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# Administrative Procedure and the Advocatory Process in Urban Redevelopment

*Lawrence A. Sullivan\**

An urban redevelopment program may touch a city in intimate ways. It is a new experience for Americans to grant to their governments control over such sensitive questions as whether to break up extant neighborhood groups and redistribute their members throughout the wider community, whether to permit an owner to continue to use his property as a transient hotel or to take it from him and sell it to one who will construct an office building upon it, and whether the buildings in a particular block are aesthetically satisfying. Yet these are typical of the questions which are being resolved through the redevelopment process in cities throughout the nation.

Redevelopment involves the exercise of eminent domain power for the taking of large urban tracts which are first cleared by a governmental agency and then sold to private investors for new uses approved by the agency. The decisions made by redevelopment agencies—respecting both basic plan objectives and program particulars—are obviously important to the urban community generally, but they are also likely to have a forceful impact upon the individuals and groups living, working or owning property in redevelopment areas. Thus, if redevelopment programs are to conform to democratic ideals and to common conceptions of fair administration, agency judgments as to basic objections ought to advance widely shared community goals while agency determinations as to plan particulars ought to be founded not only upon technical expertness but also upon sympathetic attention to the effect of such decisions upon the individuals and groups directly concerned.

The legislative framework within which redevelopment is carried on is generally similar in each of the states which has a redevelopment enabling act.<sup>1</sup> In the background is the federal grant-in-aid legislation,<sup>2</sup> adminis-

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<sup>1</sup> Redevelopment laws are in effect in substantially more than half of the states and territories. Annot., *Urban Redevelopment Laws*, 44 A.L.R.2d 1414, 1417 (1955); Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, 9 WASH. & LEE L. REV. 173 (1952); HOUSING & HOME FINANCE AGENCY, CITATIONS TO URBAN REDEVELOPMENT LAWS AND DECISIONS (1954).

<sup>2</sup> Federal law provides for the Housing and Home Finance Agency to make loans and grants for redevelopment and renewal to local agencies. 63 STAT. 414 (1949), as amended, 42 U.S.C. §§ 1451-60 (1952), as amended, 42 U.S.C. §§ 1450-60 (Supp. III 1956). The development of federal housing and land policy is retraced in Robinson & Weinstein, *The Federal Government and Housing*, 1952 WIS. L. REV. 581. See also Riesenfeld & Eastlund, *Public Aid to Housing and Land Redevelopment*, 34 MINN. L. REV. 610 (1950).

tered by the Urban Renewal Administration of the Housing and Home Finance Agency, which provides for absorption of up to two-thirds of net project costs by the federal government. State enabling statutes generally confer redevelopment powers upon independent municipal corporations, *e.g.*, "redevelopment authorities," having jurisdictions coextensive with existing city or county boundaries. These agencies are authorized to receive federal grants and grants from the city or county governments in the areas over which they exercise jurisdiction.<sup>3</sup> The portion of project costs not provided by federal aid is usually contributed by the city or county government although redevelopment agencies may sometimes raise funds by issuing bonds. Under present law<sup>4</sup> prerequisites for federal grants include conformity of the redevelopment plan to a general plan for land use development of the city as a whole,<sup>5</sup> the existence of a city-wide "workable program" to arrest blight by conservation of areas in danger of blight and rehabilitation of blighted areas which can be renewed by programs less drastic than redevelopment,<sup>6</sup> the holding of a public hearing,<sup>7</sup> and approval of the redevelopment project by the city council or the comparable local governing body.<sup>8</sup>

It is the primary purpose of this Article to sketch, in so far as limited data permit, the manner in which redevelopment laws are presently being administered and to suggest some areas where changes in governing procedural requirements as well as in practice seem to be needed in order to afford those affected by redevelopment an opportunity to participate, through counsel if desired, in the decisional process. Secondarily, an effort will be made to indicate ways in which lawyers appearing in redevelopment matters may represent their clients more effectively.

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<sup>3</sup> The particular agency responsible will vary from state to state. In a number of states redevelopment functions are vested in pre-existing public housing authorities. *E.g.*, ALA. CODE ANN. tit. 25, § 97 (Supp. 1955); MASS. ANN. LAWS c. 121, §§ 26K-26KK (1949). In others, new, separate agencies have been established. *E.g.*, PA. STAT. ANN. tit. 35, § 1704(a) (1949). It is apparent that whether redevelopment powers are placed in a housing authority or in a separate agency may affect the general approach to redevelopment which may be anticipated. See MEYERSON & BANFIELD, POLITICS, PLANNING AND THE PUBLIC INTEREST 64 (1955).

<sup>4</sup> See, generally, HOUSING & HOME FINANCE AGENCY, "SUMMARY OF FINANCIAL AID," MANUAL OF POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES c. 4 (1951, as supplemented through May 1, 1956); *id.*, BRIEF SUMMARY OF HOUSING ACT OF 1954 (1954).

<sup>5</sup> 42 U.S.C. § 1460(b)(1) (Supp. III 1956). The importance of the general plan to effective land use planning has frequently been emphasized. See, *e.g.*, Haar, *The Content of the General Plan: A Glance at History*, 21 J. AM. INST. OF PLANNERS 66 (1955).

<sup>6</sup> 42 U.S.C. § 1451(c) (Supp. III 1956). For discussion of the rehabilitation programs which must now be carried on by the municipality before it qualifies for federal aid for redevelopment see Slayton, *Conservation of Existing Housing*, 20 LAW & CONTEMP. PROB. 436 (1955); HOUSING & HOME FINANCE AGENCY, HOW LOCALITIES CAN DEVELOP A WORKABLE PROGRAM FOR URBAN RENEWAL (1954).

<sup>7</sup> 42 U.S.C. § 1455(d) (1952).

<sup>8</sup> 42 U.S.C. § 1460(b) (Supp. III 1956).

REDEVELOPMENT ADMINISTRATION AND PROCEDURE—THE NEED  
FOR REFORM

To understand redevelopment administration and procedure one must have some conception of the goals which redevelopment agencies are seeking to achieve. In keeping with statutory requirements,<sup>9</sup> slum clearance has been postulated as the basic redevelopment end. But behind this general condemnation of slums lies a thicket of unstated premises which have influenced agency decisions as to the selection of slum areas to be cleared and reuse plans to be adopted. These premises must be examined.

In the first place, it is assumed that slums are a serious social liability in that they breed delinquency and disease.<sup>10</sup> Indeed, reducing the consequent menace to public safety and health is regarded as the ultimate goal which legitimizes the use of eminent domain power and the expenditure of public funds for redevelopment.<sup>11</sup> These suppositions are adequate working hypotheses upon which to base public action. With regard to the genesis of delinquency, it must be conceded that there may be a variety of non-environmental conditioning factors, that the immediate home environment is more important than neighborhood, and that insofar as the neighborhood has a bearing, it is the social rather than the physical structure of the

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<sup>9</sup> The statutes generally describe the areas which may be cleared as areas characterized by any one or more of a series of qualities which includes not only traditional slum indicia but also indicia of economic or aesthetic deterioration. See, e.g., MASS. ANN. LAWS c. 121, § 26JJ (1949); CAL. HEALTH & SAFETY CODE §§ 33041-44. However, most statutes contain declarations of policy indicating that the basic legislative purpose is to clear slums and arrest the development of slums in order to protect public safety, health and welfare. See, e.g., MASS. GEN. LAWS c. 121, § 26JJ (1949). *But see* CHICAGO PLANNING COMM'N WITH HOUSING & REDEVELOPMENT COORDINATOR, RECOMMENDED POLICIES FOR REDEVELOPMENT IN CHICAGO 12 (1954), indicating that the criteria for selecting among areas meeting legal requirements should be total contribution of ultimate use to city welfare, not degree of blight.

<sup>10</sup> See, e.g., Newman, *Slums*, 14 ENCYC. SOC. SCI. 93 (1934). In an age of faith of recent memory McDougal & Mueller referred to "the well documented facts that slum clearance and the provision of sanitary low-rent housing decrease danger of epidemics, raise general public health, reduce crime, cut juvenile delinquency, reduce immorality, lower economic waste by reducing health, police and fire protection costs, make better citizens, eliminate fire hazards, increase general land values in the vicinity, cut the accident rate, and prevent the cancerous spread of slums to uninfected areas." *Public Purpose in Public Housing: An Anachronism Reburied*, 52 YALE L.J. 42, 48-49 (1952). For an impressive documentation of a more moderate thesis, see App. B and C of the brief for respondent (Lewis H. Weinstein, counsel) in *Stockus v. Boston Housing Authority*, 304 Mass. 507, 24 N.E.2d 333 (1939). Legislative declarations as to the pernicious effects of slums are numerous. See, e.g., MASS. ANN. LAWS c. 121 § 26JJ (1949); CAL. HEALTH & SAFETY CODE § 33040; N.H. REV. STAT. ANN. § 205:1 (1955).

<sup>11</sup> E.g., *Crommett v. City of Portland*, 150 Me. 217, 107 A.2d 841 (1954); *Papadinis v. City of Somerville*, 331 Mass. 627, 121 N.E.2d 714 (1954). There have been a few cases holding that redevelopment per se does not constitute a public purpose. E.g., *Housing Authority of Atlanta v. Johnson*, 209 Ga. 560, 74 S.E.2d 891 (1953). The cases are collected in Annot., 44 A.L.R.2d 1414, 1421-22 (1955).

area which is more pertinent.<sup>12</sup> Yet the hypothesis of interrelatedness between other factors bearing on delinquency and the structural trappings of urban poverty is a common insight which is not contradicted by the meager empirical data.<sup>13</sup> And so with the relationship between slums and disease. While those who study the causes of epidemics are reluctant to assert that the spread of communicable diseases is directly correlated with overcrowding, the assumption seems plainly warranted that alleviation of insanitation which generally accompanies overcrowding will be beneficial to the public health.<sup>14</sup> To the extent that agency focus has been upon pernicious social effects of slums those areas having the highest crime and disease rates have been the ones selected for redevelopment, and reuse plans have emphasized relocation housing.

A second assumption is that slums are a fiscal liability to municipalities. It is believed that redevelopment can transmute areas yielding low tax revenue but consuming a disproportionately large percentage of police, fire and welfare services into high revenue areas which are inexpensive to serve, thus improving the municipal revenue structure. So long as the basic source of municipal revenue remains the tax upon real property assessed in relation to its market value rather than in relation to its cost to the municipality to serve, this premise is patently sound.<sup>15</sup> And to the extent that agency judgment has been influenced by it, the slum areas which are most costly to serve have been selected for clearance, and reuse plans have emphasized uses, such as light industrial and commercial uses, which may be expected to produce a net revenue gain.

It is assumed, third, that slums impede efficient land use throughout the urban area by restraining normal growth trends and that slums are a negative factor aesthetically detracting from the beauty of the entire urban

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<sup>12</sup> See generally SHELDON & ELEANOR GLUECK, UNRAVELING JUVENILE DELINQUENCY c. XXI (1950); TAPPON, JUVENILE DELINQUENCY c. VII (1949).

<sup>13</sup> See Newman, *Slums*, 14 ENCYC. SOC. SCI. 95 (1934). For a recent study indicating that there was a net social gain upon relocation for Negroes displaced by an Indianapolis project see COMMUNITY SURVEYS, INC., INDIANAPOLIS, IND., REDEVELOPMENT, SOME HUMAN GAINS AND LOSSES (1956). Some of the complexities which may be involved in fashioning a relocation program which will serve even to maintain the status quo for slum dwellers are indicated in BAUER & McENTIRE, RELOCATION STUDY: SINGLE MALE POPULATION (Redevelopment Agency, Report No. 5, Sacramento, California, 1953).

<sup>14</sup> See generally SMITH, PLAGUE ON US (1941); GREENWOOD, EPIDEMICS AND CROWD-DISEASES (1935). See also MULLETT, THE BUBONIC PLAGUE, AN ESSAY IN THE HISTORY OF PUBLIC HEALTH (1956).

<sup>15</sup> Fiscal effects of a project are tentatively analyzed in BUREAU OF GOVERNMENT RESEARCH, INDIANAPOLIS CHAMBER OF COMMERCE, DOES REDEVELOPMENT PAY OFF? (1955). For a critical view of present techniques for analyzing fiscal effects of redevelopment, see Barnes & Raymond, *The Fiscal Approach to Land Use Planning*, 21 J. AM. INST. OF PLANNERS 71 (1955).

community.<sup>16</sup> To the extent that these assumptions—also reasonable ones—have been guiding criteria, agencies have chosen for clearance those slums which impinge most directly upon commercial areas, precluding expansion, and the ugliness of which is the most obvious affront to civic sensibilities.

There is reason to suppose that fiscal and efficient land use goals have been the factors which agencies have tended to rate most highly in planning. The revenue plight of most central cities consequent upon the exodus of commercial and industrial concerns to the suburbs has been of tremendous concern to municipal officials.<sup>17</sup> And planning personnel are deeply committed to the notion that implementation of a general plan for the municipality is the only way to assure constructive growth.<sup>18</sup> There is reason to suspect, moreover, that the social factors—the alleviation of delinquency and communicable diseases—have been emphasized more earnestly in the court room than they have been at the planning conference.<sup>19</sup> Reduction of crime and disease has become a by-product of, rather than a motive for, redevelopment.

An ideal redevelopment program would not involve a selection of a single goal but would entail a synthesis of the most constructive objectives supported by community sentiment.<sup>20</sup> It would, moreover, neither give undue weight to nor unnecessarily sacrifice the interests of any one individual or group. Procedural requirements for redevelopment administration should therefore be designed to insulate the agency from untoward private

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<sup>16</sup> Redevelopment is emphasized as a technique for accomplishing more rational land utilization in much of the planning literature. For comprehensive treatment of this and other aspects of redevelopment see *URBAN REDEVELOPMENT PROBLEMS AND PRACTICES* (Woodbury ed. 1953). For a discussion focusing largely on design of a model reuse plan see *HARVARD UNIVERSITY SCHOOL OF DESIGN, AN APPROACH TO REDEVELOPMENT: A PANEL DISCUSSION* (Community Appraisal Study 1951).

<sup>17</sup> *E.g.*, Fitch, *Fiscal and Political Problems of Increasing Urbanization*, 71 *POL. SCI. Q.* 71 (1956).

<sup>18</sup> The master plan concept and the legal effect of the plan has been comprehensively treated by Professor Haar. *E.g.*, Harr, *The Master Plan: An Impermanent Constitution*, 20 *LAW & CONTEMP. PROB.* 353 (1955); *id.*, *The Content of the General Plan, A Glance at History*, 21 *J. AM. INST. PLANNERS* 66 (1955).

<sup>19</sup> When redevelopment legislation has been attacked in the courts on constitutional grounds, it has consistently been defended on the ground that redevelopment programs constitute a reasonable means of coping with the health and safety problems arising out of slum conditions. See, *e.g.*, *In re Slum Clearance in Detroit*, 331 *MICH.* 714, 50 *N.W.2d* 340 (1951); *State ex rel. Dalton v. Land Clearance Authority*, 364 *MO.* 974, 270 *S.W.2d* 44 (1954). Yet predominance of commercial and industrial reuse plans and de-emphasis of relocation plans tend to indicate that redevelopment agencies have been less concerned with health and safety objectives than with fiscal and land use objectives.

<sup>20</sup> It was the potential for synthesis of seemingly competitive goals which resulted in the wide, bi-partisan support which was generally accorded to redevelopment legislation. See, *e.g.*, *S. REP. NO. 84*, 81st Cong., 1st Sess. (1949).

pressures while at the same time assuring that citizen interests are brought to the attention of and considered by the agency.<sup>21</sup> Beyond matters of procedure, there is a need to imbue both staff planners and agency members with a sense of responsibility, not only for the future well-being of the city as a composite, but also for the more humble needs of the individuals who live, work and carry on their trades within its confines. Planners and agency members, it may be assumed, are determined that project tracts will be saleable and that reuse plans will conform to constructive land use trends. Only when they become equally determined that no owner within a redevelopment area will be treated differently from others similarly situated and that the people removed from razed dwellings will really be rehoused in integrated neighborhoods rather than crowded into other nearby slums will the copious potential of redevelopment be within reach.

The first aspect of this need—development of adequate procedures—is manifestly the less complex. Procedural provisions presently incorporated in various state redevelopment statutes provide an ample reservoir of alternative techniques. Despite the unifying effect of federal grant-in-aid prerequisites, these statutes exhibit a marked diversity.

The initial agency process is to accumulate data as to slum areas and as to the commercial feasibility of alternative reuse plans. Investigative tasks are largely technical and of primary interest to the engineer and the statistician rather than the lawyer. There is, however, with respect to the survey, one problem of more general pertinence: Is the initial area survey to be financed by public funds or by donations from private investors?

Most redevelopment statutes either explicitly or implicitly sanction the

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<sup>21</sup> The impact of redevelopment upon the displaced resident is obvious. Problems will be particularly acute if the area is occupied by a minority racial group. See generally MEYERSON & BANFIELD, *POLITICS, PLANNING AND THE PUBLIC INTEREST* (1955). The danger of financial loss to land owners despite theoretical "just compensation" is no less real. The questions which arise where the use of the plot taken is integrated to a greater or lesser extent with tracts which are not taken exemplify the problem. If, for example, an owner operates three retail bakeries and a baking kitchen equipped and staffed to produce enough for the three retail outlets, to take one of the outlets might cause substantial losses to the total enterprise throughout a period of readjustment which might extend over a long period. Yet unless the owner can establish that the taking of the retail outlet reduced the market value of the other realty used in relation with it, the damages would be non-compensable. See, *e.g.*, *Baetjer v. United States*, 143 F.2d 391 (1st Cir. 1944). Similarly, an owner or lessee might have a substantial "good will" which is dependent upon his own or his employees' relationships with customers and upon continuance of the business in the neighborhood where the customers reside or carry on business. This would perhaps be the typical situation for retail outlets, such as independent neighborhood groceries, coffee shops, or bar rooms. Yet unless the property is of such a nature that its existent use is the only feasible one (which with respect to the typical retail outlet would not be likely), good-will elements are not regarded as inuring in or affecting the value of the realty which is taken. *E.g.*, *Banner Milling Co. v. State*, 240 N.Y. 533, 148 N.E. 668 (1925). See, generally, *Kratovil & Harrison, Eminent Domain—Policy and Concept*, 42 CALIF. L. REV. 596, 618 (1954).

use of privately donated funds for survey studies.<sup>22</sup> The reasons for these provisions are weighty. Redevelopment may be exceedingly costly; any means of lightening the public burden has much to recommend it. Basic to the redevelopment philosophy, moreover, is the conviction that private enterprise should do fully as much of the task as it can be stimulated to undertake. Private enterprise will carry out the project and profit from it. Why should it not be permitted to invest, if it be willing, at the survey stage?

The problem, of course, is that redevelopment, depending as it does upon the exercise of eminent domain power and the expenditure of public funds, ought to remain essentially a public function. At least the basic determinations—such as whether a particular area is sufficiently blighted to require clearance—ought not to be made by officials encumbered by anxiety about the impact of their rulings upon particular potential investors.<sup>23</sup> If the potential redeveloper is permitted to contribute to survey costs, it will be difficult at best for the agency to disengage itself from his concerns.<sup>24</sup>

The "big real estate operator" has become a folk-type. With much fanfare he arrives in the survey city on the invitation of business and civic leaders. He travels rapidly about, "taking everything in," and is gone again as quickly as he arrived. But he often leaves behind a more or less concrete suggestion—for example, that a project embracing a convention hall, a hotel and a clutch of luxury apartment houses would be ideal for the area

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<sup>22</sup> *E.g.*, CAL. HEALTH & SAFETY CODE § 33266(c) authorizes agencies to "accept financial . . . assistance from any . . . private source . . ." MASS. ANN. LAWS c.121, § 26P(b) (1949) authorizes agencies to "acquire by gift, bequest or grant, and hold, any property, real or personal . . . reasonably required to carry out the purposes" of the act.

<sup>23</sup> The theory upon which redevelopment legislation has been upheld against constitutional attack is that private gain afforded to redevelopment investors is incidental to the carrying out of a program initiated and determined upon by a public agency for the advancement of public ends. See, *e.g.*, *Papadenis v. City of Somerville*, 331 Mass. 627, 121 N.E.2d 714 (1954); *Gohld Realty Co. v. Hartford*, 141 Conn. 135, 104 A.2d 365 (1954). Were private investors to fashion the initial plan, finance the public investigation of its conformity to statutory standards, and procure the use of eminent domain power in carrying it out, it might be concluded that public benefits had become mere incidents to a profit-orientated private program. See *San Francisco Examiner*, Feb. 1, 1956, § 1, p. 1, col. 5, "Zeckendorf Plan to Rebuild Heart of S.F.," for a report of a redeveloper's offer "to spend \$250,000 on a new design" for blighted areas in San Francisco.

<sup>24</sup> The strained atmosphere that may be generated where private interests have invested in planning is evoked by newspaper reports of private investors to procure approval of a redevelopment program in downtown San Francisco. A planning commission study was made with funds privately provided. Apparently an initial study report to the effect that the area was not blighted was reversed by the commission chairman. *San Francisco Examiner*, Oct. 19, 1955, § 1, p. 10, "Oppermann Ruling Gives Boost to Swig's South of Market Plan." A few days later the commission chairman again reported that the area was not blighted. See *San Francisco Examiner*, Oct. 21, 1955, § 1, p. 1, col. 1, "City Planner Hits South of Market Proposal by Swig." A week later the redevelopment agency rejected the ultimate planning commission report and "placed a 'predominantly blighted' label" on the area. *San Francisco Examiner*, Oct. 26, 1955, § 1, p. 1, col. 1.

between Main Street and the river. And he may also leave—or one of his local emulators may initiate—an offer to the mayor to pay up to one-half of the cost of a preliminary planning survey.<sup>25</sup>

If the redevelopment plan has its genesis in the agile imagination of the would-be redevelopment investor and if the potential investor initiates and shares with the city the cost of the city's planning survey, is it not to be expected that the interests of the investor will count heavily when judgment must be made as to whether the area is of a character necessitating redevelopment and as to whether the reuse plan he has suggested is a desirable one? Many laws with respect to conflicts of interests may be so over-board as to frustrate wholly unobjectionable arrangements as well as potentially harmful ones.<sup>26</sup> In the redevelopment statutes, by contrast, a deliberate choice seems to have been made to invite private financing of public functions in such a manner as to put even the most conscientious public officials under unfortunate stress.<sup>27</sup>

There may be an alternative to permitting the private financing of public redevelopment studies which would afford the advantage of private support while minimizing attendant risks: require the potential investor who is anxious to stimulate public interest in a particular project to invest whatever sum he is willing in a private preliminary survey. Such a survey could then be reviewed and evaluated by the public agency staff in an atmosphere free at least from the most severe tensions which may arise where loyalties and responsibilities are blurred, as they likely will be when the area survey is a mixed public-private operation.<sup>28</sup>

If there is danger that potential redevelopment investors, by supporting preliminary surveys, may be overly effective in making their interests felt, there is a more universal danger, which prevails regardless of how

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<sup>25</sup> Press treatment is suggested by the column, Nolan, *Under City Hall Dome*, San Francisco Examiner, Dec. 4, 1955, § 1, p. 22, col. 1, which begins, "Big Bill Zeckendorf bustled into town the other day, made a couple of appropriately fabulous remarks, and then buzzed off again. When the dust had settled, it appeared that he had sketched in the quick outline of Plan Z."

<sup>26</sup> For an analysis of the impact of broadly drawn federal statutes, see McElwain & Vorenberg, *The Federal Conflict of Interest Statutes*, 65 HARV. L. REV. 955 (1952).

<sup>27</sup> Of course, there may be philanthropic offers of private financial aid for planning which could be accepted without difficulty. San Francisco Examiner, March 1, 1956, § 1, p. 1, col. 1, reports that a "group of San Francisco business leaders, in an unprecedented gesture, yesterday volunteered to finance, with no strings attached, the plans for the redevelopment of the wholesale produce area and the south of Market district."

<sup>28</sup> Even with this approach there may be some danger that a "city-booster" atmosphere will be created and that it will be extremely difficult for planning officials to focus on all relevant questions when the plan is being reviewed. Flamboyant publicity surely is of no help. See San Francisco Examiner, Feb. 1, 1956, § 1, p. 1, col. 5, which reports that "William Zeckendorf, widely publicized New York real estate tycoon, yesterday offered to plan and execute the rebuilding of a great part of downtown San Francisco."

initial surveys are financed: the danger that others within the community will not succeed at all in procuring sincere agency attention at the pre-decisional stage to their views and contentions.

Consider, for instance, the "environmental slum." This term is used to describe a physically deteriorated but socially integrated residential area such as the small residential islands which so frequently exist in the midst of industrial areas in older cities. Often these areas are inhabited by a socially homogeneous foreign-language group. Typically the neighborhood is unquestionably oppressive physically, consisting of old tenements which have by modern standards inadequate sanitation facilities, excessive ground coverage, and far above average population densities. Yet, not infrequently, prevalent social conditions in the area may be wholesome; crime and disease statistics may be no higher than the urban mean; and the inhabitants may identify with the neighborhood and its traditions in a positive way which is becoming unique in the American city.<sup>29</sup> Nevertheless, an area such as this may be extremely expensive for the municipality to serve. It may also have very high industrial reuse value, thus rendering redevelopment relatively inexpensive. And inasmuch as statutory definitions of slums are couched largely in physical rather than social terms, impressive documentation consisting of comparative data as to population density, land coverage, the absence of central heating plants and sanitation facilities is readily available.

The substantive question with respect to the redevelopment of the environmental slum is difficult: Would it make sense to break up such a neighborhood and rehouse its people in various public and private units spread throughout the city? So, also, is the procedural question to which it gives rise: How can it be assured that the attitudes of area residents and the conditioning factors which lie behind them are adequately weighted in the complex equation of administrative decision?

Or consider the owner of a structurally sound but old and unsightly industrial or commercial building which at the initial planning stage is included in an area either for aesthetic reasons or because its inclusion is thought to facilitate the reuse plan. How is this sole dissenter—so easily lost sight of in a swell of group enthusiasms—to be given an adequate opportunity to plead his cause and to insure that his contentions are evaluated?

Suppose, finally, that the question is whether an old, drab but structurally sound sugar refinery which dominates the end of a central mall in a small southern city is to be razed in connection with a program which will convert the area beyond the refinery from one of sub-standard housing into a new commercial arcade. Surely the owner of the refinery and his employ-

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<sup>29</sup> See MEYERSON & BANFIELD, *POLITICS, PLANNING AND THE PUBLIC INTEREST* 105 (1955), and the material there cited.

ees are entitled to a sympathetic hearing on such matters as whether the refinery can be tolerated in terms of planning objectives, whether its removal will be good or bad for the economy of the city, whether there are adequate relocation possibilities for the company, and whether ensuing frictional unemployment would be so severe as to outweigh other considerations. How is such a hearing to be assured to them?

To the extent that agency members, rather than staff planners, actually make critical decisions,<sup>30</sup> problems like these are no doubt mitigated by vesting planning authority in an agency composed of non-salaried executive appointees. Agency membership will normally be "well-balanced" politically, and at least one agency member will usually be responsive to the contentions of any numerically significant group in the city. Yet all persons and groups which may be detrimentally affected by a plan will not be politically articulate. Accordingly, some formal, standardized procedure is essential to enable the individual to express himself directly to the agency. The federal law requires as a prerequisite to financial aid that there be a public hearing held at the local level,<sup>31</sup> and state statutes make hearings mandatory or provide for them to be held upon application by interested parties.<sup>32</sup> The rub is in assuring that the required hearing will be conducted so as to secure to each interested participant a real opportunity to take part in the planning process.

The easy questions regarding the hearing procedure revolve around the legislative-adjudicative dichotomy. There is, as yet, little case law as to what kind of hearing is the minimum required—whether participation can be restricted to owners or occupants in the area; whether witnesses should be sworn; whether interested parties should be permitted to subpoena witnesses and documents—in brief, whether the paraphernalia should be that of an adjudicative hearing or that of a legislative hearing. Nonetheless, the question does not seem difficult. There is probably no right of constitutional proportions to a particular kind of hearing<sup>33</sup>—if indeed, to any hearing<sup>34</sup>—

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<sup>30</sup> There is little question that agencies differ widely one from another with respect to the extent to which agency members defer to the judgments of members of their professional staffs.

<sup>31</sup> 42 U.S.C. § 1455(d) (1952). The statute is not specific as to whether the hearing must be held by the planning agency or whether a hearing before the local governing body will suffice. State statutes and state practices have varied.

<sup>32</sup> *E.g.*, CAL. HEALTH & SAFETY CODE § 33530 (mandatory); MASS. ANN. LAWS c. 121, § 26KK 9 (1956 Supp.) (upon request).

<sup>33</sup> See *Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294 (1933); *The Assigned Car Cases*, 274 U.S. 564, 582–83 (1927); DAVIS, *ADMINISTRATIVE LAW* §§ 67, 72 (1951); Davis, *The Requirement of a Trial-Type Hearing*, 70 HARV. L. REV. 193 (1956).

<sup>34</sup> Compare *Bi-Metallic Co. v. Colorado*, 239 U.S. 441 (1915), with *Franchise Tax Board v. Superior Court*, 36 Cal. 2d 538, 549, 225 P.2d 905 (1950); see *United States v. Carmack*, 329 U.S. 230, 242–43 (1946); *In re Town of Hempstead*, 142 N.Y.S.2d 758 (Sup. Ct. 1955).

in cases of this nature. And inasmuch as the purpose for the hearing is to call agency attention to and procure agency consideration of the interests, attitudes and constructive ideas of interested citizens, the legislative hearing, with broad opportunity for expression, argument and introduction of documentary materials, would seem of most utility.<sup>35</sup> Moreover, to utilize an adjudicative procedure might be to invite the skillful opponent of redevelopment to seek to put not only the proposed plan, but the agency and its staff "on trial." It may be expected therefore that hearing statutes will be construed to call for legislative rather than adjudicative type proceedings.<sup>36</sup>

One matter concerning the public hearing must be underscored, however. The function of the meeting should be to provide the agency, first, with information concerning community attitudes; second, with planning data such as material concerning the social structure of the area and its physical condition; and third, with planning ideas alternative to those generated by the staff. Accordingly, the hearing must be conducted with decorum. It should not be permitted to degenerate into an emotionally-charged mass meeting.<sup>37</sup> Such a meeting might serve as a catharsis which mitigates frustration; but a raucous public meeting would not help the redevelopment agency to plan wisely, and this the proceeding ought to be made to do.

A more contentious question of procedural form has to do with the timing of the hearing in relation to other steps in the planning process. At present many statutes either require or permit hearings to be held *after* the agency has registered a final vote in favor of a particular plan.<sup>38</sup> Most agencies seem to proceed on this basis. To be sure, the hearing should focus on a specific program. Only in this way will those who may be affected be moved to participate. Only thus will those who do participate be dealing with manageable materials which can be rationally evaluated. Nevertheless, it seems essential that the hearing be held while the plan is still *tentative* rather than after it has become a thing accomplished. To hold a public

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<sup>35</sup> See DAVIS, ADMINISTRATIVE LAW §§ 67, 68 (1951).

<sup>36</sup> Cf. *Lexington v. Bean*, 272 Mass. 573, 172 N.E. 787 (1930); *Ray v. Parker*, 15 Cal. 2d 275, 101 P.2d 665 (1940). See also *Landers v. Eastern Racing Ass'n, Inc.*, 327 Mass. 32, 97 N.E.2d 385 (1951); *Drummev v. State Bd. of Funeral Directors*, 13 Cal. 2d 75, 80, 87 P.2d 848 (1939); *Opp Cotton Mills, Inc. v. Administrator*, 312 U.S. 126 (1941).

<sup>37</sup> Compare the meetings described in MEYERSON & BANFIELD, POLITICS, PLANNING AND THE PUBLIC INTEREST 182-87, 229-37 (1955). Decorum, of course, is the minimum. Ideally, the hearing officer would exercise sufficient control to exclude grossly irrelevant materials.

<sup>38</sup> See, e.g., the District of Columbia enactment which does not even require a hearing before a planning agency; it provides only for a hearing before the District Commissioners on the plan submitted by the planning agency. D.C. CODE ANN. § 5-705(b)(2) (1951). The California statute is model legislation in this respect, providing for a hearing on the agency's tentative plan. CAL. HEALTH & SAFETY CODE § 33530.

hearing—purportedly for the purpose of appraising the planning agency of community and individual attitudes—only after the work of the agency had been done may often be less than useless. Such a procedure might easily degenerate into a sham.

A related dilemma arises from the fact that it is rarely possible to evaluate with precision the emphasis which the agency has put upon the various relevant factors in preparing its proposed plan. Project documents inevitably recount the social and structural deficiencies of a proposed clearance area which render it a slum within the meaning of the statutory definition and inevitably detail the benefits to be derived from the agency's program. But all too often these documents are fashioned in the "Madison Avenue" manner. They are designed to sell, not to explain, the project. And they are designed to sell by tugging at emotion rather than by rational persuasion. Pictorial contrast between such symbols as the wayward waif and the happy hearth are not unusual.<sup>39</sup> Accordingly, the detailed bases for agency decisions—the reasons why area A was chosen rather than area B; why a commercial rather than a residential reuse was selected; or why a given structure on the fringe of the area was included while another, apparently similar, was excluded—are rarely disclosed.

This lack of disclosure not only renders it difficult for interested parties to participate effectively at the hearing but may also seriously limit the agency's own effectiveness.<sup>40</sup> Inasmuch as plans must be acceptable to politically responsible city councils (which will provide local funds and which must approve a project before federal funds may be made available), political acceptability is a *sine qua non* of program feasibility. Yet planning agencies should seek to implement the program which they regard as socially most desirable from the range of all politically feasible programs and should not hesitate to use their persuasive influence in widening the range

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<sup>39</sup> No horrendous examples need be cited. An examination in any planning library of a sample of prospectuses from eight or ten different cities will convince the skeptical. There are, of course, many exceptions. See, e.g., CHICAGO PLANNING COMM'N WITH HOUSING & REDEVELOPMENT COORDINATOR, PRINCIPLES FOR PLANNING A COMPREHENSIVE PROGRAM OF REDEVELOPMENT (1952); CHICAGO PLANNING COMM'N WITH HOUSING REDEVELOPMENT COORDINATOR, RECOMMENDED POLICIES FOR REDEVELOPMENT IN CHICAGO (1954). PERLOFF, URBAN RENEWAL IN A CHICAGO NEIGHBORHOOD (Hyde Park Herald, Inc., Chicago, Ill., 1955), contains a vivid description of conflicting neighborhood attitudes about such matters as whether a change in neighborhood composition should be accelerated by provision of low income housing or whether the values of existing commercial properties should be stabilized by decelerating change through the provision of new commercial facilities. It is informative literature of this kind, fully and fairly posing the policy issues underlying redevelopment proposals, which the agencies ought to prepare and distribute.

<sup>40</sup> It might be said that unless the public at large understands what the planner is doing, he is doing little indeed. See POMEROY, THE PLANNING PROCESS AND PUBLIC PARTICIPATION, AN APPROACH TO URBAN PLANNING (Breese & Whiteman ed. 1953).

of what is politically acceptable.<sup>41</sup> Agency documents ought to educate the public to its own needs and to alternative ways in which these may be filled. And there could be no objection to agency efforts to elevate public aspirations or to persuade the public to accept the course which the agency deems the most enlightened. There can be serious objection, however, to agency efforts to obscure its objectives or to procure public acceptance of its programs on impertinent grounds. An agency will be achieving its full potential for public service only if, by full disclosure of its objectives and of the bases for its technical decisions, it precipitates fruitful public debate and crystallization of community attitudes on rational grounds.<sup>42</sup>

A potential solvent for the problem which arises when those affected are unable to learn the bases for agency decisions is to be found in the law respecting administrative findings. While recognizing that most planning questions are ones which must ultimately be left, with a minimum of judicial interference, to administrative judgment,<sup>43</sup> courts could at the same time require that redevelopment agencies make specific findings in support of their judgments. Indeed, most redevelopment legislation explicitly requires that findings be made.<sup>44</sup> Judicial interpretation of these legislative mandates directed toward securing adequate disclosure could do much to assuage the difficulties of those who seek to influence agency action and who all too often must proceed largely in the dark.<sup>45</sup>

An example may underscore the point. Project areas frequently include a substantial number of structures which are neither dilapidated, defectively designed nor, of themselves, unduly costly for the municipality to service. Courts could require that—contrary to present practice—agencies render findings sufficiently specific to disclose why such structures are grouped with others to be cleared. Usually the actual reason is that the agency has determined that the reuse plan will not be economically feasible or will not fully achieve land use objectives if the offending structures are permitted

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<sup>41</sup> This view was suggested by Edward C. Banfield during a panel discussion on Politics of Urban Planning and Development, American Political Science Association Meeting, Washington, D.C., Sept. 6, 1956.

<sup>42</sup> Some agencies have published highly informative materials which have clearly posed the policy issues underlying proposed action. See note 39 *supra*; BAUER & McENTIRE, RELOCATION STUDY: SINGLE MALE POPULATION, (Redevelopment Agency, Report No. 5, Sacramento, California, 1953).

<sup>43</sup> See, e.g., *Bernan v. Parker*, 348 U.S. 26 (1954); *Despatchers' Cafe, Inc. v. Somerville Housing Authority*, 332 Mass. 259, 124 N.E.2d 528 (1955).

<sup>44</sup> E.g., CAL. HEALTH & SAFETY CODE § 33481; MASS. ANN. LAWS c. 121, § 26KK (1956 Supp.).

<sup>45</sup> The typical statutory provision calling for findings could, in keeping with the preponderant authorities, readily be construed to require findings as to underlying facts which support ultimate agency conclusions, not merely findings in statutory terms of the ultimate facts such as are presently typical. See *United States v. Baltimore & O.R.R.*, 293 U.S. 454 (1935); DAVIS, ADMINISTRATIVE LAW § 163 (1951).

to stand. An agency judgment based upon such considerations may be entirely defensible. But such decisions, acknowledging the tremendous impact upon affected land owners, should be put to the test of rational evaluation after open debate. They should not be camouflaged under published findings which merely catalog the structural defects existing in the area as a whole.

These questions respecting the hearing procedure fuse into more basic problems having to do with the attitudes of agency personnel with regard to the interests of individuals and groups feeling the impact of redevelopment. To serve even adequately, the agency must be ready to credit and, where possible, to accommodate interests and claims additional to, and often in competition with, the values of textbook-perfect planning.

The economic problems implicit in the sugar refinery hypothetical previously discussed suggest one realm of competing values which should be sympathetically explored. There are others. For instance, even the aesthetics of a plan such as that suggested by the refinery hypothetical may prove to be less simple than they first appear. The refinery at the head of the mall—the familiar landmark, the emblem of the city's industrial productivity—may for the people of the neighborhood have a secondary significance of great aesthetic value. It may be beautiful for them because of the things which it represents to them. Indeed, as the old Ferry Building in San Francisco bears witness, a particular building—whatever its function or form—may come to symbolize to an entire metropolitan community all that is most highly regarded in the urban culture. To suppose that for the inhabitants of a neighborhood aesthetic values repose only where they may readily be detected and verified by the application of principles of design may be to miss the essence of the art.

Considerations such as those here suggested can only be evaluated adequately if first appreciated empathically. With respect to more intangible matters, such as the aesthetic values of the neighborhood, such appreciation may be achieved most readily by experience in the neighborhood during the pre-hearing survey and preliminary planning stage. With respect to other factors, such as the economic questions, the hearing procedure may be most useful. In any event, the data and argument presented at the public hearing must constitute the substance of the agency's ultimate source book on community interests, needs and attitudes. If the hearing is held early enough and if the community is adequately prepared for it by sufficient pre-publicity which emphasizes, first, the subject matter of the hearing, second, its breadth, and third, the agency's amenability to suggestions, the procedure may provide a valuable source book. Yet unless the agency is prepared to evaluate the contents of that book with sympathy and understanding,

the hearing procedure will be fruitless and the planning process utterly inadequate.

The risk that such failures may actually occur is, at present, a real one. Agency members—business, civic and labor leaders—are generally not experienced at conducting hearings. In preparing a plan, members of an agency may work for many months with the professional staff. They may discuss, study and revise tentative proposals time and time again until the plan, in crystallized form, takes account of every factor of which the members can conceive. Moreover, by engaging in educational and propaganda activities, they may build up an emotional commitment to the plan. This will be particularly true if, as often happens, opposition develops early and becomes vocal so that the question of the soundness of the plan is litigated in the public press before the plan is even completed. In this kind of atmosphere, unless the entire planning process is clearly oriented from the beginning toward the public hearing, when hearing time is ultimately reached, agency members may espouse the plan, in all its detail, with a conviction which renders the hearing largely useless.

In addition to the requirements that the hearing be held while plans are tentative and that the plan adopted be supported by adequate findings, there are other procedural techniques which suggest themselves as a means for minimizing the danger of pre-judgment. One such device which might be considered is the division of functions technique which is incorporated in the Massachusetts redevelopment law.<sup>46</sup> In that state planning functions are exercised by local agencies but must be reviewed and approved by a state agency. The statute does not call for a hearing at the local level, but one may be had as of right before the chairman of the state agency when the local agency submits its plan for approval. By allowing the local planning agency to appear frankly as a protagonist of its plan and by vesting power to evaluate and decide upon objections to it in disinterested hands, this separation-of-functions technique avoids the problem of the sham hearing and assures opponents of a project an opportunity to attack it on the merits and have it reviewed much as it would be reviewed by a court were it feasible for a court to take jurisdiction.<sup>47</sup> However, this procedure has its own penalties. If no hearing is held by the local planning agency, that agency is left to its own investigations to uncover interested views. The review procedure provides a disinterested forum for uncovering agency error; it does not assure that the primary planning agency will become

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<sup>46</sup> MASS. ANN. LAWS c. 121, § 26KK (1956 Supp.).

<sup>47</sup> Another advantage of requiring the hearing to be held by a state official is that the incumbent officer will be or become an experienced hearing officer who likely will be able to control the hearing more effectively than would local redevelopment agency members. See note 39 *supra*.

aware of community attitudes. Redevelopment agencies in Massachusetts have recognized this and have supplemented the statutory minimums by holding their own widely publicized hearings at a stage when a plan has been prepared but not finally adopted.<sup>48</sup>

Another expedient might be to require legislatively that final agency decisions be based on the record made at the public hearing.<sup>49</sup> This would assure that all data taken into account by the agency would be read into the record and so subjected to scrutiny and possible rebuttal. Further, by specifying the ideal, such a requirement might serve to stimulate agency awareness of the adjudicative aspects of its function.

In the final analysis, however, statutory provisions respecting procedural details cannot serve fully to assure a responsible hearing procedure. Neither can court review.<sup>50</sup> Ultimately the solution must be found in the development of traditions of judicious administration by the agencies. The Urban Renewal Administration might exercise a beneficent influence in this regard. Emphasis by the federal agency upon the importance of a purposive hearing procedure in order to comply with federal standards would have an extremely wholesome effect. Similarly, the leaders of the planning profession, through national organs of opinion, could do much constructively to shape the attitudes of staff planners.<sup>51</sup> But final responsibility for local administrative traditions must repose at the local level. And if it is to have a more specific locus, perhaps it can be set at the door of the legal profession. In the sphere of procedural fairness, more than any other, it is the lawyer who must be the keeper of the community conscience.

#### THE ROLE OF THE LAWYER IN REDEVELOPMENT ADMINISTRATION

For the lawyer, be he agency member, agency counsel, or counsel for a party, the major challenge of redevelopment is that of securing the integrity of the advocacy process through which individual interests can be protected. When the lawyer participates, as often he does, as an agency member, he has a high obligation to resist being caught up in the spirit of

<sup>48</sup> See, e.g., *Papadenis v. City of Somerville*, 331 Mass. 627, 121 N.E.2d 714 (1954); *Despatchers' Cafe, Inc. v. Somerville Housing Authority*, 332 Mass. 259, 124 N.E.2d 528 (1955).

<sup>49</sup> Cf. section 4(b) of the Administrative Procedure Act which requires such a hearing for "rule making" by federal agencies. 60 STAT. 237 (1946), 5 U.S.C. § 1004(b) (1952).

<sup>50</sup> Although a court could require a new hearing where the evidence showed that the hearing procedure lacked even the forms of deliberateness, there is little that a court could do to rectify a hearing which was lacking in substance so long as the agency went through the forms with decorum. Compare *American University v. Prentiss*, 133 F. Supp. 389, 392 (D.D.C. 1953), *aff'd*, 214 F.2d 282 (D.C. Cir. 1954), with *Beebe Improvement Corp. v. New York*, 129 N.Y.S.2d 263 (Sup. Ct. Sp. T. 1954).

<sup>51</sup> Much of the recent planning literature has shown that planners are aware of their responsibilities to assure fair and democratic administration. E.g., Howard, *The Planner in a Democratic Society*, 21 J. AM. INST. OF PLANNERS 62 (1955).

contentiousness.<sup>52</sup> When, in turn, he serves as agency advisor, the lawyer should counsel agency members to approach the hearing judiciously. But it is in his traditional role as advocate that the lawyer can do the most to raise the level of current practice. The hearing, in a sense, is designed for him and will be as much as, but no more than, he makes it.

Attorneys, thus far, have often failed to participate constructively in the hearing procedure. They have often sought to use the hearing as a forum for developing public opposition to redevelopment which could then be brought to bear upon the city council. They have sacrificed the opportunity to present to the agency planning alternatives favorable to their clients in order to present emotional argument directed not to the agency but to the public. In so doing, lawyers have not served their clients to the fullest. Political victories are seldom achieved at the hearing. Planning victories might often be. Planning is not an exact science but an emerging art. No agency can safely assume that its planning staff has obtained all of the right answers, or, indeed, has even asked all of the right questions. And no lawyer representing a client adversely affected by proposed agency action can afford to forego the opportunity presented by the hearing to persuade the agency that changes in the plan are called for.

Another frequent approach of the attorney has been to introduce evidence, not in a serious effort to persuade the agency, but in the hope of making a record to provide a basis for a later court action. Usually these efforts have been directed toward proving that the area is not blighted within the meaning of the redevelopment law and hence that the agency lacks power to proceed. That courts will not review and reevaluate the evidence to determine whether an area is blighted has often been a costly lesson for counsel to learn. But the point seems settled now beyond dispute.<sup>53</sup> Blight is a descriptive characterization, not an ascertainable fact. Some of the statutory factors, such as dilapidation, overcrowding, and lack of light, heat and sanitation facilities, are amenable within limits to objective verification. Others, particularly economic and aesthetic factors, are much less so. But in any event, whether the indicia of blight are sufficiently pervasive to warrant characterizing an area as "blighted" is ultimately a question of a little more or a little less—one which must invariably be left to a trusted administrative judgment.

These have been the false starts. How then ought an attorney to protect his client's interests in the redevelopment proceeding? The answer may be

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<sup>52</sup> Cf. Dunham, *The Lawyer's Role in Developing an Area*, 28 ROCKY MT. L. REV. 453, 459 (1956).

<sup>53</sup> E.g., *Kaskel v. Impellitteri*, 306 N.Y. 73, 115 N.E.2d 659 (1953); *Despatchers' Cafe, Inc. v. Sommerville Housing Authority*, 332 Mass. 259, 124 N.E.2d 528 (1955); *Berman v. Parker*, 348 U.S. 26 (1954).

as simple as this: He should advocate *to* the agency. An attorney ought to approach a redevelopment hearing as he would a rate, franchise or other administrative hearing. His basic objective should not be to obstruct agency action, but rather to channel it along lines consistent with the interests of his client. He should seek to teach the agency that the public interest, when properly conceived, coincides with that of his client.

To accomplish this the attorney must deal with the agency on its own terms. He must view the redevelopment process with the same broad perspective as does the redevelopment administrator.<sup>54</sup> It will seldom be sufficient, for instance, to convince the agency that a proposed program will achieve but limited gains in terms of health and crime prevention objectives. The redevelopment concept goes a long step beyond the limited goals of older slum clearance and public housing programs. It comprehends a number of ends in addition to the prevention of crime and disease. And while the opinions upholding redevelopment legislation have given primacy to social ends, the courts have also recognized that projects directed toward fiscal and land use objectives are proper.<sup>55</sup> Thus the attorney must seek to show, with the aid of planning studies prepared by his own experts, that all the objectives with which the agency is concerned can best be achieved by altering its program in such a way as will render it unobjectionable to his client.<sup>56</sup>

Suppose, for example, that a proposed program contemplates the construction of municipal parking facilities which may adversely affect the interests of the proprietor of a private parking garage located adjacent to the area. An opposition presentation asserting that it would be unfair to subject the private operator to governmental competition would not likely be persuasive. A presentation supported by a parking-habit study showing that the proposed location for the municipal facility would result in excess

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<sup>54</sup> The lawyer who would participate knowledgeably in redevelopment proceedings must familiarize himself to some extent with the planning literature. URBAN REDEVELOPMENT, PROBLEMS AND PRACTICES (Woodbury ed. 1953); THE FUTURE OF CITIES AND URBAN REDEVELOPMENT (Woodbury ed. 1953); LOCAL PLANNING ADMINISTRATION (Int'l City Managers' Ass'n, Chicago 1948), are basic. BLUCHER, DUCHEY, ISAACS, MEYERSON & SIEGEL, URBAN RENEWAL BIBLIOGRAPHY (Am. Council to Improve Our Neighborhoods, New York 1954), will be invaluable. The leading periodicals which should be perused include JOURNAL OF AMERICAN INSTITUTE OF PLANNERS, THE PLANNING BOOKSHELF (American Society of Planners), LAND ECONOMICS, JOURNAL OF HOUSING AND NATIONAL MUNICIPAL REVIEW.

<sup>55</sup> *E.g.*, *Berman v. Parker*, 348 U.S. 26 (1954); *Redevelopment Agency of San Francisco v. Hayes*, 122 Cal. App. 2d 777, 266 P.2d 105, *cert. denied sub. nom. Van Hoff v. Redevelopment Agency of San Francisco*, 348 U.S. 897 (1954); *People ex rel. Gutknecht v. Chicago*, 3 Ill. 2d 539, 121 N.E.2d 791 (1954); *Despatchers' Cafe, Inc. v. Somerville Housing Authority*, 332 Mass. 259, 124 N.E.2d 528 (1955).

<sup>56</sup> Qualified, disinterested planners could be retained in most metropolitan areas. Often it would be possible to procure a constructive critique of agency plans, containing alternative proposals, at moderate cost.

parking capacity in the area and that the municipal investment would be more productive in meeting the public need for more space were the municipal facility located elsewhere might well achieve the desired result. Similarly, an attorney who in his client's interest is obliged to attack the proposed program as a whole ought not to content himself with an assertion that the project is illegal. He ought to seek to convince the agency that the project is not likely to achieve the ends with which the agency is concerned. Probably his efforts would be expended most fruitfully if he scrutinized and criticized both the cost and revenue data underlying the plan and the agency's predictions as to the effect of the plan upon tax revenues from the area and costs of providing municipal services to the area. These matters will likely be the ones in which the agency is most interested. If the advocate can convince the agency that its staff's predictions were unduly optimistic, he may accomplish his objective.

What has been said, of course, is merely suggestive. Each redevelopment program is unique and will entail unique opportunities for constructive advocacy. The important thing for the attorney to recognize is that he may be able to serve his client best by utilizing, rather than seeking to inhibit, the redevelopment process. Members of the legal profession have great faith in the advocacy proceeding as a technique for resolving questions of public concern. It is time, perhaps, that they came to recognize that creative advocacy in connection with redevelopment provides a large opportunity for greater service both to their clients and to the public.

#### CONCLUSION

Redevelopment adds a new dimension to local government and consequently to the function of the lawyer. The task of redevelopment needs doing. But if it is to be done without sacrificing accepted standards of procedural fairness, it is essential that administrative procedures be reconstructed so as to insulate agency action from undue private pressures and to assure that interested parties are provided with an adequate opportunity to affect agency determinations. It is necessary, moreover, that local agency members be brought to a fuller awareness of their obligation to proceed judiciously than seems presently to prevail. Finally, if hearing procedures are to be fruitful, attorneys participating in them must familiarize themselves with the frame of reference and the professional techniques of the planners and must learn to participate in the hearing room as constructive rather than obstructive advocates.