

Fostering a Culture of Solutions: An Introduction to the Urban Revitalization Symposium Issue

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In opening this year's Law Review Symposium, I proclaimed that no city is better positioned than Memphis to host scholarly discussion on the many-layered topic of *Urban Revitalization: The Legal Implications of Restoring a City*. Memphis, of course, was among the cities hardest hit by the historic housing crisis that resulted from the subprime mortgage and predatory lending schemes of the 2000s.¹ For a city that had suffered steady population decline² and long ranked among the nation's leaders in bankruptcies,³ those practices exacerbated an already extreme situation, inflicting a new brand of devastation marked by unprecedented levels of home abandonment, severely diminished property

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1. See Corky Neale, *Subprime Loans and Bankruptcy: The Memphis Experience Post-BAPCPA*, 28 AM. BANKR. INST. J. 50, 51 (2009) (detailing Memphis' relatively high rate of foreclosures among Top 100 metro areas in 2006 and 2007).

2. See Jimmie Covington, *Memphis Population is Down*, BEST TIMES (June 6, 2014, 8:54 AM), <http://thebesttimes.com/news/2014/jun/06/memphis-population-down/> (noting that “[h]istorical data reflect that people have been steadily moving out of the city since 1960. Population gains since that time have been the result of annexations rather than any increase in residents within city limits.”).

3. See Jacqueline Marino, *We Do Bankruptcy Right*, MEM. FLYER (Dec. 22, 1997), http://www.weeklywire.com/ww/12-22-97/memphis_cvr.html (detailing Memphis' emergence as “the Bankruptcy Capital of America” despite the economic boom of the late 1990s).

values, and entire neighborhoods changed forever.⁴ Today, nearly ten years removed from the crisis' peak and amidst cautious talk of local and national economic recovery, an estimated 13,000 vacant housing units and 53,000 vacant lots linger as blighted properties threaten the stability of Memphis and its citizens.⁵

My proclamation did not find its roots in this problem of admittedly epidemic proportion; rather, it instead had everything to do with the creative and collaborative strategies Memphis is using to confront it.⁶ Guided by the collective vision and sheer will of many who participated in this Symposium, including several authors who have contributed to this volume, Memphis has become a model for the innovation and cooperation necessary to fight the scourge of blighted properties and to reenergize the communities in which they sit.⁷ And the Law Review's decision to devote its Symposium to the often controversial legal and policy issues connected to any community revitalization effort is just the latest example of the leading role that the University of Memphis Cecil C. Humphreys School of Law ("the Law School") and its students have come to play in that important fight.

In January 2015, the Law School and the City of Memphis Law Division partnered to form the Neighborhood Preservation Clinic.⁸ In what is believed to be a first-of-its-kind construct, Clin-

4. See Eric Smith, *Roulette: How the National Foreclosure Crisis is Playing out Locally – Where it stops, Nobody knows*, MEMPHIS NEWS, Sept. 3–9, 2008, <http://www.chandlerreports.com/Site/Docs/ForeclosureUpdate-TheMemphisNews3.pdf> (describing the impact of the housing and foreclosure crisis of the late 2000s on Memphis).

5. See *Our Crisis*, MEM. BLIGHT ELIMINATION SUMMIT, <http://www.memphisfightsblight.com/#our-crisis> (last visited May 17, 2016); see also Ruth McCambridge, *What's the Prescription for the Blight Contagion in Memphis? A New Nonprofit?*, NONPROFIT Q. (Jan. 26, 2016), <https://nonprofitquarterly.org/2016/01/26/whats-the-prescription-for-the-blight-contagion-in-memphis-a-new-nonprofit> (noting that "[w]ithin the Memphis City Limits, there are more than 53,000 vacant properties, and since vacancies are the leading cause of blight, the city is plagued by the problem.").

6. See J.B. Wogan, *It Takes A Village: The Idea Behind Memphis' Anti-Blight Strategy*, GOVERNING (May 17, 2016), <http://www.governing.com/topics/urban/gov-memphis-blight-elimination-charter.html>.

7. *Id.*

8. See Peggy Burch, *Demolition of Executive Inn Kicks Off Anti-blight Law Clinic*, COM. APPEAL (Jan. 9, 2015), <http://www.commercialappeal.com/>

ic students represent the City of Memphis in lawsuits aimed at abating the public nuisance caused by abandoned properties.⁹ Clinic students investigate property ownership and conditions, communicate with and train Code Enforcement professionals, and prepare civil actions seeking enforceable orders of compliance with property maintenance and other local housing and building code standards. Just as importantly, to inform their casework, Clinic students learn—and teach¹⁰—about the history and causes of blighted properties and the pervasive impact those properties have on the children that walk by them on the way to school, the families that live next to them, and the neighborhoods that surround them.¹¹ Over the course of just three semesters, 24 students

news/government/city/demolition-of-executive-inn-kicks-off-anti-blight-law-clinic-ep-867136357-324499121.html; Bianca Phillips, *New Anti-Blight Clinic Launched at U of M Law School*, MEM. FLYER (Jan. 9, 2015, 1:40 PM), <http://www.memphisflyer.com/NewsBlog/archives/2015/01/09/new-anti-blight-clinic-launched-at-u-of-m-law-school>.

9. The Clinic files its lawsuits pursuant to the Tennessee Neighborhood Preservation Act, TENN. CODE ANN. § 13-6-101. Under the statute, “public nuisance” is defined as

any vacant building that is a menace to the public health, welfare, or safety; structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard, dangerous to human life, or no longer fit and habitable; a nuisance as defined in § 29-3-101; or is otherwise determined by the court, the local municipal corporation or code enforcement entity to be as such.

Id. § 13-6-102(8).

10. Among their other responsibilities, Clinic students conduct workshops and training sessions designed to educate community representatives groups about the Tennessee Neighborhood Preservation Act, their casework in the Shelby County Environmental Court, and the causes and impact of neglected property. See *Westwood Students, Alumni Attack Blight at School*, WMC ACTIONNEWS5.COM (Apr. 26, 2016, 6:39 AM), <http://www.wmcactionnews5.com/story/31800357/westwood-students-alumni-attack-blight-at-school>.

11. See Jarrett Spence, *Neighborhood Building in Memphis: A Strategy of Hope*, CEOs FOR CITIES (May 7, 2015), <https://ceosforcities.org/neighborhood-building-in-memphis-a-strategy-of-hope>. In his excellent piece *Perspectives on Abandoned Houses in a Time of Dystopia*, Professor Kermit Lind explores the “various perspectives on abandoned houses in urban neighborhoods” and “how conflicting reactions perpetuate the crisis of blight for individual residents and their communities.” 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 121,

have participated in the Clinic, assisting in the filing of more than 100 new blight lawsuits for the City and helping to achieve positive community outcomes in hundreds more.¹²

Yet the Neighborhood Preservation Clinic is just one of many ways in which the Law School has emerged as a centerpiece of Memphis' remarkable community revitalization movement. A week before the Symposium, the Law School's Public Action Law Society convened an Alternative Spring Break program in which more than 60 students from across the county (including many of our own) provided supervised legal assistance and participated in service project initiatives focused on a theme of "Building Community Hope Through Blight Reduction."¹³ And just a day before the Symposium, the Law School hosted a summit of community leaders at which its partner, Neighborhood Preservation Inc., unveiled the Memphis Neighborhood Blight Elimination Charter¹⁴ a comprehensive consensus document "intended to serve as both a playbook and a game plan for current and future blight abatement actions."¹⁵

Indeed, the articles published as part of the 2016 Symposium reflect the blend of creative, committed, and multi-faceted thinking that has characterized Memphis's recent rise against the ills of vacant, abandoned, and neglected properties. The volume's authors, an exceptional group of national scholars and local change

121 (2015). Lind makes the compelling argument that "real solutions for management of abandonment must be based in local communities and tailored to local conditions." *Id.*

12. See Lance Wiedower, *Memphis Law Students Help Shape City's Blight Fight*, HIGH GROUND NEWS (Jan. 14, 2016), <http://www.highgroundnews.com/features/BlightClinic.aspx>.

13. See the University of Memphis School of Law Alternative Spring Break Video, *2016 Alternative Spring Break at Memphis Law*, https://video.search.yahoo.com/search/video;_ylt=AwrBT4ajNj1X08oAtTNXNyoA;_ylu=X3oDMTEyMm43aWFsBGNvbG8DYmYxBHBvcwMxBHZ0aWQDQjE5MTBfMQRzZWMDc2M-?p=Memphis+Alternative+Spring+Break+Blight&fr=aapl#wid=7&vid=e378940b81b1f62099223eae56fcf053&action=view.

14. See MEMPHIS NEIGHBORHOOD BLIGHT ELIMINATION CHARTER (Mar. 16, 2016), <http://static1.squarespace.com/static/56ba157ab654f9986538a18c/t/56e9f94b86db430e409acfc3/1458174297659/Blight+Elimination+Charter+final+3-14-15.pdf>.

15. *Id.*; *Our Charter*, MEM. BLIGHT ELIMINATION SUMMIT, <http://www.memphisfightsblight.com/#our-charter> (last visited May 20, 2016).

agents, pragmatically consider both the opportunities and the risks associated with urban revitalization. They admonish us not to forget the complicated causes of the blight epidemic and the predominantly low-income and minority communities that have suffered most because of it. But they also offer solutions.

Kermit Lind and Joe Schilling, patriarchs of the national blight policy movement and architects of the aforementioned Blight Elimination Charter, begin their article *Abating Neighborhood Blight with a Collaborative Policy Network—Where Have We Been? Where Are We Going* by examining the complex legal and policy influences that have combined to confound the meaning of the word “blight”¹⁶ and to create a culture that accepts property neglect and neighborhood decline as societal norms.¹⁷ Lind and Schilling detail their own work over much of the last 25 years establishing and collaborating with networks of communities and professionals on strategic initiatives designed to thwart, redress, and reclaim blighted properties.¹⁸ Reflecting on lessons learned from these initiatives, Lind and Schilling conclude with a call for even broader collaboration among public, private, and community actors, and recommendations for the implementation of “a more systematic suite of neighborhood preservation and revitalization strategies”¹⁹—including clarifying the legal principles of blight and nuisance in state and local law,²⁰ expanding capacity-building opportunities for strategic code enforcement,²¹ and the development of local teams or councils for supporting cross-sector coordination and collaboration.²²

In their article *Regulatory Created Blight in a Legacy City: What is It and What Can We Do About It?*, Memphians Josh

16. Kermit Lind & Joe Schilling, *Abating Neighborhood Blight with Collaborative Policy Networks—Where Have we Been? Where are we Going?*, 46 U. MEM. L. REV. 803, 806 (2016) (explaining “blight . . . is a term encumbered with a history of associations that have diffused and diminished its clarity”).

17. *Id.* at 812–15.

18. *Id.* at 818–39.

19. *Id.* at 840.

20. *Id.* at 841–44.

21. *Id.* at 844–48.

22. *Id.* at 849–51.

Whitehead, Tommy Pacello, and Steve Barlow²³ posit that, separate and apart from traditional causes of blight,²⁴ land use regulations and building codes designed to encourage growth and development instead act often to create additional stimuli for the abandonment and decline upon which blighted communities emerge.²⁵ To make their case, Whitehead, Pacello, and Barlow delve into the rich history and complex evolution of Memphis's regulation of land use and construction, demonstrating how such regulation continues to counteract good faith efforts by government actors and others to eliminate vacant and abandoned properties.²⁶ To do away with regulatory created blight, the authors conclude, cities like Memphis should "identify and focus on small neighborhood target areas and start by finding ways to remove such regulatory barriers at that level, thereby stimulating small re-development projects that were previously impossible in that location."²⁷

Judge Raymond Pianka, one of our country's preeminent housing court jurists, writes in *Community Control Supervision of Building Code Offenders in Cleveland's Housing Court: Making the Most of Ohio's Direct Sentencing for Misdemeanors* about his Court's novel use of community control sentencing to ensure owner compliance beyond just the single blighted or code-violating property that may be at issue.²⁸ After giving insight into the Court's development, jurisdiction, and evolution into a "problem-solving" advocate,²⁹ Judge Pianka explores the statutory underpin-

23. I note with pleasure that Mr. Whitehead, Mr. Pacello, and Mr. Barlow are all distinguished alumni of The University of Memphis School of Law. Both Mr. Whitehead and Mr. Barlow serve as adjunct Law School faculty, and Mr. Barlow (or Professor Barlow, as I call him) is both the Co-Director of the Neighborhood Preservation Clinic and the undisputed leader of the remarkable blight-fighting effort in Memphis. I am proud to partner with and learn from him at every turn.

24. Josh Whitehead, Tommy Pacello & Steve Barlow, *Regulatory Created Blight in a Legacy City: What Is It and What Can We Do About It?*, 46 U. MEM. L. REV. 857 (2016).

25. *Id.* at 857–63.

26. *Id.* at 869–89.

27. *Id.* at 901.

28. Judge Raymond Pianka, *Community Control Supervision of Building Code Offenders in Cleveland's Housing Court: Making the Most of Ohio's Direct Sentencing for Misdemeanors*, 46 U. MEM. L. REV. 903 (2016).

29. *Id.* at 906–09.

nings of community control sanctions in Ohio and explains how the Court's use of such sanctions operates in line with the direct sentencing method recommended by the Ohio Criminal Sentencing Commission.³⁰ Judge Pianka then details the community control obligations posed on offending owners—namely the provision of a list of all properties the defendant owns, the duty to keep all properties in good repair, and a requirement to regularly visit and inspect each property to ensure it remains in good repair—and the manner in which the Court's Housing Specialists operate to enforce these obligations.³¹ Concluding with a candid assessment of the efficacy, opportunities, and challenges of community control supervision as demonstrated in his Court,³² Judge Pianka endorses this sentencing alternative as one supplying the flexibility needed by courts specializing in housing issues.³³

In *Saving Our Cities: Land Banking in Tennessee*, Sohil Shah offers land banking as a “novel and assertive approach” capable of succeeding where other efforts to address vacant and neglected properties have not.³⁴ After explaining land banking—Shah notes that “[a] land bank, at its essence, converts vacant, abandoned, tax-delinquent, and foreclosed properties into productive use”³⁵—Shah details the evolution of the Tennessee Local Land Bank Act before comparing the Tennessee legislation to template legislation created by land banking expert Professor Frank Alexander.³⁶ Shah ends with an assessment of the three land banks presently active in Tennessee (Oak Ridge, Chattanooga, and Memphis),³⁷ upon which he reaffirms his conclusion that local governments across Tennessee should create and devote significant resources to land banks as a means of combatting vacant, abandoned, tax-delinquent, and foreclosed properties.³⁸

30. *Id.* at 909–13.

31. *Id.* at 913–94.

32. *Id.* at 907–26.

33. *Id.* at 926.

34. Sohil Shah, *Saving Our Cities: Land Banking in Tennessee*, 46 U. MEM. L. REV. 927, 928. (2016).

35. *Id.* at 929.

36. *Id.* at 939–66.

37. *Id.* at 966–69.

38. *Id.* at 973.

Although her article is also solution-focused, University of Texas School of Law Professor A. Mechele Dickerson's leads off *Revitalizing Urban Cities: Linking the Past to the Present* with a strong caution to policymakers against using the nebulous concept of "blight" to defend traditional urban revitalization remedies that have concentrated on communities consisting of low-income, primarily black or Latino residents.³⁹ Dickerson roots her admonition in a thorough review of the role that federal, state, and local government actors—through discriminatory laws and practices, pretextual zoning laws, and racially and demographically-segregated public housing programs—and private actors, most notably urban landlords and lenders, have historically played in planting the seeds of blight in low-income neighborhoods.⁴⁰ She then takes to task the eminent domain and urban removal programs traditionally used by cities to counteract blight. Though these programs have often revitalized blighted neighborhoods, Dickerson notes, they have done so only after destroying entrenched and potentially sustainable communities while "pushing" their low-income, minority residents to other blighted areas.⁴¹ Rather than defaulting to demolition of troubled buildings and relocation of poor resident in the neighborhoods most threatened by blight, Dickerson closes with a call for early and innovative interventions that strive to save and rehabilitate buildings where possible, restore economic viability, and encourage investment, and keep long-standing neighborhoods intact by revising zoning restrictions, using land banks, and supporting other initiatives designed to grow affordable housing stock.⁴²

In similar fashion, James Kelly's *Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing* reminds that even the most innovative efforts to address vacant properties must operate in line with the Fair Housing Act's new mandate to Affirmatively Further Fair Housing ("AFFH").⁴³ Kelly first offers a comprehensive analysis of AFFH's place within the

39. A. Mechele Dickerson, *Revitalizing Urban Cities: Linking the Past to the Present*, 46 U. MEM. L. REV. 973, 973–79 (2016).

40. *Id.* at 979–94.

41. *Id.* at 994–1002.

42. *Id.* at 1002–08.

43. James Kelly, Jr., *Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing*, 46 U. MEM. L. REV. 1009 (2016).

broader FHA context and the obligations it can be said to impose upon local government entities following HUD's issuance in 2015 of the Final Rule for AFFH.⁴⁴ HUD's clear focus on AFFH, Kelly advises, requires that "[l]ocal governments seeking to make their distressed neighborhoods attractive to potential residents choosing new homes must be able to express these revitalization goals as consonant with the promotion of fair housing even as they contend with accusations their market-sensitive approaches to vacant properties reinforces segregation patterns."⁴⁵ Kelly uses the common approaches of market-sensitive code enforcement and land banking to demonstrate his point, offering guidance as to how each revitalization mechanism can satisfy the dual aims of affirmatively furthering neighborhood choice and ensuring fair housing compliance.⁴⁶

J. William Callison's article, *Inclusive Communities: Geographic Desegregation, Urban Revitalization, and Disparate Impact Under the Fair Housing Act* likewise offers helpful insight into the impact of fair housing law on urban revitalization efforts.⁴⁷ Delving into the Supreme Court's 2015 decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*,⁴⁸ Callison begins by noting that the Court's decision should quell the concerns of many that its repeated acceptance of disparate impact cases on *certiorari* spelled doom for the theory.⁴⁹ Beyond affirming the viability of disparate impact claims under the FHA and the need for both government and private actors to act with related liability in mind, however, Callison posits that *Inclusive Communities* represents a deterioration of disparate impact theory as a weapon in the fight for racial desegregation and the elimination of race considerations in housing.⁵⁰ With this in mind, and pointing to specific language in the Court's opinion, he antici-

44. *Id.* at 1009–13.

45. *Id.* at 1025.

46. *Id.* at 1025–38.

47. J. William Callison, *Inclusive Communities: Geographic Desegregation, Urban Revitalization, and Disparate Impact Under the Fair Housing Act*, 46 U. MEM. L. REV. 1039 (2016).

48. 135 S. Ct. 2507 (2015).

49. *Id.* at 1039–42.

50. *Id.* at 1042–48.

pates that future fair housing claims may fail unless able to show discriminatory intent.⁵¹

Collectively, this Symposium volume offer valuable insight and ideas to those working so hard to breathe new life into many of our country's urban centers. Amidst novel suggestions and distinctive viewpoints, the authors are consistent in the passion with which they emphasize the benefits of creative, collaborative approaches, the crucial need to appreciate the history that has led us to this point, and the paramount importance of taking action in a way that truly acknowledges the many perspectives of blight and the many constituencies impacted by it.⁵² To overcome the pervasive culture of blight that has taken hold over decades,⁵³ we must revitalize our cities and communities by instead fostering a culture of solutions.

51. *Id.* at 1048–54.

52. See also Lind, *supra* note 11, at 126 (“Some piecemeal solutions actually make things worse because they serve only the interests of the politically and economically powerful at the expense of the poorly represented. Real solutions are not possible from only one or even two perspectives.”).

53. See *Our Crisis*, *supra* note 5 (describing the “self-perpetuating . . . culture of blight” that has been “allowed to take hold, eroding the aesthetic standards of a community and frustrating other abatement efforts”).