

# Drug-Related Evictions in Public Housing: Congress' Addiction to a Quick Fix

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Barricaded behind doors, intimidated by crack dealers, frightened by gunfire and worried about the safety of their children, those who live in the projects are trapped behind the lines of an escalating war.<sup>1</sup>

Nowhere are the human and economic costs of drug use, abuse, and trafficking more evident than in public housing projects throughout the nation. From housing developments in Los Angeles, Chicago, New York, New Haven, Washington, D.C., and even Omaha, Nebraska, come tragic stories of violence, death, and fear, told by residents terrified of the open drug trade that has ravaged their neighborhoods.<sup>2</sup>

While the urgent need for action to restore safe and decent public housing is universally acknowledged, there is no accord on how that goal can best be accomplished. Some argue that the safety and quality of public housing cannot be restored unless the federal government confronts the underlying causes of the public housing drug crisis: poverty, unemployment, and hopelessness. Toward that goal, they emphasize increased spending for social programs, as well as for maintaining and improving public housing complexes. Others focus instead on the responsibility of individual tenants, insisting that public housing can be freed of drug traffic and abuse only through the eviction of traffickers and abusers.

In 1988, a time of high budget deficits and low tolerance for drugs, Congress embraced the latter approach: evicting tenants. In the Anti-Drug Abuse Act of 1988, Congress enacted a provision (the "drug-related eviction provision") requiring Public Housing Authorities (PHAs) to include in their leases a condition that explicitly makes *any* drug-related activity—use, possession, or trafficking—grounds for eviction.<sup>3</sup> The provision allows PHAs to

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1. Richardson, *No Shelter from the Storm: Projects Invaded by Drugs*, *Newsday*, Aug. 20, 1989, at 6.

2. See generally *Drugs in Federally Assisted Housing: Hearing on S. 566 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing, and Urban Affairs*, 101st Cong., 1st Sess. (1989) [hereinafter *Drug Hearing*]. See also *Drugs and Public Housing: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 101st Cong., 1st Sess. (1989) [hereinafter *Subcommittee on Investigations Hearing*].

3. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 5101, 102 Stat. 4181, 4300 (1988) (amended 1990). The Anti-Drug Abuse Act did not limit PHAs' enhanced eviction powers to drug-related activity; it allowed PHAs to evict for *any* criminal activity. *Id.* Subsequent legislation, however, as well as actions by the Department of Housing and Urban Development (HUD) and PHAs targeting drug activity, makes clear that Congress intended § 5101 to focus on drugs. See *infra* note 52 and accompanying text.

evict entire families, regardless of whether the drug-related activity was engaged in by tenants, their family members, or even their guests. Since 1988, Congress has repeatedly reaffirmed its commitment to facilitating and expediting evictions under the drug-related eviction provision.<sup>4</sup> Likewise, the Department of Housing and Urban Development (HUD), under the direction of Secretary Jack Kemp, has proved a zealous and effective ally in congressional efforts to promote and simplify the use of evictions as the primary weapon in the war against drugs in public housing.<sup>5</sup>

For Congress, focusing on evictions as a cure-all for troubled public housing complexes is politically inviting. Members of Congress can take a "tough" stand on drugs, seemingly at no direct cost to the taxpayer. Closer scrutiny, however, reveals that the eviction policy provides merely a cosmetic fix and tough rhetoric in an area where only substantial and well-targeted resources can be effective. While few would question a statute giving PHAs authority to evict drug dealers, the drug-related eviction provision, as currently written and implemented, goes much further. Well-intentioned though it may be, the provision is unwise, unjust, unnecessary and insufficient. It is unwise, because it conflicts with other important housing and public welfare goals; unjust, in its potentially arbitrary enforcement and its vicarious punishment of innocent family members; unnecessary, in that the goals of the policy could be met through more appropriate, less arbitrary means; and insufficient, because it cannot, on its own, meet the overwhelming and complex crises facing beleaguered public housing developments.

Section I of this Current Topic reviews the extent of the drug and crime problems plaguing public housing complexes, and traces recent congressional and administrative action to combat these problems. Section II analyzes the legal and policy shortcomings of the current drug eviction policy, focusing on the problems of standardless enforcement, vicarious liability, and excessive punishment with respect to evictions of drug dealers, drug users, and of their families. Section III proposes changes in statutes, regulations, and spending priorities that would maximize the benefit and minimize the harm of drug-related evictions.

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4. See *infra* notes 28-32 and accompanying text.

5. See *infra* notes 26-35 and accompanying text.

## Drug-Related Evictions

### I. THE DRUG-RELATED ACTIVITY PROVISION

#### A. *The Extent of the Drug Problem in Public Housing*

Public housing complexes in urban areas throughout the nation face drug and crime problems that are difficult to overstate.<sup>6</sup> Many projects have become open and dangerous drug markets, where residents have become virtual prisoners to drug dealers and violence.<sup>7</sup> An April 1989, *Washington Post* article on drugs in the nation's capital painted a bleak picture:

At the Potomac Gardens public housing complex 12 blocks from the U.S. Capitol, a woman stuffs towels beneath her door to keep out the vapors from people smoking crack in the stairwell. . . . A heroin addict shoots dope into a vein in her groin, moments after telling reporters that she wants nothing more than to kick her addiction. A crack dealer with cold eyes twists the diamond ring on his pinkie finger and says he would not hesitate to kill to protect what is his. The lives of these people revolve around one of the city's most notorious, longstanding drug markets, where minor insults easily escalate to death. . . . Last month, before police moved in, crowds of up to 100 people bought and sold crack cocaine in the market day and night.<sup>8</sup>

In May 1989, the Subcommittee on Investigations of the Senate Committee on Governmental Affairs heard testimony from residents and officials of public housing. About the Rockwell Gardens development managed by the Chicago Public Housing Authority (CHA), resident Mildred Wortham testified: "The gangbangers and drug dealers have taken over. One of the local gangs runs the building. People are afraid to go in and out. . . . My oldest son was shot outside of my building a month ago. . . . [S]hooting is not uncommon where I live."<sup>9</sup> CHA chairman and executive director Vincent Lane concluded: "To me, an emergency is five homicides, a firebombing where a small child is injured, where children cannot use the playlot because they are afraid of being caught in the crossfire of gang activity. . . . Those are intolerable situations."<sup>10</sup>

Statistics confirm these anecdotal reports of violence in Chicago's public

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6. Of course, the severity of the drug problem differs among PHAs: "As you can imagine, the scope of the drug problem among the 3,300 public housing authorities across the country is varied. To a great extent, the magnitude of the problem is a reflection of the size of the metropolitan area and the size of the agency." *Drug Problem and Public Housing: Hearing Before the House Select Comm. on Narcotics Abuse and Control*, 101st Cong., 1st Sess. 142 (1989) [hereinafter *Narcotics Abuse Committee Hearing*] (written testimony of Richard Y. Nelson, Jr., executive director, National Association of Housing and Redevelopment Officials).

7. See, e.g., Bryson & Youmans, *Crime, Drugs, and Subsidized Housing*, 24 CLEARINGHOUSE REV. 435, 435 (1990).

8. Duke & Price, *At the Roots of the Violence: The Agony of Potomac Gardens*, Wash. Post, Apr. 2, 1989, at A1.

9. *Investigations Subcommittee Hearing*, supra note 2, at 33.

10. Ifill, *Public Housing Residents Describe 'Emergency': Drugs, Gangs Plague Areas*, Hill Panel Told, Wash. Post, May 11, 1989, at A6; See also *Drug Hearing*, supra note 2, at 108-10 (statement of Vincent Lane).

housing. For instance, in 1988 an estimated 7,000 serious crimes—an average of 19 per day—were reportedly committed on public housing grounds.<sup>11</sup> The rate of violent crimes per 1000 residents in certain Chicago public housing developments is reported to be as high as four times the average for the rest of the city, and almost fifteen times the national average.<sup>12</sup> Data from the New York Housing Authority also reflect a disturbing increase in violence incidents. Murders on public housing grounds in New York City tripled from 66 in 1985 to 201 in 1988, while drug arrests in public housing increased from 5,760 in 1986 to 9,763 in 1988.<sup>13</sup> New York City public housing, according to one resident “is hell. My kids are always stepping on crack vials and syringes. In the 11 years I’ve lived here, I’ve never lived like this.”<sup>14</sup>

### *B. Congressional Response to the Problem*

With the official recognition in 1988 that “the Federal Government has a duty to provide public housing that is decent, safe, and free from illegal drugs; [and that] public housing projects in many areas suffer from rampant drug-related crime,”<sup>15</sup> Congress explicitly took the “war on drugs” to public housing. Significantly, Congress enacted the Anti-Drug Abuse Act of 1988 amidst anti-drug hysteria and pre-campaign paranoia, an atmosphere in which careful consideration of the merits of the legislation gave way to intense election year pressures. As Senator Dan Evans acknowledged, “[W]hat [Congress was] trying to do in this election year . . . [was] to prove that we are tougher than we ever have been on drugs.”<sup>16</sup> Senator Pete Wilson, a proponent of the bill, even admitted “there is an election year sensitivity on the part of my colleagues and I am not above exploiting it.”<sup>17</sup>

This mood of drug intolerance, combined with scant funds for new domestic programs, inspired an election-year Congress to focus its energies on punishing individuals, rather than on addressing the underlying causes of poverty and drug abuse. Although Congress authorized limited funds to subsidize creative programs to halt drug use and trade, the linchpin of the

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11. *Drug Hearing*, *supra* note 2, at 108 (statement of Vincent Lane).

12. *Id.* at 118. In an attachment to his prepared statement, Vincent Lane cited a *Newsweek* article that reported a national average of 6.2 serious crimes per 1,000 residents, a Chicago average of 22.4, and an average in the Stateway Gardens public housing project of 89.9. *Id.*

13. Richardson, *supra* note 1, at 6. *But see Investigations Subcommittee Hearing*, *supra* note 2, at 55 (testimony of Manuel Quintana, general counsel for the New York City Housing Authority that “[t]he crime rate, as it affects our residents in public housing, is about half of the regular rate for the city.”).

14. Richardson, *supra* note 1, at 6 (statement of Sheila Brown).

15. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, §5122, 102 Stat. 4181, 4301 (1988) (amended 1990).

16. Note, “User Accountability” Provisions in the Anti-Drug Abuse Act of 1988: Assaulting Civil Liberties in the War on Drugs, 40 HASTINGS L.J. 1223, 1228 (1989) (quoting 134 CONG. REC. S15,970 (daily ed. Oct. 14, 1988)).

17. *Id.* at 1228 (citing S.F. Chron., Oct. 15, 1988, at 1).

## Drug-Related Evictions

public housing program in the Anti-Drug Abuse Act of 1988<sup>18</sup> was a provision to expand the use of evictions against individuals involved in drug-related activity.

The changes effected by the Anti-Drug Abuse Act involved the federal statutory requirements for leases between PHAs and tenants.<sup>19</sup> These "lease and grievance" provisions provide a broad outline of tenant rights and responsibilities, which are spelled out more specifically by HUD regulations.<sup>20</sup> PHAs are required to write leases that conform to these statutory and regulatory guidelines. Prior to 1988, the "lease and grievance" statute made no reference to drug-related activity. Although PHAs previously possessed various means for evicting drug traffickers,<sup>21</sup> those powers were largely discretionary, and PHAs were constrained by federally mandated due process protections afforded public housing tenants.<sup>22</sup>

The Anti-Drug Abuse Act of 1988 added to the statutory lease and grievance guidelines a new requirement that PHAs include in their leases a provision stating that "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, and such criminal activity shall be cause for termination of tenancy."<sup>23</sup> The statute defined "drug-related criminal activity" as "the illegal manufacture, sale, distribution, use, or possession with intent to manufacture,

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18. Anti-Drug Abuse Act § 5101.

19. 42 U.S.C. § 1437d(k),(l).

20. See Admission to, and Occupancy of, Public Housing, 24 C.F.R. § 960 (1990); Lease and Grievance Procedures, 24 C.F.R. § 966 (1990).

21. For instance, PHAs could (and still can) evict drug traffickers for violation of the tenant obligation to "refrain from illegal or other activity which impairs the physical or social environment of the project." 24 C.F.R. § 966.4(f)(12) (1990).

22. Prior to 1989, when a PHA chose to evict an individual for any reason, including drug-related activities, the PHA was required to provide an informal administrative or "grievance" hearing, before official action to evict could take place in a state or local court. 42 U.S.C. 1437d(k) (1988). These pre-eviction grievance procedure could be waived only where the HUD Secretary determined that available state and local eviction hearings provide "the basic elements of due process." *Id.*

The right to a grievance procedure prior to an adverse action by the PHA was developed in accordance with court decisions requiring due process of law in terminating federal benefits. See *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Escalera v. New York City Hous. Auth.*, 425 F.2d 853 (2d Cir.) *cert. denied*, 400 U.S. 853 (1970). According to David Bryson and Roberta Youmans, attorneys for the National Housing Law Program, the administrative grievance procedure "is vital because of the limited access that public housing tenants have to legal services. It is the one device that enables tenants who cannot secure counsel to be heard in an informal setting with representation by a paralegal or another tenant, or pro [se]." Bryson & Youmans, *supra* note 7, at 440.

23. Anti-Drug Abuse Act § 5101. In 1990, Congress again amended § 5101, this time to clarify that only criminal activity "that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants" is a cause for termination of tenancy. However, the amended provision still states explicitly that "any drug-related activity on or near [public housing] premises . . . shall be cause for termination of tenancy . . ." (emphasis added). Cranston-Gonzales Affordable Housing Act of 1990, Pub. L. No. 101-625, § 504, 1990 U.S. CODE CONG. & ADMIN. NEWS (104 Stat.) 4085, 4185 (to be codified at 42 U.S.C. § 1437d(l)(5)) (amending Anti-Drug Abuse Act, 42 U.S.C. § 1437d(l)(5)). For discussion, see *infra*, note 52 and accompanying text.

sell, distribute or use of a controlled substance."<sup>24</sup>

The degree to which the drug-related eviction provision changed the practices of local PHAs is somewhat unclear, since PHAs already possessed the means to evict. The 1988 provision, some might argue, did not confer on PHAs any new rights. The drug-related eviction provision, however, did encourage PHAs to move beyond evicting resident drug dealers who posed a direct threat to the safety of public housing. The provision gave federal sanction to the eviction of not only drug dealers, but also drug users and even the relatives and guests of individuals involved with drugs in any way. By *mandating* that the expansive drug-related eviction provision be included in all PHA leases, Congress expressed a clear intent not merely to allow, but to promote evictions from public housing on the basis of virtually any connection to drugs.

Administrative action to curtail the availability of grievance hearings for tenants facing evictions intensified the impact of the drug-related eviction provision.<sup>25</sup> In March 1989, Secretary Kemp began using a provision of the "lease and grievance" statute that allows HUD to waive the grievance procedures requirement for jurisdictions where state and local courts provide due process protection that HUD deemed adequate.<sup>26</sup> HUD granted waivers to thirty states in 1989, and ten more in 1990.<sup>27</sup> Freed from the time-consuming administrative requirements of grievance procedures, and given the explicit right to evict for *any* drug-related activity, PHAs gained significant new latitude in evicting tenants.<sup>28</sup>

24. Anti-Drug Abuse Act § 5101.

25. Civil liberties advocates have criticized recent congressional and administrative attempts to expedite drug-related evictions by restricting access to grievance procedures. *See, e.g., Drug Hearing, supra* note 2, at 8-9 (statement of Wade Henderson, associate director, American Civil Liberties Union); *see also* National Tenants' Org. v. Kemp, No. 88-3134 (D.D.C. June 20, 1989) (motion for preliminary injunction denied), *emergency appeal denied*, No. 89-5175 (D.C. Cir. July 7, 1989) (injunction pending appeal denied) *cited in* Bryson & Youmans, *supra* note 7, at 441 (challenging the sufficiency of process provided by then-current statutes and administrative decisions). This paper, however, does not enter the fray over the constitutional adequacy of the process granted to evictees. Instead, it argues that, even if current statutes and regulations are presumed to provide adequate procedural protections, the drug-related eviction provision constitutes poor public policy.

26. *See supra*, note 22; Kemp, *Drug-Free Housing for the Nation's Poor*, Wash. Post, Apr. 17, 1989, at A19. Kemp has placed great emphasis on evictions as a means of improving public housing. *See, e.g., HUD Programs and Policies, with Secretary Jack Kemp: Hearing Before the Comm. on Banking, Finance, and Urban Affairs*, 101st Cong., 1st Sess. 44 (1989) (statement of Jack Kemp) ("I want you to know that I place [expediting evictions] as high on my list of priorities as anything I am doing at HUD.")

27. Bryson & Youmans, *supra* note 7, at 440-41.

28. Recent Congressional action has clarified the role and boundaries of HUD in making waiver determinations. The Cranston-Gonzales Affordable Housing Act of 1990, provides that:

For any grievance concerning an eviction . . . that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the [PHA] or any drug-related criminal activity on or near such premises, the agency may (A) establish an expedited grievance procedure as the Secretary shall provide . . . or (B) exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process

## Drug-Related Evictions

The congressional and administrative intent to promote and expedite the evictions of drug dealers, users, and their families was temporarily derailed by the passage of section 404 of the Supplemental Appropriations Act of 1989.<sup>29</sup> Unbeknownst to most members of Congress,<sup>30</sup> that section stated that the Secretary of HUD could exercise his authority to waive for a state or locality the pre-eviction grievance procedure only “as long as evictions of a household member involved in drug-related criminal activity shall not affect the right of any other household member who is not involved in such activity to continue tenancy.”<sup>31</sup>

If Congressional intent to allow the eviction of innocent family members had not been made clear by the passage of the drug-related eviction provision in the Anti-Drug Abuse Act of 1988, that failure was soon rectified. Through a noncontroversial provision of the Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 1990, Congress repealed section 404, only four months after its enactment.<sup>32</sup>

The federal government’s punitive response to the public housing drug crisis has not been limited to the drug-related eviction provision and expedited eviction procedures. For example, the Legal Services Corporation has taken steps to limit the availability of legal representation for eviction targets,<sup>33</sup> and

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(which the Secretary shall establish) . . . (emphasis added).

Pub. L. No. 101-625, §503, 1990 U.S. CODE CONG. & ADMIN. NEWS (104 Stat.) 4079, 4184 (to be codified at 42 U.S.C. § 1437d(k)) (amending 42 U.S.C. § 1437d(k)). Thus, under current law, once a waiver is granted, a PHA can deny grievance procedures to individuals involved in non-drug-related activity that threatens the health and safety of the project, and to those linked to any drug-related activity, whether or not the activity itself poses a threat to the public housing community. Tenants who face evictions for such reasons as nonpayment of rent will have access to grievance procedures.

29. Pub. L. No. 101-45, 1989 U.S. CODE CONG. & ADMIN. NEWS (103 Stat.) 97, 128 (1989).

30. The story of how section 404 came to be included in the Supplemental Appropriations Act is not clear. Senator Alphonse D’Amato of New York, who led the fight to repeal the provision, referred to it merely as “an error that was made in the adoption” of the legislation. 135 CONG. REC. S8165-66 (daily ed. July 19, 1989) (statement of Sen. D’Amato).

31. Supplemental Appropriations Act, § 404(b).

32. Pub. L. No. 101-144, 1989 U.S. CODE CONG. & ADMIN. NEWS (103 Stat.) 839, 853 (1989). Congress subsequently reaffirmed its support of holding families “vicariously liable” for the actions of other family members in the Cranston-Gonzales Affordable Housing Act of 1990, § 504.

33. The Legal Services Corporation, at the suggestion of Secretary Kemp, has adopted a resolution stating that:

the Board of Directors of the Legal Services Corporation, urges all legal services grantees to adopt immediately policies that discourage representation of persons involved in drug-related activity in drug-related eviction and other housing proceedings involving publicly funded housing; . . . [and] urges Congress to seek a legislative remedy which would prohibit LSC grantees from representing [public housing tenants] involved in drug-related activities . . .

Memorandum from LSC Board Chairman to Program Boards and Directors (June 29, 1990), *reprinted in* 24 CLEARINGHOUSE REV. 513 (1990).

Without access to either an informal grievance procedure or legal counsel in an adversary eviction hearing, a successful eviction is almost a certainty: “The lack of legal representation for the tenant . . . almost guarantees a tenant loss.” *Drug Hearing, supra* note 2, at 84 (statement of Wade Henderson).

HUD has taken advantage of a provision in the Anti-Drug Abuse Act that permits federal agents to seize leases of public housing units believed to be used for drug manufacturing or dealing.<sup>34</sup> These actions illustrate a federal proclivity for addressing the drug crisis by increasing penalties and reducing procedural protections rather than by addressing the root causes of the problem.

The congressional and administrative ardor for "tough" and inexpensive anti-drug strategies has greatly surpassed the government's willingness to invest adequate funds in more comprehensive and compassionate programs designed to rid public housing of drugs. Congress has authorized spending for anti-drug programs for public housing, but as Section III C of this Current Topic explains, even with significant annual increases, these funding levels are inadequate.<sup>35</sup> Ultimately, the current congressional penchant for removing "bad" tenants, while doing little to improve the safety and quality of the housing complexes, will prove counterproductive to the goal of creating safe and decent public housing.

## II. "DRUG-RELATED" EVICTIONS: LEGAL AND POLICY ANALYSIS

Although well-intentioned, the drug-related eviction provision adds little to the fight against drugs in public housing that is not already provided in preexisting sources of eviction authority available to PHAs. Moreover, without responsible implementation guidelines, the provision threatens arbitrary enforcement and unwarranted punishment of innocent family members. This section responds to the primary rationales offered in support of the eviction solution and identifies the legal and policy shortcomings of the drug-related eviction provision as it applies to alleged drug dealers, drug users, and innocent relatives and guests of these individuals.

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34. Anti-Drug Abuse Act § 5101. On June 25, 1990, Secretary Kemp and Attorney General Richard Thornburgh announced that, under the Public Housing Asset Forfeiture Project, a cooperative effort by HUD and the Department of Justice, U.S. Attorneys and public housing agencies would begin seizing the leases of "known drug criminals" in more than 20 cities across the country. *HUD and Justice Announce Strike Against Drug Dealers in Public Housing*, HUD Press Release, June 25, 1990. The forfeitures, as originally designed, would have resulted in immediate eviction without notice to the tenants. However, a Virginia tenants' organization successfully obtained a nationwide injunction against HUD and the Department of Justice, prohibiting them from effecting evictions without proper notice and process. *Richmond Tenants' Org. v. Kemp*, No. 90-00346-R (E.D. Va. June 20, 1990) cited in Bryson & Youmans, *supra* note 7, at 443. The forfeiture program has continued, although tenants are now given notice of the seizure. LaFraniere, *U.S. Alters Plan to Evict Drug Dealers*, Wash. Post, June 26, 1990, at A5.

35. The Anti-Drug Abuse Act created a pilot program through which the HUD Secretary can make grants to assist local PHAs in creating programs to "eliminat[e] drug-related crime in public housing projects." Anti-Drug Abuse Act § 5123. In fiscal year 1989, \$8.2 million was appropriated for these programs, while \$50 million will be expended in fiscal year 1990, and \$150 million in 1991. Pub. L. No. 101-145, 103 Stat. 97, 112 (1989); Pub. L. No. 101-144, 103 Stat. 839, 845 (1990); Pub. L. No. 101-507, 104 Stat. 1351, 1363 (1991). See also *infra* notes 117-118, and accompanying text.

## Drug-Related Evictions

### *A. Rationales for the Eviction Solution: Exposing the Half-Truths*

Eviction is an essential tool for any landlord—and every PHA. Although public housing is often the housing of last resort for many individuals, continued residence is not, and should not be, guaranteed regardless of a tenant's behavior. Such a guarantee would virtually ensure the continued deterioration of public housing. Policies relying on eviction as a panacea for the problem of drugs in public housing, however, are doomed to failure.

Proponents of “tough” eviction policies rely on four main themes: (1) the rights of law-abiding tenants to safe housing outweigh the rights of drug users and dealers; (2) law-abiding tenants support the use of evictions; (3) undeserving tenants such as drug dealers and users should not be subsidized in public housing at the same time that PHAs maintain long waiting lists for apartments; and (4) the threat of evicting an entire family discourages drug-related activity and encourages tenants to control the behavior of family members. While each of these statements contains some truth, the drug-related eviction provision alone does not address their concerns.

1. *Rights of law-abiding tenants.* Many drug-related eviction proponents believe that, as CHA chairman and executive director Vincent Lane put it, “The time is coming . . . where the ACLU and everyone else is going to have to recognize that the majority of residents in public housing have rights, as well as the wrongdoers.”<sup>36</sup> Without question, law-abiding tenants do have a fundamental interest in safe housing. Evicting the family of a drug user, however, does little to improve the safety, quality, or security of a public housing complex. This is particularly true since the vast majority of drug-related crimes leading to arrests on public housing grounds are committed by non-residents. In San Francisco, for example, more than eighty-five percent of arrests on public housing grounds involve non-residents.<sup>37</sup>

[T]he complete focus on evicting public housing tenants fails to address the fact that most of the drug related activity in public housing is not conducted by public housing tenants but by outsiders. . . . Evicting innocent families will not stop a drug dealer who lives outside of public housing from coming in and selling to public housing tenants.<sup>38</sup>

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36. Ifill, *Cities Seek to Emulate Alexandria on Evictions*, Wash. Post, Mar. 30, 1989, at A25. See also Kemp, *supra* note 26, at A19; Graham, *Drug-worm Residents Back Eviction Rule*, Boston Globe, Apr. 22, 1989, at 1.

37. Torry and Ifill, *HUD Drug Ruling is Played Down; Streamlining Eviction Process May Not Aid Cities Much, Experts Say*, Wash. Post, Apr. 1, 1989, at A4. See also *Narcotics Abuse Committee Hearing, supra* note 6, at 6 (testimony of Secretary Kemp). Statistics from other cities corroborate this observation. For example, 80 to 85% of arrests on public housing grounds in New Haven involve non-residents. Interview with David Echols, Executive Director of the New Haven Public Housing Authority, Apr. 23, 1990. Similarly, approximately 80% of the crime in Chicago's public housing has been attributed to unauthorized guests and non-residents. *Drug Hearing, supra* note 2, at 110 (statement of Vincent Lane).

38. *Narcotics Abuse Committee Hearing, supra* note 6, at 158 (statement of Nellie Reynolds, president, Resident Advisory Board of the city of Philadelphia).

Thus, the first rationale for evictions is only a half-truth, one that establishes a spurious tradeoff between the rights of lawful tenants and drug-dealing tenants. In truth, most dealers are not tenants, and, as later sections will explain, many evictees are not dealers.

2. *Tenant support for evictions.* Tenant support for "tough" eviction policies is well-documented.<sup>39</sup> Former Mayor James Moran of Alexandria, Virginia, a particularly visible and vocal supporter of a tough federal eviction policy, stated it succinctly: "If it were up to [the tenants], they'd have public executions in the courtyard."<sup>40</sup>

Although many tenants *do* support HUD and PHA actions to rid their projects of drug dealers, the same tenants would most likely also agree with proposals requiring PHAs to provide additional support services, renovate vacant units and provide twenty-four hour foot patrols. Unfortunately, tenants are rarely offered these alternative strategies for cleaning up their neighborhoods. As Nellie Reynolds, president of the Resident Advisory Board of the city of Philadelphia put it, "While there has been a tremendous amount of rhetoric regarding the need to evict public housing tenants for drug abuse, there has been an equal amount of silence on many issues which have a direct bearing on crime and drug related activities in public housing."<sup>41</sup> Furthermore, even though tenants may generally agree with "tough" eviction policies, numerous tenant organizations have challenged several aspects of the eviction process itself, suggesting that tenants are concerned about the consequences of an overreaching eviction policy.<sup>42</sup>

3. *Replacing "undeserving" tenants.* Few would argue that drug dealers are more deserving of public housing than are law-abiding citizens in need of housing assistance. Indeed there is some appeal to the contention that, as one HUD official noted, "[T]here are so many thousands of honest, needy people on waiting lists that we shouldn't be subsidizing those who cause a problem—those who are dealing drugs out of their apartments. . . ."<sup>43</sup>

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39. See, e.g., Marquardt, *Running the Drug Dealers Out of Public Housing*, N.Y. Times, Oct. 2, 1989, § 8, at 1 ("We know that tenant groups and tenant organizations are overwhelmingly in support of what we're doing.") (quoting HUD general counsel Frank Keating); *Housing Hearing*, *supra* note 2, at 44 (statement of Richard Bowers, director, Jacksonville Department of Housing and Urban Development); and *Investigations Subcommittee Hearing*, *supra* note 2, at 41 (statement of Edith Grigsby, resident of Lincoln Heights, Washington, D.C.). It is not clear that this tenant support extends to the eviction of innocent family members or drug users.

40. Leo, *Chipping Away at Civil Liberties*, U.S. News & World Rep., June 26, 1989, at 61.

41. *Narcotics Abuse Committee Hearing*, *supra* note 6, at 159. Ms. Reynolds listed drug rehabilitation, security, employment, and public housing maintenance programs as examples of such neglected issues.

42. See, e.g., *National Tenants' Org. v. Kemp*, No. 88-3134 (D.D.C. June 20, 1989) (motion for preliminary injunction denied), *emergency appeal denied*, No. 89-5175 (D.C. Cir. July 7, 1989) (injunction pending appeal denied) *cited in* Bryson & Youmans, *supra* note 7, at 441; *Riverside Tenants' Ass'n v. Kemp*, No. 89-545 (D. Conn. Feb. 8, 1990) (preliminary injunction denied) *cited in* Bryson & Youmans, *supra* note 7, at 441.

43. Stein, *Berkeley Uses No-Business Law to Evict Dealers*, L.A. Times, July 9, 1989, pt. I, at 3 (statement of Dirk Murphy of HUD's Regional Office in San Francisco). Similarly, former Alexandria

## Drug-Related Evictions

The “more deserving tenant” rationale, however, is flawed in much the same way as the first rationale. When entire families are evicted because of the actions of one family member, the evictees are often themselves law-abiding and “deserving” tenants. In addition, there is no guarantee that the new “more deserving” tenants will not be drug dealers.

As for evicting drug *users*, explicitly allowed under the drug-related eviction provision, the “undeserving” label is inappropriate, and eviction is counterproductive. Indeed, the most vulnerable members of our society are both most susceptible to drug use and most in need of public assistance.<sup>44</sup> Excluding these individuals from public housing might advance the goal of “cleaning up public housing,” but only at the cost of abandoning the overall mission of public housing: providing decent and affordable housing to low-income Americans.

4. *Holding families responsible.* Many eviction proponents regard family responsibility as a necessary and important component of an effective anti-drug policy. As one mayor asserted, “We want tenants to understand that if they don’t control members of their families, they are going to lose their housing.”<sup>45</sup> This rationale is perhaps best explained by MaryAnn Russ, director of the Wilmington (Delaware) Housing Authority: “The head of household is responsible for family members . . . . The message is, don’t risk your house; let them fend for themselves. We believe the family has more control than we do . . . .”<sup>46</sup>

Administrative effectiveness has also been cited as a reason for excluding the entire family:

A Housing Authority study shows that excluded family members rarely stay excluded and that there is no way the Housing Authority, or any landlord, can prevent their return. Worse, the drug crack is a cottage industry, manufactured and sold from the home, creating the infamous crack house. We cannot close down these criminal operations by excluding one or two tenants.<sup>47</sup>

Despite these assertions, the legality of holding entire families responsible for the action of individual members is highly questionable.<sup>48</sup> Moreover, as a policy matter, the marginal benefit gained by evicting a family must be

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mayor James Moran noted, “We have hundreds of families who are equally or more deserving of housing. Public housing is not a right; it is a reward that comes with responsibilities.” Gonzales, *Kemp Scores Points for Drug-free Housing*, Wash. Times, Dec. 12, 1989, at B5.

44. As Representative Bruce Vento of Minnesota argued during consideration of the McCollum Amendment to the Anti-Drug Abuse Act of 1988, which gave judges discretion to deny federal benefits for one year to individuals convicted of drug use or possession, and for five years for drug dealing, “[The amendment] suspend[s] Federal aid for the people who need that very assistance to defeat the vicious circle of drug abuse[.]” 134 CONG. REC. H7938 (daily ed. Sept. 22, 1988).

45. Jenkins, *Alexandria Starts Drug Evictions*, Wash. Post, Apr. 13, 1989, at B1 (statement of Former Alexandria mayor James Moran).

46. Raspberry, . . . *Even With Their Homes?*, Wash. Post, May 9, 1989, at A23.

47. Popolizio, *Drug Evictions Can’t Be Halfhearted Measures*, N.Y. Times, Aug. 11, 1989, at A26 (letter to the editor from Emanuel Popolizio, chairman of the New York City Housing Authority).

48. See *infra* notes 77-85 and accompanying text.

measured against the substantial human and monetary costs of the homelessness that often results. New Haven PHA director David Echols has warned of the negative consequences of holding entire families responsible for the illegal behavior of one family member: "All I hear from HUD is 'evict, evict, evict.' But eviction without any treatment or services means the tenants will be homeless, and they'll go to a shelter. If the shelter costs more, then the state will be right back here, asking me to house them."<sup>49</sup>

The case for evictions is convincing to the extent that evictions, when used properly, are a necessary management tool. Every PHA should possess the power to evict individuals who pose a real danger to public housing complexes and their inhabitants. However, each rationale offered in support of drug-related evictions is flawed. As the following subsections demonstrate, excessive reliance on evictions will *not* itself provide decent public housing, but *will* endanger the rights and interests of many "deserving" tenants.

### *B. Fundamental Flaws in the Eviction Provision*

Drug dealers have no "right" to live in public housing. Nonetheless, this axiom does not justify every possible means of evicting them from public housing. The expansiveness of the drug-related eviction provision raises concerns about the breadth of PHA discretion and authority in evicting drug dealers—concerns that apply even more gravely to drug users and innocent family members.

1. *Evicting for the wrong reason.* Congress, in its debates over eviction issues, has rarely examined explicitly the "first principles" underlying the eviction policy. Policymakers have accepted as a given that "drug-related activity," in and of itself, should be grounds for eviction. That assumption, however, withers under close scrutiny.

Evicting individuals who operate a crack house in a public housing unit or who deal drugs on public housing grounds is of unquestioned legitimacy and importance. Clearly, such behavior poses an unacceptable threat to the health and safety of public housing tenants and employees. However, it is precisely because of that threat, and not merely because of the drug-related or criminal nature of the activity, that the perpetrators should be evicted.

Assuming that the goal of the eviction policy is to improve public housing conditions rather than to punish individuals not yet convicted or even indicted for their behavior, there is no intrinsic value in evicting under the *drug-related* eviction provision instead of a *housing-related* provisions of a PHA lease. In many cases, the offending criminal behavior can easily be cast as a lease

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49. Interview with David Echols, *supra* note 37.

## Drug-Related Evictions

infraction. For example, rather than using the drug-related eviction provision to evict a dealer who uses her unit as a crack house, the PHA could instead file for eviction on the grounds that the individual's activities threaten the health and safety of public housing tenants and employees. The PHA could also evict for violations of other terms of the lease, such as the HUD-mandated condition that tenants "use the premises solely as a private dwelling . . . [and not] for any other purpose."<sup>50</sup> Similarly, an individual engaged in drug-related activity could be excluded from public housing because her income exceeded the PHA's eligibility standards.

An analogy may illuminate why the drug-related eviction provision is unrelated to its underlying purpose of securing, maintaining, and improving public housing developments. If an individual is known to engage in illegal gambling miles away from the public housing complex in which he lives, it would seem arbitrary and inappropriate to evict him on the basis of that activity. Policing the personal life of the gambler seems an improper role for a PHA. If, however, his gambling losses make payment of his rent impossible, or if he conducts a gambling enterprise from his public housing unit in violation of his lease, or in a way that endangers other residents, the PHA clearly has a legitimate interest in evicting him.

Statutory provisions recently adopted by Congress in the Cranston-Gonzales Affordable Housing Act of 1990 (Cranston-Gonzalez Act) hint at a more comprehensive and effective way to standardize eviction criteria and promote reasoned discretion in PHA decisions. In that legislation, Congress amended the statutory "lease and grievance" provisions, which, under the 1988 drug-related eviction provision, had required PHA leases to include as cause for eviction any "criminal activity, including drug-related criminal activity, on or near public housing premises."<sup>51</sup> Under the Cranston-Gonzales Act amendment, PHAs may evict individuals for non-drug-related criminal activity *only* if it "threatens the health and safety or right to peaceful enjoyment of the premises."<sup>52</sup> In making this change, Congress explicitly refused to similarly restrict evictions for *drug-related* activity.<sup>53</sup> Prohibiting activity that threatens the health and safety of tenants clearly falls within the mission and duties of PHAs. Amending the statute to allow eviction only for drug-related activity that threatens the health and safety of residents and employees would consider-

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50. Obligations of the Family, 24 C.F.R. § 966.4(f)(3) (1990). Berkeley, California, has begun using this tactic in its Section 8 housing program. Stein, *supra* note 43, at 3.

51. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 5101, 102 Stat. 4181, 4300 (1988) (amended 1990).

52. Cranston-Gonzales Affordable Housing Act of 1990, Pub. L. No. 101-625, § 504, 1990 U.S. CODE CONG. & ADMIN. NEWS (104 Stat.) 4085, 4185 (to be codified at 42 U.S.C. § 1437d(l)(5)) (amending Anti-Drug Abuse Act, 42 U.S.C. § 1437d(l)(5)). PHAs may use approved expedited procedure for individuals who violate this provision. See *supra* note 28.

53. Cranston-Gonzales Act § 504.

ably reduce the potential for arbitrariness in eviction decisions, particularly where drug users, as opposed to drug dealers, are involved.<sup>54</sup>

Requiring PHAs to articulate housing-related reasons for each eviction is more than an exercise in semantics. Rather, such a requirement would create implicit standards to circumscribe abuses of discretion and unjust eviction decisions. In addition, the existence of these alternative eviction criteria makes the overinclusive drug-related eviction provision unnecessary.

2. *Improper delegation of authority to PHAs.* By allowing PHAs to evict individuals for drug-related activity—whether or not that activity poses any threat to public housing or its residents—Congress has delegated to PHAs significant power and discretion. Because the consequences of eviction are severe and the possibility of arbitrary enforcement great, Congress's decision must be closely examined.<sup>55</sup>

The withdrawal of federal benefits does not constitute criminal "punishment" as defined by law. Nonetheless, drug-related evictions have a distinctly criminal flavor.<sup>56</sup> Both evictions and prosecutions are initiated after alleged criminal activity, and the penalties for each—potential homelessness in the case of an eviction—can be harsh. Indeed, especially where drug use is involved,<sup>57</sup> the penalty of eviction may be more severe than the penalty that the criminal justice system would impose for the same crime. The criminal defendant, however, is afforded numerous constitutional protections that are unavailable to housing tenants, such as the right to a jury trial and the right to counsel. Thus, in the context of an overworked criminal system, some might view quick evictions as a more efficient way of dispensing "punishment" for drug-related activity. The lower standard of proof required in an eviction proceeding—"preponderance of the evidence," rather than the "beyond a reasonable doubt" standard required in criminal trials—provides an additional incentive to substitute evictions for the criminal justice system.

The power to decide who shall be punished for drug-related activity inappropriately resides in the hands of local PHAs. Our legislatures have vested in the prosecutorial system of the Attorney General, the Department of Justice, and their state and local counterparts the responsibility for prosecuting

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54. See *infra* text accompanying notes 61-70 for a fuller discussion about eviction policies targeting drug users.

55. Wade Henderson, associate director of the American Civil Liberties Union Washington D.C. office testified about the severe consequences of evictions from public housing: "The economic characteristics of most public housing residents suggests [sic] that the next stop after evictions for many of these persons will be a homeless shelter, if they are lucky." *Drug Hearing*, *supra* note 2, at 79.

56. Some local officials support the view of eviction as punishment for illegal behavior. In the words of then-mayor of Alexandria James Moran: "There has to be a belief that when people violate the law, the government will act in an efficient and rational manner. [Eviction] is direct, punishing and appropriate." Jenkins, *Alexandria Conducts 1st Drug Eviction*, Wash. Post, July 14, 1989, at C1.

57. For discussion regarding the discrepancy between the crime of drug use and the punishment of eviction, see *infra* note 68.

## Drug-Related Evictions

violations of criminal law. Numerous legal, political, and societal norms inform and limit the decisions and actions of those involved in criminal prosecutions.

PHAs, by contrast, have a substantially different mission. They were not created for the purpose of enforcing criminal laws, nor are there adequate limits on the exercise of their power to evict on the basis of criminal behavior. As a result, even assuming that most PHAs have only the best intentions, eviction decisions could be made in an arbitrary and capricious manner. Indeed, the drug-related eviction provision vests in PHAs decision-making powers analogous to a prosecutor's decision concerning whom to indict and prosecute for violations of the nation's drug laws. Each local PHA is left to its own discretion on such questions as whether drug users and innocent family members should be treated the same as drug dealers, or whether one minor violation of the lease provisions is sufficient for eviction.

An analysis by National Housing Law Project (NHLP) attorneys gives credence to these misgivings:

PHAs and landlords, reacting sometimes to the desperate situations they face in their developments, but more often to the horrors happening elsewhere as portrayed by the media and HUD, embark on eviction actions at the slightest mention of a connection between a tenant and drugs. There is a very common pattern of PHAs reviewing newspaper stories for reports of incidents at their projects and sending tenants eviction notices with no further investigation. Alternatively, PHAs or landlords have been known to initiate eviction actions after reviewing police reports for situations where the arrested party has listed a subsidized apartment as his or her address.<sup>58</sup>

The unrestricted discretion bestowed on PHAs by the drug-related eviction provision also raises questions of racial discrimination. Representative Henry Gonzales, chairman of the Housing Subcommittee of the House Banking, Finance, and Urban Affairs Committee voiced his concern about the potentially invidious use of this discretion:

[W]e've got to remember that we've still got areas in our country where administrators of public housing are not exempt from some of the residual prejudices and discriminations that we have so long fought against, and would use any pretext to eject families that they felt they didn't want to have in their projects.<sup>59</sup>

In testimony before a Senate Committee, Andres Garcia, director of the Buffalo Division of Substance Abuse Service, astutely summarized the danger of vesting PHAs with unrestricted discretion in drug-related evictions: "[W]e are . . . leaving this battle against drugs to the executive directors at the local level, and that is wrong because an executive director cannot be a landlord, a law enforcement official, and a drug expert. . . ."<sup>60</sup>

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58. Bryson & Youmans, *supra* note 7, at 440.

59. House Committee on Banking, *reported* by Federal News Service, Aug. 14, 1989 (in "In the News" Section) (statement of House Banking chairman Henry Gonzales).

60. *Drug Hearing*, *supra* note 2, at 25.

*C. Evicting for Use and Possession.*

Although the majority of rhetoric regarding drug evictions has centered around ousting drug *dealers* from public housing, the Anti-Drug Abuse Act of 1988 explicitly provides for the eviction of drug *users* and *possessors*.<sup>61</sup> Facing a seemingly insatiable demand for tough rhetoric and draconian sentences for drug-related activities, public officials are increasingly speaking the language of zero-tolerance for the drug user.<sup>62</sup>

The San Diego Housing Commission (SDHC), for example, has established a streamlined procedure—approved by HUD—that can remove a tenant in as few as three days. According to SDHC officials, the new policy “sends a message: We’re not going to tolerate the slightest degree of drugs on the property.”<sup>63</sup> Executive Director Evan Becker explains, “We don’t care if you’re eventually convicted or not. . . . If you had illegal substances in your unit, that’s enough under the lease for an eviction.”<sup>64</sup> Former Mayor of Washington, D.C., Marion Barry, also joined the crusade to evict drug users when he participated in a well-publicized raid of a crack house in May 1989: “We’re doing this to show that we’re going to clear crack users out of public housing. . . .”<sup>65</sup>

Although the congressional decision to allow and promote eviction of drugs users may be legal, as a policy it is unwise. At the core of the decision to punish users are assumptions—made by policymakers hungry to appear “tough on drugs”—that equate drug users with drug dealers. These assumptions must be questioned. Do we wish to impose the same penalty on drug users that we impose on drug dealers? Do we harbor toward them the same anger and contempt? Are we prepared to visit homelessness and disruption upon a family for whom drug addiction is already a devastating problem? In short, do we truly believe that addiction or drug use alone justifies eviction?<sup>66</sup>

The lack of guidelines for implementation of the drug-related eviction

61. For purposes of this Current Topic, the term “drug use” includes drug possession that is not related to drug trafficking.

62. See Note, *supra* note 16, at 1227-29.

63. Bernstein, *Housing Panel Speeds Up Eviction Process; Rules to Prevent Drug Use in Public Housing Stiffened*, L.A. Times, Sept. 21, 1989, pt. 2, at 2.

64. *Id.*

65. Spolar, *Site of Alleged Drug Activity Raided—Twice*, Wash. Post, May 12, 1989, at C5. Ironically, Barry himself was later convicted for cocaine possession.

66. In contemplating the answer to these questions, an historical warning about current anti-drug-user hysteria is warranted:

Reflecting on the earlier wave of drug intolerance [in America during the 1920s and 1930s], one cannot help but be concerned that the fear of drugs will again translate into the simple fear of the drug user and will be accompanied by draconian sentences and specious links between certain drugs and distrusted groups within society. . . .

## Drug-Related Evictions

provision gives PHAs tremendous leeway to evict drug users arbitrarily and unfairly. Because of the prevalence of drug abuse in public housing complexes, and because drug use is a more private, less detectable activity than dealing or manufacturing drugs, PHAs can hardly make decisions about whom to evict in anything but an arbitrary way. Evictions must be based in great part on anecdotal information and chance encounters between PHA officials and residents purchasing or using drugs. Needing to satisfy only a “preponderance of the evidence” standard, a PHA could rely on the testimony of unhappy, vengeful or racist neighbors to evict an entire family. Without guidelines, PHAs can evict entire families for even negligible infractions of the lease: if a child were trying drugs for the first time, or if a guest had used drugs while visiting the family. Likewise, families can be evicted in situations that seem egregiously unfair—for example, where the drug-using member of the family is on a waiting list for drug treatment.

Unlike drug dealing, drug use usually poses little direct threat to the health and safety of public housing complexes.<sup>67</sup> Because it serves no housing-related goals, the rationale underlying the eviction of drug users seems to be almost purely punishment. Consequently, PHAs’ discretionary enforcement authority under the drug-related eviction provision is particularly inappropriate where only drug use is involved.

The penalty of eviction for the infraction of drug use, or for the status of being a drug addict, seems to be inordinately out of proportion to the “crime.”<sup>68</sup> Although one might argue that counseling and treatment would constitute a more rational and humane response to drug abuse, the statutory language of the drug-related eviction provision indicates a clear legislative intent to allow PHAs to place users and dealers in the same category of “unfit tenants.”

Eviction for drug use also raises concerns about equity across economic class lines. While simple possession or use of a small quantity of cocaine could result in homelessness for an entire public housing family, the same offense

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67. The argument that the purchase of drugs fuels drug trafficking that *does* pose such a threat is unpersuasive. The connection is tenuous, at best. Further, an individual who has been evicted can continue to purchase drugs on public housing grounds where public housing security is lax.

68. Indeed, one federal court has determined, in a criminal context, that a family’s loss of housing (through forfeiture) is a punishment that exceeds even the crime of low-level drug dealing:

The forfeiture of the apartment and the federal housing assistance payments which subsidize it would take from defendant her home and the *only* means by which she can obtain housing for herself and her children at this time. Such a forfeiture is fundamentally different in nature from forfeiture of land or a house. . . . An order of forfeiture here would be, in effect, a sentence of homelessness for the defendant and her three children.

United States v. Robinson, 721 F. Supp. 1541, 1544 (D.R.I. 1989) (emphasis in original). While this precedent is inapplicable to civil evictions, it illustrates the wide disparity between the crime of drug use and the sentence of homelessness.

might result only in judicially mandated drug treatment for a middle class individual prosecuted under criminal laws. Under the McCollum Amendment, which was included in the Anti-Drug Abuse Act of 1988,

any person 'convicted of any Federal or State offense involving the possession of a controlled substance' shall, at the discretion of the court: (1) be ineligible for federal benefits for one year; (2) be required to 'successfully complete an approved drug treatment program . . .'; (3) 'be required to perform appropriate community service;' or (4) any combination of the above clauses.<sup>69</sup>

Thus, an individual convicted of possession in a criminal proceeding could be sentenced under the McCollum amendment to drug treatment and community service, while a similarly situated public housing resident, who may have been trying to enter a drug treatment program, could be "sentenced" by a PHA to homelessness.<sup>70</sup>

Because the penalty of eviction is so severe, and the potential for random and discriminatory enforcement is immense, the right of PHAs to terminate leases because of mere drug use or possession should be abolished. Absent the political will to eliminate that clause from PHA leases, strict guidelines should be promulgated delineating procedures for determining which drug users will be penalized, and in what manner.

#### *D. Evicting the Family: Punishing the Innocent*

In reality, it is the rare case where an eviction affects only individuals directly involved in drug-related activity.<sup>71</sup> The more prevalent and difficult case arises where a family member or guest has engaged in criminal activity, and innocent family members must pay the price of eviction for that transgression. As noted above, many eviction proponents consider family responsibility to be a key component of a successful eviction policy.<sup>72</sup> However, the legal and policy issues raised by the eviction of entire families make this "vicarious liability" the most problematic aspect of the drug-related eviction provision.

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69. Note, *supra* note 16, at 1242 (citing 21 U.S.C.A. §§ 253a(b)(1), 253a(b)(A)(i-iv)(West Supp. 1989)).

70. Cf. Cohen, *When Right Goes Wrong: Aggressive War on Drugs Hits Home for the Guilty and Innocent Alike*, L.A. Times, June 11, 1989 Pt. 1, at 2 (quoting ACLU attorney Loren Siegel, "If it happened to a middle class person in their house, they would not lose their abode."). Eviction for drug use seems particularly excessive where the offender is an addict, and the drug use is no longer a matter of choice; even for those individuals who find an incentive in the zero-tolerance of the drug provisions of PHA leases, the chances of obtaining the drug treatment necessary to end an addiction are slim. According to one study "[t]here are an estimated 447,000 drug addicts in New York City but only 40,000 slots in drug treatment facilities, and those seeking help . . . often have to wait eight months or more." Richardson, *supra* note 1, at 6.

71. For instance, James Chanin, a Berkeley lawyer representing innocent family members in five eviction cases, noted, "None of the people I represent are accused of using or selling drugs. . . . They're only accused of having relatives who use drugs or being in an area when drugs are used. . . . It's not fair to hold a woman responsible for what her son does in her apartment when she is in a hospital in Sacramento." Stein, *supra* note 43, at 3.

72. See *supra* text accompanying notes 45-49.

## Drug-Related Evictions

The arbitrary nature and harsh consequences of enforcement of the provision by PHAs becomes most apparent where the rights of innocent family members are concerned. The “crime” for which PHAs evict family members is not “drug-related activity.” Rather, the failure to control a family member, or, worse yet, the mere relation to an alleged criminal serves as sufficient grounds for eviction under current law.<sup>73</sup> Moreover, families may face eviction simply because they were unable to prevent a guest or relative involved in drug-related activity from entering and remaining in the public housing unit. In the absence of bona fide efforts by the PHA to improve public housing security, this penalty is particularly unfair. Furthermore, were the criminal justice system not so overworked and jails not so overcrowded, individual family members involved in drug-related crime could be “removed” through the punishments imposed by the criminal system, rather than through the eviction of entire families.

Under current law, even the incarceration of a guest or family member involved with drugs does not ensure that a PHA will not attempt to evict innocent family members—even though no further threat of drug-related activity exists. The story of Charlene Goodman, a resident of public housing in Wilmington, Delaware, is a case in point. Despite Goodman’s best efforts to keep her children away from drugs, her seventeen year old son was charged with selling cocaine miles away from their apartment, near other PHA-managed housing. Although her son was confined to a juvenile facility, the Wilmington PHA took Goodman to housing court, where she fought successfully for her family to remain in her apartment.<sup>74</sup> Her feelings afterward crystallize the issue: “I felt like I was being prosecuted for something someone else did . . . . I didn’t break any law.”<sup>75</sup>

This question of vicarious liability makes the HUD eviction policy both distressing and constitutionally suspect. Traditional notions of jurisprudence rest on the principle that guilt is personal; one’s mere association with a guilty party is not sufficient to justify punishment.<sup>76</sup> Many courts have employed this reasoning in refusing to allow evictions based solely on vicarious liability

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73. See *supra* text accompanying notes 61-70 for a discussion of how evictions constitute disproportionate punishment for drug use.

74. *Wilmington Hous. Auth. v. Goodman*, No. JP13 89 CO883 (Del. G.P. Ct. May 22, 1989), *cited in* Bryson & Youmans, *supra* note 7, at 440 n.46. Apparently, Ms. Goodman is not alone in her experience of being held liable for the actions of an incarcerated relative. Bryson & Youmans of the National Housing Law Project recount as one category of “bizarre evictions actions,” those in which “[m]onths after the offender has been arrested, tried, convicted, and imprisoned, the PHA seeks to evict the remaining family members, who were not implicated in the drug-related activity.” Bryson & Youmans, *supra* note 7, at 440.

75. Cohen, *supra* note 70, at 2.

76. *Drug Hearing*, *supra* note 2, at 89 (statement of Wade Henderson, citing *Webster v. Aetna Casualty and Surety*, 406 U.S. 164, 175 (1972); *Scales v. United States*, 367 U.S. 203, 224-25 (1961)). See also *Plyler v. Doe*, 457 U.S. 202 (1982), in which the Supreme Court ruled that it was unconstitutional to deny public education to the children of illegal aliens, because they were not personally responsible for their illegal status.

for a child, guest, or relative. In *Hodess v. Bonefont*,<sup>77</sup> for instance, the Massachusetts Supreme Court held that a mother who resided in subsidized housing could not be evicted solely because her sons had burglarized another apartment without her knowledge. Bonefont's liability extended only insofar as she could "reasonably foresee and prevent" her sons' conduct.<sup>78</sup>

Likewise, in *Hartford Housing Authority v. Montford*,<sup>79</sup> Ruby Montford faced eviction as a result of the arrest of her son, who had sold a small amount of cocaine to an undercover police officer in her apartment. Because the Housing Authority failed to prove, by a preponderance of evidence, Montford's knowledge or acquiescence, the Superior Court at Hartford found in her favor.<sup>80</sup> Vicarious liability of all family members for the drug activity of one has been rejected in other jurisdictions, including the Eastern District of New York.<sup>81</sup> Only where a parent had prior notice of a child's illegal conduct has a court upheld an eviction.<sup>82</sup> "These decisions," say two housing rights attorneys, "reflect the fundamental constitutional principle that legal burdens imposed by the state must bear some relationship to an individual's personal guilt."<sup>83</sup>

Judicial rejection of the vicarious liability rationale speaks to the inequity and injustice of the current eviction policy. Unfortunately however, these decisions alone do not afford adequate protection to public housing tenants throughout the nation, or even within the specific jurisdictions where those decisions were handed down. Because informal administrative hearings may not be available to families living where HUD has determined that the jurisdiction provides adequate due process,<sup>84</sup> and because legal representation is

77. 519 N.E.2d 258 (Mass. 1988).

78. *Id.* at 260. See also *Spence v. Gormley*, 439 N.E.2d 741 (Mass. 1982) (PHA can evict whole family, but only if other family members knew or should have known of criminal conduct and did nothing to stop it).

79. No. 8803-43435 (Conn. Super. Ct. Housing Sess. 1989).

80. See Brief of Amicus Curiae Connecticut Civil Liberties Union Foundation, *Montford*, No. 8803-43435 (summary of precedent and arguments regarding third party liability in the context of public housing evictions).

81. In a recent case brought under civil forfeiture laws, Judge Jack Weinstein of the Southern District of New York ruled that a family of 18 could not be evicted because of the drug activity of one. Weinstein did allow the exclusion of the offending individual from the unit. *United States v. Leasehold Interest in 121 Norstrand Avenue, Apartment 1-C*, 1991 WL 43029 (E.D.N.Y. Mar. 26, 1991). See also *Wilmington Hous. Auth. v. Bacon*, No. JT 13 89 C0882 (Del. G.P. Ct. May 22, 1989) (son's conduct of possessing cocaine was breach of lease, but mother's lack of knowledge constituted an equitable defense justifying judgment for tenant), cited in *Bryson & Youmans*, *supra* note 7 at 440 n.46; *Wilmington Hous. Auth. v. Goodman*, No. JP13 89 C0883 (Del. G.P. Ct. May 22, 1989) (rejecting vicarious liability), cited in *Bryson & Youmans*, *supra* note 7, at 440 n.46; *Housing Auth. v. Hawk* No. 90D 008839 (Ga. State Ct., DeKalb Cty. Apr. 17, 1990) (eviction of mother for the drug arrest of daughter dismissed because mother was unaware of daughter's involvement in drugs), cited in *Bryson & Youmans*, *supra* note 7, at 440 n.46.

82. *Memphis Hous. Auth. v. Henry*, No. 17 (Tenn. Ct. App. May 10, 1989) (eviction of public housing tenant for second criminal act of minor son on project premises upheld because of prior notice of son's illegal conduct), cited in *Bryson & Youmans*, *supra* note 7, at 440 n.46.

83. *Bryson & Youmans*, *supra* note 7, at 440.

84. See *supra* note 28.

## Drug-Related Evictions

decreasingly available, though crucial to a successful eviction defense,<sup>85</sup> many families will lose their housing without an adequate opportunity to protect the rights delineated in *Hodess*, *Montford*, and similar cases. Moreover, many individuals are not even aware of their right to challenge an eviction action.

The rejection of vicarious liability may also stem from a perceived weakness in the causal link between an omission of parental duty and the actions of a minor. To the extent that blame and punishment—civil or criminal—should be placed only where such a link exists, it is far from clear that the entire burden should be borne by the parent. Other environmental factors can have a stronger influence on a child's involvement with drugs or crime than any act or omission of a parent. Sol Rubin, counsel for the National Council on Crime and Delinquency, recognized more than two decades ago that “[o]f the factors making for delinquency, parental inadequacy is only one of many; others are the high cost of living, poor standards of education, inadequate recreation, and slums, to name only a few. But the only one of these at hand for punishment is the parents.”<sup>86</sup> James Fyfe, chairman of the Justice, Law and Society Department at American University sees similar forces at work in Washington, D.C. public housing:

I think large parts of the District are essentially crime factories. They're marked by poor housing, poor educational opportunities, lack of strong institutions like family and church, by unemployment and underemployment, by a lack of commitment from officialdom . . . and they're essentially turning out kids who by the time they're in their late teens or early twenties see little opportunity for success through legal means and very little to lose through illicit means.<sup>87</sup>

While it does not relieve parents of all obligations or responsibilities, this recognition does acknowledge the complex origins of criminal activity, and thereby exposes the unfairness and futility of punishing parents, siblings, and even grandparents for the misdeeds of one individual. As a Los Angeles Times editorial noted, “Yes, tenants are responsible for any activity that goes on in the rented premises, but anyone who has raised a teen-ager knows that it is impossible to monitor a teen's every action.”<sup>88</sup>

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85. See *supra* note 33.

86. S. Rubin, *Crime and Juvenile Delinquency* 25 (3rd ed. 1970), cited in Note, *Criminal Liability of Parents for Failure to Control Their Children*, 6 VALPARAISO L. REV. 332, 333 (1972).

87. Duke & Price, *supra* note 8. Indeed, the allure of the drug culture in public housing is tremendous. Carmen Vinales, a New York City public housing resident whose daughter has been addicted to heroin since 1969 told a reporter, “You can't say it won't happen to anyone in your family. . . . A lot of people blame their addiction on this place. It's a very hard place to raise kids. I think if I was raising a family again I'd leave.” Richardson, *supra* note 1, at 6. Vicariously liable for her daughter's drug use, 54-year-old Vinales could be made homeless under the current drug-related eviction provision if she provides a home for her addicted daughter.

88. Editorial, *Anti-Drug Push Needs Restraint*, L.A. Times, Sept. 10, 1989 pt. 2, at 2. Likewise, a *Christian Science Monitor* editorial questioned the effectiveness of eviction policies that threaten innocent family members:

Will the threat of legal sanction force parents and families to shape up? Or will it only heighten tension and fear? Would mandatory family counseling be a more constructive option than fines, eviction or

The damage to innocent children provides a final and compelling criticism of the vicarious liability component of the drug-related eviction provision. Although it is often a parent or older sibling who is involved in drug use or dealing, it is the child who suffers most from an eviction. The experience of the daughter of a crack addict living in Potomac Gardens in Washington, D.C., provides insight as to the hardships that may confront children of users under strict enforcement of the lease provision:

I'm not being as much neglected as I was . . . . I really didn't mind my mother using crack, but I didn't like all the company that was coming in there. My mother did give me money, she did send me to the store, and I did eat every night. It wasn't like I was being abused or nothing like that. . . . I don't ever want to try any kind of drugs. I have a good chance of being what I want to be because a lot of people tell me I'm bright and I believe it.<sup>89</sup>

This child has already paid a serious price for her mother's addiction. Additionally sentencing her to homelessness or separating her from her mother and placing her in an overworked foster care system could be devastating. Some positive intervention—particularly drug treatment—might provide a more beneficial form of state action in the long run.

The practical benefit, fairness, and legality of the vicarious liability portion of the drug-related lease provision are dubious. If Congress is unwilling to repeal the drug-related provision or to amend the lease provision to require proof of a threat to the safety and health of the housing project, it must restrict the reach of vicarious liability. In line with the holdings in *Hodess* and *Montford*, HUD and individual PHAs should adopt standards that allow eviction actions against only those families who are aware of the drug-related activity of a family member, but who neither attempt to prevent further activity nor cooperate in efforts to exclude that individual from their housing unit.

### III. RECOMMENDATIONS

#### *A. Recommendations for Statutory Changes*

Using evictions to identify and punish criminal drug-related activity is neither within the proper scope of PHA discretionary authority nor the most efficient use of PHA resources. For that reason, Congress should eliminate drug-related activity as grounds for eviction in PHA leases. In the absence of the drug-related eviction provision, the goal of "cleaning up public housing" could still be achieved by allowing and encouraging PHAs to evict individuals

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imprisonment? Government and law enforcement need families on their side in the fight against delinquency and drugs. . . . [W]e doubt this statute will bring about that partnership.

*Parents and Crime*, Christian Sci. Monitor, May 10, 1989, at 20.

<sup>89</sup>. Duke & Price, *supra* note 8.

## Drug-Related Evictions

on the basis of housing-related (rather than drug-related) grounds.

Failing congressional will to eliminate the drug-related eviction provision altogether, Congress should amend that provision explicitly to allow PHAs to evict for drug-related activity *only* when that drug-related activity threatens the health and safety of other tenants. This constraint would curb abuses of discretion, particularly with respect to the eviction of drug users. Further, in order to better safeguard the rights of innocent family members, the statute should be altered to allow families to remain in public housing if efforts are made to exclude the offending individual.

### *B. Proposed Administrative Changes*

Because the political climate of intolerance for drugs has not changed significantly since 1988, it is unlikely Congress will retreat from the “tough” stand it took in the Anti-Drug Abuse Act of 1988.<sup>90</sup> Nonetheless, in order to preserve the rights and interests of public housing residents, the sweeping discretion afforded PHAs by that law must be restricted. Congress should, by statute or more informal means, require HUD to promulgate guidelines to constrain PHA discretion in enforcing the drug-related eviction provision. If the political climate prevents even that, HUD should adopt guidelines on its own initiative.

In adopting such guidelines, HUD should make clear to residents the circumstances under which they may be evicted, and give adequate warning to those who are slated for eviction. Guidelines should also provide an opportunity to remedy the situation that has led to the decision to evict. The rules should also be drafted to encourage family and individual responsibility without jeopardizing the well-being of innocent third-parties and without unduly punishing drug addicts, who have lost their ability to choose whether to use drugs. In short, the guidelines should promote evictions as “a management tool, not a weapon against drugs.”<sup>91</sup> Below are the basic principles upon which the guidelines should rest.

*1. Appropriate grounds for evicting an individual.* An eviction should proceed against a public housing tenant only when: (1) police have arrested that tenant for drug trafficking and have collected evidence of that crime; (2) no innocent family members will be evicted; *and* (3) the drug dealing is of such a nature that the dealer can be evicted because of a non-drug-related infraction of the lease, such as threatening the health and safety of other tenants, using the housing unit for a purpose other than as a residence, or earning an income that surpasses eligibility requirements.

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90. In fact, Congress explicitly reaffirmed its support for the key elements of the drug-related-eviction provision in 1990. See discussion of Cranston-Gonzales Act amendments, *supra* notes 52-53.

91. Interview with David Echols, *supra* note 37.

2. *Appropriate grounds for evicting an entire family.* When a PHA becomes aware of alleged drug dealing by a public housing resident, the PHA should be required to confront the family and individual with the allegation before initiating an eviction proceeding against them. Options such as counseling and drug treatment should be considered at this time.<sup>92</sup> If the criminal behavior continues, the PHA should have authority to exclude the individual from the unit and from the public housing grounds. If the individual continues to return to the housing unit, the family may be evicted, but only if: (1) the family has been uncooperative in excluding the individual;<sup>93</sup> and (2) the PHA has taken substantial steps to improve project security, such as providing secure buildings and identification cards, and assisting tenants, where appropriate, in obtaining a restraining order on the individual.<sup>94</sup> If the family has attempted, albeit unsuccessfully, to exclude the individual, a PHA should have the option to commence an eviction action against the entire family, only if the PHA can show that: (1) the presence of the offending individual is a continuing threat to the health and safety of the project; and (2) the eviction of the family will, in fact, prevent the individual from returning to the public housing grounds.

3. *Appropriate grounds for evicting users.* PHAs should not be allowed to evict users, addicts, and their families solely because of drug use. If the PHA is concerned about an individual's drug use, the PHA should, before commencing an eviction action, consult with the family and develop a plan for drug treatment and counseling. If no such treatment is available, no eviction should be allowed. Efforts should be made to gain the cooperation of community organizations in working with affected families.

4. *Creating guidelines specific to each PHA.* In order to minimize the potential for arbitrary enforcement of lease provisions and to give residents the fullest possible understanding of their rights and responsibilities as tenants, each PHA should be required to tailor its policy and procedures for evictions to its own unique circumstances, taking into account the local availability of

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92. According to Richard Y. Nelson, executive director of the National Association of Housing and Redevelopment Officials, this guideline is unofficially in effect in many PHAs:

[I]n most cases, housing authorities work with families before they even begin to think about the process of eviction. They counsel the families. They try to work with the offending family member, but there are some occasions when the better good of the rest of that public housing community dictates that a family be evicted from public housing. It's at that point that the housing authorities will go to the court to try to seek evictions. It is a last resort . . . .

*Narcotics Abuse Committee Hearing*, *supra* note 6, at 64.

93. The New York City Housing Authority has a policy of dismissing eviction actions if a family excludes the offending household member. *See, e.g., Knox v. Christian*, 465 N.Y.S.3d 203, 203 (App. Div. 1983), *cited in* Bryson & Youmans, *supra* note 7, at 440.

94. Greater Boston Legal Services has taken the step of obtaining restraining orders against individuals allegedly involved in drug-related activity on behalf of the family members who would be evicted if those individuals were to return to the housing unit. *Drug Hearing*, *supra* note 2, at 46 (statement of Jay Rose, senior housing attorney, Greater Boston Legal Services).

## Drug-Related Evictions

treatment, counseling, and other community resources. The PHA should be required to involve tenants, tenant organizations, legal services lawyers, and other housing advocates in developing the local policy.

5. *Providing adequate notice of eviction policies.* PHAs should be required to provide meaningful notice to tenants of their rights and responsibilities under the PHAs' eviction policies. The notice should be clear, concise, easily understood, and available in English, Spanish, and any other language appropriate to specific PHAs.

### *C. Recommendation for an Increased Investment in Public Housing*

It seems such a tragedy that the only business, either foreign or domestic, willing to invest in our public housing people is the illegal drug trade. They are the only ones who took the time to offer economic opportunity to our residents, when the rest of the country was writing off public housing and its people as a lost cause.<sup>95</sup>

An eviction policy on its own can produce only limited results. At best, it can prevent only the drug activity of public housing residents, though non-residents represent the majority of those arrested on public housing grounds for drug activity.<sup>96</sup> Further, eviction can only remove negative influences; it cannot, by itself, improve the conditions of public housing. As Jay Rose of Greater Boston Legal Services testified: “[Supporting evictions] is a wonderful way to get a headline . . . but it is not going to solve the problem. We can all feel good about it and think that is the answer, and then we are going to leave here, and it doesn't do it. They will move next door.”<sup>97</sup>

There is little disagreement that what is ultimately needed to succeed in creating safe, drug-free housing is money. In the words of Robert McKay, executive director of the Council of Large Public Housing Authorities, “If you can't fix up your units, it's just nuts to try to clean up drugs. . . . It's like eating your kids to survive.”<sup>98</sup> Chicago Housing Authority executive director Vincent Lane concurs: “[W]hen you have gangs who are in control of housing, just the goodwill of the tenants and a tenant group that has the motivation to throw the bad guys out, it is not going to occur. You have got to give them help, and that costs money.”<sup>99</sup> Even Secretary Kemp has echoed these concerns:

We need more money. . . . I have told the President. I am telling that to Congress. I believe in fiscal responsibility, but I think this is an issue that . . . will lead to greater costs down the road if we don't do something right now to begin

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95. *Narcotics Abuse Committee Hearing*, *supra* note 6, at 45-46 (testimony of Nancy Brown, chairperson, Connecticut State Task Force on Public Housing and Drugs, 1988).

96. *See supra* note 37 and accompanying text.

97. *Subcommittee on Housing Hearing*, *supra* note 2, at 47.

98. Casuso, *Housing Officials Taking Tough New Tack on Drugs*, *Chicago Trib.*, July 30, 1989, at C1.

99. *Drug Hearing*, *supra* note 2, at 37.

the treatment and the rehabilitation, the education, and answering some of the social pathologies and social problems that in some cases lead to the abuse of drugs.<sup>100</sup>

Indeed, a survey of public housing success stories in such diverse places as Chicago, Omaha, and Pawtucket, Rhode Island reveals that strict eviction policies alone are not responsible for the improvements registered in these locations. Rather, PHAs at these sites have supplemented evictions with increased spending on security and social programs in order to achieve success in cleaning up their public housing areas. In Chicago, Operation Clean Sweep resulted in 192 eviction proceedings, 50 of which were drug-related, in nine buildings.<sup>101</sup> However, those evictions would probably have had little long-term effect without the program of increased security and construction improvements that accompanied them.<sup>102</sup>

In Omaha, Robert Armstrong has established a tough drug-related eviction policy that allows evictions of an entire family if the Housing Authority has evidence of the possession or use of drugs on or off public housing grounds, unless the family takes action to correct the drug problem.<sup>103</sup> Armstrong's reputation for having created "one of the best housing authorities in the country,"<sup>104</sup> however, comes not from his tough stance on drugs, but from the numerous other educational, anti-drug, resident participation, recreation, and scholarship programs developed by the Omaha Housing Authority.<sup>105</sup> Likewise, Galego Court, a public housing development in Pawtucket has been transformed from a crime- and drug-ridden complex to a safe, livable community through the infusion of funds for similar programs. Although evictions and background checks of prospective residents played a part in the transformation of the complex, the metamorphosis began with a \$6 million grant from HUD for drastic renovation of housing units, increased security, and youth, tutoring, and anti-drug programs.<sup>106</sup> "[A strict eviction policy] nowhere near begins to address the major problems of drugs," concludes Richard Nelson,

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100. *Narcotics Abuse Committee Hearing*, *supra* note 6, at 13-14 (statement of Secretary Kemp).

101. Rasky, *Kemp Asks Repeal of Drug-Related Law*, N.Y. Times, July 11, 1989, at A10.

102. Vincent Lane told one House panel: "[T]he best defense against drugs in public housing is professional, competent management. Buildings that are not well-maintained and not well-secured are havens for criminal activity." *Narcotics Abuse Committee Hearing*, *supra* note 6, at 114.

103. *Drug Hearing*, *supra* note 2, at 55 (statement of Robert Armstrong).

104. Brower & Pick, *As Omaha's Tough-Talking Housing Boss, Robert Armstrong Helps Tenants Grab for Their Bootstraps*, PEOPLE, May 15, 1989, at 93 (statement of James Baugh, former deputy assistant secretary of HUD).

105. See Robbins, *Omaha's Housing Chief Strives to Lead the Way to Better Lives*, N.Y. Times, Jan. 17, 1989, at A20. OHA programs established by Armstrong include a foundation which finances college scholarships for public housing residents, as well as a partnership with the Omaha Public School system under which OHA staff members are informed when a student has two unexcused absences. Armstrong explains, "If so . . . a staff member will soon be knocking at the door. If the excuse is they have no clothes, we'll provide clothes; we have a clothes pantry. If they have no food, we have a food pantry. If they miss the bus, we'll provide transportation. You see, we leave them no excuses." *Id.*

106. Levinson, *Manor, Once a Drug Haven, Becomes Model Residence*, L.A. Times, Dec. 3, 1989, at A45.

## Drug-Related Evictions

director of the National Association of Housing and Redevelopment Officials. “That requires a lot more than pure enforcement pressure.”<sup>107</sup>

There is no shortage of ideas as to how added federal expenditures could be used to improve the safety of and decrease drug dealing and use in public housing. First, the vast stock of vacant public housing units must be renovated. An estimated 78,000 public housing units are currently vacant, and are “idle, unoccupied, vandalized, and devoted to illicit drug use.”<sup>108</sup> Vincent Lane estimates that the costs of renovating such vacant apartments range from \$1,500 to \$7,000 per unit.<sup>109</sup> Second, increased security—through the provision of twenty-four hour foot patrols, police substations, improved lighting, identification card systems, intercom systems, and single security entrances to buildings—is essential for reducing crime in public housing.<sup>110</sup> Again, Vincent Lane, who gained his national reputation primarily for effective action against drugs through his “Operation Clean Sweep” program,<sup>111</sup> estimated in 1989 that the initial cost of securing Chicago’s public housing projects was \$2,800 per unit and \$1,200 per unit annually thereafter “to maintain a decent, safe and clean environment.”<sup>112</sup> Included in that cost was perimeter fencing and electronics, security services, and management and maintenance personnel.<sup>113</sup> It was estimated that the total cost of securing a 1,126 unit building was \$8 to \$10 million for the first year alone. “I am not talking about major rehabilitation work, just enough to make the building safe, decent and sanitary.”<sup>114</sup>

In addition to improvements to the public housing itself, PHA directors insist that increased funds for social services—child care, job training, drug treatment and prevention programs, education, and prenatal care—must be directed toward the vulnerable public housing population.<sup>115</sup> An increase in funding for these crucial services is essential, as the roots of the drug crisis can be attacked only through a long-term investment in the residents of public housing. The drug crisis in public housing will not be solved merely by evicting residents for drug use or for being related to individuals involved with drugs. Only by providing funds for rehabilitation and for programs improving the legitimate economic opportunities available to tenants will meaningful and

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107. Cohen, *supra* note 70.

108. *Drug Hearing*, *supra* note 2, at 60 (statement of Robert Armstrong). *See also id.* at 14 (statement of Wade Henderson, ACLU), at 21 (statement of Jay Rose, Greater Boston Legal Services), and at 37 (statement of Vincent Lane, CHA).

109. *Id.* at 37.

110. *Id.* at 108-12 (statement of Vincent Lane); *Id.* at 59 (statement of Robert Armstrong); Interview with David Echols, *supra* note 37.

111. *Id.* at 117-26 (statement of Vincent Lane describing Operation Clean Sweep).

112. *Drug Hearing*, *supra* note 2, at 37.

113. *Id.*

114. *Id.* at 114.

115. *Id.* at 58-59 (statement of Robert Armstrong); *Id.* at 141 (statement of James Moran); Interview with David Echols, *supra* note 37.

lasting gains be made in the "war on drugs."

Although Congress has been enthusiastic about providing housing authorities with eviction powers, it has not been nearly as forthcoming with the funding necessary to address the foundations of the public housing drug problems. In 1990, Congress appropriated only \$2.03 billion of the \$21 billion estimated to be necessary to eliminate the backlog in public housing modernization needs.<sup>116</sup> Likewise, congressional appropriations for the Drug-Free Public Housing program established in the Anti-Drug Abuse Act of 1988 to provide PHA with grants to combat drugs was funded at a level of \$50 million in fiscal year 1990, a sum equal to the estimated cost of securing and stabilizing 125 high-rises in Chicago alone, without any basic structural improvements.<sup>117</sup> And though it is encouraging that Congress appropriated \$150 million for the anti-drug programs in the 1991 fiscal year, the appropriation remains well below the amount necessary to effect widespread improvements in our nation's public housing.<sup>118</sup>

The current congressional belief that a tough drug eviction policy will adequately address the drug problem in public housing is as dangerous as the excesses of the eviction program itself. The responsibility of Congress to the tenants of public housing does not end with the passage of the drug eviction lease provision. A full commitment to the goal of eliminating drugs from public housing requires the commitment of substantial fiscal and human resources. The price of failing in that commitment will be paid in the continued loss of human potential and even lives in deteriorating public housing complexes.

#### IV. CONCLUSION

The current public hysteria surrounding drugs has created a political climate in which the federal government has sought short-cuts and inexpensive strategies for ending drug use, trafficking, and its attendant crime. As a result, the current policy for eliminating drugs in public housing is weighted too heavily toward evictions. It pays only lip service and offers only nominal appropriations for more positive methods of improving the lives and housing conditions of public housing tenants.

To be sure, an eviction-based public housing policy seems to offer a host of inviting benefits. It seems to promise the removal of the source of the drug problem in public housing. It offers a deterrent and punishment for drug

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116. *Drug Hearing*, *supra* note 2, at 58 (statement of Robert Armstrong); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, Pub. L. No. 101-144, 1989 U.S. CODE CONG. & ADMIN. NEWS (103 Stat.) 839, 844 (1989).

117. Casuso, *supra* note 98.

118. Veterans Affairs, HUD, Independent Agencies Appropriations Act. Pub. L. No. 101-507, 104 stat. 1351, 1363 (1991).

## Drug-Related Evictions

dealers and users that is not readily available in an overworked criminal justice system. It presents a process unencumbered by the constitutional protections that accompany criminal prosecution. It seems to cost the federal government virtually nothing, while offering politicians an opportunity to take a visibly tough stance on drugs.

The drug-related eviction policy, however, cannot withstand either legal or common sense scrutiny. Without statutory or administrative changes to confine PHA discretion, the policy threatens arbitrary enforcement and legally questionable vicarious liability, even as it sentences drug addicts and innocent family members to homelessness—a consequence that will eventually drain governmental resources as surely as if those individuals remained in public housing. A successful and responsible policy to rid public housing of drugs would de-emphasize drug evictions, and increase funds for security, maintenance, modernization, social services, drug prevention, and drug treatment programs. Failing the political will or financial resources to implement such an ambitious program, the federal government should at least establish eviction guidelines to minimize the capriciousness of evictions and the devastation evictions can visit upon innocent children and family members.