effect, that the city administration had merely required the addition of another citizens' group.<sup>114</sup> The court failed to consider that the Mayor's appointees might override or replace neighborhood representatives and thus control the Model Cities program. Whether such substitution was allowable and within the statute was the real issue, but the court never discussed it.

The facts of *Area-Wide Council* suggest some of the difficulties inherent in a judicial determination of the scope of public participation in antipoverty programs. In the first place, the contract for planning services expired midway through the dispute. Second, the contract itself was poorly drawn: it did no more than repeat the language of the participation sections of the Act and it in no way defined the right to participate. The district court believed that the more groups and interests represented, the better the concept of participation was served. The court did not consider the political relationships among representatives, the dilution of political impact resulting from the expansion of the boards, and the results of adding new parties to the then coalescing network of antipoverty politicians. In effect, the court did not define "citizen participation" at all. Developing a political system inevitably takes time, and judicial tampering with the process is likely to destroy political relationships. After litigation, the process is inevitably set back as the actors regroup.

Unfortunately, an awareness of these difficulties also eluded the Third Circuit, which considered the case on appeal.<sup>115</sup> The court assumed that, in light of recent Supreme Court pronouncements,<sup>116</sup> AWC had standing to challenge HUD's grant to the city, but in reversing and remanding the case, the court did not articulate its view of participation in any detail. It merely said that any "fundamental changes" in the program, which it found the city's and HUD's actions to be, required citizen participation. The community participants, the court said, did not

claim to possess a veto over proposals by the City or HUD. They contend, however, they have the right to be consulted and to participate in the planning and carrying out of the program. Such a

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114 Civil No. 69-1909, at 10 (E.D. Pa. Nov. 10, 1969).

115 *North City Area-Wide Council, Inc. v. Romney*, 428 F.2d 754 (3d Cir. 1970).

116 *Barlow v. Collins*, 397 U.S. 159 (1970); *Association of Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150 (1970).

right—within the provisions of the Act—is in fact required by HUD's own administrative pronouncements.

... [T]he issue is not citizen veto or even approval but citizen participation, negotiation, and consultation in the major decisions which are made for a particular Model Cities Program. While not every decision regarding a Program may require full citizen participation, certainly decisions which change the basic strategy of the Program do require such participation.<sup>117</sup>

The court then noted that the program had previously

contemplated a much heavier involvement by the designated citizen participation component, AWC. This involvement was drastically reduced by the unilateral actions of the City and HUD. The Secretary therefore violated the Act when he accepted a proposal for major modification of the Model Cities Program from the City which made clear on its face there had been no citizen participation in its formulation, and when he imposed additional significant terms of his own without citizen consultation.<sup>118</sup>

Crucial terms are here left for future definition: "veto power," "basic program strategy," "major decisions," and "significant terms." No clear definition of "participation" emerges.

In support of its decision, the Third Circuit relied on that language in the Act directing the Secretary to "emphasize local initiative" and provide for "widespread citizen participation."<sup>119</sup> But the issue for decision turned on facts involving the contractual relationship of the AWC with the city, not the depth of support and involvement of target-area residents in the program. Moreover, the meaning of these statutory phrases was not made clear by their legislative history.

Considering the ambiguity of the Act itself, more interesting and to the point is the Third Circuit's reliance on CDA Letter No. 3.<sup>120</sup> It would appear that the court was really requiring conformity of the city-AWC program with administrative regulations—if that is in fact what CDA Letters are.<sup>121</sup> This aspect of *Area-Wide Council* might make

<sup>117</sup> 428 F.2d at 757-58.

<sup>118</sup> *Id.* at 758.

<sup>119</sup> 42 U.S.C. §§ 3303(a)-(b) (Supp. V, 1970).

<sup>120</sup> "[C]itizens in the model neighborhood area" are to be "fully involved in policy-making, planning and the execution of all program elements." 428 F.2d at 758, quoting CDA Letter No. 3, at 1.

<sup>121</sup> The court did not decide that all actions taken by the city and HUD with respect to the program after June 1969 were illegal. Counsel for AWC stipulated in oral argument that there was no need to reach this issue. *Id.* at 758. Hence, those actions remain in limbo. Reversing the district court, the Third Circuit merely remanded the



the case an important precedent for any future litigation over the program because the facts litigated involved a situation which CDA Letter No. 10A may well generate in the future.<sup>122</sup> The regulations on which HUD and the city agreed, without citizen assent, resemble the guidelines of CDA Letter No. 10A. Just how a court could reconcile the statutory reasoning of the Third Circuit opinion and also require conformity with CDA Letter No. 10A in a case involving similar facts is unclear.<sup>123</sup>

## V

### A SUGGESTION FOR JUDICIAL ANALYSIS

In general, courts might view participation in two ways. It might be defined narrowly in terms of representation. If it is, the appropriate questions involve the nature of the interests represented and the role of the representative. On the other hand, it is also reasonable to view participation as a process. If it is a "shared experience," as Robert C. Wood has said,<sup>124</sup> participation is a process in which each party's role interlocks with the roles of others and all are dependent on each other for the effective functioning of the system. In order not to prejudice the working (much less the outcome) of the network, no one party should be allowed to interfere with the functioning of any other party. In other words, once elected and after the planning stage, representatives should, under either definition, be secure in their roles as participants.

Whichever definition is accepted, the result may depend on a sufficiently well-drawn contract between the city government and Model Cities groups. The scope and extent of participation, elections,

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case for further proceedings consistent with its opinion. The problems inherent in writing an order still remain for that court.

<sup>122</sup> CDA Letter No. 10A had not been issued at the time of the district court decision, and its effect was neither raised by the parties nor discussed by the court of appeals. The case was thus decided under the regulations existing at the time the contract was made.

<sup>123</sup> To some extent, this case may finally wind up in the same stance as *Thorpe v. Housing Authority*, 393 U.S. 268 (1969). There, a HUD circular arguably mooted the question presented, and here CDA Letter No. 10A, if harmonized with CDA Letter No. 3 and TAB No. 3, does the same. But the circular involved in *Thorpe* incorporated one possible interpretation of a prior judicial decision into HUD's regulations governing eviction from public housing. It is by no means clear that CDA Letter No. 10A can be reconciled with *Area-Wide Council*.

<sup>124</sup> "To recognize that the genuine experience of participation is shared experience—not the creation of a separate presence—is the beginning of wisdom in our present urban efforts." Wood, *supra* note 43, at 8.

options to extend the contract, and rules governing tenure and removal of City Demonstration Agency directors should be covered explicitly in future contracts. In lieu of a contract, a local ordinance might control the same questions. The effect of such an ordinance on a federal program, and its binding effect on federal authorities, is of course open to some question, but the approach may be worth trying.<sup>125</sup>

The situation presented in *Area-Wide Council* was the result of a shift in HUD's administrative policies. The facts show that HUD's national administration has had difficulty rationalizing the citizen participation component of Model Cities in administrative terms. That is, it cannot "balance" participation and what it conceives to be good administration. Hence its communication to Philadelphia officials talked in terms of legal rules designed to ensure "efficient," honest administration. In at least these respects, HUD is now trying to impose administrative constraints on the citizen participation component of Model Cities. This would be proper if experienced administrators were involved, but here it may well result in a case of bureaucratic overkill: the burdening of a program with so many requirements that it burns itself out trying to contend with them all.

It has been shown that citizen participation can serve a useful administrative purpose in well-designed bureaucratic programs.<sup>126</sup> What, however, if bureaucracy has no definitive program, or mix of programs? What if its priorities have not been set beforehand? This was the case with Model Cities. The federal government admitted that it was bankrupt of new ideas to save our cities from their problems and so it turned to the local communities. The legislative history makes clear that the citizen participation requirement was intended to fuse the planning and later administrative functions. Thus, the question of continuing a local program, as in Philadelphia, under community control, must be decided by the community itself.

How should a plaintiff go about proving this and asking for reinstatement of future AWC's in court?<sup>127</sup> First, someone knowledgeable about past governmental efforts at participation might be called as an expert witness. His testimony should discuss the frustration and distrust that result when participation serves administrative purposes

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<sup>125</sup> This approach was taken in Cambridge, Massachusetts. Cambridge, Mass., Ordinance No. 766 (May 20, 1968).

<sup>126</sup> Text accompanying notes 1-19 *supra*.

<sup>127</sup> Of course, there are several ways and what follows is a suggestion that assumes plaintiffs' attorneys are given an opportunity to present the court with evidence designed to show that the basic premises of the program rest on the outcome and impact of the particular case.

only. He should recite the history of participation in Urban Renewal in the 1950's and 1960's, the rising expectations created and then constrained by participation in OEO programs, and the middle ground of participation in Model Cities: a compromise at its inception but now threatened with annihilation by rulings from Washington. A second witness could be a city planner familiar with the history of his profession. He might trace the development of the concept of advocate or adversary planners who work for neighborhood or minority groups as a planning staff. The thrust of this testimony would be to emphasize the need for an independent staff backing up citizens.<sup>128</sup> The third witness could be an expert in the functioning of bureaucracy and the administrative process. The testimony he gives would indicate how compartmentalization of planning, staff, and line functions stall or kill a program. He could point out that the distinction between operating and evaluative functions is sound, but that evaluations should not be performed on the local level anyway; since Washington will inherently mistrust such reviews, this particular allegation of conflict of interest is a "make-weight" issue on HUD's part. A fourth line of argument could be elicited from a sociologist or social psychologist. This testimony should provide some insight into why issues like this arise. The citizens' group, the argument might go, is in a sense testing the extent of its freedom and competence, much as a child tests himself and his parents. The present conflict is thus preliminary, even a precondition, to the development of a further working relationship. Furthermore, if a new group were formed, the same process with similar conflicts at the end of it would most likely recur.

One more point might be raised. It has to do with the function of the program vis-à-vis its potential beneficiaries. If Model Cities is to provide programs traditionally carried out by government, then its actions are as important to the residents as those of any government would be.<sup>129</sup> As in any community, elected officials are not to be turned out of "office" lightly, and courts should deal with this situation accordingly. In a pluralistic, mobile society, the seat of government is where power is, not necessarily in city hall. Courts would do well to see to it that appropriate legal safeguards follow citizens when they themselves become a locus of power. Initially, this means that the role

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<sup>128</sup> The need for them has a dual origin: (1) in the idea that comprehensive, public agency planning, as it is traditionally carried on, is really middle-class oriented and either ignores or leaves the poor unrepresented in the planning process; and (2) in the distrust with which poverty groups view city hall.

<sup>129</sup> M. KOTLER, NEIGHBORHOOD GOVERNMENT 81-87 (1969).

of courts may be to recognize and legitimate "government" so that they can better control it later.

Although some take heart from the Third Circuit's decision in *Area-Wide Council*, personnel morale in Model Cities is sagging badly around the country.<sup>130</sup> On October 1, 1970, Secretary Romney announced his intention to give fiscal and program-review powers over local efforts to a selected group of mayors.<sup>131</sup> If this had been done in Philadelphia, the outcome of *Area-Wide Council* might have been different.

In light of this uncertainty one further difficulty with the Third Circuit's opinion remains: whether the "participation, negotiation, and consultation" it required encompasses all the parties to the grant—that is, the city, the citizens, and HUD.

What if HUD refuses to give the city the grant unless conditions are imposed on citizen participation? In that case, of course, the city will tend to capitulate and hope it can persuade the citizens to accept them. This was the situation when Philadelphia was negotiating with HUD in the spring of 1969. So the scope of negotiations should realistically include the city and citizens on one side, and HUD on the other side of the bargaining table. As to the programmatic content of the plans themselves, this is consistent with the idea, contained in the legislative history as interpreted by the administrators of the Act, of "stretching" the capacity of local government to deal with a broader range of its citizenry and present their case to Washington. However, when the participation of citizens is itself called into question, HUD's role must change if it is to carry out the all-sector "local initiative" mandate of the Act. It must become a negotiator and mediator between city and citizens; it must judge questions of participation, subject to judicial review. On such issues, negotiation must be triangular—between HUD, the city, and the citizens on a "face-to-face" basis.

The trouble then with the Third Circuit opinion is that it does not say enough. To hold that HUD and the city acted "unilaterally" does not say how the prior negotiations should have been arranged. Like the Vietnamese Peace talks in Paris, the problem is the size and shape of the bargaining table. Ultimately, however, courts should confine the issues of such cases to matters of the contract. Construing such

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<sup>130</sup> N.Y. Times, April 26, 1970, at 1, col. 1, reported that President Nixon was considering diverting the \$500 million allocated in fiscal 1971 to Model Cities for an upgrading of programs in center city schools. Secretary Romney worked to have this decision rescinded and was successful.

<sup>131</sup> Washington Post, Oct. 1, 1970, at 1, col. 1.

contracts, however loosely drawn, will make future contracts of this type more detailed. Future negotiators will be forced to think through questions of tenure, powers, and replacement of participating citizens. Similarly, future courts would be wise to interpret these contracts in the light of regulations existing at the time the contract was drafted.<sup>132</sup> It might even be argued that administrators should generally be confined to enforcing only prior regulations on federal grants; with participatory programs, this point seems particularly well founded. Otherwise, ad hoc administration gives program flexibility at the expense of citizen participation. In such situations, it is difficult for participation to function at all.

The problem of citizen participation in Model Cities is one of bureaucracy generally. It is possible to have so many rules and regulations that a program breaks down under the strain of trying to harmonize all of them. What this country has learned since the New Deal is that it is virtually impossible to plan and rationally coordinate social programs. This is not to say that they should be stopped; rather, they should not be overregulated from Washington. The level of decision-making power should be scaled down, defederalized, and made a matter of local control. Given the legislative history of Model Cities, that program is a good place to start this process.

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<sup>132</sup> This the Third Circuit did, resting its decision in part on CDA Letter No. 3. The difficulty lay in the fact that HUD was evidently "trying out" new regulations on the Philadelphia program.