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Target Practice: On the Intersection of Race, Class, Gender, Public Housing, and “The War On
Drugs”

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ABSTRACT

Target Practice: On the Intersection of Race, Class, Gender, Public Housing, and “The War on Drugs”

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This thesis analyzes how intersectional failures during the development of drug and public housing policy and law diminish their subjects' legal and human rights. Racialized narratives developed throughout United States history define both public housing and drug usage. These histories not only morph how the Federal Government perceives public housing as a space and drugs as an object, but also how they change the nature in which government handles both public housing residents and drug users, as subjects of the law. As a result, the actions of Congress in both of these realms have undue negative impact on public housing residents, who are disproportionately people of color. Through War on Drugs acts, which place public housing in the criminal justice system, such as The Anti-Drug Abuse Act of 1988, The Cranston-Gonzalez National Affordable Housing Act, and The HOPE Act of 1996, public housing residents' Constitutional rights to due process and privacy have been severely limited. For these people, and for women of color specifically, this lessened rights status has not only limited their access to safe and affordable housing, but has also created a situational reality within which the law takes advantage of them due to their personal identity.

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Dedicated to the Victims of “The War on Drugs”

I. INTRODUCTION

As George H.W. Bush prepared to deliver his first nationally-broadcast televised address from the Oval Office on September 5, 1989, a war was raging right outside the White House. At least, that was the narrative he announced to the public. Staring into the camera as he lifted a bag of crack cocaine to eye-level, he declared:

This. This is crack cocaine, seized just a few days ago by drug enforcement agents in a park just across the street from the White House. It could have easily been heroin or PCP. It's as innocent looking as candy. But it's turning our cities into battle zones, and it's murdering our children. Let there be no mistake, this stuff is poison.¹

In response to this apocalyptic vision, President Bush proposed a massive “National Drug Control Strategy,” which included doubling federal assistance to state and local law enforcement, enlarging the criminal justice system by building more prisons and jails with an increase of \$1.5 billion in federal spending, and targeting specifically, with a \$50 million budget increase for law enforcement, public housing units.² For President George H.W. Bush, the War on Drugs was literally a war.

Bush's hyperbolic speech was indicative of the larger War on Drugs strategy that had been picking up steam since the Reagan presidency. Fear-mongering and war metaphors were two of the primary tactics used to not only encourage abstinence from drug use, but also to purport the Reagan, Bush, and Clinton neoliberal political agendas. In keeping with their fervent faith in personal responsibility as the key to social reform, each president pushed for the enactment of draconian drug policy that urged harsher punishments for drug possession and use.³ As many scholars have shown, these effects, which were largely built from racist stereotypes regarding drug use, have had a disproportionate impact on people of color.⁴

By evolving simultaneously with the criminal justice-oriented War on Drugs, public housing policy, like drug policy, was thrust into the racializing, neoliberal, narrative that

Presidents Reagan, Bush, and Clinton bolstered. Inherently linked to the long history of housing discrimination in the United States that racist residential measures including redlining, restrictive covenants, and block busting perpetrated, public housing became a racialized space. In the context of the War on Drugs, these racist practices and policies have created an image of public housing as crime-ridden and degenerate. It was with this image in mind that President Bush listed public housing as one of his primary areas of focus.

The co-existence of the War on Drugs with the racialized image of public housing produced the perfect combination of historical timing and political will to spur one of the most direct and brutal state interventions into the lives of people of color. By mapping both the evolution of public housing as a racialized space and the racist foundation of the War on Drugs, revealed through sentencing practices and incarceration rates, this project will discuss how public housing became a prime target for the War on Drugs and the effects that this intersection had on public housing residents. Specifically, section II will focus on the evolution of public housing as a racialized space, thereby serving as the first piece of the narrative that this project will tell. By exploring historical racist stereotypes associated with drug use, section III will then focus on the role of race in the War on Drugs, forming the second important element of this project. Through analysis of legislative history and Congressional Record, section IV will combine the analysis from both sections II and III to explore the extent to which the War on Drugs targeted public housing in policy initiatives and law. Lastly, section V will explore the effects of this policy intersection on the public housing residents themselves.

II. THE RACIALIZATION OF PUBLIC HOUSING

While most in the 1980s and 1990s considered public housing an apocalyptic vision of lawlessness, it was not always so perceived. In fact, during public housing's nascent years in the 1930s, it had a more positive public image. However, like most welfare programs, neither the

U.S. government nor the U.S. public have embraced public housing wholesale. This unhealthy U.S. skepticism shaped public housing policy and limited its effectiveness as a relief program. This section will briefly chronicle public housing's turbulent history, focusing specifically on the metamorphic role of race, in order to demonstrate how the space would later become a political and physical target for the War on Drugs.

Before the 1940s, government's interest in housing at the local, state, and federal level, was primarily in enforcing a decent and sanitary standard of living.⁵ Federal and state governments actively pursued housing interests during the Great Depression. In fact, President Franklin Delano Roosevelt urged in a 1936 speech to a crowd at Roosevelt Park in New York City that more needed to be done: "... we have ... neglected the housing problem for all our lower-income groups... we have not yet begun adequately to spend money ... to help the families in the overcrowded sections of our cities..."⁶ Instead of labeling public housing a battle zone, FDR was pressing for more and better public housing. Consequently, in this early context, public housing did not have a reputation as a crime-ridden space, a label reserved for slums. As a piece of United States Housing Authority propaganda depicts, slums, which were seen as breeding places of crime, were the problem, while public housing was the solution.⁷

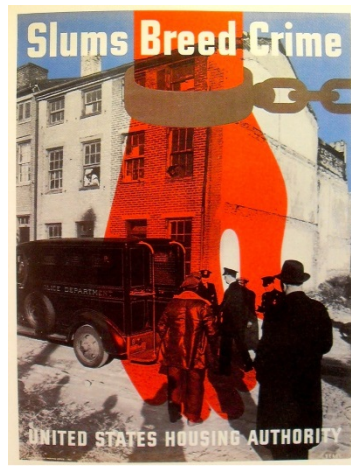


Figure 1: Lester Beal, "Slums Breed Crime," *United States Housing Authority*, 1941, accessed March 2, 2015, <http://www.loc.gov/pictures/item/93509010/>.

To be clear, public housing, like almost every other U.S. government program during this time, was strictly segregated. In fact, as Peter Marcuse argues in “Interpreting ‘Public Housing’ History,” public housing was a tool used to maintain segregation.⁸ He cites New York City as an example, where only white individuals were able to live in the Williamsburg Houses, and only black New Yorkers were allowed to live in Harlem River Houses.⁹ This racist reality ensured that, at least in the early days, public housing avoided racialization. However, as public housing demographics changed, so did peoples’ perception of it.

One of the primary engines of demographic change in public housing was the Housing Act of 1949. By granting the lowest income families preference in public housing, funding notoriously racist loan programs, and increasing urban renewal funds, this act limited the mobility of black families and pushed them into public housing, thereby transforming public housing demographics.¹⁰ Consequently, by 2000, despite the fact that African Americans made up no more than 15 percent of the total population in the United States, they constituted 48 percent of public housing residents.¹¹

While this legislative change led to a shift in the demographics of public housing residents, it was the Federal Government's actions, and oftentimes inactions, in response to this shift which led to the racialization of public housing. As white families, during the mid-twentieth century, fled from urban areas to the suburbs, federal funds and government resources retreated with them.¹² Levels of governmental disinvestment from public housing reached record-high rates under the leadership of President Reagan, when between 1978 and 1983 Housing and Urban Development's (HUD) budget was cut from \$83 billion to \$18 billion.¹³ As a result, public housing buildings began to decay at alarming rates, especially considering that, in an effort to match the cost-cutting requirements of public housing legislation, most of the high-rise buildings were of poor design and therefore, from their creation, prone to dysfunction.¹⁴

In addition to the deteriorating quality of public housing, many units were also spatially-segregated. Because the implementation of public housing programs was delegated to the local control of the Public Housing Authorities (PHA) and therefore subject to the prejudices of local leaders, many public housing units were placed in already existing communities of color.¹⁵ As a result, public housing residents were not only isolated from the benefits of the Federal Government's financial resources, but also were often physically isolated from centers of activity and commerce, solidifying both their identity and the space they inhabited as the "other."

For many people, public housing became, in the words of former vice president Al Gore, "monuments of hopelessness."¹⁶ While some public housing units did fulfill this description, most did not. In reality, the 1989 Congressional National Commission on Severely Distressed Public Housing found that 94 percent of the public housing stock was of acceptable quality and an essential element in ensuring the housing of low-income people.¹⁷ These findings reveal the

extent to which, despite its level of truth, the racialized disaster narrative of public housing was taken as fact; a trend that even the commission's title accepted.

The history of public housing is important to note in order to understand its state before the War on Drugs, thereby illuminating how its current image was constructed. Public housing does not have its reputation as a crime-ridden space due to some unknown intrinsic qualities. Specific forces, including financial and geographic isolation, motivated by public housing's changing demographic inspired its narrative transformation.

III. RACE AND THE WAR ON DRUGS

Many of the racist assumptions that defined the evolution of public housing's image played an equally-influential role in defining drug policy in the United States. In fact, the negative effects of drug/substance use have historically been associated with specific racial stereotypes. In exploring the role of race in the War on Drugs, this section will first discuss the historical association between race and drug/substance use. Moving from that foundation, the second part of this section will explore how the historical association between race and drug use manifested in the War on Drugs.

A Brief History of the Connection Between Race and Drug Use

The racist assumptions that define the historical association between race and substance use stretch back to colonial America. As Denise Herd argues in "The Paradox of Temperance: Blacks and the Alcohol Question in Nineteenth-Century America," it was the belief of many that "drunkenness led to disorder and rebellion in the black population."¹⁸ As a result, in order to protect against slave rebellions, numerous legal codes restricted African Americans' ability to access alcohol.¹⁹ In the same way, after slavery ended and the philosophy of Social Darwinism took center stage, alcohol continued to aggravate and grow fears of black male violence as something that was inherently attached to African-American identity. As Herd writes, "by the

turn of the twentieth century the divergent concerns about black savagery, alcohol disinhibition and social disorder converged in the image of the drunken black beast.”²⁰ In fact, as Doris Provine notes in *Unequal under the Law: Race in the War on Drugs*, the racist imagery associated with alcohol use was a major factor in pushing prohibition closer to reality in the early 20th century.²¹ She writes, “racism and ethnic stereotyping gave energy to the campaign (prohibition) for criminal controls.”²² In the South especially, alcohol inflamed the image of black men as brutes, sexual deviants, and mentally and emotionally inferior, which served to not only push prohibition forward, but also to solidify the disenfranchising efforts against all black citizens.²³

These racist stereotypes came to a fuller fruition in the perceived relationship between African Americans and cocaine use. Catherine Carstairs argues in “‘The Most Dangerous Drug’: Images of African-Americans and Cocaine Use in the Progressive Era,” that cocaine became known as the “most dangerous drug” because people linked the drug to black men.²⁴ In fact, as she reveals, numerous medical professionals argued that because of certain inherent inadequacies connected with being black, cocaine had a more dramatic and violent impact on black users than white users.²⁵ In particular, cocaine, like alcohol, was said to result in, especially in the case of black users, complete loss of self-control, heightened violence and sexuality, and greater strength.²⁶ This is seen most clearly in a 1914 *New York Times* article authored by Edward Huntington Williams and referenced by Carstairs, titled, “Negro Cocaine Fiends are A New Southern Menace.”²⁷ Providing the first piece of the narrative to justify his claim of the creation of a “new southern menace,” Williams cites multiple, mythic-like stories of black cocaine users possessing super human abilities of not only immunity to bullets, but also to hawk-like marksmanship with lethal weapons.²⁸ As such, black men on cocaine, more than any other drug,

not only became immune to the power of white men to control their behavior, but also gained a greater ability to eliminate the existence of white men. As Williams writes, “In short, the South in attempting to correct a bad condition has created one infinitely worse. For the evils of alcoholism ... are not to be compared with the horrors of cocainism.”²⁹ Due to his belief that black individuals did not have the will power to break their addiction to cocaine once it began, complete isolation from the drug and society through incarceration was the only solution Williams reached.³⁰ Criminalization as a solution to drug use, therefore, carried great strength moving forward as the discourse on drug use became more legalized.

Racializing Drug Policy in the War on Drugs

These historical tendencies regarding the connection between race and drug/substance use are of paramount importance to understanding the effects of the War on Drugs. In essence, the War on Drugs is the more current policy manifestation of the historically racialized image of minority drug use. As opposed to employing blatantly racist language to purport an agenda of incarceration, as the William’s article did, Congress created policies that, in basing their logic on the hyperbolized effects of black drug use, targeted and punished users. Instead of focusing on drug treatment, federal policy made criminalization the priority, for as Williams argued, physically excluding the user from the substance was, oftentimes, the only way to combat addiction. The federal budget best demonstrates this heightened concentration on criminalization. As Michelle Alexander notes in *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, most anti-drug federal organizations received a massive budget increase during Reagan’s War on Drugs.³¹ For example, “between 1980 and 1984, FBI antidrug funding increased from \$8 million to \$95 million;” between 1981 and 1991 the Department of Defense’s antidrug budget grew from \$33 million to \$1,042 million; and “DEA antidrug spending grew from \$38 million to \$181 million.”³² On the other hand, the budgets for agencies such as the

National Institute on Drug Abuse, which were focused on drug treatment, were dramatically cut; from 1981 to 1984 NIDA's budget fell from \$274 million to \$57 million.³³

In addition to this dramatic increase in funding for criminalization efforts, the Federal Government also created draconian mandatory minimum sentences for possession of certain drugs. As the Anti-drug Abuse Act of 1986 required, for first-time drug traffickers, possession of over 500 grams of powder cocaine justified at least five years of imprisonment.³⁴ The Anti-drug Abuse Act of 1988 not only extended this punishment to drug-trafficking attempts (whereas before the crime actually had to be committed to trigger the sentence), but also placed mandatory minimum punishment on simple possession of crack cocaine.³⁵ The culmination of all of these measures had a massive impact on increasing the prison population in the United States.

According to a Justice Policy Institute Report titled, *The Punishing Decade: Prison and Jail Estimates at the Millennium*, the prison population jumped from 474,368 in 1980 to 1,965,667 in 2000.³⁶ To put this increase into perspective, the next highest increase in prison population during a 20-year period in the 20th century occurred between 1920 and 1940 when the inmate population rose from 110,099 to 272,955.³⁷

This massive increase in inmate population had a major impact on many demographic groups, but it was African Americans and their communities who were disproportionately targeted by the War on Drugs and subject to incarceration. While the Anti-Drug Abuse Act of 1986 punished trafficking of 500 grams of powder cocaine with 5 years of imprisonment, it punished trafficking of only 5 grams of crack cocaine with the same penalty, establishing the infamous 100:1 sentencing ratio.³⁸ To an even greater extent, crack cocaine was the only drug with a mandatory minimum punishment for simple possession under the Anti-drug Abuse Act of 1988.³⁹ Arrest rates also reflect this targeting of African Americans. According to Department of

Justice Statistics, of the 1,552,432 individuals arrested in 2012 for “drug abuse violations”, which includes sale, manufacturing, and possession, 482,400 were black.⁴⁰ This means that while, according to the 2010 census, 13.6% of the U.S. population identified as African Americans, they composed approximately 31% of the population arrested for “drug abuse violations.”⁴¹ The arrest statistics for New York City are even more dramatic. In 2010, while 25.5% of the New York City population identified as black or African American, 47.6% of the arrests for Drug Misdemeanors were black, and 42.7% of the arrests for Drug Felonies were black (2014).⁴²

This targeting of crack cocaine was a result of racialized fears, for crack, due to its cheaper price during the 1980s, became associated with urban areas and African Americans. These fears evolved from the same fears regarding race and drug use that permeated the late nineteenth and early twentieth centuries. The media clearly captured this racialized mindset. As Provine notes, “in the three months before the 1986 election, there were one thousand stories discussing crack.”⁴³ With the hysteria of anti-black fear of crack cocaine on the rise, numerous articles, as Alexander argues, “typically featured black ‘crack whores,’ ‘crack babies,’ and ‘gangbangers,’ reinforcing already prevalent racial stereotypes of black women as irresponsible, selfish ‘welfare queens,’ and black men as predators’ – part of an inferior and criminal subculture.”⁴⁴

Nowhere is the racialized fear of crack use seen more clearly than in the “Snake Drug PSA,” which aired in 1991.⁴⁵ In this public service announcement a young black man, looking into the camera attempts to sell the viewer drugs. Addressing the viewer as “little dude,” he tells the audience to make sure parents are not in the room as he continues his drug-selling pitch. As the announcement continues, his voice grows more aggressive and his skin becomes a darker shade of black. Eventually he transforms into a snake, marking his complete transformation into

the Biblical symbol of ultimate evil. In a brief thirty seconds, by combining religious symbolism with race and fear mongering this PSA sums up one of the major strategies of the War on Drugs – stoking racialized fears. Ultimately, the War on Drugs had a devastating impact on people of color. The combined effect of both racist drug policy and racist propaganda resulted in outrageously disproportionate amounts of African American incarceration. As the Justice Policy Institute reports, “in 1997, even though African Americans made up only 13% of the population, half of the 1.2 million state and federal prisoners were African American (548,900).”⁴⁶ As a result, the racist effects of the War on Drugs stand as one of the policy’s most notable legacies.

IV. THE MARRIAGE OF THE WAR ON DRUGS AND PUBLIC HOUSING

The historical narratives of both public housing and drug policy in the United States share many distinctive elements – perhaps most notable their evolution as racialized issues. The fact that both areas share this element is of principal importance because it creates a link between them in ways that generate real impact in the lives of people of color. As is true in both drug policy and public housing, race had a vilifying role. Both issues became hyperbolized because, in some way, racialized stereotypes could be attached to their narratives. The marriage of drug policy and public housing subsequently magnifies the role of race as a deterrent from whatever is considered right. Considering their similarly racialized histories, this section will explore the manner in which public housing became a target for the War on Drugs’s criminalizing effort, focusing on the impact that race has in motivating increased surveillance and producing issues of housing accessibility. As such, this section will start by reviewing the media’s role in solidifying and spreading the racialized images of drug use and public housing. Then it will consider the role of policy in further solidifying the connection between the housing and drug arenas by revealing how their legislative foundations were based on racialized myths.

The Power of Media

Mass media was a major formative influence on the rhetoric around drugs, race, and public housing in the last half of the twentieth century. There are numerous instances in which news media, both paper and televised, utilized the racialized histories of drug use and public housing to attract attention, and by extension, ratings. For example, one article published in the *New York Times* in 1994 titled, “Neighborhood Report: Chelsea; When Drugs and Terror Stalk a Housing Complex,” opened with, “Her apartment door was blown off by a firebomb. One car was stolen, another was torn apart. A third was burned... then there are the death threats – not to be taken lightly considering the random gunfire...”⁴⁷ As the article continued and as the title suggests, drugs took center-stage in the framing of this violence: “But Capt. Charles Hanley of the 10th Precinct said, ‘There are drug problems there ... the people are right to be worried, which we are too...’”⁴⁸ This article was not alone in the narrative it told.⁴⁹ As Michael H. Shill wrote in “Distressed Public Housing: Where do We Go From Here?,” “scarcely a day goes by without reports in the media about the physical, managerial, and social problems that plague some publicly-owned housing developments.”⁵⁰ While the conditions in many public housing units were, indeed, grim, news media covered the bad stories disproportionately. The media not only disproportionately covered negative stories about public housing, but they also often fabricated the truth regarding drug usage. In true keeping the War on Drugs racialized rhetoric, ABC’s Peter Jennings once reported that, “a person would crave cocaine for as long as they lived (if they tried it once).”⁵¹

From the beginning, government propaganda was one of the primary engines fueling the effectiveness of the War on Drugs rhetoric of fear. For example, in the late 1960s TV producers of famous shows such as *Hawaii Five-O*, *Andy Griffith*, and *The Name of the Game*, were called to the White House for a gathering to request that they censor their shows in support of President

Nixon's political anti-drug mission.⁵² The leader of the convening, John Ehrlichman counsel to the President of Domestic Affairs, stated, "it would not be accurate to portray the drug problem as a ghetto problem. It is a problem which touches all economic, social and racial strata of America."⁵³ In other words, the "black drug problem" was soon going to infiltrate white America. To further enhance the fear-mongering potential of the War on Drugs and solidify its racist intent, as Clarence Lusane writes in *Pipe Dream Blues*, the media saturated daily broadcasts on networks such as CBS and ABC with dead black bodies, violating the black body to an even greater extent by wielding its deceased form as a political tool. These measures were so effective that by 1985, according to two University of Michigan studies, the depiction of black cocaine users rose by two-thirds, while the depiction of white cocaine users fell by two-thirds.⁵⁴

As a result, news media solidified the connection between drug use, public housing, race, and crime for most in the general public. As Shill wrote, the negative image of public housing as a drug haven became so normalized that it was embedded in the popular culture of the 1980s and 1990s.⁵⁵ In addition to news stories, best-selling works such as Alex Kotlowitz's *There are No Children Here: The Story of Two Boys Growing Up in the Other America*, and films such as *Candyman* and *Menace II Society*, further contributed to the reification of public housing as a violent drug hotspot.⁵⁶

Public Housing and Drug Use Together in Policy

While newspapers and magazines were publishing stories on the violent effects of crack in public housing, Congress was passing criminalizing legislation with public housing specifically as the target. It is clear that the combination of media attention and Congressional action mark the existence of drug use in public housing as one of the primary issues of the day. In fact, Congress's dramatic actions reflect the same determined fixation with drug use in public housing, and the issues created thereby, that news media had. Beginning with the Anti-drug

Abuse Act of 1988 and building steadily to a punitive climax with the Housing Opportunity Extension Act of 1996, this section will outline how Congress, emboldened by President Clinton's call to action, effectively transformed public housing into another law-enforcement tool in the War on Drugs's arsenal. The legislative history of the intersection of public housing and drug policy clearly reveals how Congress failed to consider how policies can impact people of certain identities differently, multiplying the harsh and widespread consequences that are born at the locus of intersectional failures.

The Anti-Drug Abuse Act of 1988

The War on Drugs's first major intervention in public housing came with the Anti-Drug Abuse Act of 1988. In 1987, President Reagan signed Executive Order 12595, which established and "set forth the functions of the White House Conference for a Drug Free America."⁵⁷ The conference was a direct manifestation of President Reagan's attempt to centralize his politically expedient, no-tolerance attitude toward drug use. It convened to assist in "America's victory in the War on Drugs" and focused on numerous fields in which drug use created problems, including: workplace, transportation, media and entertainment, sports, public housing, and many others.⁵⁸ This conference, and the suggestions it set forth, stands as one of the major precursors to the intervention in public housing that the Anti-drug Abuse Act of 1988 initiated. According to the conference report, numerous actions were required to tackle the drug problem in public housing. "Establishing and implementing procedures to ensure that PHA residents can be immediately evicted for being convicted of drug-related offenses," and "screening potential PHA residents for past illegal or disruptive behavior" were just two of the conference recommendations that were directly reflected in the substance of the Anti-drug Abuse Act of

1988.⁵⁹ Ultimately, this conference, and the recommendations it set forth, established the fronts upon which the future War on Drugs was to be waged.

While the White House Conference on Drug Free America touched briefly upon the intersection of drug use and public housing, the Congressional hearing on “HUD Programs to Combat Drug Abuse in Public Housing,” which convened before Congressional debate on the Anti-drug Abuse Act of 1988, made the topic its focus.⁶⁰ In 1988, the hearing opened with a statement from Chairman Tom Lantos who in painting a picture of war-torn public housing placed President Reagan’s rhetoric at the center of the discussion:

Widespread drug abuse has rendered much public housing little more than a war zone. The tenants are fighting for their homes and for their families. Many projects have become unsafe, unsanitary, and unwanted by those most in need of housing. We hear stories about fearful tenants remaining prisoners inside their own homes, frightened of venturing outside, less a stray bullet from a drug deal strike.⁶¹

The purpose of this section is not to deny that some public housing units, and the residents in them, were subjected to violent conditions, for as testimony in these hearings and in numerous newspapers around the country reveal they most certainly were. The purpose is to instead analyze how prioritizing a punitive legislative response to drug use and violence in public housing not only elevated the war-torn public housing narrative, but also reduced the amount of privacy and constitutional rights that public housing residents possessed.

During the hearing, public housing tenants provided testimony that focused on resolving issues of economic opportunity and structural problems within the federal government more than on a punitive, security-oriented response to drug use in public housing. For example, during her opening statement, Elsie Harry, chairman of the tenants association in White Plains, New York, highlighted steadily increasing rent, low minimum wage, and structural and community exclusion as the primary problems facing public housing.⁶² She said:

People living in municipal housing are a lost and forgotten colony of people colonized by the large community who wants to keep them in their place ... in their eyes they are a lawless, shiftless group of people who don't deserve the basic service which municipal housing was designed to give, safe, decent, and sanitary housing. If the larger community did care, then why would we be excluded from the laws such as rent control, rent stabilization...⁶³

In this one sentence, Harry reveals the ways in which the racialized history of public housing impairs the original purpose of government housing as a whole. She not only expresses how the image of public housing transforms society's perceptions of the people who live in it, but also how that image creates and perpetuates structural inequities, citing rent control laws as her evidence.⁶⁴ It was not until the end of her opening statement that she remembered why the hearing had convened in the first place – so she added, “Also, try to go back and establish some drug treatment programs that all people in this country can be able to afford and rehabilitate themselves if they so desire.”⁶⁵ For Harry, accessible drug treatment programs, not added security, was the appropriate response to drug use in public housing.

Charles Booth, the third tenant testifier, also prioritized rent control. ⁶⁶ Similarly, when speaking on drug use, Booth, in telling the story of a young, disabled tenant who turned to drugs when his mother died and was subsequently evicted from public housing, advocated for treatment as opposed to eviction: “... this youngster is a victim many times over ... through the housing authority HUD should place somebody who understands that behavior ... (to) advocate for these youngsters.”⁶⁷ Instead of providing assistance to this young tenant, the federal government's draconian drug-housing policy aggravated his misfortune by taking away what little assistance was provided. His eviction from public housing was the physical consequence of the federal government's failure to consider the unique circumstances he faced as a low-income, disabled recipient of government aid. Ultimately, every tenant testifier highlighted government's failure as a cause of the perceived drug problem, instead of an individual's inability to make a

sound decision. When asked about the most important element for the government to address regarding drug use in public housing, Ron Jackson another public housing resident in White Plains, New York and the first public housing tenant to testify, did not suggest enacting harsher penalties – he advised providing more funding for social programs, so young people would not turn to selling drugs in desperation.⁶⁸ Similarly, Harry suggested capping rent in public housing, hiring more social workers to work in-building, and higher minimum wages.⁶⁹

While the tenant testifiers focused on issues outside of added security, they did not ignore the problem of drug use in public housing all together. For example, in his opening statement Jackson made highlighting drug use in public housing his primary focus.⁷⁰ He said: “...There is not a day that passes that one (child) won’t pick up a little vial and ask the little boy on the bus ‘what is this?’ and the little boy... might say, ‘oh, don’t bother with this, that’s an empty crack vial.’”⁷¹ However, while he did center the drug use in public housing narrative, Jackson did not advocate for a punitive solution. By highlighting the root causes of drug use, as opposed to blaming a low-income or violent pathology, Jackson subsequently offered structural solutions. He asked, “Why should I, as a young man, have to wonder whether or not will I be able to afford to stay in public housing because the Federal Government may have some day another idea for it, turn it into co-op because the Federal Government ... ‘(is) not in the business of housing people.’”⁷² In speaking to the Federal Government’s disinvestment from housing, Jackson was calling for more government support to fix the problems that their disinvestment caused. Harry and Booth similarly called for structural solutions to drug use in public housing since they saw drug use as a problem with systemic roots.

In addition to calling out the structural roots, the tenants also worked to combat the narrative that drug use was a bigger problem in public housing than it was elsewhere. Mildred

Seegars, leader of Mothers against Crack, and public housing resident in New Rochelle stated, “Ninety-eight percent of people in municipal housing are good, decent, God fearing, hard-working people. [Applause] I am tired of the 2 percent who aren’t who get the publicity all the time.”⁷³ In making this statement, Seegars highlighted the media’s role in creating the negative reputation that unfairly plagued public housing and encouraged government disinvestment. Based on her personal experience, the media’s sensationalization of public housing as a crime-ridden space had a negative impact on her lived experience because it inspired and justified disinvestment from both the federal government and the public’s goodwill.

While the representatives running the hearing and the testifiers who were not residents of public housing agreed with Seegars’s assertion, they almost exclusively discussed personal responsibility, security strategies, and harsher penalties. This focus, in being constructed from the racialized image of public housing that the media helped create, was subsequently a big player in perpetuating the existence of this narrative. In discussing why people in public housing use drugs, Bruce Quint, director of the Oasis Institute, named “mental poverty,” which he defined as, “that defeatist attitude that says nothing will change, life will never get better, and the problems will always be with us.”⁷⁴ The consequence of removing the structural roots of drug use and emphasizing a neoliberal philosophy of personal responsibility is brought to fruition in his next statement: “When our good intentions are put in the form of police, counseling, treatment, and other such programs, they run up against the invisible walls of doubt that are maintained by the program implementers and program recipients. Thus, these programs are often doomed to fail before they begin.”⁷⁵ This philosophy of self-help not only marginalized public housing residents by blaming them for the deteriorating quality of public housing, but also diminished any real systemic and funded effort to improve conditions. Under this philosophy,

public housing residents became the federal government's scapegoat, that not only justified their continued disinvestment from public housing, and social services writ large, but also erased the past that created the issues being addressed at the hearing in the first place.

Consequently, the entire last half of the hearing was spent discussing security and policing strategies as the only answer to drug use in public housing. In speaking to what needed to happen, Robert M. Stutman a special agent in the Drug Enforcement Administration said, “until there is a philosophy in this State (New York) that says if you are arrested and convicted, with all protections of the law, for drug trafficking, you will receive a punishment, sure and swift ... we will continue to have dope peddlers walking around public housing...”⁷⁶ Representative Joseph DioGuardi responded by claiming that drug use in public housing was such a huge problem because something was missing from the criminal justice system: “there is a three-legged stool for criminal justice and we have got to figure out which leg is missing so we can fix it because it is not working right now, and the chain is only as strong as its weakest link and we have got a weak link here...”⁷⁷ Despite the fact that law enforcement was by far the most funded arm of the War on Drugs, DioGuardi was committed to the idea that a lackadaisical criminal justice system was the problem. This insistence signifies a complete erasure of alternate strategies, thereby solidifying increased punitiveness as the only appropriate action. Ultimately, the hearing settled on harsher penalties for drug use in public housing as the most suitable solution, for as Stutman declared:

We have got to have a philosophy that says, if you are convicted – we are talking about overriding civil rights – if you are convicted for drug violations, there is a sure and swift penalty. And you and I could argue whether that penalty should be 30 days or 30 years, I don't care. The issue is it should be swift and sure so there is a meaningful penalty for violations.⁷⁸

What happened during this hearing was indicative of what was happening throughout the United States in the larger conversation about drug use and public housing. The hearing re-enforced negative stereotypes and subsequently forecast the spirit of legislation that was to follow.

The calls in the legislature for quick and strict action against drug use in public housing were rapidly mounting. Nearly three months after the hearing on drug use in public housing, but before discussion regarding public housing in the Anti-drug Abuse Act of 1988 began, the Committee on Government Operations issued a report to Congress titled “Just Saying No is Not Enough: HUD’s Inadequate Response to the Drug Crisis in Public Housing.”⁷⁹ Right out of the gate, this report ignored hearing testimony from public housing residents, claiming “nowhere is the problem of drug abuse more evident than in our Nation’s public housing projects...”⁸⁰ In establishing public housing as exceptional when it comes to drug usage, this report further built on the hearing’s punitive focus by ushering primarily security-oriented solutions including: increased funding for security-oriented upgrades to the physical structure of public housing buildings and allowing PHAs to create their own police forces.⁸¹ All of these recommendations are directly translated into the text of the Anti-drug Abuse Act of 1988, which, more than any other document, reveals the consequences of a legally-manifested racialized history.

Debate on the passage of the Anti-drug Abuse Act of 1988 began with Democratic Representative Charles Rangel from New York City. On September 7, 1988 Rangel opened discussion stating, “...this afternoon we will have an opportunity to, in part, meet the challenge of the great scourge that drugs has brought upon our congressional districts, our regions, our States, and indeed, the world.”⁸² This new act was intended to amplify the War on Drugs by extending the reach of the Anti-drug Abuse Act of 1986 into numerous areas, including public housing. While the Congressional Black Caucus did not offer a wholesale embrace of the act --

certain members voted no and many members, including Rangel at points, argued for less punitive responses -- it is impossible to ignore the role that the reality of drug use and violence in public housing played in informing real policy decisions that had a disproportionate impact on Black Americans. Even still, analysis of Congressional Records reveals legislators' obsession with punitive and violent responses to drug use, especially in public housing. As has been argued in previous sections, this dramatic focus on imprisonment and public housing is largely a response to racialized histories.

During the debate on the Anti-drug Abuse Act, public housing, while not central to the Congressional agenda, inspired considerable tension. The issue of drug use in public housing first emerged in Congressional debate on September 8, 1988 during a House session on the McCollum Amendment. The McCollum Amendment, as defined by Representative Bill McCollum, was introduced to provide a "user accountability" mechanism.⁸³ According to McCollum, the legislature needed to address the demand-side of the drug trade because the War on Drugs, while plenty forceful when attacking the supply-side, was weak on attacking demand.⁸⁴ When demand was addressed, McCollum claimed it was only in terms of rehabilitation and education.⁸⁵ He argued, "education and rehabilitation are not enough to stop demand for drugs in this country. It is absolutely necessary that we enact user accountability provisions that say that that user will pay some kind of a reasonable price if he is going to choose to make the decision to use drugs."⁸⁶ As such, the amendment proposed eliminating federal benefits, including public housing, for drug traffickers for 10 years and for individuals convicted of drug possession twice for 5 years.⁸⁷ Completing a drug rehabilitation program would grant the convict exemption from this penalty.⁸⁸

However, the harsh mandatory minimums that the 1986 law established prove that the War on Drugs already provided user accountability. If an individual committed a drug-related crime, including using the drug, jail time was the consequence. That is a user accountability system. In response to Representative McCollum's argument that in addition to jail-time, federal benefits also needed to be eliminated for convicted drug users, Representative Ben Cardin countered that imposing additional punishment after an individual had already served his/her sentence was counter-intuitive in that it made re-integration in society even harder.⁸⁹ Furthermore, he pointed out the amendment's inconsistency, and the inconsistency of the War on Drugs at large when he said, "this amendment would add to our current system of justice a variety of post conviction penalties, not for all criminals, just for drug offenders. Apparently, proponents of this amendment feel that our judicial system imposes appropriate sentences in all instances except for drug crimes."⁹⁰ This comment reveals the absurdity of the War on Drug's excessively punitive mission in that it exposes Federal Government's unorthodox focus on drug-related crimes. He goes on to say, "imposing additional punishment on an individual who has already served a sentence will work directly against the goal of reintegrating individuals into the community. We cannot allow retribution to displace rehabilitation."⁹¹ He questions the legitimacy of these draconian post-conviction punishments by acknowledging they apply only to drug-users. If enacting these penalties served a purpose outside of fulfilling a politically driven goal, then other, more severe crimes would be the focus. Despite Cardin's counter, the representatives seemed to accept the foundational logic of the War on Drugs – that drug use is exceptionally bad – without questioning what false, racialized narratives bolstered the act's criminalizing focus. As a result, racial disparities manifested with no legal repercussions.

Cardin's critique was not the only criticism. Rangel disfavored the amendment as well. According to Rangel, the amendment was too harsh in that it harmed students by removing aid, punished veterans who had already sacrificed an inordinate amount, and punished families of drug users in addition to the users.⁹² Additionally, despite the opt out provision that graduating from a drug rehabilitation program provided, Rangel argued that these programs were in short supply, thereby nullifying the viability of that option.⁹³ As such, Rangel offered an alternative amendment, which excluded public housing as a federal benefit that could be withheld from individuals convicted of drug-crimes, provided more funding for drug rehabilitation centers and protected dependents by not expanding the exclusion of benefits to them.⁹⁴ While Rangel was making an argument for public housing tenants, other portions of the act, which were not debated in any capacity, gave PHAs the authority to remove convicted and/or suspected drug users with little oversight.⁹⁵ So, Rangel's defense of public housing tenants in this context alone speaks to the depth of his belief in defending the housing rights of drug users. He was more protecting their ability to potentially to receive housing, than advocating for their right to access housing.

Furthermore, despite his status as one of the most well known members of the Congressional Black Caucus (CBC), none of the debate regarding public housing as a benefit was framed as a matter of racial equity, even though the majority of public housing residents were people of color, in addition to the majority of people incarcerated by the drug laws. Instead, the debate was framed as a matter of veterans' rights. Rangel argued:

What is even more shocking to me, as we find more and more veterans from the Korean and Vietnam wars who have been exposed to more horrendous experiences than any of us would hope for ourselves or our children, that these people would be denied veterans' benefits by the country they were serving. No, Mr. Chairman. I do not think that politically we intend to be that cruel.⁹⁶

While targeting veterans as the at-risk population might have been politically expedient when attempting to garner votes against the McCollum Amendment, the erasure of public housing residents' experience, in addition to a failure to recognize the race of the majority of residents, from this discussion reveals the extent to which perceptions of people, instead of lived experience, define legislative action. In fact, the rhetoric used to define public housing brings the erasure of tenant experience into even greater relief. As explored in the previous section, and as the September 8 session in Congress makes abundantly clear, the War on Drugs was considered the political equivalent of an actual war. If the war rhetoric were more than just a tool employed to hyperbolize truth and subsequently inspire punitive action, then public housing residents and drug addicts would be the innocent victims and receive a defense as equally vociferous as provided to veterans. Yet, as the debate over the McCollum Amendment elucidates, tenants and drug users failed to enter the matrix of legislative concern, as veterans did. The metaphor stopped short when low-income people, especially those of color who struggle with addiction and have been historically marginalized, entered the equation. Rangel's, and others', failure to raise this point and frame the discussion as an issue of class, race, and ability reveals the harm that is created at the locus of intersectional failures. By failing to grapple with how this amendment, and other provisions in the act which regulated public housing, would disproportionately affect people of certain identities, Congress gave power to the racialized narratives that defined both drug use and public housing. As a result, War on Drugs rhetoric, as opposed to lived experience, determined policy-making decisions.

In fact, during this session, the only context in which race was mentioned was during discussion of the Gekas Amendment, which permitted the death penalty to be administered as a

punishment for drug-related violent crimes.⁹⁷ In arguing against the amendment, Representative John Conyers, a member of the CBC, said:

...it is clear that the death penalty is applied in a discriminatory fashion. Although blacks constitute only 11 percent of the population at large, 39 percent of those executed in the last 12 years were black. Only 11 people – who were black – were executed for the murder of blacks, and 86 people for murdering whites. Currently, blacks constitute 41 percent of those persons on death row, as of May 1, 1988.⁹⁸

By citing these statistics Conyers brought race to the center of the discussion. However, why the racial disparity was highlighted in this context and not the others is unclear. Conyers goes on to say that “racial discrimination in a criminal justice system that claims to be fair and impartial is intolerable. But it is even worse when its effect is irreversible.”⁹⁹ Intolerable though it may be, it is only objectionable in the context of the death penalty. While he and the majority of the CBC voted against this amendment, as well as the McCollum Amendment, the CBC was more divided on the final vote.¹⁰⁰ Conyers, along with 5 others voted no, mostly citing the death penalty’s presence in the bill’s final version; four members did not vote; and 13 voted in favor.¹⁰¹

In fact, despite leading the charge against the amendments that allowed the death penalty and removed federal benefits from drug users, Representative Rangel ultimately voted for the Anti-Drug Abuse Act. In Rangel’s opinion, while the act had improved in many ways after Senate consideration, including allowing court discretion in determining loss of benefits for drug users, excluding public housing as a benefit that could be withdrawn, and accounting for limited space in drug rehabilitation programs, he still found major issues with the bill. He said, “There are still provisions in the bill I do not support – specifically, inclusion of the death penalty; taking away federal benefits...”¹⁰² However, Rangel considered the drug crisis intense enough to push aside his numerous concerns: “...the Nation’s deepening drug crisis and the administration’s lack of any legislative initiative on their own make the expansion of antidrug

programs under this bill necessary.”¹⁰³ Rangel’s unwavering support of the Administration’s drug agenda is consistent with his anti-drug and punitive policy stance that began with his work in New York.¹⁰⁴ While the black vote was not uniform, the majority of black congresspeople, with Rangel as the most vocal, supported the Anti-drug Abuse Act, highlighting the effectiveness of the War on Drugs’s rhetorical pull.

In its final form, the act was just as hyperbolic as the news stories that enflamed fear of drug use and public housing across the nation. The act grants unprecedented authority to criminal justice forces to intervene in the lives of public housing residents. It declares, “drug dealers are increasingly imposing a reign of terror on public housing tenants...”¹⁰⁵ As a result:

a public housing tenant, any member of the tenant’s household, or a guest or other person under the tenant’s control shall not engage in criminal activity, including drug-related criminal activity, on or near public housing premises, while the tenant is a tenant in public housing... such criminal activity shall be cause for termination of tenancy.¹⁰⁶

In other words, any sort of “drug-related activity,” which includes sale, use, or manufacture stands as grounds for eviction, even if a guest perpetrated said drug-related activity outside the bounds of public housing property.

In addition to this increased discretion, the Anti-drug Abuse Act also increased funds available to PHAs to implement anti-drug security measures. Known as the Drug Elimination Program (DEP), this piece of the legislation was created to “help public housing agencies ... combat drug use and drug-related crime in their developments.”¹⁰⁷ As the act enumerates, DEP could be used to implement numerous drug elimination strategies, the majority of which were security-oriented, including employment of security personnel in the projects, reimbursement of local law enforcement agencies, security-oriented physical improvements, and training for tenant patrols.¹⁰⁸ Only two of the options for funding held non-punitive treatment potential for drug

users in public housing, including “innovative programs designed to reduce use of drugs in and around public housing projects; and providing funding ... to develop security and drug abuse prevention programs involving site residents.”¹⁰⁹ Despite this potential, the majority of DEP funds went to increasing security in public housing units. Jeffrey Fagan, Garth Davies, and Jan Holland’s study in “The Paradox of the Drug Elimination program in New York City Public Housing” reveals this reality with startling effect.¹¹⁰ By honing in on New York City Housing Authority’s (NYCHA) use of DEP funds, Fagan demonstrates how overtime DEP funds increased in the law enforcement arena but decreased for rehabilitation services.¹¹¹ For example, DEP in New York City began in 1991, and by 1994 the funds reserved for security measures more than doubled, while the funds for “demand reduction” severely dropped, so that by 1996 they were receiving no more than 3% of the DEP budget.¹¹² This was true despite the constant increase of DEP funds between 1991 and 1996, from \$12,698,781 to \$35,000,000.¹¹³ Nationally, the program’s funding also skyrocketed, from \$8.2 million in 1989 to \$145.5 million in 1993.¹¹⁴ While a decrease in the crime rate might have objectively justified this emphasis on security, Fagan concludes that DEP efforts led to “no measurable declines in crime in the public housing projects themselves.”¹¹⁵ In fact, as Fagan notes, the public housing residents themselves did not attribute any improving conditions in public housing to DEP efforts.¹¹⁶ Instead, most officials administering the program, as well as residents, saw DEP as an effort to grow and enhance existing policing measures, which in turn inspired greater tension between law enforcement officials and tenants than already existed.

This tension grew mostly from policing programs that DEP funded, such as Operation Safe Home (OSH). This program, in creating collaboration between Federal, State, and Local law enforcement agencies, pushed to reduce crime within public housing units, thereby granting

law enforcement officials authority, depending on the localized process, to access public housing units to investigate drug-related crimes.¹¹⁷ New York City provides the most powerful example of these programs and policies in action. As Jeffrey Fagan makes clear in *Race and Selective Enforcement in Public Housing*, New York City oversaw the creation of Trespass Affidavit Program (TAP), which allowed “the NYPD to act as both landlord and police.”¹¹⁸ In essence, if a public housing agency enrolls in this program, NYPD officers are provided with a list of the tenants in a building and can thereby enter at will, without a warrant, and arrest trespassers.¹¹⁹ In implementing this power, NYPD officers developed the “vertical patrolling strategy.”¹²⁰ In essence, the officers will start at the top of a building and work their way down, questioning people in the building on their status as residents.¹²¹ As a result of the TAP development, in the context of the War on Drugs, NYPD officers do not have to witness people committing a drug-related crime to arrest them; they merely have to be trespassing in public housing.¹²² As a result, in using trespassing instead of suspicion of drug-related crime as grounds for arrest, the NYPD is able to question “more people with less evidence,” thereby increasing the probability of arresting a drug offender.¹²³ Despite the implications of this policy on the Fourth Amendment rights of public housing residents, it has become a key strategy to monitor and control the lives of public housing tenants.

The Anti-Drug Abuse Act of 1988 marked new territory for the War on Drugs. Not only did it transform the legal framework that governed the lives of public housing residents by limiting their access to safe housing and narrowing their housing security, but it also provided enormous sums of money to construct new structures of policing and surveillance through the DEP and its children programs, including OSH. This new foundation of power only grew more expansive for PHAs and law enforcement as Congress continued to prioritize narratives that

motivated the passage of exceedingly punitive laws, including the Cranston-Gonzalez National Affordable Housing Act and The HOPE Act.

The Cranston-Gonzalez National Affordable Housing Act and The HOPE Act of 1996

The Anti-Drug Abuse Act of 1988 was only the beginning - with a minor tweak in legal language, PHAs' authority to evict and screen tenants for entry grew even more expansive after the passage of the Cranston-Gonzalez National Affordable Housing Act in 1990.¹²⁴ According to the act, PHA leases must include that:

any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.¹²⁵

Compared to the similar provision in the Anti-drug Abuse Act of 1988, this portion of the Cranston-Gonzalez Act expands who is eligible for eviction, adding anyone who threatens the "health, safety, or right to peaceful enjoyment" of other tenants. By expanding the reasons for eligible eviction, Congress made it even easier for PHAs to evict tenants based on their own discretion. This legal shift significantly damaged the housing security of tenants – especially those whose personal identity had been exploited to develop the more punitive drug laws.

Moving forward, the HOPE Act of 1996 was the next major indicator of the marriage of housing and drug law. While both the Anti-drug Abuse Act and the Cranston-Gonzalez Act were designed to lower rates of crime and drug use in public housing, the narratives employed to pass the HOPE act reveal that neither law had much impact. The rhetorical advocacy used to support the HOPE Act was, in fact, the same used to pass the Anti-drug Abuse Act. A Congressional hearing convened in October 1995 titled "Troubled Public Housing," proves this point in that it reads strikingly similar to the hearing titled "HUD Programs to Combat Drug Abuse in Public Housing," which convened before the passage of the Anti-Drug Abuse Act of 1988. The leaders

of the 1995 hearing continued to tout public housing as a failed service. In his opening statement, Chairman of the subcommittee on housing and community opportunity Rick Lazio declared, “Quite simply, we are no longer going to finance this failure (public housing). For years, the solution to the problems of public housing had been to simply spend more money ... we cannot and will not continue to pour more money into a failed government program...”¹²⁶ To an even greater extent, Susan Gaffney, Inspector General of HUD, pushed the narrative of public housing as a criminal space even further forward, “...every police department in this country knows that public housing is a major, if not the major locus of violent crime in this country.”¹²⁷

Comments of this nature were made throughout the course of the hearing, but lacked any supporting evidence. In fact, many scholars at the time argued that the research that had been conducted to prove that crime rates were higher in public housing than elsewhere was inconclusive and unreliable. As Claire Renzetti writes in ““One Strike and You’re Out’ implications of a Federal Crime Control Policy for Battered Women:”

Even though public housing communities are typically thought to be plagued by social problems, including high crime rates, there has actually been little research on crime in public housing (Holzman, 1996), and although some individual PHAs track crime rates in their developments, there are not national statistics on crime in public and assisted housing (Helegers, 1999). Much of the research on crime in public housing has focused on housing structure issues, such as comparisons of crime rates in different types of public housing developments (e.g., large vs. small, high rise vs. garden style.)¹²⁸

In referencing the studies that had been completed, Jeffery Fagan argues that numerous biases impair their accuracy including: a prioritization of the oldest units in already high-crime urban areas, a reliance on crime complaints as opposed to victimization studies, and a near total ignorance of the “historical, socioeconomic, structural, and administrative contexts...”¹²⁹ So, not only did hearing testimony lack evidence to support its claim of dangerous public housing, but research compiled at the time regarding the exceptionally high crime rates in public housing was

inconclusive. Yet, Congress still relied on the rhetoric of crime and failure to push through punitive legislation. This reliance on the negative image of public housing to pass penal legislation, despite the lack of definitive evidence, reveals the extent to which the existing public housing narrative was a tool of political expediency, rather than a lived reality. In fact, had the punitive strategy, implemented initially with the Anti-drug Abuse Act of 1988, actually worked, it would have made sense for Congress to drop this narrative, for conditions would have improved. On the other hand, had this hyperbolic rhetoric been a reality, it would have made sense for Congress to adopt a new policy approach by 1996, after 8 years of failed punitive solutions. But, as the Congressional record shows, the negative rhetoric toward public housing and the focus on a penal response continued.¹³⁰

Nowhere is this reality clearer than in President Clinton's 1996 State of the Union Address. To applause on both sides of the aisle, President Clinton declared:

We know big Government does not have all the answers. We know there's not a program for every problem. We know, and we have worked to give the American people a smaller, less bureaucratic Government in Washington. And we have to give the American people one that lives within its means. The era of big Government is over.¹³¹

In making this statement, President Clinton effectively extended his predecessors' neoliberal agenda, stating his goals for a smaller, work-for benefits government. This philosophy influenced every programmatic interest of Clinton's administration, including public housing. In the same speech he declared: "I challenge local housing authorities and tenant associations: Criminal gang members and drug dealers are destroying the lives of decent tenants. From now on, the rule for residents who commit crime and peddle drugs should be one strike and you're out."¹³² Whether knowingly or not, Clinton was creating political capital for a Democratic Party typically perceived as soft on crime from the racialized narratives of drug use and public

housing. Clinton pushed for tighter control over the type of tenant allowed in public housing and Congress soon responded, passing the Housing Opportunity Extension Act of 1996.¹³³

The final version of the HOPE act, passed in 1996 after President Clinton's State of the Union address, clearly demonstrates the nature in which the legislature continued to utilize public housing's racialized narrative as a means to fulfill a punitive agenda. With the passage of each new piece of public housing legislation, starting with the Anti-drug Abuse Act of 1988, moving then to the Cranston-Gonzalez Act, and finally to the HOPE Act, public housing moved away from its original purpose a welfare program and became instead a program of crime control.

The HOPE act implemented numerous changes to public housing screening and eviction policies that made the process stricter. First, it initiated the merging of different bureaucratic structures to make it more difficult for applicants to enter public housing. The act created a bridge between local police forces, the National Crime Information Center, and PHAs by giving PHAs the authority to access applicants' criminal background records during the screening process.¹³⁴ With this information, PHAs were allowed to deny potential residents access to public housing not only if they had proof that the individual used an illegal substance, but also if they merely suspected the individual might be abusing drugs or alcohol.¹³⁵ The same standard applied to finding cause for eviction.¹³⁶ By not requiring an arrest or conviction to deny or evict tenants from public housing units and instead relying on "reasonable suspicion," the Federal Government increased the probability that PHAs would discriminate against applicants or tenants based on culturally defined images of drug users – an identity that has been thoroughly racialized. According to then-HUD Secretary Henry Cisneros, this sort of eviction policy could withstand legal challenge because:

Public housing is a benefit... Only about a quarter of the eligible population in the United States can actually get into housing. Therefore, it is not a right that you're entitled to, but it is a privilege, and if someone is there to abuse, or threaten or intimidate, then there simply is no place for them when there's a vast list of people who want to come in.¹³⁷

By labeling public housing a privilege and denying housing as a right, Cisneros, and by extension HUD, justified weakening, in the context of public housing, the procedural processes that normally protect criminals from having their due process rights removed. Lastly, in addition to these changes, the HOPE Act also gave PHAs the authority to evict tenants for either their own or their guests' criminal activity "on or off" public housing grounds, instead of merely "on or near."¹³⁸ With this minor change in language, public housing residents' lives became subjected to even greater amounts of state-sponsored surveillance.

The terms of entrance and eviction to and from public housing that were established in the "One Strike and You're Out" policy were not legal requirements to which PHAs were bound. They instead served as guidelines for PHAs to follow as they constructed their own leases. This did not mean, however, that they were less effective. In fact, to encourage implementation of the "One Strike and You're Out" policy, HUD sent PHA directors across the country a "how to" guide regarding the creation of local "One Strike" policies.¹³⁹ The guidelines in essence re-iterated policy enumerated in the HOPE Act by encouraging PHAs to adopt the strict eviction and screening policies that the federal policy allowed. According to the guide:

While some PHAs take full advantage of their authority to use stringent screening and eviction procedures, there are many PHAs that do not... These guidelines are intended to give local housing agencies a legal road map for adopting and implementing fair, effective and comprehensive One Strike policies that encompass both prevention through screening and enforcement by eviction. They also provide guidance in enlisting the cooperation of residents, police departments, and courts that is necessary to the success of One Strike Programs.¹⁴⁰

Re-iteration was not HUD's only strategy to encourage PHAs' adoption of One Strike programs. HUD promised to PHAs that adopted One Strike policies a higher grade upon annual evaluation;

a higher grade equaled more funding.¹⁴¹ By attaching funds to adoption of One Strike policies, HUD was aggressively encouraging PHAs to adopt harsh and punitive policies. In fact, by 1998, HUD had this funding system codified in the Quality Housing and Work Responsibility Act of 1998, demonstrating its passionate belief in the One Strike Program.¹⁴²

These guidelines, and the funding attached to their adoption, had a major impact on the number of public housing evictions. According to an ACLU report, “In the first six months after the ‘One Strike’ guidelines were adopted, evictions jumped from 9,835 to 19,405.”¹⁴³ Cumulatively, the effect of these policies dramatically impaired the ability of low-income people to access public housing. As the Human Rights Watch report titled “Federal ‘One Strike’ Legislation” records, HUD disclosed that by 2002 46,657 applicants had been rejected from public housing because of the “one-strike” policy.¹⁴⁴ However, as the report makes clear, this sort of data is hard to collect because HUD does not keep an accurate record, nor do they have a unified system to monitor, how, when, or why applicants are rejected from public housing assistance. Ultimately, these restrictive policies, passed in reaction to the racialized narratives associated with drug use and public housing, had a massive impact on the ability of low-income people of color, who disproportionately reside in public housing, to access affordable housing.

Department of Housing and Urban Development v. Rucker

President Clinton’s admonishment of PHAs for not being strict enough on drug users in his 1996 State of the Union Address created incentive for PHAs to enact and enforce their own One Strike policies. The PHAs’ more zealous execution of their discretionary authority created legal conflict between evicted tenants and the harsh policies that authorized their eviction. The most controversial aspect of PHAs’ newly expressed discretionary power was the provision that allowed PHAs to evict tenants for the criminal or drug-related activity of their guests on or off

public housing grounds, even in cases when the tenants were unaware of such acts. From the emergence of the One Strike policy forward, PHAs' authority to evict tenants as a result of their guests' drug-related or criminal activity has been a matter of constitutional debate within the judiciary.¹⁴⁵

It was not until 2002, in *HUD v. Rucker* that the U.S. Supreme Court settled the issue.¹⁴⁶ In this case, the Supreme Court granted judicial approval to these policies when deciding against Ms. Rucker, a 63-year old woman. The Court ruled that Ms. Rucker could be legally evicted from her public housing apartment because her mentally disabled granddaughter had been convicted of committing a non-violent drug-related crime off public housing grounds, despite the fact that she was neither using herself nor aware of her granddaughter's drug activity.¹⁴⁷ Reversing the Ninth Circuit's ruling in favor of Ms. Rucker, the U.S. Supreme Court, in a unanimous ruling written by Justice William Rehnquist, validated the harsh, punitive policies that, from 1988, had re-defined the legal status of public housing residents. According to the Court, the textual clarity of existing legislation removed any ambiguity regarding whether PHAs had the authority to issue no-fault evictions for any drug-related activity:

We hold that 'Congress has directly spoken to the precise question at issue ...' section 1437d(l)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guests engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity.¹⁴⁸

In other words, existing legislation left no space for judicial interpretation of a PHA's ability to construct and enforce a lease. That this unambiguously rendered power was constitutional was even clearer to the Court considering the state of public housing.¹⁴⁹ According to the Court, "with drugs leading to 'murders, muggings, and other forms of violence against tenants,' ... it was reasonable for Congress to permit no-fault evictions..."¹⁵⁰ By invoking the racialized narrative of

public housing as a drug-ridden criminal space, the Supreme Court was utilizing the same politically expedient rhetoric that Congress used to pass the punitive legislation in the first place, demonstrating the role that racialized images can play in defining the laws and policies that determine the rules of marginalized people's lives in society.

Despite the Supreme Court's insistence that Congress's intent was clear, thereby making a search through legislative history unnecessary, the Congressional Record suggests otherwise. According to the Congressional Record of the Cranston-Gonzalez Act, evicting a tenant due to the unlawful behavior of their guest was not an appropriate course of action:

The committee anticipates that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the PHA and the eviction court. For example, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity.¹⁵¹

An unquestioning judiciary, however, weeded out this Congressional intent. Not only was punishing a tenant for the crime of a guest not Congress's original intent, but it also violated basic due process principles established in common law. As Evi Schueller writes in "HUD v. Rucker, Unconscionable Due Process for Public Housing Tenants," due process jurisprudence holds that guilt is personal, yet according to *Rucker*, guilt does not have to be personal to justify eviction from public housing.¹⁵² The principle of personal guilt is normally only applicable in cases of criminal liability, but the principle also applies for "serious deprivations of property interest," according to *Goldberg v. Kelly*.¹⁵³ In addition to discarding the personal guilt principle, the Court also rejected the "innocent owner defense," which permits a lack of knowledge defense in civil forfeiture cases.¹⁵⁴ According to the Court, Congress did not include this defense in the policy they constructed, despite the fact that substantive due process alone implies an innocent owner defense.¹⁵⁵

The Court's rejection of both of these principles, in conjunction with their discussion of dangerous, drug-ridden public housing, emphasizes their focus on preserving the purpose of these policies, which according to Congress was to decrease drug use and crime in public housing. By focusing on the purpose of the legislation, as opposed to the methods used to implement the policies, the Court ignored the lived reality of public housing tenants, and as a result, facilitated the violation of not only their constitutional due process rights but also their dignity as human beings.

V. THE INTERSECTIONAL FAILURE OF THE PUNITIVE PUBLIC HOUSING PROGRAM

The transformed legal framework, increased state surveillance, and judicial ignorance of lived reality, has had dire consequences for public housing residents, specifically those of color, to whom an entire history of racialized stereotypes are attached. For example, in 2014, an NYPD officer who was conducting a round of vertical patrolling shot Akai Gurley, visiting his girlfriend in the Louis Pink Houses in Brooklyn, in a stairwell.¹⁵⁶ Gurley has not been the only victim of vertical patrolling; others include Timothy Stansbury Jr. in 2004 and Nicholas Heyward Jr. in 1994.¹⁵⁷ Furthermore, in *Arrested Justice: Black Women, Violence, and America's Prison Nation* Beth E. Richie presents a story about the ill-effects of increased surveillance in public housing on the lives of people of color. According to Richie, on April 13, 2003 Ms. B, who had been living in a public housing building in Chicago for 27 years was assaulted and raped by five Chicago police officers that claimed to be searching for drugs they had falsely heard she possessed.¹⁵⁸ Without a warrant and with no repercussions, the same officers assaulted Ms. B six more times over the course of three months.¹⁵⁹ In fact, in a horrific display of the power granted the authorities at the nexus of public housing, drug use, and race, the officers, after placing drugs on

Ms. B, made her perform sexual acts to prevent them from arresting her for drug possession.¹⁶⁰ As made evident by Ms. B's story and the fates of Akai Gurley, Timothy Stansbury Jr., and Nicholas Heyward Jr., the current lived experience of black public housing residents are still subjected to damning treatment at the hands of a drug policy that is based on long-since debunked racialized assumptions about race and drug use. History still plays a massive role in defining their lives.

These specific instances of violence committed in public housing units are not random; they clearly demonstrate the manifested consequences of the marriage of public housing and drug policy and reveal larger, systemic maladies that affect people of certain identities. Because racial stereotypes fueled the creation of housing-drug legislation, they continue to define the laws' method of selective enforcement. This reality is especially true for low-income women of color, who disproportionately reside in public housing units. According to HUD Public Use Microdata Sample (PUMS) for 2012, people of color make up the majority of public housing residents - African Americans and Hispanics being the majority of that pool at 45 percent and 21 percent respectively.¹⁶¹ Furthermore, 75 percent of households in public housing units are female-headed – a massively disproportionate amount.¹⁶² And lastly, 86 percent of all people living in public housing make \$20,000 or less in annual income.¹⁶³

The situational reality of public housing residents, and specifically women of color, startlingly reveals the state's outright rejection of their status as full and equal citizens. In crafting legislation, it is obvious that Congress failed to consider how their policy might impact people of certain identities more severely. Battered women who reside in public housing reveal this intersectional failure most dramatically. Existing policy radically undermines their ability to protect themselves. As Claire Renzetti argues in “‘One Strike and You're Out.’ Implications of a

Federal Crime Control Policy for Battered Women,” one element of Clinton’s one strike initiative poses serious issues for women who experience abuse: the PHA’s power to evict or deny admission to the lessee for the criminal or drug-related behavior of the tenant’s guest or family, regardless of arrest or conviction.¹⁶⁴ As Renzetti writes, numerous realistic hypotheticals involving this provision of the policy could put battered women at even greater risk. For example, if a woman and her children are fleeing an abusive partner and have nowhere but public housing to turn for shelter, the no-fault eviction provision could force the woman to return to her abuser, if no other options exist.¹⁶⁵ The violent partner could even activate eviction under this policy by visiting the unit and committing criminal or drug-related behavior, which could include physically harming the partner who was fleeing violence in the first place.¹⁶⁶ In other words, a woman could be evicted for suffering abuse -- a reality that not only multiplies brutality, but also prevents effective reporting, for fear of eviction. To an even greater extent, as Renzetti makes clear, abusive partners often force their victims into criminal activity, a trend that is even more frequent for lower-income battered women, therefore making admittance into public housing under the one strike policy, which gives PHAs access to applicants’ criminal records, even more difficult.¹⁶⁷ Finally, Renzetti also argues that lower-income women who experience abuse often turn to substance use to cope with their reality.¹⁶⁸ As a result, these women are at even greater risk of eviction from public housing and denial of admittance. By failing to provide an exception or specified alternative process for battered women, legislators who crafted the one strike policy multiplied the harm that these women experience, revealing one of the major intersectional failures of the drug-housing policy agenda.

Another harmful consequence of the housing-drug policies involves its intersection with juvenile crime. As Wendy Kaplan and David Rossman write in “Called ‘out’ at Home: The One

Strike Eviction Policy and Juvenile Court,” while the original purpose of separating the juvenile justice system from regular criminal court was to provide an opportunity for rehabilitation as opposed to punishment, the current one strike policy, with its draconian eviction and admission standards, places the emphasis of juvenile justice back into the realm of punishment.¹⁶⁹ By evicting entire families for the actions of delinquent children, the one strike policy instates an unrealistic and classist standard, in that it only applies to low-income families, that grants undo authority to the actions of children. For families that rely on public housing as a last stop before homelessness, this policy only multiplies opportunities for delinquency to evolve, for without a home, the chances of children engaging in criminal behavior increase exponentially.¹⁷⁰ That this strict standard applies even when disabled children engage in unlawful behavior, reveals the intersectional failure of the one strike policy to an even greater extent – especially given that 21 percent of households in public housing have at least one member who is disabled.¹⁷¹ The reality of this policy is no brighter for parents of delinquent children. It is often the case that upon re-entry, parents are forced to choose between allowing their previously delinquent child back into their home and face the possibility of eviction, or denying their child a service they need for successful re-integration.¹⁷² As such, the juvenile justice mission and the goals of the current public housing program are at odds, revealing yet another harmful effect of passing housing legislation defined by racialized War on Drugs rhetoric, as opposed to lived experiences.

While the issues that parents of delinquents in public housing face are not isolated to any particular identity, women of color, as the demographics of public housing reveal, face these issues at a disproportionate rate, placing them at the matrix of these intersectional failures. As Tiffany King writes in “One Strike Evictions, State Space and the Production of Abject Black Female Bodies,” the law constantly morphs and bends to control and exclude women of color –

the one strike policy is just another example.¹⁷³ By first noting the association of welfare with lazy, black mothers in order to establish the state's perception of black women, King writes that the one strike policy marries the disciplinary program to welfare assistance, thereby providing a means for women of color to be lawfully excluded from receiving state-sponsored aid:

In a neo-liberal era in which the majority of Americans believe that welfare rolls have been overrun by savage black women and their children, a logic of expulsion becomes the imperative in order to relinquish the state of the responsibility to support black women and their families. The One Strike law emerges as a legal and spatial practice which can render 'expensive' black women outside the bounds of the state and therefore outside their care.¹⁷⁴

The manner in which the majority of the housing-drug policies were crafted justifies the existence and validity of King's argument. Furthermore, while low-income women of color who often reside in public housing are accused of being bad mothers, the one-strike policy, through its harsh eviction standards, forbids them from interacting with their state-named "delinquent" children, thereby not only preserving the stereotypes that define the image of mothers of color, but also drawing the internal boundaries of black families.¹⁷⁵ From personal status to family relations, the housing-drug policies shape the existence of people of color. Failure to recognize the unique situation of women of color in public housing not only results in the harmful effects previously discussed, but also falls in line with history's constant exclusion and dehumanization of women of color. As King argues, and as the lived experience of women of color reveal, policies such as one strike, are not methods to preserve safety in low-income residencies, as they were purported to be, but are instead technologies of control.¹⁷⁶ Not even political War on Drugs rhetoric can mask that reality.

VI. CONCLUSION

By using the War on Drugs as justification to gain access into public housing, the Federal Government has staged an oftentimes-brutal invasion into the lives of low-income public

housing residents. In the context of the racialized history of both public housing and drug use, the state's increased surveillance of people of color in public housing makes perfect sense as a next step in the evolution of the effects of radicalized stereotyping. Divorced from the history of public housing and drug policy, the War on Drugs's targeting of public housing would not appear to be as racially discriminatory as it truly is. However, in connecting current policy to both past representation of black drug users and racialized assumptions about public housing, the Federal Government's continued use of racist stereotypes to define policy becomes clear. Vertical patrolling and strict control over public housing tenancy exist as mechanisms of control because policymakers operate from an analytic framework in which 19th century images of African American drug use and overwhelmingly dystopian narratives of racialized public housing still exist.

Congress's reliance on politically expedient War on Drugs rhetoric to form the baseline logic of public housing policy led to the creation of an utterly ineffective housing program, which has yielded grim results for residents, especially female residents of color. Congress failed to adequately consider what living in public housing was really like for the majority of residents and as a result, diminished the legal status of residents by creating an assistance program defined by a punitive logic. For residents whose lived experience is defined by this racist policy, there are few options for remedy. The U.S.'s existing legal framework to address issues of housing accessibility is abysmal. Not only has the U.S. refused to ratify existing international human rights standards regarding housing rights, as codified in the International Covenant on Economic and Social Rights, but the U.S. has also failed to craft its own legislation to guarantee safe and quality housing as a right for all.¹⁷⁷ Despite this fact, legal recourse should be pursued through the existing framework of anti-discrimination law, both on the Federal and International levels. As

this project reveals, not only does the current housing program have a harmful discriminatory impact on people of color, but it was also formed on a logic of racial control.

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