

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	SSNs and DOBs [Personally Identifiable Information] (3 pages)	05/09/1994	b(6)
002. fax	SSNs and DOBs [Personally Identifiable Information] (3 pages)	05/05/1994	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 5318

FOLDER TITLE:

HUD [Housing and Urban Development]: Search Policy

2016-0931-S

rc2283

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

FAX TRANSMISSION

DATE: 5/18/94

NUMBER OF PAGES (including this page) 4

To: Jose Cuda

FROM: Luz Arky

#

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708-3161

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217 South High Street
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(216) 375-2244

Asst. Chief of Police Emmett H. Turner
Nashville Police Department
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Nashville, TN 38103
(615) 862-7367

Deputy Chief Peter Shurla
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1300 W. Jackson Street
Chicago, IL 60607
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Lt. Curtis Dick
Oklahoma City Police Department
701 Colcord Drive
Oklahoma City, OK 73102
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Commander Richard Holder
San Francisco Police Department
850 Bryant Street, Room 525
San Francisco, CA
(415) 553-9178

Chief Melvin High
206 Monticello Avenue
Norfolk, VA 23510
(804) 441-2261

Sheriff John Anderson
100 North Coward Street, Room 114
Baltimore, Maryland 2202
(410) 396-5826

Captain Randall B. Russin
Mark Spurrier
E.D. Intl Assoc. of Chiefs of Police
Baltimore County Police Department
700 East Joppa road
Townson, MD 21286
(410) 887-2154

Deputy Chief Al A. Philippus
San Antonio Police Department
214 W. Nueva Street
San Antonio, TX 78207
(210) 299-7405

Chief George D. Pugh
Police & Administration Building
900 Federal Street
#1 Police Plaza
Camden, NJ 08103
(609) 757-7474

Chief James E. Newby
335 West 3rd Street
Dayton, OH 45402
(513) 449-1082

Chief Isaiah McKinnon
Benny N. Napoleon
Detroit Police Department
1300 Beaubien
Detroit, MI 48226
(313) 596-1800

Major Sam Williams
Metro-Dade Police Department
9105 Northwest 25th Street
Miami, FL 33172
(305) 644-5158

William R. Celester, Police Director
City of Newark Police Department
31 Green Street 4th Floor
Newark, NJ 07102
(210) 733-6007

Sergeant William w. Gentry
501 North 9th Street
Richmond, VA 23219
(804) 780-4504

Chief Miles T. Cobbs
Cuyahoga Metropolitan HA Police
2685 E 79th Street
Cleveland, OH 44109
(216) 361-3700

Christian R. Maerz
Dir. of Dept of Public Safety
47 West Cermak
Chicago, IL 60616
(312) 326-2727

Deputy Chief John Cresci
3000 Tasker St
Philadelphia, PA 19148
(215) 684-4840

Chief of Security Joseph Foushee
83-85 Muhammad Ali Avenue
Newark, NJ 07103
(201) 430-2706

Acting Commander Cornelius J. Hairston
417 East Fayette Street, Suite 237
Baltimore, MD 21202
(410) 396-4068

Captain Willie Thompson
1401 West 6th Street
Los Angeles, CA 90017
(213) 484-0914

Chief DeForrest Taylor
216 East 99th Street
New York, NY 10029
(212) 410-8501

Sergeant Alisa Clemons
1001 North Washington
Minneapolis, MN 55411
(612) 342-1447

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
North Little Rock	AR	Patrick Henry Hays	Mayor
		William Nolan	Chief of Police
Phoenix	AZ	Thelda Williams	Mayor
		Jacques Aveni	Deputy City Manager
		Dennis Garrett	Police Chief
Tucson	AZ	Michael Ulichny	Acting Chief of Police
		Kenneth Magoch	Sergeant
Anaheim	CA	Fred Hunter	Mayor Pro Tem
		Randall Gaston	Chief of Police
		Kristine Thalman	Intergovernmental Relations
Huntington Beach	CA	Ed McErlain	Captain, Police Department
		Linda Moulton-Patterson	Mayor
Long Beach	CA	Robert Luman	Deputy Chief of Police
		Douglas Drummond	Council Member
Los Angeles	CA	Richard Riordan	Mayor
		Mary Leslie	Deputy Mayor
		Kim Wardlaw	Intergovernmental Relations
		Gloria Molina	Supervisor
Lynwood	CA	Paul Richards, II	Mayor
Oceanside	CA	Colleen O'Harra	Council Member
		Dick Lyon	Mayor
Richmond	CA	Diana Corbin	Community Representative
		Deborah Noonan	Police Officer
		Judy Morgan	Chamber of Commerce Pres.
		Rosemary Corbin	Mayor
Riverside	CA	Ken Nelson	Electrical Supervisor
		John Mejia	Chairman of Board
		Teresa Wagner	Community Leader

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
San Francisco	CA	Lee Wagner	Police Captain
		Frank Jordan	Mayor
		Rhea Serpan	President of Chmbr of Comm
Santa Barbara	CA	Anthony Ribera	Police Chief
		Richard Breza	Chief of Police
		Harold Conklin	Mayor
		Daniel Wallace	City Attorney
		Evelyn Canby	Chairman, Fire Police Comm
		Jennifer Bouma	Student
		Hilda Hoffman	Secretary to Mayor
		William Levy	Businessman
		Donald George	Director, Religious Center
Denver	CO	Richard Bouma	Waterfront Director
		Gerald Root	Clergyman
		David Michaud	Chief of Police
		Wellington Webb	Mayor
Manchester	CT	Stephen Cassano	Mayor
		Henry Minor	Chief of Police
		Richard Sarter	Town Manager
Norwich	CT	Louis Fusaro	Deputy Chief of Police
		Richard Abele	Chief of Police
		Harry Jackson	City Council President
		Kevin Crowley	Alderman
Waterbury	CT	Anthony Bergin	Assistant Corporation Couns
		Neil O'Leary	Sergeant Detective
West Haven	CT	H. Richard Borer, Jr.	Mayor
		David Russell, Jr.	Youth Volunteer
		Paul Dorsi	Attorney

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
		Vito Mazza	Mayoral Assistant
		Marvin Kasowitz	Detective
Washington	DC	Sharon Pratt Kelly	Mayor
		De Sales Atwell	Chair, Citizen Advisory Coun
		Herbert Boyd	Member, City Advisory Panel
		Fred Thomas	Chief of Police
Davie	FL	Jack Mackie	Chief of Police
		Joan Kovac	Mayor
Fort Pierce	FL	William Dannahower	Mayor
Gainesville	FL	James Painter	Mayor
		Wayland Clifton, Jr.	Police Chief
		Marilyn Thompson	Community Dev. Coordinator
Pinellas County	FL	Barbara Sheen Todd	Commissioner
		Tiffany Todd	Community Leader
Atlanta	GA	Eldrin Bell	Chief of Police
		Carolyn Long Banks	Councilwoman
Augusta	GA	Charles Hamilton	Councilman
Macon	GA	Tommy Olmstead	Mayor
Calumet City	IL	Jerome Janiga	Police Commissioner
		Jeffrey Keith	Pres., Business Association
		Michael Kovacs	Mayor's Staff
		Jerry Genova	Mayor
		Joseph Genova	Community Leader
		Leonard Kieptyka	Chief of Police
		Rosemaria Genova	Comm. Development Directo
		William Stachmus	Executive Director
		Faye Genova	Community Leader
		Spiro Mitrakis	Mayor's Staff

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
Chicago	IL	Richard Daley	Mayor
		Matt Rodriguez	Superintendent
		James Williams	Press Secretary
		James Reilly	Assistant to the Mayor
		Kimberly Joseph	Attending Surgeon
		Barbara Kaden	Executive Director
		Carlos Azcoitia	Principal, Spry Elementary
		Veronica Costello	Executive Director
		Thomas Vandenberg	Director, Children's Home
		Michelle Michael	Mayor's Staff
		David Yudin	Director
		John Molden	Facilitator 15th Caps. Progra
		Joseph Michaud	Deputy Director, DC Office
Cook County	IL	Michael Marano	Commander, Security Detail
		John Stroger	Commissioner
		Patricia Ann Daley	Attorney
Palatine	IL	Rita Mullins	Mayor
		Charles Scholz	Mayor
		John Wilson	Chief of Police
Quincy	IL	George Harper	Director, Housing Authority
		George Longmeyer	Village Manager
		Al Larson	Village President
Schaumburg	IL	Donald Weakley	Director of Govt. Services
		George Bridges	Police Chief
		James Petkus	7th Ward Alderman
Waukegan	IL	Arturo Hernandez	2nd Ward Alderman
		John Lawler	Mayor
		Ronald Rheam	Chief of Police
Anderson	IN		

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
		Richard Richwine	Assistant Chief of Police
		Edward Lew Leonard	Assistant Chief of Police
Columbus	IN	Charles Imel	Chief of Police
		Johnr Baughn	Deputy Mayor
East Chicago	IN	Ruth Ann Pastrick	Community Leader
		Robert Pastrick	Mayor
		Craig Love	Deputy Chief of Police
Elkhart	IN	John Ivory	Chief of Police
		James Perron	Mayor
		William Faus, Sr.	Uniform Captain
		Len Simon	Community Activist
Fort Wayne	IN	Alfred Stovall, M.D.	Physician
		Joseph Ruffolo	Community Leader
		Payne Brown	Safety Director
		Sally Lee Foley	Community Leader
Gary	IN	Thomas Barnes	Mayor
		Douglas Wright	Police Chief
		Sylvia Hill	Public Affairs Officer
Lafayette	IN	Elbert Strain	Pres./CEO Huntington Bank
		John Martin	Senior VP, NBD Bank
		Elizabeth Solberg	Project Manager
		James Riehle	Mayor
		Barbara Wood	Controller
		James Carney	Manager, JC Penney
		Wilbur Hancock	Regional Mgr. PSI Energy
South Bend	IN	Joseph Kernan	Mayor
		Ann Puzzello	President, City Council
		Ronald Marciniak	Chief of Police

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
		Larry Bennett	Uniform Division Chief
		Thomas Faulz	Captain, Neighborhood Svc.
		James Clark, Jr.	Captain, Investigative Div.
		Lynn Coleman	Lieutenant, Juvenile Aid
West Lafayette	IN	Sonya Margerum	Mayor
Topoka	KS	Harry Felker	Mayor
Louisville	KY	Jerry Abramson	Mayor
		Doug Hamilton	Police Chief
		Kathleen Parlow	Director of Communications
		Rebecca Bennett Crow	Mayor's Staff
New Orleans	LA	Joseph Orticke, Jr.	Superintendent of Police
		Israel Fields, Jr.	Sergeant
Boston	MA	Thomas Menino	Mayor
		Howard Leibowitz	Director of Federal Relations
		Paul Evans	Commissioner of Police
Fitchburg	MA	Jeffrey Bean	Mayor
Gardner	MA	Charles Manca	Mayor
Leominster	MA	Dean Mazzarella	Mayor
Medford	MA	Michael McGlynn	Mayor
		Martin Murphy, Jr.	Mayor's Aide
		Francis Shea	Police Officer
		William Hafner	Police Officer
		James Perillo	Police Officer
New Bedford	MA	Joseph Finnerty	Executive Director
		Rosemary Tierney	Mayor
		Bernadette Coelho	Public Information Officer
		Carl Moniz	Deputy Police Chief
Springfield	MA	Robert Markel	Mayor

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
		John D'Agostino	Municipal Grants Manager
		Ernest Stelzer	Chief of Police
Taunton	MA	Gill Enos	Assistant to the Mayor
		Robert Nunes	Mayor
Baltimore	MD	Stuart Simms	State's Attorney
		Thomas Frazier	Police Commissioner
		Gary May	Police Officer
		Wanda Dobbins	Police Officer
		Patrick Rowe	Police Officer
		Tracy Brown	Director, Mayor's Council
Gaithersburg	MD	W. Edward Bohrer, Jr.	Mayor
Detroit	MI	Judith McNeeley	Executive Assistant
		Dennis Archer	Mayor
		Isaiah McKinnon	Chief of Police
		Charlie Williams	Pres., New Detroit Inc.
		John Broad	Chairman
Saginaw	MI	Gary Loster	Mayor
Southfield	MI	Joseph Thomas	Chief of Police
		Donald Fracassi	Mayor
Columbia	MO	Mary Anne McCollum	Mayor
		Ernest Barbee	Chief of Police
		William Brown	Executive Director
		Mary-Angela Johnson	Chair, Housing Authority
St. Charles	MO	David King	Chief of Police
		Grace Nichols	Mayor
Jackson	MS	Jimmy Wilson	Chief of Police
		John Kane Ditto	Mayor
Charlotte	NC	Patrick McCrory	Mayor Pro Tem

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
Wilmington	NC	Dennis Norwicki	Police Chief
		Donald Betz	Mayor
		Thaddeus Waddell	Police Sergeant
Wilson	NC	Robert Wadman	Chief of Police
		John Byrd	Community Relations Mgr.
		C. Bruce Rose	Mayor
		Daniel Jordon III	Captain
Winston-Salem	NC	Thomas Younce	Police Chief
		Thomas Trollinger	President, Contract Office
		Ruth Burcaw	Admin, Asst.
		Victor Flow, Jr.	Chairman, Flow Automotive
		Chandler Lee	CEO, Classic Cadillac
		Helen Wood	Asst. to Pastor
		Delores Smith	President, Urban League
		Michael Bowens	Police Officer
		Martha Wood	Mayor
		Lydia Plaster Beane	Co-Chair, Violence Task Force
		George Sweat	Chief of Police
East Orange	NJ	Cardell Cooper	Mayor
		Harry Harman	Chief of Police
		Armando Fontoura	Essex County Sheriff
Edison	NJ	George Spadaro	Mayor
Elizabeth	NJ	J. Christian Bollwage	Mayor
Englewood	NJ	Mary Rabadeau	Police Director
		Donald Aronson	Mayor
		Robert Bencke	City Manager
		James Mosley	Police Chief
Hope	NJ	Timothy McDonough	Mayor

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
Jersey City	NJ	Michael Moriarty	Director of Police
		Stuart Koperneis	Chief of Staff
		Bret Schundler	Mayor
		Lynn Schundler	Executive Assistant
Lambertville	NJ	David Del Vecchio	Mayor
		George Hambach	Councilman
New Brunswick	NJ	Morgan Roth	Public Information Director
		James Cahill	Mayor
		Kevin Moran	Crime Prevention Specialist
		Donald Bowling	Chief
		Lawrence Evans	Commander
		Minnie Worley	President, Crime Watch Asso
		Michael Beltranena	Director of Police
		Sharpe James	Mayor
Newark	NJ	William Celester	Police Director
		Robert Brown	Mayor
Orange	NJ	Thomas Morrison	Business Administrator
		Creft Hannibal	Aide to Mayor
		Charles Cobbert	Police Director
		Henry Kita	City Administrator
Plainfield	NJ	Mark Fury	Mayor
		Alex DeFortuna	Town Administrator
West New York	NJ	Gary Michaels	Special Counsel
		Bob Stover	Chief of Police
Albuquerque	NM	Martin Chavez	Mayor
		George Petri	Police Inspector
Hempstead	NY	James Russo	Chief of Police
		James Garner	Mayor

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
New York	NY	James Howe	Deputy Inspector
		Alice Teleman	Director, Washington Office
		Mary Helen Mathis	Legislative Representative
Rochester	NY	William Johnson, Jr.	Mayor
		Thomas Conroy	Acting Chief of Police
		Russell Coriddi	Police Captain
		Anne Ekedahl	Chairperson, Planning Comm
		Mitchell Dannenberg	Director, Planning Comm.
		Jonathan Taylor	Director, Planning Comm.
		Becky McCorry	Project Director
		David Koon	Manager, Bausch & Lomb
		Michael Coniff	Executive Director
		Louis Bommattei	Member, Revitalization Com
		Carmen Arlotta	VP, Lyndon Guaranty Bank
		Patricia Jackson	Pres., Business Association
		Joseph Griffo	Mayor
Rome	NY	Merino Ciccane	Chief of Police
		Ronald Conover	Director of Planning
		Lynn Rosen	Pres., Chamber of Commerce
		Frank Duci	Mayor
Schenectady	NY	Charles Mills	Police Commissioner
Yonkers	NY	Terence Zaleski	Mayor
		Robert Olson	Commissioner of Police
		Charles Cola	Police Officer
		Sadie Young	Pres., R.E.A.D.Y.
Akron	OH	Charles Lesnick	Director of Economic Dev.
		Richard Warren	Inspector
		Marty Bodnar	Law Director

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
		Larry Givens	Chief of Police
		William Forrest	Lieutenant
		Donald Mittiga	Member of Council
Chillicothe	OH	Joseph Sulzer	Mayor
		Timothy Crawford	Police Chief
		Timothy Barnhart	Deputy Registrar
		William Knott	Sheriff
		Chris Hanners	Dentist
Kettering	OH	James O'Dell	Police Chief
		Richard Hartman	Mayor
Lorain	OH	Craig Casteel	Police Chief
		Alex Olejko	Mayor
		Dennis Davis	Police Sergeant
Toledo	OH	James W. Wiegand	Chief of Police
		Michael Collins	Pres., Police Association
Youngstown	OH	Patrick J. Ungaro	Mayor
Hillsboro	OR	Matthew Shannon	Police Officer
Marion County	OR	Randy Franke	Commissioner
Erie County	PA	Joseph Francis Giles	Commissioner
Norristown	PA	Joseph Pizonka	Borough Solicitor
		Jack Salamone	Mayor
		Tom Stone	Chief of Police
		Anthony Biondi	Director of Finance
Philadelphia	PA	Edward Rendell	Mayor
		Frances Walker	Executive Director
		Thomas Seamon	Deputy Police Commissioner
Scranton	PA	James Connors	Mayor
		James Klee	Deputy Chief of Police

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
York	PA	George Murphy	Chief of Police
		William Smith	Chief of Police
		Thomas Gross	Captain
Bayamon	PR	Abraham Amoros	Vice President, City Council
		Walter Davila	Washington Representative
		Hector Fuentes	Deputy Mayor
San Juan	PR	Jose Fernandez	Director of Planning
		Hector Acevedo	Mayor
		Teresa Geigel	Religious Leader
		Evaristo Rivera	Minister
		Rafael Jaime	Communications Director
Pawtucket	RI	Ramon Lugo	Counselor to Mayor
		Richard DeLyon	Chief of Police
		William Noonan	Public Safety Director
		Robert Metivier	Mayor
Charleston	SC	Joseph Riley, Jr.	Mayor
Columbia	SC	Robert Coble	Mayor
		Charles Austin	Chief of Police
Cleveland	TN	Stephanie Stapleton	Mayor's Assistant
		Lee Reese	Police Chief
		J. Thomas Rowland	Mayor
		Jerry Estes	District Attorney
Knoxville	TN	Victor Ashe	Mayor
Corpus Christi	TX	Phillip Keith	Police Chief
		Henry Garrett	Chief of Police
Fort Worth	TX	Virginia Nell Webber	Mayor Pro Tem
		Samith Hill	Deputy Chief of Police
		Patsy Watson Thomas	Executive Director

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
Houston	TX	Eric Walker	11th Grade Student
		Helen Huey	City Council Member
		Sabrina Foster	Director
Pasadena	TX	Marlene Colucci	City Representative
		Johnny Isbell	Mayor
		Don Carpenter, Sr.	Mayor's Administrative Aide
		Andy Helms	Budget/Financial Officer
San Antonio	TX	Al Philippus	Deputy Chief of Police
		Nelson Wolff	Mayor
Texas City	TX	Jerry Purdon	Chief of Police
Alexandria	VA	Peggy Papp	Assistant to the Mayor
		Patricia Ticer	Mayor
		Rustan Petrela	Chief of Staff, PM of Albania
		Gayle Reuter	Community Leader
		Helen Miller	Community Leader
		Juan Correa	Police Volunteer
		Kevin Goos	Minister
		Rosa Byrd	Community Leader
		John Crawford	Police Lieutenant
		Otis Peaks	Market Manager
		Diane Hume	Loss Prevention Manager
		Gwen Robbins	Police Lieutenant
Chesapeake	VA	Ian Shipley, Jr.	Chief of Police
		John Newhart	Sheriff
		William Ward	Mayor
		James Rein	City Manager
Portsmouth	VA	Gloria Webb	Mayor
		Dennis Mook	Chief of Police

APRIL 14 WHITE HOUSE MEETING

CITY	STATE	NAME	TITLE
Richmond	VA	Arthur Roane	Administrative Assistant
		Dwight Jones	Pastor
		John Shreves, Jr.	Businessman
		Richard Gentry	Executive Director
		Walter Kenney Sr.	Mayor
		Carol Anderson	Assistant to City Mgr.
		Marty Tapscott	Chief of Police
		Charles Bennett, Jr.	Deputy Chief of Police
		Deborah Morton	Director, East End Initiative
		Virginia Ritchie	Businesswoman
		Marilyn West	Businesswoman
		Leonard Edloe	Businessman
		Anne Amoury	Assistant to City Manager
Virginia Beach	VA	Robert Taylor	Pastor
		Robert Dean	Councilman
		Charles Cloud	Church Elder
		Steven Swain	Lawyer
Milwaukee	WI	James Fleming, Jr.	Staff Assistant
		Donald Werra	Captain of Police
		John Norquist	Mayor
Wheeling	WV	Michael Beaver	Training Officer
		Robyn Holland	Executive Director
		Edward Long	Police Chief
		John Lipphardt	Mayor
		Jimmy Curnes	City Manager



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

FAX TRANSMISSION

DATE: 6/9/94

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To: Jose Cerda

FROM: Liz Arroyo

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797-3161

COMMENTS: _____

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Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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RIGHTS & RESPONSIBILITIES

American Alliance for Rights & Responsibilities

1725 K Street, N.W. ■ Suite 1112 ■ Washington, D.C. 20006

July 1994

AARR Defends Community Service in N.Y., N.C. Schools

The AARR has come to the aid of high school students and community leaders in Chapel Hill, N.C., and Rye Neck, N.Y., who hope to save their new community service programs from legal attack.

In each city, a diverse coalition of educators and citizens persuaded the school board to make community service a condition of high school graduation. And in each city, the Institute for Justice, a self-styled libertarian group in Washington, D.C., has sued as part of a national litigation strategy to block the growing trend to make community service an integral part of traditional civics programs.

Thanks to Dennis Hirsch of the law firm of Sidley & Austin, the AARR will be filing friend-of-the-court briefs in both cases.

Chapel Hill High School's "service learning" program requires students to complete 50 hours of unpaid community service in order to graduate, which amounts to 12.5 hours per year, or roughly one hour per month. The service must be performed at two placements chosen by the student. The program at Rye Neck High School is similar, but requires just 40 hours of service over the four years.

The Institute for Justice argues that such programs violate the 9th, 13th, and 14th amendments to the Constitution. It claims that a service requirement amounts to "involuntary servitude," unnecessarily deprives students of their liberty without a compelling governmental interest, infringes on the right of parents to direct the upbringing of their children, and violates the students' right to privacy by forcing them to document where they choose to serve.

To the contrary, contend school board supporters, service is a means of learning through experience, which is much more powerful than classroom instruction alone. The service experience can serve to enrich and give meaning to courses in civics, history, social sciences, literature, and the arts.

Furthermore, as Tony Deleberti, a teacher at another school, has found, service often "instills an 'I can make a difference' attitude," making it a truly liberating experience.

Service is a vital part of citizenship education, through which students can learn the importance of social interdependence and become empowered in the democratic arts.

Governor Kicks Off One Church—One Addict in Illinois

On May 23, Governor Jim Edgar inaugurated the Illinois chapter of One Church—One Addict, a movement by Father George Clements and the AARR to get every church in America to take long-term responsibility for at least one recovering drug addict.

"Just as Father Clements' One Church—One Child program has facilitated the adoption of over 40,000 children in the last decade," Governor Edgar said, "One Church—One Addict will help thousands of addicts to succeed on the road to recovery and become contributing members of their communities."

He further announced that the Illinois Prevention Resources Centers will provide substance abuse training for churches embracing the program.

One Church—One Addict was introduced to the

nation in February at a White House ceremony hosted by Drug Czar Lee Brown. Illinois is the first state to sign on.

Maryland joins the movement this summer, with Florida and Washington set to begin programs later in the year.

Governor Edgar acknowledged that combatting substance abuse and addiction is exceedingly difficult, calling the problem "one of the greatest challenges we face, costing society billions of dollars."

Father Clements speaks of the cost in other terms. "The problem is a spiritual one, and the reason people are involved in drugs is because they have lost their spiritual base," he says. "The solution has to be a spiritual one."

THE WHITE HOUSE

Office of the Press Secretary
(Chicago, Illinois)

Embargoed for Release
Until 10:06 A.M. EDT
Saturday, June 18, 1994

RADIO ADDRESS BY THE PRESIDENT TO THE NATION

Robert Taylor Homes
Chicago, Illinois

THE PRESIDENT: Good morning. For a year and a half now, I and my administration have worked very hard to do the right thing by ordinary Americans -- to restore the values of community, opportunity and responsibility that have always strengthened our country. Thanks to you, we're getting the job done on many fronts.

We've reduced the deficit dramatically. We're going to have three years of deficit reduction for the first time since Harry Truman was President. We've expanded trade and increased investment in our people's education and training and in new technologies. All of this has produced steady growth in our economy. There are now 3.4 million new jobs in the economy in the last 16, 17 months -- more than in the previous four years combined.

Meanwhile, we've worked hard to give more of our children a better education, more of our workers a chance to meet the changing demands of the job market. This week we offered a plan to end welfare as we know it, a plan that will encourage personal responsibility and help strengthen our families through tougher child support, more education and training and an absolute requirement to go to work after a period of time.

We've broken seven years of gridlock to pass the Family and Medical Leave Law, to give working families the security of knowing they won't lose their jobs if they have to take time off from work for a child's birth or a sick parent. Seven years of gridlock to pass the Brady Bill to help keep more of our citizens and police officers alive by keeping guns out of the hands of people with dangerous criminal or mental health records.

And then our efforts to reform health care, to provide health care to all Americans -- for the first time ever, a committee of Congress has recommended private health insurance

for every American family. We're trying to break 60 years of gridlock and stranglehold by special interest on health care.

Now, each of these accomplishments is important in its own right. But all of them take on an even greater meaning when we see them as part of our larger mission. That mission is to make it possible for all Americans, without regard to their race, their gender, their income, the region of the country from which they come, to be able to make better lives for themselves -- to face the future with all of its changes with the enthusiasm and confidence that they should have.

Our goal is not to hand anyone anything, but to improve the economy, offer opportunities, strengthen families and communities so that people can assume the responsibility to make a better life for themselves.

No issue poses the need to come together more to deal with the problems that we face than does the cancer of crime and violence that is eating away at the bonds that unite us as a people. I saw it again this week when I visited a housing project in Chicago called Robert Taylor Homes.

I went there once three years ago, so I'm pretty familiar with all the wonderful people who live there, the good things they're trying to do, and the terrible problems they face from violence and guns and drugs. I went there because it's a good place to emphasize to all Americans that we have begun a nationwide effort to drive the guns, the gangs, and the drugs from public housing and from all neighborhoods where Americans feel terrorized. I wanted to underscore how important it is to empower our people to take back their homes, their streets and their schools wherever they live.

Unless we do something about crime, we can't be really free in this country; we can't exercise the opportunities that are there for us; and our children can't inherit the American Dream.

Now, our administration and the Congress must do our job on crime so that the American people can do their job in the communities where they live. We have waited five long years, through partisan and political gridlock, for a crime bill that will address the growing crisis. That's long enough. The crime bill, which has now passed both Houses of Congress, but which must be reconciled into one bill and passed one more time, does provide us with the tools we need to help prevent and punish crime.

Congress is on the verge of adopting this crime bill. It contains almost all the elements of the anticrime plan I've been promoting ever since I started running for President. Now it's time to pass the bill -- to stop talking, to stop posturing, and pass the bill.

The crime bill will put 100,000 more police officers on the street. They'll be visible. They'll know the children and the neighbors. They'll give our communities the power to keep themselves safer. Properly trained and properly deployed, 100,000 more police officers on our street will lower the crime rate and increase security.

The bill will enforce our sense of safety in many other ways. We did what many said couldn't be done, including in this bill a ban on assault weapons. I saw hundreds -- I mean hundreds -- of those assault weapons in one little police cubicle in the office in Robert Taylor Homes just on Friday. We have got to take these weapons of killing away from people who are putting the police at a disadvantage and terrorizing our children and our neighborhoods.

This bill will provide for capital punishment for anyone who kills a law enforcement officer. It will give serious repeat offenders what they have earned -- a life sentence, by making three strikes and you're out the law of the land. It will make it illegal for teenagers to possess handguns unless they're under the supervision of a responsible adult. It will make our schools safer by giving the most dangerous school neighborhoods in the country more resources to provide for safe schools.

But providing more police and tougher punishment isn't enough. We have to deter crime where it starts. This proposal also gives people something to say yes to. It provides jobs for thousands of young people from high-crime neighborhoods, particularly those who stay in school, off drugs and out of trouble. It gives funds to keep schools open after hours. It adds support for boys and girls clubs, for community activities like midnight basketball. It builds better partnerships between our police and our young people.

An investment in a child is not only a contribution to America's future, it's a real stroke in the war against crime. Those on the front lines of crime, our police officers, have witnessed firsthand the explosion in youth crime and violence, and they know this is true.

A coalition representing more than half a million law enforcement officers nationwide has just written to me and said, "We support the inclusion in the crime bill of substantial funds for prevention programs. They can help make a difference."

Here at the Robert Taylor Homes on Friday I saw young people wearing tee-shirts for peer groups, for Adopt A Grandparent's program, for antidrug programs, for midnight basketball programs. I met adults working in tenant patrols. All these prevention programs are unleashing the grass-roots energy of responsible residents who understand that they, too, have a duty to try to do something about crime. They're young,

they're old, they're middle-aged, they want to take their streets, their neighborhoods, their communities back. And we owe it to them to support them. We can only do it if we keep the prevention component of the crime bill.

Now is the most crucial time to make sure your congressmen know you want action on the crime bill. There has been enough talk. We have broken years of gridlock to get the bill through both houses of Congress. But unless it comes to my desk and I sign it, all this effort will have been for nothing. We can give the families of this country the chance to control their own neighborhoods, to raise their children in safety and security. That's what real freedom requires. We can't give up until we've got it.

Thanks for listening.

END

RON WYDEN

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Congress of the United States
House of Representatives

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FACSIMILE TRANSMISSION FROM CONGRESSMAN RON WYDEN

(202) 225-4811 (o)

TO: Mr. Bruce ReedFROM: Rep. Ron Wyden

THERE ARE 5 PAGES TO THIS TRANSMISSION, INCLUDING THIS
COVER SHEET. IF YOU HAVE EXPERIENCED ANY DIFFICULTY, PLEASE
CONTACT Cawlyn AT THE ABOVE NUMBER.

JOSE -
He called me
re Friday
in Chicago

**SUMMARY OF THE SAFE PUBLIC HOUSING ACT OF 1994
AMENDMENT TO HOUSING BILL**

I. Amends the United States Housing Act of 1937 to allow residents to vote to either:

- 1) Ban guns on the premises of their public housing development.**
- 2) Require all guns on the premises of the public housing development to be registered with the public housing agency.**
- 3) Require gun owners to be registered with the public housing agency to bring guns onto the premises of the public housing development.**

II. Upon approval of a referendum on restricting guns, non-residents will be prohibited from bringing guns onto the premises of a public housing development:

- 1) This bill would establish as a federal crime the possession of any firearm on the premises of a public housing development, unless the person possessing the firearm is 1) a resident at the development, 2) a law enforcement officer, 3) any other person authorized to possess a firearm in the housing development by the federal, state, or local government, or by the public housing authority.**
- 2) Violators would be penalized with a fine of up to \$5,000 or up to 5 years in prison.**
- 3) For a non-resident to bring a gun onto the premises of a public housing development, he or she must receive authorization from the public housing authority.**

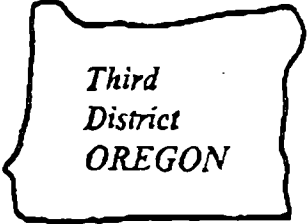
III. Procedure of the vote:

- 1) 10% of the residents in a public housing development must sign a petition to initiate the referendum on guns. Public housing authority must voice any objections to the petition within one month, after which the petition will be automatically considered to be certified.**
- 2) The referendum must in a timely manner after certification of the petition. HUD will make such rules as necessary to ensure that the vote is publicized and held at a time and place convenient for the residents. The vote will be held by secret ballot. The housing agency will oversee the referendum and tally the vote. However, at the request of the resident council, the housing agency may designate a non-profit organization to administer the vote.**
- 3) The housing authority and the resident council will jointly decide on a third party to review and certify the referendum.**

IV. Procedure of the gun ban:

- 1) If the referendum passes, the housing agency will have 60 days to notify residents of the new provision in their lease.**
- 2) Breaking the ban will be grounds for termination of the lease.**
- 3) Money from the Community Partnership Against Crime (COMPAC) may be used by the Secretary for grants to housing developments that have taken such a vote for enforcement purposes, such as metal detectors, gun lockers, registration material, etc.**

NEWS FROM

CONGRESSMAN**RON WYDEN**

Third
District
OREGON

1111 Longworth House Office Building * Washington D.C. * (202) 225-4811

**STATEMENT OF CONGRESSMAN RON WYDEN
INTRODUCING THE SAFE PUBLIC HOUSING ACT OF 1994
March 16, 1994**

Across America over 3 million of our citizens live in public housing projects and many live in fear. In too many public housing communities, the children cannot go safely outside to play, and the residents can't sit on their stoops to visit. At bedtime, the doors are bolted and the beds placed strategically far from windows that might be shattered by stray bullets.

The fact is that the rate of violent crime and drug offenses is far higher in public housing than in other neighborhoods. In a Rand Corporation report, researchers found that public housing often had between 2 to 6 times as much violent crime as surrounding neighborhoods.

No American deserves to live in this state of siege, and public perception has unfortunately painted too many public housing communities as either clusters of weak victims or perpetrators of crime themselves.

The fact is these images are untrue. Like most Americans, the majority of public housing residents are law-abiding citizens. They want a safer community, and they deserve one. Several years ago, residents of Columbia Villa, a troubled public housing development in Portland, Oregon approached my staff about what might be done to control gun violence in their community.

Other public housing public housing communities across the country have also wrestled with this problem, and this is why Congressman John Lewis and I have worked with public housing residents from across the country to fashion a new approach for increasing safety.

Our approach is straight-forward: Empower residents to reduce gun violence in their communities. Give residents the power to take back control of their lives, and get out from under the scourge of gun violence and crime. Give residents the right to make their community gun-free, and keep non-resident criminals from terrorizing communities. Give residents the opportunity to secure the most basic civil right -- safety in their community. Give the children in these communities the right to have a full life.

(MORE)

WYDEN

Page 2

Under our proposal, residents could petition the housing authority to hold a referendum on banning and restricting guns. The housing authority would be required to hold a vote on either banning guns completely or requiring gun or gun owner registration. If the vote passes, then the gun ban will be triggered in the resident's lease after 30 days and a violation will cause the lease to be terminated.

After a vote for a gun ban or restriction provision, all non-residents will be banned from bringing firearms onto the premises of a public housing project. The penalty for a non-resident violation of the ban would be up to 5 years in prison or a fine of up to \$5,000. Too often it is the non-residents who prey on the residents and bring violence into the public housing communities.

Additionally, resources needed to enforce a gun ban -- such as metal detectors and gun lockers -- will be made an eligible expense under the Drug Elimination Program.

Some have inquired as to whether such a measure is constitutional. The evidence clearly indicates that it is. In Richmond, Virginia and in Portland, Maine, federal and state courts have upheld gun bans imposed by the management. According to the American Law Division of the Congressional Research Service, since public housing developments receive substantial funding from the federal government and given the scope of the commerce clause to regulate items carried interstate, the federal government has a sufficient jurisdiction to regulate guns in public housing.

Even though gun bans in public housing are constitutional, without our proposed law a state or local government could pass a law overriding gun restrictions imposed in public housing. This has already been attempted in Virginia. This legislation would preempt such state and local laws.

Finally, we have been asked "What about residents who are trying to control their own destiny by keeping guns for their own safety?"

I believe this question was best answered by a lieutenant with the Portland police in my hometown. Lt. John Hren with the neighborhood response team at Iris Court in Portland, Oregon said, "That's an issue the residents have to face when they choose to vote. The question is, do they want to give up their right to have that protection in exchange for the law that says anyone in the complex with a gun is subject to arrest."

####

MAY 05 '94 09:44AM CONGRESSMAN JOHN LEWIS

P.22

THE OFFICE OF U.S. CONGRESSMAN JOHN LEWIS

RESTORING SECURITY TO PUBLIC HOUSING

**by Congressman John Lewis
March 16, 1994**

Good morning, ladies and gentlemen. I want to welcome you here today. I also want to thank my Colleague, Congressman Ron Wyden, for leading this effort to help empower the residents of the nation's public housing units.

I join Congressman Wyden and Kimi Gray this morning to take a stand against violence. Criminal violence is threatening the very stability of American society. I'm deeply saddened and troubled by the violence and the bloodshed we have witnessed in recent years. In the 5th Congressional District of Georgia, I've read and heard about too many tragic deaths because of the easy availability of guns. Solutions are desperately needed to stop the carnage. It is time to empower our citizens to end this violence.

Nationally, public housing communities incur two to three times the rate of violent crime as surrounding neighborhoods. Permitting residents in these areas to ban guns in their communities is a small step in breaking down the gun violence.

This legislation gives us the tools to reverse the deadly cycle of gun violence in public housing. The citizens in public housing have a right to live in a safe environment free of violence. We must reclaim our streets and communities. We must stop the violence. There are too many guns, and there are too many killings.

America must be disarmed. If the United States government can send troops thousands of miles to Somalia, which I supported, to disarm the warring clans, why can't we disarm the gun-carrying thugs on the streets of America.

I am optimistic that Congress will act quickly to adopt this legislation. This bill is a significant step down the long road to restoring security to these communities.

Thank you.

GUIDANCE
ON
PUBLIC HOUSING SECURITY

U.S. Department of Justice
U.S. Department of Housing and Urban Development

May 4, 1994

In their April 14 letter to President Clinton, Secretary Cisneros and Attorney General Reno outlined a series of constitutional options for public housing authorities seeking to address the serious problems of guns, drugs, and violence which are jeopardizing the right of public housing residents in many places to live in a decent and safe housing environment.

While the specific impetus of this initiative was the situation in the Robert Taylor Homes and Stateway developments in Chicago, the President, along with the Secretary and the Attorney General recognized that there are other authorities and local law enforcement officials struggling with the same types of problems and concerns, to varying degrees, throughout the country.

The purpose of this meeting is to give you our best thinking on the subject of security in the public housing context, and to hear and learn from you. This is an issue on which you need and deserve some guidance and support at the national level. However, in the final analysis, it is the local conditions that determine the degree of the problem and dictate the appropriate response. We look forward to a productive and informative dialogue on this issue that is so important not only to the residents of the public housing developments involved, but to the wider community of which they are a part.

Below are questions and answers dealing with various aspects of the options outlined by the Attorney General and the Secretary in their letter to the President. While by no means exhaustive, they represent some of the most common questions raised about the guidance being given on this important issue.

I. Securing the Building Entrances and Lobbies

QUESTION:

Can a public housing authority require a tenant to submit to a search upon entering the development in order to gain access to his or her apartment?

ANSWER:

Yes. The courts have upheld the use of metal detectors and follow-up searches at airports, in federal buildings, and in other settings as long as they are legitimately necessary to protect the safety of the public. Certainly, the need for these measures is manifest in projects in which violent crime is pervasive.

II. Inspections Pursuant to Terms of the Lease

QUESTION:

Under what conditions can an individual unit be inspected for firearms by public housing authority personnel?

ANSWER:

1. A federal regulation, 24 C.F.R. 966.4(j), requires public housing lease agreements to allow entry, with reasonable advance notice, for routine inspections and maintenance.

2. The regulation also requires a housing authority to include a lease provision allowing the authority to enter a dwelling unit at any time "without advance notification when there is reasonable cause to believe that an emergency exists." An emergency under this provision may include the presence of guns or drugs, gunfire, or heightened gang activity in public housing. When these conditions are present, the authority may enter a unit and conduct an inspection. In the Summeries Consent Decree, the American Civil Liberties Union and the Chicago Housing Authority agreed to allow inspections in these circumstances.

QUESTION:

Can the receipt of public housing be conditioned on the tenant's acceptance of a lease provision providing for routine and emergency inspections?

ANSWER:

Yes, a prospective tenant may be denied an apartment if he or she refuses to agree to lease provisions allowing inspections. Such provisions are common in residential leases. Although non-public housing leases do not define emergencies in terms of the presence of firearms or the threat of violence, the conditions in some public housing developments make such provisions reasonable.

QUESTION:

How intrusive may an inspection of a public housing unit be?

ANSWER:

Generally, during an administrative inspection, the inspector

may walk through and view all areas of the apartment. The inspector may also open cabinets, closets, and refrigerators. The inspection may not extend to dresser drawers and other personal effects.

QUESTION:

What role would police officers play in the routine or emergency inspections authorized by the leases?

ANSWER:

A police officer may accompany the housing authority employee to provide security during the inspection. If the inspector discovers firearms, contraband, or unlawful activity during the inspection, the police officer may seize the firearms or contraband or make arrests, as appropriate.

III. Consensual Searches

QUESTION:

Under what conditions may police search an apartment with the tenant's consent?

ANSWER:

1. Police may always ask for consent to search an individual apartment. They do not need probable cause to believe that contraband or illegal activity may be found inside.
2. Residents of public housing could be asked to consent to searches of their apartments when they sign the lease. The consent provision could be included either in the lease itself or in a separate document. The consent provision should explain the circumstances that will trigger the search.

QUESTION:

Can a prospective or existing public housing tenant be forced to sign a consent provision as a condition of obtaining or remaining in public housing?

ANSWER:

Conditioning the acceptance of public housing on agreement to a consent provision raises a difficult question of Fourth Amendment law. A consent provision in a lease may be valid if it is reasonably necessary to protect the tenants and the PHA

property.

Any Fourth Amendment question can be avoided by making the consent provision optional or by including a right to revoke the consent when police appear to conduct a search. In the alternative, public housing developments could be divided into "consent" and "non-consent" buildings. A tenant who refused to sign the consent provision would be offered an apartment in a building in which such provisions are not required as a condition of tenancy.

QUESTION:

In which housing developments will consent provisions be included in leases?

ANSWER:

Lease consent provisions should be limited to developments where the residents have voted to use them based on their assessment of the development's security needs.

QUESTION:

May a public housing authority include a lease consent provision without HUD approval?

ANSWER:

Yes. HUD does not have a role in lease approval, but tenants are entitled to a 30-day period to comment on new lease provisions.

QUESTION:

How intrusive may a search pursuant to a consent be?

ANSWER:

A search pursuant to consent may be as intrusive as necessary to discover the object that is the announced purpose of the search. Thus, a consensual search for firearms can extend to any place where a firearm may reasonably be found.

IV. Searches of Common Areas and Vacant Apartments

QUESTION:

What limits are there on the right of Housing Authority police

and inspectors to search and inspect common areas and vacant apartments?

ANSWER:

The Fourth Amendment does not prohibit searches of common areas or apartments that are not leased to someone. Common areas belong to the Housing Authority, and searches of those areas are therefore lawful exercises of the Housing Authority's right to maintain and protect its property. No warrant or other justification is needed before the Housing Authority may search or inspect any such areas.

Searches of vacant apartments (i.e., apartments that are not leased to anyone) may also be conducted without the need for a warrant or any other justification. As in the case of common areas, the vacant apartments do not belong to an individual. Accordingly, no one enjoys any Fourth Amendment rights in a vacant apartment, even if he is present or has left property there.

That is not to say that a person found in a vacant apartment may automatically be subjected to a search of his person. A search of a person may be conducted only if the police have reasonable suspicion that he is engaged in a crime and may be dangerous. But in many instances when a person is found in a vacant apartment where he has no right to be, the requirement of reasonable suspicion will be satisfied by the suspicious circumstance of the person's unauthorized presence in the vacant apartment.

V. Weapons Frisks of Suspicious Persons

QUESTION:

When can police approach suspicious persons for questioning?

ANSWER:

The Fourth Amendment permits a police officer to stop a person briefly for questioning when the officer has a reasonable basis to suspect that the person is engaged, has engaged, or is about to engage in criminal conduct. The requirement of "reasonable suspicion" is less demanding than the traditional standard of "probable cause" that is necessary for an arrest, for a full search, or for a warrant.

QUESTION:

When can police frisk a suspicious person for weapons?

ANSWER:

Not every person the police stop for questioning may be frisked. Instead, the police must have some reason to believe that the person may be armed before conducting a pat-down search. The courts, however, have been willing to accord police a great deal of leeway in making on-the-spot assessments of dangerousness. If the officer's judgment seems reasonable under the circumstances -- even if it is based more on a hunch than on clear evidence of dangerousness -- the court is likely to hold that the officer was justified in conducting a frisk.

VI. Warrant Searches on Probable Cause

QUESTION:

When must a warrant be obtained to conduct a search?

ANSWER:

The general rule under the Fourth Amendment is that a search may be conducted only under the authority of a warrant, unless one of the exceptions to the warrant requirement applies. There are a number of exceptions to the warrant requirement, such as:

1. A search of the person and his immediate surroundings, conducted in the immediate aftermath of an arrest.
2. A search of a moveable item, such as an automobile, on probable cause to believe it contains evidence of a crime.
3. A search under "exigent circumstances," i.e., in the event of an emergency in which there is no time to obtain a warrant.
4. A search pursuant to the consent of the person whose property is being searched.

The warrant requirement is at its strongest when a search of the home is involved.

QUESTION:

How can a lease clause authorize a warrantless search without probable cause.

ANSWER:

Where the parties to a lease agree to allow searches or inspections by the landlord without probable cause, the search

or inspection that is conducted pursuant to that lease provision is considered to be the product of the tenant's consent. As we have discussed above, however, there are limits on the extent to which a tenant's consent can be required: if the lease clause is considered reasonably necessary to protect the interests of the landlord and the other tenants, the landlord can insist on the tenant's consent. But if the clause goes beyond what is considered reasonably necessary to protect the interest of the landlord and the other tenants in the building, the landlord may not be able to insist on the clause, at least if the tenant does not have any other realistic opportunity to obtain housing.

VII. Searches Based on Exigent Circumstances

QUESTION:

Under what circumstances may police rely on the exigent circumstances doctrine to search an apartment for firearms?

ANSWER:

Police officers may enter an apartment from which they have heard the sound of gunfire and conduct a warrantless search. In addition, police officers may enter an apartment where they know drugs or firearms will be found if they reasonably believe that the evidence will be lost in the time it takes to obtain a warrant. The search must occur immediately after the police hear the gunfire or learn of the presence of contraband. By definition, an exigency is a situation in which the police do not have time to secure a search warrant.

QUESTION:

May police officers search multiple units of a building if they cannot isolate the source of gunfire?

ANSWER:

If the police reasonably believe that a person is wounded in one of several apartments, they may enter those apartments to find the wounded person. A good argument can also be made that if police can isolate the source of gunfire to two or three apartments, they can enter those apartments and search for a gun. Police cannot rely, however, on the exigent circumstances doctrine to search every apartment in a building. The rule is that the police must have probable cause for each apartment they wish to search.

QUESTION:

How intrusive a search may be conducted under the exigent circumstances doctrine?

ANSWER:

If the police are responding to the sound of gunfire within an apartment, they may conduct a search of any area in which a gun may be found. Similarly, if police are conducting a search because they have probable cause to believe that guns or drugs will be found in an apartment and the evidence will be removed before they can obtain a warrant, the police may conduct a thorough search of every area of the apartment. If police have reasonable suspicion only that a person is wounded in the apartment, they may only enter to determine whether in fact someone requires assistance; they may not conduct a thorough search of the apartment. The rule is that police may conduct as thorough a search as is necessary to address the exigency that allowed them to enter the apartment.

VIII. Arrest Warrants

QUESTION:

What authority does an arrest warrant grant to the police to enter a private residence?

ANSWER:

An arrest warrant authorizes the police to arrest the subject anywhere he is found. It also authorizes the police to enter the subject's home. When the police enter the subject's own home, therefore a separate search warrant is not required. However, if the police wish to enter a third party's house to arrest a person under an arrest warrant, the arrest warrant is not enough. In that case, they must also obtain a search warrant to enter the home, since the invasion of the third party's privacy is considered a separate Fourth Amendment interest from the interests addressed by the arrest warrant for the subject.

The White House
Office of the Press Secretary

For Immediate Release:

April 7, 1994

**STATEMENT OF THE PRESIDENT ON THE COURT DECISION REGARDING
THE CHICAGO HOUSING AUTHORITY'S "OPERATION CLEAN SWEEP"**

Just hours ago, a Federal District Court for the Northern District of Illinois, Eastern Division, declared the Chicago Housing Authority's (CHA) search policy in violation of the Fourth Amendment.

I am ordering Attorney General Reno and Secretary Cisneros to develop promptly a search policy for public housing that is both constitutionally permissible and effective, and that can be implemented on a nationwide basis. We must not allow criminals to find shelter in the public housing community they terrorize.

I have also asked the Attorney General and Secretary Cisneros to explore what other resources we can provide for sweeps by localities and by federal agencies.

During the last weekend in March, 13 people died violently in Chicago -- 3 of them in the Robert Taylor Homes -- and more than 300 gun incidents were reported to local police. The people in the Robert Taylor Homes have asked us to help protect them, and within constitutional limits we will do so.

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

April 11, 1994

REMARKS BY THE PRESIDENT
IN TELEPHONE CALL TO A TOWN MEETING WITH SECRETARY CISNEROS

The Oval Office

10:27 A.M. EDT

SECRETARY CISNEROS: Mr. President, this is Henry Cisneros in Chicago.

THE PRESIDENT: Hello, Henry, how are you?

SECRETARY CISNEROS: Good, sir. I'm here with Senator Carol Moseley-Braun and Congressman Bobby Rush and Vince Lane of the Housing Authority, who's a good friend of yours, and about 200 folks at Progressive Community Church. And we are gathered together to talk about how to deal with the violence that's plagued the Chicago Housing Authority, Robert Taylor, Stateway and other developments over the last couple of days.

We're sitting at a table with about 20 guns that were picked up last night in police actions; a very violent weekend that resulted in about 15 shootings and five deaths -- one 16-year old was killed last night at Washington Park Homes, here in the area.

We're looking at about 20 or so rifles, pistols, automatic weapons that were picked up in police action last night. So this is a very serious circumstance, and the group is very appreciative for your call, sir.

THE PRESIDENT: Well, I'm very concerned that all the efforts that have been made there over the last several years -- and I'm glad Senator Moseley-Braun's there; I'm glad Bobby Rush is there -- I know you're in his district. And I know Vince Lane remembers the trip that we took into Robert Taylor Homes back in 1991, before I even started running for President. And I'm so worried that all the progress that's been made will be undermined by the court decision. I wonder if some of this violence has not been almost aggravated by the decision. And I'm hoping that you'll be able to find a constitutional solution to this working with the Attorney General.

I know that this bike team effort last night did net a significant amount of guns and other things; and I'm encouraged by what you say. I want to encourage all the citizens who are there that we're going to do everything we can to support them and enable them to have control over their lives and not allow criminals to find shelter in the very public housing communities that they're terrorizing.

I think it's very important. I just want to say -- you tell me what you think we have to do, and I'll do it. I've seen what can be done there when people can take control of their own destinies. And I think we owe it to them to do everything we can to give them their homes back.

SECRETARY CISNEROS: Mr. President, we're looking at a strategy that is essentially four elements. And I'll prepare a report for you with the Attorney General and have something on your desk, hopefully by tomorrow or the next day. But obviously the first

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piece is to focus on the sweeps and the legality of what can be done to get the sweeps constitutional.

Secondly, to focus on other security measures, other measures we can take, such as Operation Safe Home and other things we can do. Thirdly, to focus on such things as recreational programs this summer, recreational activity, midnight basketball, ballparks, anti-gang things, youth mentorship -- critically important, and the community recognizes that so.

And then finally to focus on the long-term vision remake of public housing in Chicago. And we've got some ideas about that. And I'll get it all to you in writing. But I just wanted to give you kind of the strategy.

I'm going to ask Senator Moseley-Braun to say a word, if I may, Mr. President.

SENATOR MOSELEY-BRAUN: Good morning, Mr. President.

THE PRESIDENT: Good morning, Senator.

SENATOR MOSELEY-BRAUN: Mr. President, I am first delighted that you've called this morning. I know the community appreciates your concern and your attention to this critical issue. And of course, the Secretary coming out and staying last night was just unprecedented. And we are just very grateful for the commitment and the concern that's being expressed by your administration.

I mentioned to the Secretary that the real bottom line in all of this is getting some money to create some jobs and to put in some security here at DHA. I mean, that's the bottom line. We can -- we've done sweeps before. They work for a while and then you have to go back to the problem.

And the problem here, I think, Mr. President, is only going to be solved if we can put some investment in behalf of securing the buildings, providing security forces and giving people some jobs and some opportunity and some hope back. That really is bottom line here, and I think we're up to do it. And I think we can do it without breaking the bank.

And I would very much appreciate -- Ivan's going to work with the Secretary and with Vince Lane and with the delegation. And your support, sir, will be absolutely critical in making sure that we can free up some money to do this.

THE PRESIDENT: Thank you. You know, there's some money in the -- some significant money, especially in the House version of the crime bill that would provide for some jobs for young people in high crime areas.

SENATOR MOSELEY-BRAUN: Right.

THE PRESIDENT: And that's one of the things that we tried to do in rewriting it over on the House side, was to get some money in there so that we could determine the impact on the crime rate of providing jobs for people. I think -- of course, I know you agree with me, what we're going to find is if we can go into some of these neighborhoods and put people to work, the crime rate will go way down.

SENATOR MOSELEY-BRAUN: I think that's right. That's right. Well, as you know, I'm going to support that legislation. And, again, if we can come up with some other initiatives -- Mr. Lane was talking about some things this morning. I want to work very closely with you, sir, and with this administration and the Secretary in behalf of putting together the money and putting together the

initiatives we need to begin to turn around a history of neglect here.

THE PRESIDENT: Thank you.

SENATOR MOSELEY-BRAUN: Thank you again, sir.

THE PRESIDENT: Thank you so much.

REPRESENTATIVE RUSH: Mr. President?

THE PRESIDENT: Yes.

REPRESENTATIVE RUSH: Bobby Rush, how are you doing?

THE PRESIDENT: Hi, Bobby, nice to hear your voice, Congressman.

REPRESENTATIVE RUSH: Yes. Mr. President, I certainly appreciate your calling to the public housing community of the city of Chicago this morning. It's the first time that any Chief Executive Officer of this nation has taken a part of their day to discuss vital issues that all the residents here are concerned about and have been concerned about over the years. There are a lot of resources that I think that we can bring to bear on this. You and I have talked about this, particularly during the campaign. There are a lot of resources, I think, will be brought to bear if, in fact, we have the commitment and the vision to do that.

I think gathered around this table, and in this room, we have really an advanced team of people who can come up with the solutions. And we certainly, in the Congress, can try to help assist you in terms of helping to find those resources and use creative efforts and creative endeavors to try to bring some resources into public housing; because the people who live here, they're the true victims. They didn't create public housing; they didn't locate it where it's located. Circumstances have forced them to live in these conditions, but they should not be exiled to living in public housing camps in the way they're living in them right now. We have to make these developments livable.

Mr. President, I have a community leader here who's going to ask for 30 seconds to discuss -- to say something to you for about 30 seconds, if in fact that would be appropriate.

THE PRESIDENT: Sure.

MR. SISTRUNK(?): Mr. President, Mr. Clinton?

THE PRESIDENT: Yes.

MR. SISTRUNK(?): First of all, I want to say my name is -- Sistrunk(?). And I want to encourage you to continue to support Mr. Lane and the Congressman and the Senator and Mr. Cisneros.

Mr. President, last week, a couple of days ago, I spent a day in the hospital with a Terrence Graham, who was shot in the developments. I've lost kin people in the developments. Mr. President, I want to say sincerely to you, if you would in your next year or so, or whenever you're available, to come and witness the terror, the hurt and the pain, because it's serious, and it hurts, Mr. President. And we need you here in Chicago, but more important we need you to continue to support Mr. Lane and community activists and people who are concerned about death and dying and the residents. And I encourage you to take a stand, Mr. President.

Thank you. (Applause.)

THE PRESIDENT: Thank you very much. Thank you for what you said.

SECRETARY CISNEROS: Mr. President, thank you very much.

THE PRESIDENT: I want to thank the gentleman for his remarks. As I said, I once came to Chicago and visited the projects with Vince Lane shortly before I declared for President. And I would like to come again. And I do care a lot about what's going on there. And I'm encouraged by this meeting. And I want to thank Secretary Cisneros for so promptly responding to my request and going over there and spending the night and getting in closer touch with the situation. I feel better about it. And I hope we can do some things to help. I believe we can.

SECRETARY CISNEROS: Mr. President, thank you for calling. I'm going to sign off with Vince Lane saying a couple of words to you, and we'll close out. We appreciate your time very much. We know there's things swirling in the world and you've got a busy schedule, so we deeply appreciate your call.

THE PRESIDENT: Thanks.

MR. LANE: Mr. President?

THE PRESIDENT: Yes. Hi, Vince.

MR. LANE: How are you?

THE PRESIDENT: Great.

MR. LANE: Mr. President, I want to say that this is a historic day in Chicago. We have a symbol here -- are people from all perspectives of this community. As you know, some of the things that we've had to do in order to try to protect life have been controversial; but in the end what I know, as you heard from Mr. Sistrunk(?) and from the Senator and the Congressman -- there we all have the same bottom line -- we've got to make this a safe place for poor black children in this city and in this country so that they can have the same opportunities as everyone else. And I know that with your leadership, under your leadership, and Secretary Cisneros and the leadership that you will bring and the champion of the efforts to redress the problems in Chicago with the Congress will yield us real longlasting permanent change in this country.

And so I just want to thank you for exercising the leadership that you have undertaken here with sending Secretary Cisneros and involving Janet Reno with addressing the problems here in public housing in Chicago.

THE PRESIDENT: Well, thank you Vince, and thanks for blazing away for us and making people believe that we could actually do something to improve life in public housing. You showed me that it could be done years ago, and I'm convinced that maybe we can use this court decision as a spur to even do a better job, a more comprehensive job. We're going to do everything we possibly can.

MR. LANE: God bless you.

THE PRESIDENT: Thanks -- it's nice to hear your voice.

Goodbye, ladies and gentlemen. Thank you. (Applause.)

END

10:37 A.M. EDT

THE WHITE HOUSE

Office of the Press Secretary

Embargoed for Release
Until Saturday, April 16, 1994
at 10:06 A.M. EDT

RADIO ADDRESS BY THE PRESIDENT
TO THE NATION

The Roosevelt Room

THE PRESIDENT: Good morning. This week we joined in sorrow for those who lost their lives in the downing of two of our helicopters over Iraq. I want to begin by expressing, again, my condolences to the loved ones of those who died. They gave their lives in a high cause -- providing comfort to Kurdish victims of Sadaam Hussein's brutal regime -- and we honor the sacrifice of those brave individuals.

Today I want to talk about one of the greatest threats we face right here at home -- the threat of crime in our communities. In 1991, I visited the Rockwell Gardens in the ABLA Housing Projects in Chicago where I saw firsthand what happens to our children who live too long in the shadow of fear. Dozens of children rushed out to greet me, eager to have someone to tell their stories to. They talked of gunshots and drug dealers, of late-night knocks at their doors and hallways where they dared not stray. Many of their stories had a common theme -- their childhoods were being stolen from them.

Vince Lane, the head of the Chicago Housing Authority, is a genuine hero to these children. He's trying to show the children that someone cares. To help, he put into effect a search and sweep policy to clean out Chicago's public housing communities, to find weapons, to get people out of those housing projects who didn't belong, to find drugs. But just over a week ago a federal district judge declared Vince Lane's search and sweep policy unconstitutional.

Every law-abiding American, rich or poor, has the right to raise children without the fear of criminals terrorizing where they live. That's why, as soon as I heard about the court's decision, I instructed Secretary of Housing and Urban Development Henry Cisneros and Attorney General Janet Reno to devise a constitutional effective way to protect the residents of America's public housing communities. Secretary Cisneros and Attorney General Reno moved quickly. Today I am announcing a new policy to help public housing residents take back their homes.

First, at my direction, Secretary Cisneros is in Chicago to provide emergency funds for enforcement and prevention in gang-infested public housing. We'll put more police in public housing, crack down on illegal gun trafficking, and fill vacant apartments where criminals hide out. And we'll provide more programs like midnight basketball leagues to help our young people say no to gangs and guns and drugs.

Second, we will empower residents to build safe neighborhoods, and we'll help to organize tenant patrols to ride the elevators and look after the public spaces in these high-rise public housing units.

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Finally, we're going to work with residents in high-crime areas to permit the full range of searches that the Constitution does allow -- in common areas, in vacant apartments and in circumstances where residents are in immediate danger. We'll encourage more weapons frisks of suspicious persons, and we'll ask tenant associations to put clauses in their leases allowing searches when crime conditions make it necessary.

This new policy honors the principles of personal and community responsibility at the very heart of this administration's efforts. It also shows all Americans that their government can move swiftly and effectively on their behalf.

Now we must move swiftly on the crime bill before Congress. The bill provides the right balance of protection, punishment and prevention. It will put 100,000 more police officers on the streets for community policing efforts that work. It will make three strikes and you're out the law of the land and provide money for new prisons. And it will pay for a wide variety of prevention programs to give our young people a future they can say yes to.

This is a crucial moment in the crime bill debate. It's time to tell Congress you've waited long enough for comprehensive national crime legislation; that you don't want political posturing or frivolous amendments, and instead, you need help to take back your communities.

This crime bill is for all our people, but nobody needs it more than the people like the mother of three who lives right here in Washington. A week ago, this 33-year-old mother came home after celebrating her ten-year-old daughter's birthday to find a gang of gunmen ransacking her apartment. The mother had one plea for the intruders: "If you believe in God, please don't shoot my children. Shoot me." The reply was cold and terrifying. "I don't believe in God," said one of the gunmen. Then he shot her daughter dead. Before the gunfire ceased, another child and the mother were both shot, and her three-year-old son witnessed the whole thing.

The sad fact is, the police now believe the shootings were carried out by youths who hang out in the very apartment complex where that mother was trying to raise her children.

There are many rights that our laws and our Constitution guarantee to every citizen, but that mother and her children have certain rights we are letting slip away. They include the right to go out to the playground, and the right to sit by an open window; the right to walk to the corner without fear of gunfire; the right to go to school safely in the morning; and the right to celebrate your tenth birthday without coming home to bloodshed and terror. The crime bill will help us take back those rights for all of our people. So will our new policy to protect public housing residents.

We must decide we will not tolerate more tragedies like that mother's. When we do that, together, we can replace our children's fear with hope.

Thanks for listening.

END

THE WHITE HOUSE

Office of the

Secretary

For Immediate Release

Jose Cerda
Room 224 OEOB

April 16, 1994

PREL

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
AND ACTING ASSOCIATE ATTORNEY GENERAL

CISNEROS
/SON

The Briefing Room

10:38 A.M. EDT

MS. MYERS: A huge crowd today, the Saturday gang.
(Laughter.) You're all so quiet.

Secretary of Housing and Urban Development Henry Cisneros, and the Acting Associate Attorney General Bill Bryson are going to brief you on their report to the President on fighting violent crime in the public housing projects. So, without further ado, Secretary Cisneros.

SECRETARY CISNEROS: Thank you, Dee Dee.

The last weeks have seen an eruption of violence in Chicago's public housing, of which has been unprecedented. Last weekend alone, some 15 shootings and five deaths in the public housing developments along the State Street Court, or principally at Robert Taylor Homes and Stateway Homes.

It prompted the President to direct the attentions of the Attorney General and the Department of Housing and Urban Development to several elements of this crisis. First, to devise a policy on the sweeps, and secondly, to look at the other elements of security and community development that need to occur to stop the violence.

Unfortunately, the violence we see in Chicago is not limited to Chicago public housing. While it may not be on as intense a scale in other places at this time, it exists in many communities across the country, and Washington, D.C. as well, as many of us know.

The President directed the Attorney General and the Secretary of Housing and Urban Development to devise a policy that could be used nationally so that other housing authorities across the country would be able to act upon it; a policy that would look at the nature of sweeps that might be necessary and do it within constitutional limits.

As you know, a judge, Judge Anderson in Chicago last week ruled that the sweeps as they were being conducted exceeded constitutional limits. And so work has been done over the course of the last week to devise a national policy. That policy has essentially five elements. You heard the President describe it in general terms in his radio address. I'd like to be a little more specific on the elements of the policy.

First, the policy assumes that it is essential to get control of the lobbies of buildings. So substantial effort is placed, and resources, to focus on access, entryways, metal detectors, guards, and control of lobbies.

The precise policy on sweeps includes the following four elements. Sweeps can occur in the common areas of buildings. This

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is important, because of what we have seen in recent weeks in Chicago includes the use of post boxes, mail boxes, as hiding places for guns, as well as stairwells, air vents and electrical outlets used as hiding places for weapons as well as drugs. So it is not insignificant to be able to sweep the common areas. That was allowed before and it continues to be.

Secondly, obviously, sweeps can occur in vacant units. I was along with a sweep team last Sunday evening in Chicago that netted something on the order of 25 weapons just Sunday night -- heavy weapons, rifles, 30-06 weapons with scopes, automatic weapons and revolvers -- just on Sunday night. The stock room at the police substation of the Chicago Housing Authority is full; literally 1,000 weapons that have been secured principally in vacant units.

And I'll say more about the issue of vacancies in a moment. But sweeps through vacant units can be very productive because the gangs tend to put the weapons -- locate these caches of weapons in vacant units.

Fourthly, sweeps can occur where consent has been given. That consent can take several forms. It may be consent that is given in advance as an element of a lease where people in the agreement to sign a lease for a building sign a consent that would allow searches for weapons just as they allow consent for searches -- for maintenance problems, inspections that are now a standard part of a lease. And we expect that this will be decided on a local basis, sometimes as local as the residence voting themselves in a building whether or not they want that as a precondition on the lease. We believe that would be important in a court test on this subject, that the residents voted that kind of element in a lease in advance.

But another approach to consent is what I witnessed myself on Sunday, and that is leases that are signed on the spot as a police team arrives at a unit. What you find -- you say, well, that's surprising that a resident would allow a search if they know there is contraband in their apartment. Frequently, they don't know that there's contraband there. It may be a mother who has small children, but a relative, a boyfriend, an older member of the family who has hidden guns there that the family doesn't know. What I witnessed on Sunday was the discovery of heroine in bags hidden in a mother's chest of drawers -- bureau -- by a son who was in the room and when it was discovered, readily admitted it was his. The mother did not know that it was there. She had consented to the search. So it is not insignificant to search when consent has been given. And that, obviously, meets the test of the law.

Finally, the fourth element of searches are warrantless searches in exigent circumstances. The key word there, of course, is exigent. It has to do with what has occurred -- whether or not there has been shooting, for example, from the upper stories of the building, and how massive it might be, how frequent it might be, and how timely the response is. All of those are subjective judgments, but the judge's order indicated that under circumstances of exigency, these sweeps can occur.

So those are the elements, then, of clarification on the sweeps policy. The bottom line is they allow for the continuation, the use of that particular vehicle, sweeps, within certain circumstances. And they are an instrument available not only to the city of Chicago, but to other housing authorities that want to use that instrument.

Acting Associate Attorney General Bill Bryson is here in the event you have some questions. But I'd like to follow up on the second aspect of this beyond sweeps to what is essentially a strategy of providing a down payment on the crime bill.

Yesterday in Chicago, the mayor and Vince Lane, the chairman of the Housing Authority, and myself announced a series of initiatives that represent cooperation between the federal government and the city of Chicago.

You have in front of you a handout that I'd like to call to your attention because it speaks to the other elements of what have to occur. The first page is called enforcement measures. The second is called prevention measures. Roughly speaking, they group into those two categories. The first one are measures associated with security and safety and taking control of buildings and their surrounding areas. And the second revolve around recreation, youth programs, antigang strategies, drug control and other elements that are preventative in character.

Let me just quickly give you the highlights of this, because I think it underscores what the President has said all along in his fight against crime and, particularly, in his pressing for the crime bill that while we focus on security measures, we must also focus on the balancing of some preventative measures.

On the security side, HUD is putting in new funds as well as advancing some CHA unobligated funds, totaling \$10 million for the creation of 10 additional BITE teams which will augment two BITE teams -- that stands for Building Interdiction Team Effort -- already in existence.

Now, let me just say quickly what those are. They're 18-member teams: eight members of the Chicago Police Department with a sergeant or nine Chicago police; eight members of the Chicago Housing Authority Police and a sergeant or nine CHA police team up together and literally arrive at a building, take control of the lower floors of the building, and then proceed on searches within the limits of what has been described.

I went with one of those teams on a raid on Sunday night. This was one where consent was required, but the emphasis was on controlling the common spaces and vacant spaces, and, as I say, 25 weapons were secured by BITE teams that evening.

This is a very substantial commitment of 180 additional police personnel, 18 times 10, for a year with a capacity to extend it beyond a year with additional HUD funds, as well as with funds that are in the crime bill. So this is a substantial addition of police capability that can be on the scene immediately. It does not require hiring of police personnel. These are off-duty personnel who, through overtime, can be in place as quickly as the funds are available. We're talking about the next week to 10 days on this. It's a very effective mechanism. They arrive en masse, without notice where buildings are in particular difficulty, and it's made a great deal of difference.

You see also under the next item, the third one down, \$5-million advance to fund replacements of private security guards so that sworn police officers can be in charge of the lobby and entrance areas. Today, there are so-called rent-a-cops, private security guards at the entrances, generally regarded to be ineffective. They're not trained, they're underpaid; the gangs intimidate them, go around them, even when they have a metal detector and it goes off. The rent-a-cops stay in there plastic, glassed-in cages for fear of stepping out and confronting the gangs. We think the gang members will have a good deal more of a problem confronting a peace officer, a police officer, a trained policeman with back-up capability in the same way. So this is an effort to replace the security personnel with sworn officers.

You see a program that is part of -- the next one -- an element of our Operation Safe Home initiative which will bring FBI

and Alcohol, Tobacco and Firearms resources together in order that we can trace weapons and prosecute appropriately, based on interstate movement of weapons, moving weapons through the mails and other possible things such as that.

The next one, I promised I'd say a word about vacancies. There's a \$10-million advance to rehabilitate vacant apartments. This is literally an around-the-clock effort. Conditions are so bad in the housing authority that I saw, the housing developments that I saw, that when you make an effort at vacancy rehabilitation, if the workmen leave at 6:00 p.m. in the evening, by the time they return the next morning, the work they did the previous day's been vandalized and undone.

So in a mixture of fixing the buildings on a practical, round-the-clock basis, using the model that was used in the California earthquake to get the freeway built in a fourth of the time that was originally projected, as well as to have a physical presence in the buildings with workers and spotlights and guards moving equipment through the building 24 hours, that will be an element of getting control of some of these buildings and dealing with the vacancies.

You see, finally, on this page funding for tenant patrols -- very important American heroes who wake up in the middle of the night to patrol their own buildings, no matter the weather. And they need some support in the form of radio equipment and so forth.

Let me quickly go through the second page because it's important to balance the security steps against the prevention measures. You see there funds to rehabilitate playground facilities. Presently the ball fields around Robert Taylor Homes are covered with glass shards and fragments and drug paraphernalia; clearly, unavailable to the children who want to play there.

In addition, \$200,000 to support recreational programs, particularly one called Midnight Basketball that takes and allows gangs members to be engaged in something other than gang activity by participating in basketball late into the night. Well orchestrated, coached, supervised basketball.

A very successful drug program at the Harold Ickes Homes called CADRE will be extended to the rest of the developments in the Chicago Housing Authority with the funds advanced from the Bureau of Justice Assistance. And then, very importantly, you see a \$2 million new investment of family -- in what we call Family Investment Center funds to provide recreational programs, youth counseling, cultural activities, after-school programs, and do that on the ground floor of the buildings, which then take some units out of circulation and replaces them with adults to add to the control of the bottom floor of the lobbies.

In addition, what we find is that many of those ground floor units are being used for drug transactions because people can avoid coming to the building and just use the windows for drug transactions at the ground levels. If we would transform those into active places where adults are providing youth services and counseling and so forth, they're unavailable for those purposes.

And finally, \$150,000 to establish a Boys and Girls Club.

Let me just say two things in closing. The first is that this represents a down payment on the concepts the President has pushed in the crime bill; the same balancing of, on the one hand, prevention measures with those matters related to enforcement. And though this is particularly targeted to Chicago, because of the

emergency circumstances of the moment -- the level of violence and gang war that is at its highest intensity -- this same approach will be available to other communities in the crime bill and through other programs that exist between the various federal departments. And we will work with other communities in the same way.

Finally, everything that we have proposed here is in consultation with the residents. Keep in mind, it is the residents who have requested that the policy of sweeps continue, and support them. And I can tell you this from firsthand, spending Sunday afternoon and Monday and yesterday with the residents. I didn't take one step in recommending to the President, consulting with the Attorney General, or allocating our resources -- HUD resources -- without consultation with the residents. It is an absolute imperative that we do that, and I can tell you from those discussions that they are nearly desperate with the conditions that they're forced to raise their children in today.

I could tell you anecdotal stories; I won't dwell on it now, but perhaps the most plaintive voice that I heard on Sunday was a lady who just said, "Please make it stop." Beyond ideology, beyond partisanship, beyond fine legal distinctions, she was just begging that the violence, the shooting, her children having to watch their classmates be taken to the hospital stop. And they're convinced that the sweeps have played an important role in slowing down the flow of weapons.

Without the sweeps, the weapons have come back into the buildings on a large scale. As a matter of fact, one lady told me yesterday -- she said, they're bringing the weapons back in in bagfuls. So some mechanism like the sweeps needs to be available to those who would try to provide safety and security. We've tried to provide those within constitutional limits.

The rest of the things we've talked about here -- the BITE teams, the vacancies, the drug programs, the recreational programs -- all -- I can show you my notes -- are specifically requested by the residents, because they know their circumstances better than anyone else.

I'll be happy to stop on that note and take questions. And Mr. Bryson may want to speak to some of the legal issues.

Q Is this problem only with the public housing? I mean, why particularly with public housing?

SECRETARY CISNEROS: Well, I'll tell you why particularly with public housing. Because the configuration of the public housing is a big part of the problem. First of all, we have created a legacy of concentration in Chicago -- not only in Chicago, but in Chicago, 67 high-rise buildings along State Street for four miles, literally -- no exaggeration -- you can check it on the odometer of your car -- four miles, 67 high-rise buildings without a break. A concentration of something like a third of the 144,000 people who are public housing residents in Chicago in this State Street corridor.

Point number one, concentration. Secondly, the federal government has been part of the problem in recent years in allowing income levels to drop so dramatically in public housing that the residents of public housing share all of the same problems. The median income in Chicago public housing is \$5,400, as against something in excess of \$40,000 in the metropolitan area as a whole. So an eighth or so, and no income mix. In many buildings, 85 percent single heads of households; no one working in regular jobs; no role models for the children at all.

Now, that's the base condition. Then it is exaggerated by -- rather it is complicated by the war for turf, and particularly for control of drug producing properties. There is a gang war in Chicago right now -- and particularly, I speak now of Robert Taylor Homes and Stateway -- by two gangs; one called the Gangster Disciples, the other called the Black Disciples. They literally control entire high-rise buildings, and frequently these buildings are adjacent to each other. I am told by the Chicago police that the drug take from those high-rise buildings is as high as \$30,000 a week, or \$1.5 million a year. Therefore, in the minds of 15- and 16-year-old gang members, it is worth fighting for, even dying for, control of the buildings.

What you end up with, then, is high-rise buildings adjacent to each other with young men spotting from the upper stories to see whether their rival gang members are moving around in the common space between the buildings, and shooting from building to building with heavy weapons. I mean, a 30-06 deer rifle with a scope is the kind of weapon that's in use and the kind of weapon that was confiscated the other night.

So, unfortunately, you find circumstances where, because children live there and families live there, they get caught in the cross-fire. Women will show you apartments with bullet holes over their children's beds; bullets that have finally ended up in the hallway in their homes not because they were the targets, but because anyone in the opposite building ends up being a target in the cross-fire.

Q Where are the Chicago police in all this?

SECRETARY CISNEROS: Chicago police are patrolling, and they have allocated a unit of 125 officers in addition to what the Chicago Housing Authority has. But it's not enough to patrol, when what is required is to actually take control of buildings and take them back from the gang members; and that's the circumstance. That's why Chicago, at this moment -- and that's why public housing.

Q What are you hearing from the civil liberties groups on this? What are your preliminary estimates of court tests? Are people telling you this will or will not pass constitutional muster?

SECRETARY CISNEROS: We believe that this will pass constitutional muster, and a lot of work went into drafting a policy that would pass a court test. The consent forms, the consents in the leases, the conditions under which warrantless searches can occur -- all of those were drafted with that in mind.

Now, if you were, this afternoon, to call a member of the ACLU and ask them a specific question, I can't tell you what their answer might be. My guess is that there are some who might continue to want to test these questions; and that's what the courts are for. But we believe that we have devised a policy here that can meet the test.

And let me, in the final analysis, say that the conditions in public housing in Chicago -- as well as other places right now -- are so severe that any abstract analysis of people's rights of the type that the ACLU might do is swamped in real life by people's rights being denied. Clearly, people ought to have a right to live safely, in peace, take their children to school, walk the sidewalks of their buildings, to be able to walk through the hallways of a building without all the lights having been knocked out and the elevators pitch dark because the gang members want to reduce the silhouette that they'll make to gunners in the next buildings -- those are rights that people have, as well; and those rights are being abridged by the present circumstances.

Q In announcing the program --

SECRETARY CISNEROS: I'll come back -- just let me take this lady and I'll come back.

Q What is the status of the overall issue of gun control in public housing?

SECRETARY CISNEROS: We are, internally now, assessing the proper course that we want to follow. Clearly we want to discourage -- obviously, illegal weapons are banned in public housing. The question has arisen of whether or not we ought to ban all guns in public housing by lease. Some public housing residents -- and there are some places in the country where people would feel this would be a substantial infringement on their rights, so we have not crossed that bridge at this point.

There is some legislation that suggests that developments may want to vote on whether all weapons can be banned in a building. And we think that has some plausibility and is worth looking at. But we've not issued regulations or taken a stand yet on the question of banning all weapons in public housing. It's an open question; it's now being discussed in the department and elsewhere.

Q In announcing this program, it sounds like housing authorities are admitting a failure on a rather extreme level -- that people are indeed living in circumstances where their children have bullet holes over their bed, or where they're always making --

SECRETARY CISNEROS: I'm not afraid to acknowledge that public housing, in the worst configurations, has failed. And therefore, we must go beyond security measures and even the kinds of community building measures, salvaging measures that I've described here today to profound and dramatic change in public housing.

We'll be introducing legislation this next week which will allow us to do things, for example, like change the rules and internal dynamics of public housing so that people can work, and families that have incomes and work can be included in the mix of families in public housing. That goes to one of the questions that I answered earlier about the income mix.

We want to go farther than that, and make it possible to capitalize future streams of public housing assistance to housing authorities so that large sums of money can be made available now -- not down the road, not just rehabilitate, modernize and put Band-Aids, but replace the worst of the high-rise public housing with more appropriately scaled, scattered, safer configurations across the metropolitan area. These are the kinds of dramatic, profound changes I think we need to make in public housing.

Let me just say, anytime that you're in Chicago -- and I know most of you are White House press so it may be restricted to a time when you're traveling there with the President -- but it is worth seeing this line up of 67 high-rise buildings and recognizing what was done there.

Q Can that be torn down?

SECRETARY CISNEROS: Much of it ought to be replaced because, as I said, the present configuration is a failed effort at housing people.

Q But, Mr. Secretary, may I ask you just a question about the allocation of resources understanding that you are going to accomplish nothing without a zone of safety.

SECRETARY CISNEROS: Right.

Q I still note that some \$30-odd million are devoted to enforcement, and of the \$2,950,000 that have been slated for prevention, my count is no more than \$950,000 that might go for such things as counseling, drug prevention, violence prevention. What can you really hope to accomplish if you lay in a heavy dose of law enforcement short-term and you don't do anything to counsel kids who are seeing this violence, to help their parents find jobs who only have a median income, that you so eloquently put it, at \$5,000 a year. I mean, what about the so-called soft services that really are going to be the building blocks of changing this thing? You've got to change the people.

SECRETARY CISNEROS: Good question, and I'd like to answer it in two ways. The first is that what you see here is an immediate infusion of federal resources to deal with the present circumstances. In part, it's law enforcement. It's also some of these community efforts.

Yesterday morning, I met with the mayor, with the head of the Parks District in Chicago, which controls the park system as well as recreational programs; met with foundation leaders from the Chicago area and began discussions with the business community of Chicago. There's one important element missing that was not present at the table, but the mayor committed to bring them to the table is the Board of Education. And what we're asking is that this down payment be matched by these other institutions in their areas of capability. And we received some tentative commitments yesterday, which the mayor will outline in the weeks ahead.

This is a partnership in which the federal government has started and we expect fully that we will see resources for summer recreation programs from the Parks District, for some educational initiatives from the Board of Education, some commitments from the foundation and business community to cultural programs, antidrug initiatives, and, very importantly, the city of Chicago with its own discretionary resources. So what you see here is a small percentage of what will be brought to bear on this circumstance.

Additionally, and the second part of the answer, we have many ongoing programs that are not represented in this -- our own HUD as well as the other federal departments. And I might also say that in instances where we concentrate effort, such as you know the decision this week to join in a partnership with the District of Columbia government to deal with the very troubled District of Columbia Housing Authority, it gives us the opportunity, gives HUD the opportunity to work on the housing component, but also to bring to bear the efforts of other federal resources.

So I fully expect you'll see the Department of Education and Labor and Justice and Health and Human Services joining us, using public housing, the base as the focal point for effort.

Q Considering the magnitude of the money you're discussing here for these two projects, doesn't that really limit the likelihood of this truly being a nationwide approach?

SECRETARY CISNEROS: Let me make clear, the announcement yesterday in Chicago was not solely for these two projects. If you look at many of these things, for example, the BITE teams, which is \$10 million of this \$29 million package; the vacancy reduction, which is another \$10 million of the \$29 million -- so now we're up to \$20 million of the \$29 million -- are intended to be used throughout the CHA. So we're talking about one of the largest housing authorities in the country that has new resources to work with.

Now, as to the question of inadequacy of resources -- yes, we're always working with tight resources, always. It's the sort of going in assumption that we're going to be very, very tight. That's why it's important to leverage beyond what the federal government can do and get others to the table. That was the first thing I did on arrival yesterday morning in Chicago, is to meet with the group that I described. And I think we can create partnerships that leverage money dramatically.

We're looking now at some changes in rules that would allow us to bring private sector partners that can bring resources, like our pension fund relationship where we put \$100 million of housing vouchers, and with pension money, extend that to \$1.2 billion worth of housing product. We'll have to do a good deal more of that. And I think that's going to be one of the watchwords, one of the hallmarks of our efforts the next few years.

Q Mr. Secretary, are these search consent clauses now going to be a part of everybody's lease in the Chicago Housing Authority?

SECRETARY CISNEROS: The preconsent given in leases will be a local decision. That is to say, we believe it is an element of policy that will enhance the ability of housing authorities to conduct searches. The decision will have to be made as local as each housing authority, and potentially, each development where residents may want to vote. That would further enhance the constitutionality of these preconsent devices.

Q Are sweeps being used in other housing authorities?

SECRETARY CISNEROS: Yes, they are. Yes, they are, but in different configurations. For example, in Baltimore, they give 48 hours notice that a sweep is going to occur and have not been tested with that approach.

Bruce, do you know other cities that are using sweeps now?

MR. KATZ: I think Philadelphia and Puerto Rico are using sweeps similar to the ones they use in Baltimore.

SECRETARY CISNEROS: In Baltimore -- with advance notice.

Q Is that successful?

SECRETARY CISNEROS: You'd be surprised at how successful they are because, as I said earlier, frequently residents don't know what another family member has put in the unit. So it's more successful than you might imagine, but clearly, not as successful as a surprise sweep might be.

Q But there are dangers, too. I mean, recently, in Boston, a 71-year-old man who also happened to be a preacher had a heart attack and --

SECRETARY CISNEROS: I don't think that was a sweep, though. That was a -- my recollection is it wasn't public housing, it was a private apartment and -- it may have been assisted housing, but it was a private apartment and it was a police action. That was not a sweep, but it was an anticrime raid. It was a different circumstance. They arrived in force, rammed down the door, were looking for fugitives and had the wrong person. It's exceedingly unfortunate. The mayor and the police chief apologized; obviously, apologies aren't enough in such a circumstance, but that was the circumstances of that case.

Q Could you just clarify -- when you were talking about the warrantless searches in exigent circumstances, does that mean that -- let's say, there's a shooting, a shoot-out, and the police come into the building, that they are able without a warrant to go into an entire floor, searching?

SECRETARY CISNEROS: It does. It does --

Q -- kind of leave open the possibility that whenever there might be any type of incident whatsoever, the police could use that in order to --

SECRETARY CISNEROS: No, and let me tell you some practical reasons why it doesn't. First of all, the sweeps involved a lot of police personnel. You can't just assemble large numbers of people anytime there's an incident. The sweeps, as they were being run in Chicago, involved over 100 personnel. So the likelihood that you could say, oh, there's been some shooting; we need the excuse; let's put 100 people together and go -- it doesn't work that way as a practical matter.

Legally, what we interpret the -- and Bill may want to expand on this -- what we interpret the exigent condition to be an appropriate response in a timely fashion. It can't be three days later. It's got to be in some rough approximation to when the incident occurred and targeted to the circumstances of the incident.

Bill?

ASSOCIATE ATTORNEY GENERAL BRYSON: With respect to exigent circumstances, there's a lot of case law on this, and the theme of what we're saying here is that we think we can have an effective crime prevention and apprehension program without departing from standard Fourth Amendment law. We're not trying to create new law here. What we're really trying to do is to avoid having everything tested in court, avoid having long delays while programs get precleared, in effect, by federal and state courts. We think there is the capacity through existing Fourth Amendment law to take care of the problem.

Now, with respect to exigent circumstances, the standard formula -- and of course, it's very fact specific; you just can't say in any more than the most general terms how exigent circumstances will apply in a particular case until you know the facts -- but by and large, the way the courts would articulate it is to say that you need some kind of emergency situation where the need to act without a warrant is pressing. And the police, under those circumstances, can engage in an appropriate response.

If a gang is running into a building and the police are following, they can run into the building. They can pursue the gang. That doesn't mean that they can go through the entire building, to the top floor, and look through everybody's chest of drawers in their apartments. That would be well beyond what the courts would characterize as exigency. But it really is a fact-specific kind of inquiry that has to be done and yet, it gives flexibility to police to deal with emergency situations.

Q How throughout the chain of command would a determination need to be made in order to declare a circumstance exigent? Are we talking about a sergeant, a captain? What are we talking about?

ASSOCIATE ATTORNEY GENERAL BRYSON: Well, typically, when -- real exigency is typically something that has to be decided on the spot, because if it has to go up to the captain, by that time, your need for immediate action very often has ended. Not necessarily, but very often. So this is the kind of thing -- if

there is a medical emergency; somebody has been shot, somebody is shooting from the windows of an apartment, you can identify the apartment. You go in and you try to apprehend them then. You don't need, under those circumstances, to get a warrant because you have no capacity to get a warrant. You don't have the time. And you also, of course, don't have the time to call the chief of police.

That's the way exigent circumstances typically works. Now, there may be circumstances in particular cases in which you do have to go up the chain. But the normal exigent circumstances case will not involve the opportunity for that.

Q So it could be a cop on the beat?

ASSOCIATE ATTORNEY GENERAL BRYSON: It typically has been. In exigent circumstances law, it's the cop on the beat who is trained to understand what the limits are of exigent circumstances, but it's the cop on the beat that has to make that decision in many exigent circumstances cases.

Q On another part of this, you say that it will be helpful for a tenant to show their support for searches in advance. Is this basically a majority rule can overrule the Fourth Amendment?

ASSOCIATE ATTORNEY GENERAL BRYSON: No. What we think is very important here, and the theme of that element and really a lot of this is, one, local circumstances really control what is reasonable in a particular case. The whole Fourth Amendment is premised on the concept of reasonableness. And reasonableness is a balancing of need against the intrusion.

Now, in particular cases, the need may be very great. And that's true of these two units. We need desperately to get control of these units -- to get control from the gangs. Therefore, the need element is extremely high. The intrusion of searches into one's home obviously is high, too. But what's important, I think, about allowing the voice of the tenants to be heard through tenant organizations or otherwise is that you have evidence in the clearest form that you can have of what the people who are affected by both the emergency need and also by the intrusions that are involved -- how they feel about it.

Now, this is not to say that the Fourth Amendment is somehow subject to majority rule; of course, it's not. It is, however, to say that in assessing a particular case what the level of need versus intrusion is, that it's very important to consider how the people who are there view it. And for that reason, I think a lot about this policy is really local specific. This is not to say that the same policy were to be applied in say a senior citizens' public housing home in Sarasota which hasn't had a serious crime problem in years -- of course not. This is a policy which, in its various applications, has to be made specific to, as the Secretary said, a particular housing authority and even perhaps a particular building.

Q Are you suggesting that the consent to be searched be a condition of the lease? And what circumstances would that consent be able to be withdrawn?

ASSOCIATE ATTORNEY GENERAL BRYSON: Well, again, that's going to have to depend on how these particular authorities work that out. I think that there certainly are circumstances in which it is legitimate to have in the lease a provision similar to the maintenance and emergency clause provision which would allow for administrative inspections for firearms, let's say. In fact, there is already a provision in the consent decree in the Chicago case that allows inspections of that character.

Now, this is in the leases. It is a provision that everybody who is in the unit is bound by. Whether there would be, in a particular case, provisions that would allow somebody to opt out at particular time; or whether somebody could say, no -- just at the outset -- I don't want to sign that; and whether that person would then be able to do that would depend very much on the local conditions. And that's the gist of, I think, the whole constitutional analysis here, is that it really is not something on which you can make any across-the-board pronouncements that X policy applies regardless of where and regardless of the circumstances.

I point out that when you have a clause like this in a lease, what it really gives you is flexibility. That means you don't, then, necessarily have to conduct any of these procedures. You can say, we've got this capacity and, therefore, when the time comes, if we need to use it, we can invoke it. That gives you the flexibility that the current typical lease clauses do not. They do contain emergency entry provisions. But they typically -- the word emergency in that sense usually means the place is on fire, or there is water flowing out from the place and down into the lower units.

We think that, in effect, that in some of these units there is a fire -- there is a problem that ought to be addressed in the same sort of a way; this is a form of emergency. Now, obviously, it's different from the emergency or maintenance inspections. But it is of the same general nature, and can be dealt with in the same kind of way. It is something that has to be explored, I think, by, again, the local agencies.

And one of the things in our discussion with the people at HUD -- which has been very profitable on this, and I expect to continue -- will be to try to provide guidance to local housing authorities to the extent that they seek it as to what kinds of innovative mechanisms can be used to try to address the problem without infringing Fourth Amendment rights.

Q Do you think in some circumstances it ought to be a condition of the lease?

ASSOCIATE ATTORNEY GENERAL BRYSON: I think in some circumstances it can be a condition of the lease, that's right. Now, the basic theme of consent law in the Fourth Amendment is that you can't coerce somebody to consent to something. So if the conclusion is that, under those circumstances, you would be effectively coercing consent because the person has no other choice, then you would have to reassess that. If the person had other choices -- if there were a provision, let's say, in a particular development that conditions were so bad that you felt you had to go to some mandatory lease provision, then if the person had choices -- was offered public housing under the circumstances, it might well take the coercive element away. But in any even, that's the basic theme.

What we're saying is, we can square this with the Fourth Amendment. We are not engaged in an effort to try to undermine the principles of the Fourth Amendment; and we would welcome, as a matter of fact, the constructive suggestions of any civil liberties groups as to how we can go about doing this while minimizing the intrusiveness of these procedures. But I think they, as we, recognize that what we're dealing with here is an emergency situation in which some kind of innovative action is required. And we're prepared to embark on it without, in any way, trampling on the rights of people under the Fourth Amendment. And we think it can be done. We think there is enough room under the doctrines that the courts have devised to do that.

Q I have one more question for Secretary Cisneros. You had said that people in public housing had supported these measures and you had worked in consultation with them.

SECRETARY CISNEROS: Correct.

Q But some of the other tenants that I've talked to have said that housing officials have, in effect, set up a second-class citizenship, forcing people to endure things like metal detectors and frisking and home searches -- the kinds of things that would be viewed as indignities if they were applied to more middle-class neighborhoods.

SECRETARY CISNEROS: Interesting question -- let me take it in two parts. The first piece is, I've talked with the public housing residents, talked with their elected leaders -- the people that I meet with when I go to Chicago are the leaders of the buildings, the people who are duly elected. They are quite clear that they want security measures. Unequivocal, strongly worded -- in fact, if anything, our package didn't go far enough for them when I described it yesterday. They wanted more money, more resources, more programs and want to make sure that we carry out on these, which we will; but, very clear speaking the voice of their members.

As a matter of fact, we had a meeting at a church on Monday morning in Chicago with residents and other persons in the community, and several discordant voices were raised on these points; and the residents literally took back the meeting and said, "You don't live in public housing; you don't know what you're talking about. We live here, and we want these protections."

Q Excuse me, this is to say that older women, elderly women and elderly men are saying that they don't mind going through metal detectors?

SECRETARY CISNEROS: Well, that was the second part that I wanted to answer. If you -- many developments in America today have protections. The most elite developments in America today have a guard at the door; a security person that you walk by at a desk; closed-circuit television from the downstairs desk to the upstairs hallways, from the parking garage. Frequently they are fenced in, in some way.

And article in last Saturday's Washington Post talked about the number of people who live in some 20 enclosed communities throughout the Washington area. Now, I'm not proposing that that's the preferable way to live, but it is not correct to say that people are stigmatized somehow by living with security when the most elite communities in America have it. Indeed, what we're doing is offering some of the same protections to the poorest of our population that those who can pay hundreds of thousands of dollars for shelter pay.

One of the interesting things, for example, is the issue of fencing of public housing. For years, I had a kind of personal sense that fencing might be regarded as fencing people in, instead of keeping trouble out. And so I resisted it until I talked to residents who said that when fencing had been put in place and it had restricted people driving through their developments without going through some kind of a entry way, sometimes even a guard shack with a guard there, but that when it was done, drive-by shootings stopped, drug trafficking stopped, people wandering across the development from outside to come and do drug purchases had stopped. In Houston, 44 percent reduction in crime the first year after fences -- simple step -- fences around a development.

Again, if we go up Connecticut Avenue, Massachusetts Avenue in Washington, D.C., we'll find the most elite condominiums have those same basic security measures. So I don't think it's a fair attack on the concept of providing security.

THE PRESS: Thank you.

END

11:25 A.M. EDT

From the desk of STEPHEN R. NEUWIRTH

To Lloyd Cutler

Date 4/13

Carol Rasco
George Stephanopoulos
Rahm Emanuel
Bruce Reed ✓
Jennifer O'Connor

Attached is the latest draft of the public housing search proposals being drafted by Justice and HUD. The Departments plan to include a third section, not in this draft, discussing other HUD programs that might be used to help address the problem.



U.S. Department of Justice
Office of the Associate Attorney General

Deputy Associate Attorney General

Washington, D.C. 20530

FACSIMILE TRANSMITTAL COVER SHEET

DATE:

April 13, 1994

TO:

Steve Neuwirth (Fax: 456-1647)

Bruce Katz (Fax: 708-2476)

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FROM:

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Deputy Associate Attorney General

FACSIMILE NO. 202--514-0238

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NUMBER OF PAGES (INCLUDING COVER SHEET): 5

COMMENTS:

This is a revised version by Bill Bryson of the version we sent over last night. I will follow up with a phone call to both of you.

COMBATING VIOLENT CRIME IN PUBLIC HOUSING: A NATIONAL POLICY

I. Searches for Firearms in Public Housing

1. The Chicago Searches

In response to the escalation of violence and the prevalence of firearms in public housing projects in Chicago, the Chicago Housing Authority (CHA) instituted a policy of conducting warrantless, apartment-to-apartment searches of CHA public housing projects. On April 7, 1994, a federal court in Chicago held that CHA's search policy violated the Fourth Amendment. The court therefore enjoined CHA from undertaking further warrantless, apartment-to-apartment searches pursuant to the CHA "sweep search" policy. The court made clear, however, that its ruling did not preclude CHA from taking other steps to conduct searches in and around the housing projects. The court identified various measures that CHA could lawfully take, such as obtaining residents' consent to search particular apartments, searching common areas and vacant apartments (where violent gang activity often occurs), securing search warrants to search particular apartments, and conducting appropriate searches in emergency situations.

The Chicago court case showed that although some public housing project residents oppose the CHA's "sweep search" policy, many others agree with the policy and support the CHA's efforts to maintain order and combat gang violence in the housing projects. The case also made vividly clear once again how pervasive violence has become in many of our inner-city housing projects. While striking down the particular "sweep search" policy employed by CHA, the judge recognized that the level of violence in the housing projects threatens the lives and safety of innocent persons in and around the CHA buildings.

The court's ruling prompted the President to direct the Attorney General and the Secretary of Housing and Urban Development to devise a strategy for combating crime in selected public housing projects that suffer from extremely high crime rates. In response to the President's directive, a HUD team including the Secretary, traveled to Chicago, met with the CHA leadership, residents, and law enforcement personnel, and conducted an assessment of the security needs of Chicago's public housing projects. At the same time, HUD and Department of Justice personnel cooperated in formulating effective and constitutional options for increasing the security of America's public housing. As a result of these cooperative efforts, the Secretary of HUD and the Attorney General submit the following proposals.

2. Using Searches to Combat Violent Crime.

Public Housing Authorities (PHAs) cannot protect public housing projects from gun-related violence unless they have broad

search authority. We propose use of the following search powers to reduce the incidence of violence in housing projects with high crime rates and to reclaim those projects for their law-abiding residents.

a. Securing the Building Entrances and Lobbies. Any effort to stem violence in public housing projects must begin in the lobbies of the buildings. In some high-rise public housing projects, gang members effectively control access to the buildings. They move freely in and out of the buildings. While some buildings are protected by housing authority guards, those guards are often intimidated by gang members, and they therefore let unauthorized persons enter the buildings unchallenged.

It is essential that PHAs gain control of building lobbies and staunch the flow of firearms into public housing apartments and common areas. To accomplish that end, PHAs can erect fences around buildings, issue identification cards to tenants, and install magnetometers or metal detectors at the building entrances. Security guards should be accorded the authority to conduct follow-up searches with hand-held metal detectors when necessary. Security guards should also be authorized to search packages and clothing for firearms, and to refuse entry to anyone who does not submit to inspection. Most importantly, the PHAs and the local police must cooperate to ensure that the security guards have sufficient protection to do their screening work effectively.

b. Consent Searches. PHAs may search individual units within a public housing project with the tenants' consent. The most effective means of ensuring consent is through specific consent clauses in the lease agreements. Lease agreements should therefore provide for periodic administrative inspections of unit dwellings for unlicensed firearms. This provision should be in addition to current lease provisions allowing maintenance inspections and emergency entries. Because such a clause will specify that the inspectors will be looking for firearms, it will give PHA inspectors authority to search dwellings more thoroughly than is now permissible under a maintenance inspection.

Lease agreements should also provide that refusal by a tenant to allow the PHA to inspect the dwelling unit for firearms shall be cause for termination of the tenancy.

c. Tenant Resolutions. PHAs should encourage tenant associations to endorse the use of building entrance security devices and the inclusion of consent clauses in lease agreements. A resolution by a tenant association would demonstrate widespread tenant support for such measures and would help PHAs resist challenges by particular tenants to the constitutionality of restrictions on entry and apartment searches.

d. Searches of Common Areas and Vacant Apartments. Experience in Chicago teaches that gangs commonly use vacant apartments as bases of operation. PHAs can search the common areas of public housing projects and vacant apartments without consent or a warrant, and at any time of the day or night.

e. Weapons Frisks of Suspicious Persons. If police or security personnel have reason to believe that an individual is involved in criminal activity and that he is armed, they may frisk him for weapons. More aggressive use of the power to stop and frisk suspicious persons could be used to curb violence in the projects.

f. Warrant Searches on Probable Cause. Whenever the PHA has probable cause to believe that a specific dwelling contains firearms or other evidence of a crime, a search may be conducted with a judicial warrant. PHAs should make use of expedited techniques for obtaining warrants, such as by telephone or by having magistrates readily available to the PHA and local police to execute warrants.

g. Searches Based on Emergency Conditions. PHAs may conduct warrantless searches of individual units where there is justification for a search but insufficient time to obtain a judicial warrant, such as to pursue gang members fleeing from a shooting incident, or to investigate a possible medical emergency.

h. Arrest Warrants. PHAs or local police may enter a dwelling unit to execute an outstanding arrest warrant if the fugitive resides in the unit and the police have reason to believe he is present. Once inside the unit, the authorities may search the area within the fugitive's immediate control. They may also seize firearms that are in plain view at that time.

II. Other Security Measures

The search strategies outlined above will not work if the PHAs lack the manpower to conduct them safely. In addition, searches will provide only a short-term solution if they are not integrated into a long-range anti-crime strategy to attack the gangs that victimize public housing projects. We propose the following programs to implement a security program in the housing projects and to combat the violent gangs by aggressive use of federal, state, and local law enforcement agencies against drug and firearms offenders in housing projects identified as crime-infested.

1. B.I.T.E. Teams.

The CHA and the Chicago Police Department have established an innovative anti-crime effort called B.I.T.E. - Building Interdiction Team Effort. Teams of up to 10 CHA and Chicago police, working together, are able to provide a sufficient show of

force to have the capacity to "win back control" of selected buildings from gang members. B.I.T.E. teams are being used to secure the perimeters of buildings and then patrol and search common areas and vacant apartments, challenge suspicious persons and inspect occupied apartments when they receive tenant consent.

An expanded B.I.T.E. force can provide the manpower and expertise to secure buildings and conduct lawful searches for firearms. Federal funding to support the use of such teams can be effective in breaking the gangs' stranglehold over some of the most crime infested buildings, and in restoring tenants' confidence that the PHAs and local police have the capacity and the will to protect the inhabitants of the buildings from gang violence.

2. Operation Safe Home and Other Joint Anti-Crime Programs.

As part of the Administration's Anti-Violent Crime Initiative that was announced on March 1 by Vice President Gore and the Attorney General, the Department of Justice and the Department of the Treasury have joined in support of Operation Safe Home, a HUD program designed to combat fraud and violent crime in public housing. In communities where violence in public housing is particularly acute, the Anti-Violent Crime Initiative will result in a coordinated federal-state-local law enforcement response to violent crime at public housing sites.

Other coordinated federal-state-local anti-crime programs should be promoted as well. In Chicago, HUD recently joined the Mayor's task force on violence in public housing known as CHANGE, which stands for Chicago Housing Authority Neighborhood Gang Enforcement. Under that program, representatives of the FBI, ATF, DEA, U.S. Marshals Service, state police, Chicago police, and Chicago Housing Authority have participated in coordinated sweeps of targeted public housing sites armed with arrest and search warrants for drug dealing and other offenses. Most of those arrested have been prosecuted by the Cook County State's Attorney's Office, which has nearly a 95% conviction rate resulting from those arrests.

3. Vacancy Reduction.

Excessive vacancies present serious security problems for PHAs in high-crime projects. In some developments, they have become a haven for gangs to stash weapons and drugs. In some buildings, gangs have literally broken through walls dividing separate apartments -- a practice called "tunnelling" -- enabling the gangs to control large segments of floors within the buildings.

The PHAs should expand programs designed to reduce vacancy rates, by training residents to rehabilitate and then occupy their own units and by conducting rehabilitation on a "round-the-clock" basis to combat the random nighttime destruction of unfinished rehabilitation work.

PREVENTION MEASURES

Amount and Source of Assistance	Purpose	Status	Next Step(s)
\$300,000 [HUD - Advance from CHA's unobligated modernization funds]	Playgrounds/Recreation: To rehabilitate playground facilities and other outdoor recreational areas at Robert Taylor Homes and Stateway	CHA and Chicago Park District must develop and approve an IGA IGA will include the following provisions: • \$300,000 from mod. to support two community landscape projects and two new or renovated playgrounds -- no process has begun in identifying leadership and involving residents in planning of landscape projects; playgrounds have been identified; • \$10,000 from PHDEP for Dancin' in the Park -- one program has begun • \$30,000 from PHDEP for Video in the Park - one program has begun • \$10,500 from PHDEP for mural projects -- no movement has been made; some questions remain regarding the \$10,000 • \$50,000 from Freddie Mac for beach trips -- Freddie Mac and Secy. Cisneros will jointly announce new funds in Chicago on 6/24; program will kick-off 7/1	CHA and Park District will sign IGA by Mon. 6/13 Two playgrounds have been identified and work will begin on them next week; visible progress by Fri. 6/17

DRAFT

Updated 6/13/94

**PROGRESS ON THE \$29 MILLION FEDERAL ASSISTANCE TO CHICAGO
FOR COMBATTING VIOLENT CRIME IN PUBLIC HOUSING**

ENFORCEMENT MEASURES

Amt. and Source of Assistance	Purpose	Status	Next Step(s)
\$10,000,000 HUD - \$5 million from HUD's public housing modernization emergency program and \$5 million advanced from CHA's own unobligated modernization funds	BITE Teams: To fund additional B.I.T.E. teams (B.I.T.E. -- Building Interdiction Team Effort) which are used to secure building perimeters, patrol and search common areas and vacant apartments, challenge suspicious persons, and, with tenant consent, inspect occupied apartments	Three tracks: • HUD has authorized CHA to reprogram funds; to reprogram mod. funds, CHA must submit a budget revision for Yr.2 of the Comp Grant and a CGP application for Yr.3 [Note: In the meantime, HUD must grant CHA a waiver to enable them to exceed their mod. cap in their Mgmt Improvem't plan] • HUD will issue \$5m emergency mod funds to CHA soon; CHA will in turn transfer money to City • CHA and the City must enter into an Intergov't Agreem't (IGA); it has not been signed City will be unable to provide officers for BITE teams by 6/17. In the meantime, CHA will provide abatement teams (how many?) for the targeted developments. Abatement teams are "suppression units" of CHA police officers who primarily responsible for vertical patrols.	 City and CHA are in the process of developing an IGA (IGA should include City's long-term commitment to increase security in these targeted developments; since \$10m is one-time subsidy, City should strive to make PH police presence a permanent fixture in budget) Chicago Police Dept. (CPD) will prepare a plan for hiring and deployment by ... ? CHA Abatement teams will be in place by...? CHA will submit budget revision and Yr.3 application to HUD by Mon. 6/13 HUD will grant waiver of mod expenditures by Mon. 6/13 (upon receipt of budget revision and applicat'n) HUD will approve budget revision and Yr. 3 application by Mon. 6/13

ENFORCEMENT MEASURES (cont.)

Amount and Source of Assistance	Purpose	Status	Next Step(s)
\$500,000 [DOJ - Bureau of Justice Assistance]	BITE Teams: To enhance/expand the B.I.T.E. program	City must apply for funds and has not done so; BJA has pledged to approve funds in one day	Chicago Police Dept. will apply for DOJ funds by Fri. 6/10 -- did we get this?
\$5,000,000 [HUD - Advance from CHA's unobligated modernization funds]	"Rent-a-Cops": To fund replacement of private security guards with CHA security at Robert Taylor and Stateway	CHA is having problems with recruiting and cannot rely on deployment; anticipated 60-90 days to hire security officers due to high number of applicants and clearance checks CHA submitted a plan and timetable for replacement on Fri. 6/10	While awaiting budget revision and Yr.3 application, HUD will complete necessary paperwork by Mon. 6/13
\$200,000 [DOJ - Bureau of Justice Assistance]	Illegal Trafficking of Guns: To support a program to investigate and prosecute those engaged in illegal trafficking of firearms in and around CHA projects	City is working with ATF to develop an IGA to implement a program to investigate illegal trafficking of firearms	City will meet w/ ATF to discuss IGA by Fri. 6/10 Still true? City will apply to DOJ for funds by ... ?
\$10,000,000 [HUD - Advance from CHA's unobligated modernization funds]	Vacancy Reduction: To rehabilitate vacant apartments in Robert Taylor and Stateway to prevent safe havens for gangs to store weapons and drugs	HUD will authorize CHA to reprogram funds in anticipation that CHA will receive vacancy reduction funds later in FY '94 CHA has identified primary and secondary buildings where they will concentrate 12-hr rehab. program to stabilize bldgs; CHA is planning to rehab. 160 units by end of July (turning around 40 units a week)	

ENFORCEMENT MEASURES (cont.)

Amount and Source of Assistance	Purpose	Status	Next Step(s)
\$10,000,000 (cont.)	Vacancy Reduction (cont.)	CHA submitted a short-term vacancy reduction plan on 6/10; the plan expands the role of the 4 crews to not only minor rehab. but also to complete work orders and address building fire code violations. 4 crews are in place and working on a variety of tasks (2 will be Step-Up crews composed of PH residents); repairs will be done in double shifts 7:00am - 7:30pm	HUD's vacancy reduction NOFA will be published on Mon. 6/13 CHA will prepare a long-term rehab plan by ...?
\$150,000 [HUD - Advance from CHA's unobligated modernization funds]	Tenant Patrols: To help start up tenant patrols in the rest of the buildings of Robert Taylor and Stateway (e.g. training and equipment/armament)	CHA Board has approved reprogramming of funds CHA submitted a plan for establishing tenant patrols on 6/10 Some buildings have existing tenant patrols	CHA will have recruitment flyers for tenant patrols posted in buildings by Fri. 6/17

PREVENTION MEASURES (cont.)

Amount and Source of Assistance	Purpose	Status	Next Step(s)
\$200,000 [HUD - Advance from CHA's unobligated modernization funds]	Midnight Basketball: To support midnight basketball programs	HUD will permit CHA to reprogram funds	CHA will submit budget revision and begin recruitment immediately Program at Robert Taylor and Stateway will begin in early July; however, CHA will sponsor basketball games at targeted developments on Fri. 6/17
\$300,000 [DOJ - Bureau of Justice Assistance]	Drug Prevention: To create a drug prevention, intervention and treatment program, CADRE (Combatting Alcohol and Drugs through Rehabilitation and Education), at Robert Taylor Homes	The Center for Substance Abuse Treatment (CSAT) will transfer funds to the State of Illinois for use by Robert Taylor	CSAT will transfer funds on Mon. 6/13 on Tues. 6/14; CHA will receive funds by Tues. 6/14 or Wed. 6/15
\$2,000,000 [HUD - Family Investment Center funds]	Family Investment Centers: To rehabilitate supportive services facilities for residents; up to \$300,000 may be used to directly fund such services as youth counseling, summer cultural activities, and after-school programs	FIC NOFA published in Federal Register on 6/6/94 HUD has provided CHA with funds; up to \$300,000 may be used to support a range of supportive services CHA has identified a site for FIC near developments and have implementation schedule on Fri. 6/10 CHA has already contracted service provider to	HUD will execute a grant agreement with CHA by Mon. 6/10 Site work should be completed by ... ?

integrate \$2m to FSS program; will be ready to
provide range of services at release of funds;
site not yet identified

PREVENTION MEASURES (cont.)

Amount and Source of Assistance	Purpose	Status	Next Step(s)
\$150,000 [DOJ - Bureau of Justice Assistance]	Boys and Girls Club: To establish Boys and Girls Clubs at Robert Taylor Homes and Stateway	BJA has provided \$2m to national organization, and nat'l org. has agreed to provide \$150,000 to Chicago B&G Club to expand its activities to these targeted developments	HUD has worked with Chicago B&G Club to develop needs assessments; funds will be transferred by ...?

THE FEDERAL PLAN FOR CHICAGO PUBLIC HOUSING SAFETY

- On April 15, HUD Secretary Henry Cisneros and Attorney General Reno recommended an anticrime plan to President Clinton for Robert Taylor Homes and Stateway Garden Apartments.
- The strategy elements of the plan resulted from meetings with residents, Mayor Daley, Housing Authority Chairman Vince Lane and others.
- General security issues, illegal gun trafficking, and preventive programs are the focus of the \$28.8 million plan.

Enforcement

- The joint CHA-Chicago Police Department Building Interdiction Team Effort -- B.I.T.E. -- will be expanded to secure buildings and patrol and search areas.
- HUD has committed to fund 8 additional BITE Teams at a cost of \$10 million. A total of \$5 million has already gone to the CHA from emergency funds and the balance has been approved pending the receipt of an amended budget from CHA.
- An additional \$500,000 for the BITE teams will come from the Justice Department's Bureau of Justice Assistance.
- A timetable has been set to replace in-house security staff with private security guards or CHA-trained officers.
- The Bureau of Justice Assistance will make available \$200,000 and also help Alcohol, Tobacco and Firearms prosecute gun traffickers.
- A total of \$150,000 will help start tenant patrols in buildings at Robert Taylor and Stateway that do not presently have them.

Prevention

- HUD has authorized CHA to spend another \$300,000 to improve playground facilities, also using reprogrammed monies.
- CHA plans to rehabilitate 160 vacant units by July 31. This work has already begun.
- About \$200,000 is available for CHA to fund a midnight basketball program as well.

- The Department of Health and Human Services has provided the the Illinois Department of Alcohol and Substance Abuse with \$300,000 to expand CHA's "Combating Alcohol and Drugs through Education" (CADRE) program to Robert Taylor Homes.
- HUD has provided CHA \$2 million for Family Investment Centers to provide counseling, victim assistance, summer cultural activities, Boys and Girls Clubs after-school programs; and truancy reduction.
- The Bureau of Justice Assistance has provided \$150,000 to establish Boys and Girls Clubs.
- A total of \$300,000 in modernization funds will support two community landscape projects and two renovated playgrounds.

PUBLIC HOUSING SEARCHES

- HUD and the Department of Justice have developed a policy to guide public housing authorities on searches, which is based on these four guidelines:
 - * First, searches can occur in common areas. We must regain control of the lobbies and the accessways.
 - * Second, searches can take place in vacant units. Empty apartments often serve as the base of operation for public housing criminal activity.
 - * Third, searches can take place where there is consent. Whether consent is given orally or written, or even if it is included in a lease agreement, it would be residents' free decision.
 - * Fourth, warrantless searches may be conducted under exigent circumstances such as a shooting, or some other event that puts residents in immediate danger.
- Any changes to lease provisions require notice to tenants as well as an opportunity for the tenants to comment.
- HUD is encouraging housing authorities to allow tenants to vote on the policy. They can do it building-by-building, or development-by-development.

THE CRIME BILL

- The crime bill represents a balanced approach to crimefighting, providing police, punishment and prevention.
- The crime bill would provide 100,000 police officers on the nation's streets working with citizens to prevent and solve crimes.
- All the good work done by law enforcement is lost if those who devastate our neighborhoods are not punished. "Three strikes" and you're out would mean repeatedly violent offenders would abandon their right to ever be released from prison.
- The crime bill's prevention components would complement HUD strategies to make public housing safe, decent and liveable. Among them are:

- Midnight sports leagues would be targeted at high-crime neighborhoods with persistent socio-economic problems.
- The Youth Employment and Skills program would help provide young public and assisted housing residents with viable careers.
- A police residency initiative would allow law enforcement officers to live in public housing free of charge in certain high-crime areas.
- Boys and Girls Clubs would be created and expanded in public and assisted housing developments.

GUIDANCE
ON
PUBLIC HOUSING SECURITY

U.S. Department of Justice

U.S. Department of Housing and Urban Development

May 4, 1994

In their April 14 letter to President Clinton, Secretary Cisneros and Attorney General Reno outlined a series of constitutional options for public housing authorities seeking to address the serious problems of guns, drugs, and violence which are jeopardizing the right of public housing residents in many places to live in a decent and safe housing environment.

While the specific impetus of this initiative was the situation in the Robert Taylor Homes and Stateway developments in Chicago, the President, along with the Secretary and the Attorney General recognized that there are other authorities and local law enforcement officials struggling with the same types of problems and concerns, to varying degrees, throughout the country.

The purpose of this meeting is to give you our best thinking on the subject of security in the public housing context, and to hear and learn from you. This is an issue on which you need and deserve some guidance and support at the national level. However, in the final analysis, it is the local conditions that determine the degree of the problem and dictate the appropriate response. We look forward to a productive and informative dialogue on this issue that is so important not only to the residents of the public housing developments involved, but to the wider community of which they are a part.

Below are questions and answers dealing with various aspects of the options outlined by the Attorney General and the Secretary in their letter to the President. While by no means exhaustive, they represent some of the most common questions raised about the guidance being given on this important issue.

I. Securing the Building Entrances and Lobbies

QUESTION:

Can a public housing authority require a tenant to submit to a search upon entering the development in order to gain access to his or her apartment?

ANSWER:

Yes. The courts have upheld the use of metal detectors and follow-up searches at airports, in federal buildings, and in other settings as long as they are legitimately necessary to protect the safety of the public. Certainly, the need for these measures is manifest in projects in which violent crime is pervasive.

II. Inspections Pursuant to Terms of the Lease

QUESTION:

Under what conditions can an individual unit be inspected for firearms by public housing authority personnel?

ANSWER:

1. A federal regulation, 24 C.F.R. 966.4(j), requires public housing lease agreements to allow entry, with reasonable advance notice, for routine inspections and maintenance.

2. The regulation also requires a housing authority to include a lease provision allowing the authority to enter a dwelling unit at any time "without advance notification when there is reasonable cause to believe that an emergency exists." An emergency under this provision may include the presence of guns or drugs, gunfire, or heightened gang activity in public housing. When these conditions are present, the authority may enter a unit and conduct an inspection. In the Summeries Consent Decree, the American Civil Liberties Union and the Chicago Housing Authority agreed to allow inspections in these circumstances.

QUESTION:

Can the receipt of public housing be conditioned on the tenant's acceptance of a lease provision providing for routine and emergency inspections?

ANSWER:

Yes, a prospective tenant may be denied an apartment if he or she refuses to agree to lease provisions allowing inspections. Such provisions are common in residential leases. Although non-public housing leases do not define emergencies in terms of the presence of firearms or the threat of violence, the conditions in some public housing developments make such provisions reasonable.

QUESTION:

How intrusive may an inspection of a public housing unit be?

ANSWER:

Generally, during an administrative inspection, the inspector

may walk through and view all areas of the apartment. The inspector may also open cabinets, closets, and refrigerators. The inspection may not extend to dresser drawers and other personal effects.

QUESTION:

What role would police officers play in the routine or emergency inspections authorized by the leases?

ANSWER:

A police officer may accompany the housing authority employee to provide security during the inspection. If the inspector discovers firearms, contraband, or unlawful activity during the inspection, the police officer may seize the firearms or contraband or make arrests, as appropriate.

III. Consensual Searches

QUESTION:

Under what conditions may police search an apartment with the tenant's consent?

ANSWER:

1. Police may always ask for consent to search an individual apartment. They do not need probable cause to believe that contraband or illegal activity may be found inside.
2. Residents of public housing could be asked to consent to searches of their apartments when they sign the lease. The consent provision could be included either in the lease itself or in a separate document. The consent provision should explain the circumstances that will trigger the search.

QUESTION:

Can a prospective or existing public housing tenant be forced to sign a consent provision as a condition of obtaining or remaining in public housing?

ANSWER:

Conditioning the acceptance of public housing on agreement to a consent provision raises a difficult question of Fourth Amendment law. A consent provision in a lease may be valid if it is reasonably necessary to protect the tenants and the PHA

property.

Any Fourth Amendment question can be avoided by making the consent provision optional or by including a right to revoke the consent when police appear to conduct a search. In the alternative, public housing developments could be divided into "consent" and "non-consent" buildings. A tenant who refused to sign the consent provision would be offered an apartment in a building in which such provisions are not required as a condition of tenancy.

QUESTION:

In which housing developments will consent provisions be included in leases?

ANSWER:

Lease consent provisions should be limited to developments where the residents have voted to use them based on their assessment of the development's security needs.

QUESTION:

May a public housing authority include a lease consent provision without HUD approval?

ANSWER:

Yes. HUD does not have a role in lease approval, but tenants are entitled to a 30-day period to comment on new lease provisions.

QUESTION:

How intrusive may a search pursuant to a consent be?

ANSWER:

A search pursuant to consent may be as intrusive as necessary to discover the object that is the announced purpose of the search. Thus, a consensual search for firearms can extend to any place where a firearm may reasonably be found.

IV. Searches of Common Areas and Vacant Apartments

QUESTION:

What limits are there on the right of Housing Authority police

and inspectors to search and inspect common areas and vacant apartments?

ANSWER:

The Fourth Amendment does not prohibit searches of common areas or apartments that are not leased to someone. Common areas belong to the Housing Authority, and searches of those areas are therefore lawful exercises of the Housing Authority's right to maintain and protect its property. No warrant or other justification is needed before the Housing Authority may search or inspect any such areas.

Searches of vacant apartments (i.e., apartments that are not leased to anyone) may also be conducted without the need for a warrant or any other justification. As in the case of common areas, the vacant apartments do not belong to an individual. Accordingly, no one enjoys any Fourth Amendment rights in a vacant apartment, even if he is present or has left property there.

That is not to say that a person found in a vacant apartment may automatically be subjected to a search of his person. A search of a person may be conducted only if the police have reasonable suspicion that he is engaged in a crime and may be dangerous. But in many instances when a person is found in a vacant apartment where he has no right to be, the requirement of reasonable suspicion will be satisfied by the suspicious circumstance of the person's unauthorized presence in the vacant apartment.

V. Weapons Frisks of Suspicious Persons

QUESTION:

When can police approach suspicious persons for questioning?

ANSWER:

The Fourth Amendment permits a police officer to stop a person briefly for questioning when the officer has a reasonable basis to suspect that the person is engaged, has engaged, or is about to engage in criminal conduct. The requirement of "reasonable suspicion" is less demanding than the traditional standard of "probable cause" that is necessary for an arrest, for a full search, or for a warrant.

QUESTION:

When can police frisk a suspicious person for weapons?

ANSWER:

Not every person the police stop for questioning may be frisked. Instead, the police must have some reason to believe that the person may be armed before conducting a pat-down search. The courts, however, have been willing to accord police a great deal of leeway in making on-the-spot assessments of dangerousness. If the officer's judgment seems reasonable under the circumstances -- even if it is based more on a hunch than on clear evidence of dangerousness -- the court is likely to hold that the officer was justified in conducting a frisk.

VI. Warrant Searches on Probable Cause**QUESTION:**

When must a warrant be obtained to conduct a search?

ANSWER:

The general rule under the Fourth Amendment is that a search may be conducted only under the authority of a warrant, unless one of the exceptions to the warrant requirement applies. There are a number of exceptions to the warrant requirement, such as:

1. A search of the person and his immediate surroundings, conducted in the immediate aftermath of an arrest.
2. A search of a moveable item, such as an automobile, on probable cause to believe it contains evidence of a crime.
3. A search under "exigent circumstances," i.e., in the event of an emergency in which there is no time to obtain a warrant.
4. A search pursuant to the consent of the person whose property is being searched.

The warrant requirement is at its strongest when a search of the home is involved.

QUESTION:

How can a lease clause authorize a warrantless search without probable cause.

ANSWER:

Where the parties to a lease agree to allow searches or inspections by the landlord without probable cause, the search

or inspection that is conducted pursuant to that lease provision is considered to be the product of the tenant's consent. As we have discussed above, however, there are limits on the extent to which a tenant's consent can be required: if the lease clause is considered reasonably necessary to protect the interests of the landlord and the other tenants, the landlord can insist on the tenant's consent. But if the clause goes beyond what is considered reasonably necessary to protect the interest of the landlord and the other tenants in the building, the landlord may not be able to insist on the clause, at least if the tenant does not have any other realistic opportunity to obtain housing.

VII. Searches Based on Exigent Circumstances

QUESTION:

Under what circumstances may police rely on the exigent circumstances doctrine to search an apartment for firearms?

ANSWER:

Police officers may enter an apartment from which they have heard the sound of gunfire and conduct a warrantless search. In addition, police officers may enter an apartment where they know drugs or firearms will be found if they reasonably believe that the evidence will be lost in the time it takes to obtain a warrant. The search must occur immediately after the police hear the gunfire or learn of the presence of contraband. By definition, an exigency is a situation in which the police do not have time to secure a search warrant.

QUESTION:

May police officers search multiple units of a building if they cannot isolate the source of gunfire?

ANSWER:

If the police reasonably believe that a person is wounded in one of several apartments, they may enter those apartments to find the wounded person. A good argument can also be made that if police can isolate the source of gunfire to two or three apartments, they can enter those apartments and search for a gun. Police cannot rely, however, on the exigent circumstances doctrine to search every apartment in a building. The rule is that the police must have probable cause for each apartment they wish to search.

QUESTION:

How intrusive a search may be conducted under the exigent circumstances doctrine?

ANSWER:

If the police are responding to the sound of gunfire within an apartment, they may conduct a search of any area in which a gun may be found. Similarly, if police are conducting a search because they have probable cause to believe that guns or drugs will be found in an apartment and the evidence will be removed before they can obtain a warrant, the police may conduct a thorough search of every area of the apartment. If police have reasonable suspicion only that a person is wounded in the apartment, they may only enter to determine whether in fact someone requires assistance; they may not conduct a thorough search of the apartment. The rule is that police may conduct as thorough a search as is necessary to address the exigency that allowed them to enter the apartment.

VIII. Arrest Warrants

QUESTION:

What authority does an arrest warrant grant to the police to enter a private residence?

ANSWER:

An arrest warrant authorizes the police to arrest the subject anywhere he is found. It also authorizes the police to enter the subject's home. When the police enter the subject's own home, therefore a separate search warrant is not required. However, if the police wish to enter a third party's house to arrest a person under an arrest warrant, the arrest warrant is not enough. In that case, they must also obtain a search warrant to enter the home, since the invasion of the third party's privacy is considered a separate Fourth Amendment interest from the interests addressed by the arrest warrant for the subject.

The White House
Office of the Press Secretary

For Immediate Release:

April 7, 1994

STATEMENT OF THE PRESIDENT ON THE COURT DECISION REGARDING
THE CHICAGO HOUSING AUTHORITY'S "OPERATION CLEAN SWEEP"

Just hours ago, a Federal District Court for the Northern District of Illinois, Eastern Division, declared the Chicago Housing Authority's (CHA) search policy in violation of the Fourth Amendment.

I am ordering Attorney General Reno and Secretary Cisneros to develop promptly a search policy for public housing that is both constitutionally permissible and effective, and that can be implemented on a nationwide basis. We must not allow criminals to find shelter in the public housing community they terrorize.

I have also asked the Attorney General and Secretary Cisneros to explore what other resources we can provide for sweeps by localities and by federal agencies.

During the last weekend in March, 13 people died violently in Chicago -- 3 of them in the Robert Taylor Homes -- and more than 300 gun incidents were reported to local police. The people in the Robert Taylor Homes have asked us to help protect them, and within constitutional limits we will do so.

-#-#-#-

Date: 04/14/94 Time: 14:01

Reno supports consent forms for gun control

WASHINGTON, April 14 (April 14) UPI - U.S. Attorney General Janet Reno said Thursday that residents of public housing projects can sign consent forms to allow police to make weapons searches without warrants.

A federal judge in Chicago, Illinois, has blocked warrantless gun sweeps of federally subsidized housing by the Chicago Housing Authority, but Reno said ''consensual searches can still go forward.''

The attorney general's comments came after President Bill Clinton on Monday asked Reno and Housing and Urban Development Secretary Henry Cisneros to look into constitutional ways to get guns out of the projects.

Reno said she's given no official report to the president, though she talked to the White House Wednesday. She said Justice Department officials would be meeting with officials from the Department of Housing and Urban Development Thursday afternoon to discuss effective ways of dealing with the problem.

Cisneros was in Chicago earlier this week, where the violence in some projects has reached a boiling point.

The secretary told Clinton by phone that he was in a Chicago housing project where he had spent the night, and there were about 20 confiscated guns on a table in front of him.

Cisneros told the president there were 15 shootings and five deaths last weekend in Chicago.

(Written by Michael Kirkland in Washington)



U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

FACSIMILE TRANSMISSION

FROM THE OFFICE OF: Nelson A. Diaz, General Counsel

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4/12/94

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April 12, 1994

DRAFT

**Combatting Violent Crime in Public Housing
A National Policy on Searches for Guns and Drugs
A Federal Action Plan for the Chicago Housing Authority**

I. Searches for Guns and Drugs in Public Housing

1. The Chicago Searches

The HUD team made a quick assessment of the CHA's search policy during its one-day visit to Chicago. Meetings were held with CHA leadership and staff, residents, law enforcement personnel and community leaders. The Secretary and his regional representative participated in a B.I.T.E. team search of an apartment identified as harboring drugs and weapons.

It is clear that the CHA's "search policy" actually covers a range of practices and tactics. The federal district court in Pratt -- while enjoining CHA's method of conducting warrantless searches of apartments -- approved without reservation the CHA conducting searches under a range of circumstances.

First, the CHA can conduct searches pursuant to valid search warrants.

Second, the CHA can conduct searches pursuant to resident consent, either written or oral. It must be emphasized that the majority of CHA's searches -- by B.I.T.E. teams (see below) and other police forces -- are undertaken with such consent.

Third, the CHA can conduct searches in common areas throughout CHA buildings and in space not leased to tenants, including vacant apartments.

Fourth, the CHA can conduct searches in an existing emergency or clear and present danger when there is probable cause to believe that a crime has been committed. The Court expounded on this type of search by saying that a door-to-door search in pursuit of an armed gang after the building has been surrounded, would be appropriate to apprehend the criminals and restore safe conditions. The Court stressed the relevance of such factors as timeliness of the response and the probability of arrests and confiscation of weapons, in saying that such a door-to-door search might be appropriate without a warrant.

Fifth, the CHA can conduct searches pursuant to CHA's general management responsibilities. The federal district court in the Summaries consent decree already validated such

"administrative searches". Housing inspectors are permitted to examine units for physical and structural deficiencies and to identify and remove unauthorized occupants. The inspectors are accompanied by CHA police (who wait in the corridor) to provide protection. The inspectors report any violation of the law, or any unlawful or criminal activity, observed during the inspection to the police. The police may then conduct a warrantless search based upon probable cause.

Sixth, the CHA can conduct searches reasonably required to assure the safety of any individual or law enforcement officer while law enforcement officers or CHA administrative staff are engaged in a lawful search.

The federal district court, therefore, did not rule out the conduct of warrantless searches in public housing; it outlined several criteria that will be used to judge whether a particular method of search passes constitutional muster.

The CHA intends both to appeal the court's ruling as well as test its limits in the coming months. The CHA believes that it may continue to conduct searches necessary to protect the safety and welfare of its residents within the guidelines outlined above, and will do so as the circumstances require. The CHA intends to prepare written guidelines to govern its conduct of warrantless searches as well as embark on a campaign of gaining tenant consent for such activity. Key issues to be covered in the written policy include:

who in the PHA has the authority to order a warrantless search;

the level of violent activity that arises to an emergency situation or a clear and present danger;

what measures will be taken on a timely basis to secure the building site and initiate the search of apartments; and

how the searches will be conducted.

2. A Federal Position on Searches

HUD believes that the Pratt opinion provides the basis for establishing a national policy on searches in public housing. The national policy would have at least 5 elements.

It would first recognize the extreme situation which now exist in many public housing developments around the nation, giving concrete examples of the toll of gang violence and drug-related crime.

It would recognize searches as one element of a larger, more comprehensive strategy to combat violent crime (particularly gang-related crime) in public housing. Searches keep the gangs on the defensive, disrupting their settled organization and practices of business.

It would praise the efforts of the CHA and other agencies that have instituted searches as a way to protect the lives of residents and wrest control of buildings back from the gangs.

It would outline the types of searches that are clearly permissible under the Constitution and would give examples of where such permissible searches are underway.

The policy would recognize that warrantless searches without tenant consent can be undertaken under certain parameters. It would outline those parameters and give examples of warrantless searches that, in the Administration's view, would pass constitutional muster.

HUD also believes that revisions to public housing lease provisions will support PHAs in their efforts to restore safety to embattled developments. HUD will amend its regulations to clarify that PHAs are not only permitted but encouraged, where they feel it is necessary, to give notice of an intent to amend the lease to provide for tenant consent to unit searches, without a warrant, under exigent circumstances. Exigent circumstances would be defined in the lease to include a general and serious threat of violence and disruption to the right of the residents to peaceful enjoyment of their home. The amendments would only go into effect following formal endorsement of the proposal by the duly elected resident councils of the PHA (or some other validated survey of the residents). Resident support for the lease provision would lessen the likelihood of a successful challenge to the provision in court.

HUD will also seek legislation to permit PHAs to include gun ban provisions in their leases and to preempt state and local law to the contrary. HUD would urge the Administration to include this provision in the crime bill to expedite its consideration.

II. Other Security Measures

CHA has identified 3 strategies that can be used to carry out and augment the constitutional search policies described above.

1. B.I.T.E. Teams

The CHA police and the Chicago police have established an innovative anti-crime effort called B.I.T.E. -- Building

Interdiction Team Effort. Four teams have been established consisting of the following:

- 8 public housing officers
- 8 Chicago police officers
- 1 public housing sergeant
- 1 Chicago police sergeant

The goal of the teams is to "win back control" of selected buildings from the gangs. B.I.T.E. teams are being used to secure the perimeters of buildings and then patrol and search common areas and vacant apartments, challenge suspicious persons and inspect occupied apartments when they receive tenant consent.

The CHA believes that the an expanded B.I.T.E. force can provide the manpower and expertise to conduct emergency sweeps in the future. The CHA estimates that the minimum number of police personnel needed in a sweep are:

- 8 police to secure the perimeter of buildings;
- 14 police to secure the interior (particularly ground floor) of buildings;
- 4 police to start the search from the bottom floor up; and
- 4 police to start the search from the top floor down.

Recommendation:

Provide sufficient federal resources (how much?) to fund 10 B.I.T.E. teams. HUD is exploring a range of funding possibilities.

2. Operation Safe Home

HUD, the Department of Justice and the Department of Treasury have established the Operation Safe Home initiative to combat violent crime in designated public housing sites. The initiative coordinates federal and local law enforcement efforts at these sites on a range of investigative and prevention matters.

Recommendation:

Instruct the Operation Safe Home task force of federal law enforcement personnel (e.g. HUD IG, DEA, FBI, ATF, Secret Service) in Chicago to include Robert Taylor Homes and Stateway within their target agenda.

3. Vacancy Reduction

Excessive vacancies represent a significant security problem for the CHA. In some developments, they have become a haven for gangs to stash weapons and drugs. In some buildings, gangs have literally broken through walls dividing separate apartments -- a practice called "tunnelling" -- enabling gangs to control segments of floors.

Management personnel are constantly at risk; gangs control exit and entry in many buildings. Work is constantly disrupted; crews return some mornings to find partially rehabilitated apartments destroyed.

The CHA is taking a series of innovative steps to reduce vacancies in their developments. The construction trades are training residents to rehabilitate vacant apartments under a new HUD program called Step-Up. Homeless veterans are "house-sitting" and fixing up vacant apartments, getting preferential treatment for future apartments in return.

Recommendations:

Provide the CHA with additional HUD funds (how much?) to increase Step-Up participation from xxx to yyy. HUD is exploring a range of funding possibilities.

Provide the CHA with additional HUD funds (how much?) to rehabilitate vacant apartments for occupancy. HUD is exploring a range of funding possibilities.

Work with the CHA on designing a "round-the-clock" rehabilitation program to combat the random destruction of unfinished work.

III. Recreational Facilities/Resident Services

The CHA, local ministers and residents consistently identified the absence of recreational facilities and other services as a major impediment to stabilizing the current situation. The CHA and others have great experience with administering a range of programs and activities -- in both Robert Taylor Homes and Stateway as well as in other CHA developments.

1. Playground Reconstruction

The playground facilities in Robert Taylor Homes and Stateway are abysmal: strewn with glass, needles and other drug paraphernalia, broken gyms. Reconstruction of adequate, secure ballfields, "green space" and other playground facilities needs to happen immediately. Progress is being

made; the corporate and philanthropic community is expected to provide \$x towards this end. The state government may contribute an additional \$1.5 million.

Recommendations:

Provide the CHA with additional HUD funds (how much?) to support playground reconstruction. HUD is exploring a range of funding possibilities.

Work with Department of Interior to identify other longer-term funding sources for such activities.

2. Recreational Activities

The CHA has successfully administered a range of recreational activities to offer an alternative to gang life for public housing youth. The CHA has particularly requested additional funding for their midnight basketball program. The House crime bill would authorize \$50 million for midnight sports leagues. Yet appropriations for this initiative would not be made until the fall; funding awards might not be made until winter. CHA estimates that approximately \$200,000 is needed to administer a program this summer.

Recommendation:

Provide the CHA with \$200,000 to carry out midnight basketball activities. HUD is exploring a range of funding possibilities.

3. Drug Rehabilitation

The CHA has designed and implemented in other developments a program called CADRE -- Combatting Alcohol and Drugs through Rehabilitation and Education. The program provides a range of prevention, intervention and treatment services for residents. CHA estimates that it would cost approximately \$300,000 to implement the program in Robert Taylor Homes.

Recommendation:

Provide the CHA with \$300,000 to expand CADRE to Robert Taylor Homes. HUD is exploring a range of funding possibilities.

4. Other Services

The CHA identified a range of other services needed to address the root causes and effects of the violence in Robert Taylor Homes and Stateway. These services include:

counseling for young children, summer cultural activities, support for boys and girls clubs and after-school programs, truancy reduction measures and other support services.

Recommendation:

Provide the CHA with additional federal funds (how much?) to support these services. HUD is exploring a range of funding possibilities.

IV. Long Term Measures

Robert Taylor Homes, Stateway and other developments comprise 65 highrise buildings along State Street in South Chicago. These buildings warehouse 23,000 of the nation's poor in dense, ill-designed environments, with average incomes around \$5400.

The efforts described above will hopefully stabilize the situation in Robert Taylor Homes and Stateway over the next several months. Yet more radical measures are needed if this housing is to become safe and livable and if the tenants residing in the developments are to become working, productive citizens.

Vince Lane has a vision that would virtually "change the landscape" of Chicago by demolishing these high-rises and rebuilding in their place small-scale, well-designed, economically integrated housing.

To accomplish Chairman Lane's vision, HUD and Congress will need to dramatically transform the way the public housing program works. Three revisions are most critical.

Public housing agencies should be given the flexibility to use modernization funds to demolish and replace dilapidated buildings. Currently, the CHA receives approximately \$xxx million a year in modernization funds. It must use those funds to rehabilitate existing developments whether or not demolition and replacement would be more costly and effective.

Public housing agencies should be allowed to capitalize a portion of the expected modernization funding stream -- as is done with Community Development Block Grant Funds. The CHA could potentially leverage \$xxx million in funding under a proposal which would permit a PHA to capitalize xx% of its modernization grant.

Public housing agencies should be allowed to leverage public housing funds with such resources as bond financing and other public and private sources of capital. The ability to leverage non-Federal funds will permit PHAs to stimulate the

development of mixed income communities.

Recommendation:

Include the modernization revisions in HUD's 1994 legislation. Implement the leveraging proposals administratively.

AMERS. HAVE A CONSTITUTIONAL RIGHT TO BE SAFE.

DRAFT

PROPOSALS FOR RESTORING SAFETY TO PUBLIC HOUSING

The Department of Housing and Urban Development has asked us to prepare a set of options for measures that would be both effective and constitutional in addressing the problem of widespread use of firearms in public housing projects. The decision whether, and how, to implement these proposals is, of course, for HUD to make based on policy judgments and the availability of resources. We are comfortable, however, that the proposals we have incorporated here are constitutionally supportable, for the reasons given in the analysis that accompanies each proposal.

I. INTRODUCTION AND SUMMARY OF PROPOSALS

In Washington, D.C., residents of one public housing project call their neighborhood "Little Vietnam," because of the nightly sounds of gunfire. Near another Washington, D.C., project a minister explained that school children are unfazed by a murder because they are "children of war." In Los Angeles, a public housing development is called a "war zone," populated by gangs wielding "horrendous" firepower. In Dallas, tenants complain that gangs and drug dealers control their public housing complex.

Recent events in Chicago have highlighted the level of violence in that city's public housing. In the last two years, nearly 120 homicides occurred in the Chicago Housing Authority's 1,479 structures. In 1988, a molotov cocktail thrown into a family's apartment severely burned a seven-year-old girl. Random sniper fire killed another seven-year-old walking to school in October 1992, and in the summer of 1993, gunfire threatened the lives of maintenance workers, forcing them to abandon the premises. During one three-day period in March 1994, gang warfare resulted in over 300 shooting incidents and three deaths in a single CHA project. According to the New York Times, mothers counsel their children on how to react if they are caught in a cross-fire. The Washington Post reported that tenants in one Chicago project had to pay gang members to be allowed to take their groceries to their apartments.

Public housing must be both affordable and safe. The decision in Pratt v. Chicago Housing Authority, No. 93 C 6985 (N.D. Ill. April 7, 1994), which held that the Chicago Housing Authority's policy of conducting warrantless, apartment-to-apartment searches of public housing projects violates the Fourth Amendment, demonstrates the difficulty of finding effective and constitutional ways of achieving that end. Nonetheless, the Constitution does not disable public housing officials from taking the steps necessary to ensure that the tenants of public housing projects are afforded the basic right to a safe environment for themselves and their children.

We set forth here a series of proposals designed to restore safety to public housing projects, while at the same time respecting the constitutional rights of every resident and visitor in those projects. If these proposals are adopted and implemented, we believe they can be highly effective in curbing violence in public housing projects and thereby making a huge contribution to the quality of the lives of persons served by the nation's public housing agencies.

We propose the following:

1. Public housing agencies (PHAs) should include in their lease agreements a provision banning the possession of firearms;
2. Public housing lease agreements should be amended to allow periodic administrative inspections for firearms;
3. PHAs should rely on their ability to obtain warrants to conduct administrative inspections of their buildings;
4. PHA tenant associations should adopt resolutions approving lease agreement provisions banning weapons and providing consent for firearms inspections;
5. PHAs should take steps to secure buildings through use of metal detectors, identification cards, and effective security guards;
6. Police patrolling public housing should attempt to take weapons from violent criminals by aggressively using their authority to stop and frisk suspicious individuals;
7. Public housing authorities should rely on the exigent circumstances doctrine to conduct warrantless searches of individual units where there is probable cause to believe that evidence of a crime will be found in that unit or when emergency conditions require immediate action, such as to pursue persons fleeing from the scene of a crime or to investigate a possible medical emergency resulting from a shooting incident.

YES
Concealed
weapons

II. FIREARM PROHIBITIONS IN PUBLIC HOUSING LEASE AGREEMENTS

a. The Proposal

Presently, federal regulations set forth lease requirements for public housing. See 24 C.F.R. § 966.4 (1993). These regulations require Public Housing Agencies (PHAs) to "maintain the dwelling unit and the project in decent, safe and sanitary condition." Id. at § 966.4(e)(1). Similarly, they require the

tenants "[t]o abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants," "[t]o keep the dwelling unit * * * in a clean and safe condition," and "[t]o act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition." Id. at § 966.4(f)(4), (6) and (11). The tenant is further required "[t]o assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in" criminal activity that threatens the safety of other residents and employees and drug-related criminal activity. Id. at § 966.4(f)(12)(i). Criminal violations or serious or repeated violation of the lease provisions are cause for termination of the tenancy. Id. at § 966.4(l)(2)(ii).

HUD should amend these regulations (1) to state that violent crime is rampant in public housing projects, and that firearms are a threat to the safety of residents, employees, and guests; (2) to ban all firearms from public housing projects, with the exception of firearms carried by law enforcement and security officers; (3) to prohibit tenants from possessing or storing firearms anywhere within the confines of the housing project; (4) to require that the tenant assure that any member of his or her household or guests shall not possess or store firearms within the confines of the housing project; and (5) to state that possession of a firearm by the tenant, a member of his household, or his guest shall be cause for termination of the tenancy.

+Knives
+grenades

b. Explanation and Legal Analysis

[KICK YOU OUT IF YOU
HAVE A GUN]

A regulation banning firearms in public housing projects would not offend the Second Amendment. The Second Amendment provides: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." The courts uniformly have held that the Second Amendment guards only against federal attempts to disarm or abolish organized state militias, and does not confer an individual right to own or possess firearms. See, e.g., United States v. Cruikshank, 92 U.S. 542, 553 (1876) (the Second Amendment does not give individuals a right to bear arms; instead, it was meant only to limit the power of the federal government with respect to the maintenance of state militias); Presser v. Illinois, 116 U.S. 252, 265 (1886) (same; upholding a defendant's conviction for violating a state law that prohibited military assemblies without a permit); United States v. Miller, 307 U.S. 174, 178 (1939) (rejecting Second Amendment challenge to federal conviction for possession of a sawed-off shotgun because the sawed-off shotgun lacked a "reasonable relationship to the preservation or efficiency of a well-regulated militia"); Quilici v. Village of Morton Grove, 695 F.2d 261, 269-271 (7th Cir. 1982) (rejecting constitutional challenge to

Tough
Fight

a local ordinance prohibiting the possession of handguns within the municipality's borders), cert. denied, 464 U.S. 863 (1983).

Nor would a regulation banning firearms violate the Equal Protection Clause. The regulation would apply equally to anyone who entered a public housing complex. Moreover, the regulation would not restrict the rights of tenants and their guests to own firearms as long as they stored the firearms elsewhere. Cf. Sklar v. Byrne, 727 F.2d 633, 639 (7th Cir. 1984) (rejecting equal protection challenge to gun-control ordinance with a grandfather clause). And finally, the overwhelming need to control violence in public housing projects amply provides a rational basis for the regulation.

III. CONSENT CLAUSES IN LEASE AGREEMENTS

a. The Proposal

Tenant cooperation will be essential to enforce a ban on firearms in public housing projects. That cooperation should be reflected in the lease agreement and should be a condition of tenancy. Presently, 28 C.F.R. § 966.4(j) requires that the "lease set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession." The current regulations require advance notification for routine inspections and maintenance, but they do not require advance notice of an entry by PHA staff "when there is reasonable cause to believe that an emergency exists." Id. at § 966.4(j)(1) and (2). These provisions should be amended explicitly to provide for periodic administrative inspections of the dwelling unit for firearms. Advance notice of a firearms inspection would not be required. The regulations should also authorize the PHA to remove and retain firearms discovered during an inspection. Refusal by a tenant to allow the PHA to inspect the dwelling unit for firearms, in conformity with established PHA procedures, would be cause for termination of the tenancy.

b. Explanation and Constitutional Analysis

The Fourth Amendment provides that "[t]he right of the people to be secure in their * * * houses * * * shall not be violated." On the basis of this language, the Supreme Court has held that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." United States v. United States District Court, 407 U.S. 297, 313 (1972). Accordingly, the Court rarely has dispensed with the warrant requirement where the locus of the search or inspection is a private dwelling. See, e.g., Payton v. New York, 445 U.S. 573, 590-601 (1980) (barring warrantless home arrests in the absence of exigent circumstances); Camara v. Municipal Court, 387 U.S. 523 (1967) (requiring a warrant for a nonconsensual administrative search of

a residence). Nevertheless, it is beyond dispute that government officials may enter and search a dwelling without a warrant and without probable cause upon the consent of a party who has "common authority over the premises." Illinois v. Rodriguez, 497 U.S. 177, 179 (1990); see United States v. Matlock, 415 U.S. 164 (1974). Consequently, a tenant can allow the PHA to search his apartment for firearms.

The tenant's consent should be binding on the other members of the household. Matlock, 415 U.S. at 169-170. See 24 C.F.R. § 966.4(a) (requiring that the lease identify all members of the household). Moreover, because the tenant may not sublease the dwelling unit (id. at § 966.4(f)(1)), his or her consent should endure until the unit is turned over to a new lessee. As a general matter, the tenant's consent should also extend to areas of the dwelling inhabited by a guest. A more difficult question of the scope of the tenant's consent would be presented in the unusual case in which a guest was present during the inspection and objected to the inspection of his suitcase or personal belongings, see 3 Wayne R. LaFare, Search and Seizure, § 8.5(d) at 304-309 (2d ed. 1987), but that situation is not likely to arise with great frequency.

Because the "scope of a search is generally defined by its expressed object," Florida v. Jimeno, 111 S. Ct. 1801, 1804 (1991), a properly crafted lease provision can give the PHA sufficient authority to conduct a thorough search of the project and the individual dwelling units for firearms. The tenant's consent should authorize access to any area or container within the dwelling unit that could possibly conceal a firearm. Ibid.

We believe that conditioning the receipt of public housing on a waiver of Fourth Amendment rights is permissible, although that question is not entirely free from doubt. On several occasions, the Supreme Court has held that it is lawful to condition receipt of a government benefit on an agreement to forfeit certain constitutional rights, particularly where, as here, the agreement is a reasonable means of protecting a compelling interest. See, e.g., Treasury Employees v. Von Raab, 489 U.S. 656 (1989) (upholding drug testing of employees who are involved in drug interdiction or who carry firearms); Snepp v. United States, 444 U.S. 507, 509 n.3 (1980) (upholding restriction on First Amendment freedoms as a condition of employment with the CIA). Significantly, in Wyman v. James, 400 U.S. 309 (1971), the Supreme Court held that receipt of public assistance can be conditioned on periodic home visits by a case worker. In that case, the limited intrusion of a home visit was offset by the need to protect dependent children and the public fisc. Id. at 318-319. To be sure, firearms inspections will be far more intrusive than the home visits at issue in Wyman, but that greater intrusion is balanced by a greater need, namely, the need to protect the lives of the residents of public housing projects.

The consent provision in a lease agreement must be backed by an eviction clause. In Wyman, for example, the State terminated the welfare recipient's public assistance when she refused to admit the caseworker for a home visit. Likewise, here, a tenant who attempts to prevent the PHA inspectors from searching his unit for firearms should face eviction.

IV. TENANT ASSOCIATION APPROVAL

a. The Proposal

Many public housing projects contain formal or informal tenant organizations, and HUD officially encourages tenant participation in public housing management. See 24 C.F.R. § 964.11. In keeping with that policy, PHAs should urge these organizations to approve - - by resolution or otherwise - - the use of the measures set forth above. Such a resolution would provide concrete justification for the implementation of the recommendations. Thus, a tenant organization resolution should set forth in detail the conditions that justify the use of these new measures. Tenant organizations should also specifically state that the organization expressly approves the ban on weapons, the insertion of consent provisions in leases, the execution of searches pursuant to those consent provisions, and the use of eviction as a penalty for violation of the new lease provisions.

b. Explanation and Legal Analysis

The Supreme Court has stated that "the community has a real interest in encouraging consent." Schneckloth v. Bustamonte, 412 U.S. 218, 243 (1973). Although tenant organizations may not provide consent for individual tenants, a tenant organization's explanation of the need for weapons bans and consent provisions may provide support for a judicial validation of these provisions. Approval by representative tenant organizations will help to ensure that all tenants have notice of these provisions. In addition, tenant organization approval may support a finding that the inclusion of consent provisions in leases establishes the actual consent of individual tenants.

V. ADMINISTRATIVE SEARCH WARRANTS

a. The Proposal

Although consent clauses in the lease agreement appear to be the strongest tool for enforcing a project-wide prohibition on firearms, administrative search warrants provide a useful but more limited means of protecting tenants. The administrative warrant

will not permit a full-scale search of the dwelling, including a rummaging through drawers and closets. But the administrative warrant should be sufficient to allow the PHA staff to walk through the apartment and interview the tenants. Administrative searches should be conducted on a routine basis; they should not be tied to a particular shooting incident. Moreover, the PHA should establish uniform procedures for conducting the inspections.

b. Explanation and Legal Analysis

An administrative search warrant can authorize a routine inspection of all residential units within a building for enforcement of safety codes. Camara v. Municipal Court, 387 U.S. 523 (1967). The warrant does not require a showing of probable cause or even a reasonable belief that a particular dwelling has violated the code. Id. at 534. Rather, an administrative warrant will issue if a building-wide inspection is needed to protect the "public health and safety." Id. at 535. Surely, the reduction of gunfire in public housing projects is a special need that justifies an administrative inspection of unit dwellings for firearms. In the context of a commercial business, routine inspections are permissible even where, as here, the inspection may ultimately detect crime and benefit law enforcement. See New York v. Burger, 482 U.S. 691, 709 (1987) ("regulation of the vehicle-dismantling industry reasonably serves the State's substantial interest in eradicating automobile theft"); United States v. Biswell, 406 U.S. 311, 315 (1972) (federal regulation of the sale of guns is of "central importance to federal efforts to prevent violent crime").

Nevertheless, it must be noted that a routine inspection conducted pursuant to administrative warrant is less invasive -- and hence less thorough -- than a consent search or a warrant search supported by probable cause. See Camara, 387 U.S. at 537 ("because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy").

To ensure the constitutionality of Camara-type searches of public housing units, the PHA should establish firearms inspection procedures that reduce the discretion of the PHA inspectors and that are narrowly tailored to the public interest of providing safe public housing. In the absence of an emergency, those procedures should restrict firearms inspections to daylight hours. Firearm inspections should occur regularly, and should not be tied to any particular incidence of gunfire. Also, the PHA procedures should require the inspectors to knock and announce their purpose prior to entry. The inspectors should refrain from full-scale searches in the absence of tenant consent. In this regard, the PHA should explore the feasibility of using hand-held metal detectors to identify areas (drawers, cabinets) that require closer inspection. PHA inspectors should not examine personal items unless they have reasonable grounds to believe that the item contains a firearm. If

the dwelling unit is unoccupied at the time of the inspection, the PHA should leave written notification of the inspection for the tenant, and the inspectors should close all windows and lock all doors upon leaving. Inspectors should remove and retain all firearms located during the inspection, but they should not take other property. Local police may accompany PHA inspectors for the purpose of providing security, but they should not search the premises.

In the absence of consent or a warrant, the PHA cannot conduct routine inspections of unit dwellings for firearms. Warrantless administrative inspections are permitted only where the subject of the search has a "reduced expectation of privacy." New York v. Burger, 482 U.S. at 702. See, e.g., ibid. ("the owner or operator of commercial premises in a 'closely regulated' industry"); New Jersey v. T.L.O., 469 U.S. 325 (1985) (students); O'Connor v. Ortega, 480 U.S. 709 (1987) (government employees); Griffin v. Wisconsin, 483 U.S. 868 (1987) (probationers). In contrast, residents of public housing do not have a reduced expectation of privacy in their homes, and cases, such as Griffin, do not provide a basis for bypassing the warrant requirement.

VI. IDENTIFICATION CARDS, METAL DETECTORS, AND ENTRY SEARCHES.

a. The Proposal

A PHA can enhance the security of its public housing by implementing a program of issuing identification cards to residents, using magnetometers or metal detectors, and conducting entry searches to prevent residents and visitors from bringing firearms into public housing properties. These measures could be implemented in much the same way that they are used at courthouses and other public buildings. Residents and visitors who wish to enter public housing would be required to pass through a metal detector. If the detector reacted to the presence of metal, then the person would be required to empty his or her pockets of metal objects and pass through the detector again. Follow-up searches also could be conducted with hand-held magnetometers. At the same time, hand baggage and parcels would be subjected to an x-ray or to a hand search limited to determining that these containers do not contain a weapon. Implementing such a program would require the deployment of guards who can enforce the requirement that persons empty their pockets of any metal. To ensure that these measures have a deterrent effect, the PHA should conspicuously display signs announcing that persons entering public housing must pass through metal detectors and are subject to entry searches. Finally, PHA leases should be modified to contain a provision in which residents consent to the use of magnetometers and entry searches.

Yes -
Frank

b. Explanation and Legal Analysis

Entry searches have been upheld against Fourth Amendment challenges in the context of airports, (see United States v. Edwards, 498 F.2d 496 (2d Cir. 1974)), courthouses, (McMorris v. Alito, 567 F.2d 897 (9th Cir. 1978); Downing v. Kunzig, 454 F.2d 1230 (6th Cir. 1972)), and other public buildings (Justice v. Elrod, 832 F.2d 1048 (7th Cir. 1987)). Courts have approved entry/magnetometer searches on the ground that the governmental interest in ensuring the safety of air travel and public spaces justifies the relatively minimal intrusion into the privacy of persons subject to the search. Courts have been willing to extend this rationale to other locations based on a showing that an entry search is legitimately necessary to protect the safety of the public. See Wilkinson v. Forst, 832 F.2d 1330 (2d Cir. 1987) (people who wish to attend Ku Klux Klan rally); Jeffers v. Heavrin, 701 F. Supp. 1316 (W.D. Ky. 1988) (people entering Churchill Downs for the Kentucky Derby), rev'd on other grounds, 932 F.2d 1160 (6th Cir. 1991). As the Seventh Circuit has explained, an airport-style entry search "being unintrusive, is constitutionally unproblematic where * * * there is some reason -- there needn't be much -- to expect that armed and dangerous people might otherwise enter." Justice v. Elrod, 832 F.2d at 1050. In addition, in some circumstances, a person entering a building after being given notice that an entry magnetometer search would be conducted on all persons entering the building has consented to the search. See Jeffers v. Heavrin, 932 F.2d 1160, 1163 (6th Cir. 1991); McMorris v. Alito, 567 F.2d at 901.

The pervasiveness of firearms and the level of violence in some public housing plainly supply the requisite need to institute the use of metal detectors and entry searches. If conducted in an unintrusive manner that is designed only to reveal the presence of weapons, then such searches do not constitute an unreasonable invasion of the privacy rights of persons entering public housing. In addition, visitors who are warned of the entry-search policy and nevertheless decide to enter a public housing building have consented to the search. Although notice alone may not be sufficient to support a finding that residents have consented to entry searches, a general consent to such searches can be included in lease agreements.

VII. TERRY STOPS

a. The Proposal

PHAs should seek to remove firearms from people carrying them in public housing projects. To this end, police officers patrolling the indoor and outdoor common areas of public housing should rely on their ability to stop and frisk persons whom the officers reasonably suspect of carrying firearms. Aggressive use of the

authority to stop and frisk suspicious individuals could result in the confiscation of numerous weapons.

b. Explanation and Legal Analysis

Under Terry v. Ohio, 392 U.S. 1 (1968), police officers who have reasonable suspicion to believe that a person is armed and dangerous may stop and frisk that person. Reasonable suspicion consists of "'some minimal level of objective justification' for making the stop." United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting INS v. Delgado, 466 U.S. 210, 217 (1984)). Officers may rely on a broad range of suspicious circumstances to justify a Terry stop, including furtive behavior, flight at the sight of the police, suspicious bulges beneath clothing, narcotics dealing, and information from informants. Recent studies suggest, however, that police officers do not aggressively employ their authority to conduct Terry stops. See James Q. Wilson, Just Take Away Their Guns, N.Y. Times Magazine, March 20, 1994, at 46-47. yes

Because of the prevalence of firearms in some public housing, aggressive use of Terry stops may result in the confiscation of significant numbers of weapons. Police officers who routinely patrol a public housing unit and are familiar with its residents would be particularly attuned to suspicious behavior in the areas under their patrol. Such officers would be likely to become aware of the identities of gang members and drug traffickers and thus better able to judge when a Terry stop would be justified.

VIII. SEARCHES BASED ON EXIGENT CIRCUMSTANCES

a. The Proposal

PHAS may also rely on the exigent circumstances exception to the warrant requirement to conduct warrantless searches in some limited circumstances. That doctrine clearly permits police to conduct immediate, warrantless searches for guns in public housing units from which the sound of gunfire has been heard. Where the police have probable cause to believe a gun is present in an apartment, but no specific evidence of the gun's past or impending use, a warrantless search may also be permissible. Warrantless searches when police are unable to limit the likely location of gunfire to a single unit are more problematic. If police have narrowed the likely location of gunfire to two or three units, they may be able to conduct a search of those units for firearms. Any door-to-door search for guns in more than two or three apartments, however, should not be conducted unless it is for the limited purpose of searching for wounded or to prevent an imminent physical attack (as in the instance of the roving, armed gang). Finally, the exigent circumstances exception is inapplicable when the reason for the search is not so urgent that police may reasonably delay in obtaining a search warrant. Thus, police cannot rely on the

doctrine to justify a search occurring more than a short time after an incident involving a firearm.

b. Explanation and Legal Analysis

1. When the sound of gunfire emanates from a particular dwelling, the existence of an exigency, warranting an immediate entry to apprehend the shooter, attend to any wounded, or recover the gun, is unquestionable. Under the exigent circumstances exception, police officers may conduct a warrantless search of premises when exigent circumstances and probable cause exist to justify the intrusion. See, e.g., Ker v. California, 374 U.S. 23, 41-42 (1963). "Exigent circumstances" are defined as "those circumstances that would cause a reasonable person to believe that entry * * * was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." United States v. McConney, 728 F.2d 1195, 1199 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984). That test is plainly satisfied when the police know that a gun has been fired from a particular apartment.

A reasonable argument might also be made that, in areas pervaded by violent crime, such as the CHA developments in Pratt, the mere presence of a gun in a dwelling, even absent any evidence of its past or impending use, creates an exigency supporting an immediate search for the gun; the exigency inheres in the fact that, given the omnipresent violence in the area, a significant possibility exists that, at any moment, the gun will actually be used. In Boston Housing Authority v. Guirola, 575 N.E.2d 1100 (Mass. 1991), the court upheld a BHA officer's warrantless entry into an apartment to seize a sawed-off shotgun that had been observed in the apartment by an exterminator. After taking explicit note of the "'almost total absence of safety and security in BHA's developments,'" id. at 1105 n.11 (quoting Spence v. Reeder, 416 N.E.2d 914 (1981)), the court concluded that an immediate search was justified because of "the potential for danger to the community and to the police" posed by the shotgun, id. at 1106. Gaulmon v. United States, 465 A.2d 847 (D.C.App. 1983), used a similar rationale to uphold a police entry into a hotel room and seizure of a gun that had been observed there by a hotel maid. The court noted that the hotel was located in a "high crime area," id. at 852, and it referred to the "menacing statistics" reflecting "substantial injury and loss of life attributable to the unlawful use of firearms in the District of Columbia." Ibid. (footnote omitted). Although by no means conclusive, these cases provide some support for the proposition that, in a setting where violent crime is pervasive, the mere presence of a weapon in a dwelling may constitute an exigency justifying a warrantless search.

2. It does not follow, however, that, when the police, based on the sound of gunfire or otherwise, have probable cause to

believe there are guns located somewhere in a housing project building, they are entitled to conduct a warrantless apartment-to-apartment search for the guns. As one court of appeals has observed, "[f]ederal courts long have held that police officers, before they constitutionally may search a separate unit within an apartment building, must have probable cause to do so that is specifically related to that unit." United States v. Dorsey, 591 F.2d 922, 928 (D.C. Cir. 1978). See also, e.g., United States v. Winsor, 846 F.2d 1569, 1572 (9th Cir. 1988) (en banc); United States v. Votteller, 544 F.2d 1355, 1363 (6th Cir. 1976); United States v. Higgins, 428 F.2d 232, 235 (7th Cir. 1970); United States v. Olt, 492 F.2d 910, 911 (6th Cir. 1974). These courts correctly recognize that each entry into a separate unit of a multiple-unit dwelling, like each entry into a separate house, constitutes a discrete invasion of the privacy rights of an additional individual.

The Supreme Court has upheld the validity and execution of a warrant that mistakenly described the place to be searched as a third-floor apartment, when the area was in fact divided into two separate apartments. Maryland v. Garrison, 480 U.S. 79 (1987). But in that case, the officers reasonably believed that the area described in the warrant was one dwelling instead of two, and they had already entered the second apartment and found the evidence they were seeking when they became aware that the area contained two apartments instead of one. The Court "expressly distinguish[ed]" those facts "from a situation in which the police know there are two apartments on a certain floor of a building, and have probable cause to believe that drugs are being sold out of that floor, but do not know in which of the two apartments the illegal transactions are taking place." Id. at 88 n.13.

Although Garrison makes clear that police must have probable cause specifically connected to a particular dwelling unit, courts might allow a search of more than one apartment based on the extreme exigency posed by someone firing guns from a multiple unit apartment building. Cf. New York v. Quarles, 467 U.S. 649 (1984) (finding "public safety" exception to Miranda rule where police failed to recite Miranda warnings before asking suspect the location of a gun just used in a crime and apparently discarded in a supermarket).

At least when police can limit the probable location of gunfire to two or perhaps three apartments within a building, they should be able to search each of those apartments for the gun. In Brinegar v. United States, 338 U.S. 160, 175 (1949), the Supreme Court stated that probable cause requires "less than evidence which would justify * * * conviction" but "more than bare suspicion." More recently, in Illinois v. Gates, 462 U.S. 213, 235 (1983), the Court stated that "finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence * * * have no place in the probable cause determination," and that there is no

"numerically precise degree of certainty corresponding to 'probable cause' * * *." To the degree these cases suggest that probable cause may be established on less than a 50% probability, it seems unlikely that the police may lawfully search several apartments in a building for a gun they know to be located in one of them, because the chance that the gun is located in any single apartment is simply too low. But where the police have limited the likely location of the gun to two or three apartments, the odds that the gun is in any one apartment are better and may pass muster. See State v. Smith, 344 N.W.2d 505 (S.D. 1984) (upholding warrant that authorized search of entire two-unit house, where police had probable cause to believe evidence was located somewhere in the house but lacked information as to which unit contained the evidence). But see 1 W.R. LaFave, supra, § 3.2(e) at 603-604 (in the absence of a "compelling need for an immediate search * * *, it is to be doubted that a less than 50% probability should suffice when it appears that one of the places to be searched has no connection at all with the criminal activity").

The possibility that the standard for probable cause varies depending on the urgency of the search, see 3 LaFave, supra, § 6.5(d) at 685, raises a broader point. Assuming the standard for probable cause is significantly lower where there exists a risk of immediate bodily harm or death, the lower standard might be invoked in the wake of a volley of gunfire in a public housing project to support an immediate apartment-to-apartment search for the responsible weapon. Given the pervasively violent setting, one volley of gunfire is likely to lead to another in very short order. An immediate apartment-to-apartment search for the weapons could therefore help prevent mayhem. The exigency might not rise to the level of a ticking bomb, but the underlying theory is the same. We stress that in raising the possibility of a variable probable cause standard sufficient, at its lower end, to support an immediate apartment-to-apartment search for the weapon giving rise to recent gunfire, we are moving beyond the cutting edge of the law. The likelihood of success on such an argument is quite low.

In footnote two of its opinion (at page 10), the Pratt court stated that an immediate apartment-to-apartment search would be permissible, absent probable cause particular to each apartment, for the purpose of apprehending an armed gang that has entered the building "engaged in shooting." This seems a defensible proposition given the serious threat to safety presented by the gang members, and the limited nature of the intrusions confined to determining their location. But see Winsor, 846 F.2d at 1572-1573 (door-to-door search of hotel for fleeing bank robbery suspect violated Fourth Amendment, even though search was restricted to "visual entry" from corridor). On much the same rationale, the sound of gunfire in an apartment building should permit the police to conduct an apartment-to-apartment search, in the area where the gunfire was heard, for the limited purpose of determining if anyone was wounded and is in need of medical attention. Although such a

search would not cover weapons. any weapon observed in plain view could be seized. Nothing in the Pratt footnote, of course, authorizes anything remotely resembling an immediate apartment-to-apartment search for guns.

Because the purpose of the exigent circumstances exception is to allow the police to avoid the delay necessary for obtaining a warrant, the general rule is that, if the officers had time to get a warrant, then there was no exigency. See, e.g., United States v. Lindsey, 877 F.2d 777, 780 (9th Cir. 1989). Accordingly, searches that are conducted days or even several hours after the existence of probable cause has become known to the authorities cannot be justified by exigent circumstances.

April 11, 1994

Note to: Betsy Julian

From:  Steven Balis

Re: Crime in Public Housing

You asked for ideas on possible changes in the HUD public housing tenancy requirements, including lease provisions on entry of the tenant's unit.

HUD public housing tenancy requirements are stated in the so-called "lease and grievance" regulations (Part 966). These regulations state the requirements on public housing leases (Subpart A), and on administrative grievance hearings for public housing tenants (Subpart B). Many provisions affect the control of criminal activity by public housing residents and guests.

In principle, the existing tenancy requirements provide an ample legal foundation for aggressive PHA action against public housing crime. In practice, PHAs often confront crippling practical and legal difficulties in effective enforcement of tenancy requirements. However, for the most part the difficulties are not caused by HUD's lease and grievance regulation, and cannot be cured or seriously relieved by revision of the HUD regulation under existing law. It is doubtful that amendment of the lease grievance procedure will significantly aid PHA action against criminal activity and violence in public housing.

In a past rulemaking, the Department proposed to relieve the rigidities of lease and grievance -- in part to facilitate PHA action against criminal activity. In response, the Congress codified major aspects of the existing lease and grievance procedure. See 42 U.S.C 1437d(k) (grievance procedure) and 1437d(l) (leases). The following is a brief summary of current requirements.

Summary of current rule

Under the law and regulation, a public housing tenant may be evicted for violation of the lease or other good cause. The tenant may also be evicted if household members or guests commit a crime that threatens other residents or employees, or a drug crime "on or near" public housing.

For most evictions, the PHA may not evict a tenant until the tenant is offered an administrative grievance hearing. To evict, the PHA must prove the grounds for eviction twice -- first, in the PHA grievance hearing; and, second, in the State landlord-tenant court. The total time for eviction is the sum of the times needed for the administrative hearing and subsequent State judicial process. By law, the PHA may only bypass the grievance process in evictions for drug crime or crimes that threaten residents or employees (if HUD has determined that law of the State requires a due process hearing in court). (See the attached copy of the final rule published October 11, 1991 (56 Federal Register 51560). The Preamble contains a full discussion of rule provisions on eviction for criminal activity.)

Under the lease, a public housing family may only use the unit as a private dwelling for approved household members, may not disturb other residents, may not damage the unit, may not use the unit for an illegal activity, must comply with State health and safety codes, and must comply with PHA rules. § 966.4. The PHA may change the lease form or project rules after 30 days notice to tenants. § 966.3 and § 966.5.

The PHA may evict for any serious violation of the lease, whether or not caused by a criminal activity. In practice, PHAs evict for those available grounds that can be most readily proved. For example, the PHA may not have willing witnesses to prove drug dealing or use inside a family's apartment, and may therefore elect to evict the family for nonpayment of rent, or for damage to the unit. However, the PHA must offer an administrative hearing if evicting for grounds other than criminal activity.

Entry to unit

You asked me to explore legal options for broadening the PHA's right to enter a public housing unit and prevent or secure evidence of criminal activity or guns. (My remarks do not consider Constitutional search and seizure issues.) The public housing statute does not contain any provision on the PHA's authority to enter an assisted unit.

The lease and grievance rule establishes requirements for PHA entry of the unit with and without advance notice to the tenant. § 966.4(j). The PHA may enter without advance notice

if there is "reasonable cause" to believe than an "emergency" exists. In other cases, the PHA must give the tenant "reasonable advance notification". When the PHA has given advance notice, the PHA may inspect the unit for "routine inspections and maintenance", for improvements or repairs, or to show the unit for re-leasing.

The Department could revise the lease grievance rules on unit entry in any of the following ways:^{1 2}

- (1) By deleting the unit entry provision.

If HUD's rule is silent on this subject, the PHA's contractual right of entry would be controlled by any provisions of the lease (not dictated by HUD), and by constraints under State law, and the Constitutional prohibition of unreasonable search and seizure.

- (2) By amending the provision on entry with notice to the tenant. Such amendments could include:

-- Provision explicitly allowing notice inspection for guns, unlawful activity or unauthorized use or occupancy (illegal activity is often accompanied by unauthorized use or occupancy).

-- Provision explicitly allowing notice inspection for these purposes for a broad portion of the day (say, at any time other than midnight to eight a.m.). This would permit a notice search during evening hours.

An advance notice of inspection would obviously give time and incentive for participants to remove or hide evidence of illegal activity (such as drug paraphernalia or guns), or to disappear from the unit. Nevertheless, a notice inspection, or even the threat of inspection, may disrupt illegal activity or force

¹ This is a technical statement of options, not a recommendation.

² Unlike entry under a search warrant, the contractual right (to enter a unit in accordance with a lease), even if valid and enforceable in court, may not carry the right for PHA representatives to force entry where the occupants refuse. The refusal of the tenant or family to admit the PHA inspector may be a violation of the lease, and ground for eviction through the courts. Probably, however, such refusal does not authorize PHA self-help to force entry without the aid of judicial process.

participants and illegal transactions out of apartments into public or common areas (possibly more vulnerable to surveillance or arrest).

- (3) By amending the provisions on emergency no-notice entry.

The rule could be revised to explicitly authorize no-notice inspections because of specified types of crime-related activity.

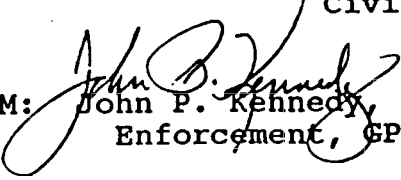


U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0500

APR 11 1994

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Elizabeth K. Julian, Deputy General Counsel,
Civil Rights and Litigation, GD

FROM:  John P. Kennedy, Associate General Counsel for Program
Enforcement, GP

SUBJECT: Fourth Amendment Law Governing Searches of Apartments

This is in response to your request for a summary of the Fourth Amendment case law governing searches of apartment units.

No place is more sacred under Fourth Amendment law than the home. See Payton v. New York, 445 U.S. 573, 589 (1980) ("In [no setting] is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home -- a zone that finds its roots in clear and specific constitutional terms: 'The right of the people to be secure in their . . . houses . . . shall not be violated.'"). The Supreme Court has repeatedly cited Payton for the proposition that warrantless searches of homes are presumptively unreasonable. See Maryland v. Buie, 494 U.S. 325, 331 (1990); Arizona v. Hicks, 480 U.S. 321, 327 (1987); Welch v. Wisconsin, 466 U.S. 740, 748-49 (1984). Generally, either the voluntary consent of the tenant or a search warrant supported by probable cause is required before an apartment may be searched for law enforcement purposes. See Reardon v. Rhoan, 811 F.2d 1025, 1028 (7th Cir. 1987) (and cases cited therein).¹ Numerous cases have held that the probable cause showing -- i.e., a fair probability that contraband or evidence of a crime will be found -- must be related to each discrete apartment unit to be searched. See, e.g., United States v. Busk, 693 F.2d 28, 30-31 (3d Cir. 1982); United States v. Dorsey, 591 F.2d 922, 928 (D.C. Cir. 1978); United States v. Higgins, 428 F.2d 232, 235 (7th Cir. 1970).

The probable cause showing is always required for a non-consensual search of an apartment, even where exigent circumstances excuse the failure to first obtain a warrant. See Hopkins v. City of Sierra Vista, 931 F.2d 524, 527 (9th Cir. 1991); Reardon v. Wroan, 811 F.2d at 1028. For this reason, any warrantless sweep search of an entire apartment complex to locate and confiscate

¹ Where an arrest is lawfully made inside an apartment, a reasonable search incident to that arrest may be made in order to secure the area.

firearms is extremely difficult to justify under the Fourth Amendment, no matter how grave the emergency. Indeed, we are unaware of any case upholding these kinds of searches by the government.

As mentioned above, obtaining the voluntary consent (either oral or written) of all tenants is an appropriate way to avoid Fourth Amendment problems. The Fourth Amendment does not apply to situations in which voluntary consent has been obtained, either from the tenant whose apartment has been searched or from a third party who possesses common authority over the premises. See Illinois v. Rodriguez, 497 U.S. 177, 181 (1990). Another possible approach is to require, as a lease condition, periodic inspections of apartments by the landlord for safety-related purposes. If firearms are observed in plain view, we do not see any reason why the landlord cannot notify law enforcement authorities of this fact, and invite them to enter the premises to either verify the legality of the firearm's possession by the tenant, or to confiscate the firearm if its possession is illegal under state law.

I would be happy to provide you with a more detailed analysis of the law in this area at your request. Please contact me, at 708-2568, if you wish to discuss this matter.



UNIVERSITY PROFESSOR

April 18, 1994

*Jose -
MY*

Mr. Bruce Reed
Deputy Assistant to the President
Domestic Policy Council
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. Reed:

This is in reference to the Justice-HUD task force on the Chicago Housing Authority situation in Chicago and related matters. We did long research on this issue, working with lawyers. Our focus is on the non-legal aspects of the issue (for instance, public reaction to various measures under consideration). We believe we are able to make a contribution to the discussion. Even if the task force is composed only of people from inside the Administration, ways can be found to incorporate an outsider.

An example of the issues we would like to point out: The need to consolidate the issue of sweeps with the use of screening gates and photo ID's in the same public housing, matters also under active litigation, etc., etc.

I can be reached at 202/994-8190 (office) or 202/338-0366 (home).

Sincerely,

Amitai Etzioni

Amitai Etzioni



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

FAX TRANSMISSION

DATE: 4/7/94

NUMBER OF PAGES (including this page) 4

TO: TOSS CERDA

FROM: L12 ARKY

PHONE: 456-7028

456-5568 (PHONE)

COMMENTS: _____

**Statement for President Clinton
on the Court Decision Regarding
The Chicago Housing Authority's "Operation Clean Sweep"**

As you know, the Chicago Housing Authority has been working to protect the citizens who live in that city's most crime-ridden public housing developments through the Operation Clean Sweep program for more than 5 years. Operation Clean Sweep innovatively partners the Housing Authority and local police in weeding out the sources of crime and drugs, much of it perpetrated by gangs, through routine door-to-door checks.

Just hours ago, a Federal District Court for the Northern District of Illinois, Eastern Division, declared the CHA search policy in violation of the Fourth Amendment.

Today, as a result of the court ruling, I am ordering Attorney General Reno and Housing and Urban Development Secretary Henry Cisneros to develop a search policy for public housing; a policy that can be federally validated and supported.

Our purpose is to develop an effective, constitutionally permissible search policy and then recommend ways in which that policy can be implemented and supported throughout the nation.

This strategy should be as effective as those in Chicago's public housing developments such as Robert Taylor Homes, which have been proven effective in curtailing crime and violence.

We must send a message to criminals and would-be criminals who see Robert Taylor Homes and other public housing communities as "easy prey" that we will not allow them to pervert the protection of our Constitution to run their enterprises of evil.

Individuals' right to privacy -- especially in their homes -

- is protected under the Constitution, but we are obligated to find a way to combat the wanton lawlessness that makes daily life miserable -- and dangerous -- for millions of law-abiding public housing residents. We must strike a delicate balance.

Robert Taylor Homes is a densely-populated highrise in the inner city where walking from your car to your door -- even in broad daylight -- could pose more risks than crossing the street with blinders on.

People are prisoners in their own homes. Some people are so frightened by rampant gunfire that they take refuge in bathtubs at night to protect themselves from errant bullets meant for others.

The streets of places like Robert Taylor Homes are ruled by outlaws who thrive on chaos and commotion, and on their ability to terrorize entire communities.

The last weekend in March, 13 people died violently in Chicago -- 3 of them in Robert Taylor Homes -- a story all too common in inner cities, especially in public housing communities. As President, I will not stand by as children die, and as innocent people are forced to live under such intolerable conditions.

My order will bring together Attorney General Reno and Secretary Cisneros to develop guidelines for searches and seizures that are both effective and permissible under our Constitution. Specifically, they will identify activities and resources that can be applied to support such searches.

They will consider such searches where tenant consent is

given either orally or in lease provisions; conducting searches in response to an existing emergency where there is probable cause to believe a crime was committed; considering additional funding in the crime bill for sweeps by localities and by federal agencies as a part of Operation Safe Home. Initiated on February 4, Operation Safe Home is an effort to coordinate interagency activities to combat public housing crime and eliminate fraud in public and assisted housing programs.

Along with massive poverty, crime and violence makes Robert Taylor Homes virtually unlivable. Income levels there are only one-sixth of the city of Chicago. The poverty rate is four times that of the rest of the city. Unemployment is pervasive -- reportedly five to six times the citywide unemployment rate. And overcrowded housing conditions are three times higher than the rest of the city of Chicago.

A major priority of this Administration is to bring economic opportunity to inner city public housing developments and other low-income communities. But unless we work at the same time on establishing law and order and on improving the quality of life, the other initiatives do not stand a good chance of making a difference.

The people in Robert Taylor Homes have asked us to help protect them, and we will. Thank you, and I look forward to reporting back shortly on the proposals that Attorney General Reno and Secretary Cisneros devise.

**STATEMENT OF THE PRESIDENT ON THE COURT DECISION REGARDING
THE CHICAGO HOUSING AUTHORITY'S "OPERATION CLEAN SWEEP"**

Just hours ago, a Federal District Court for the Northern District of Illinois, Eastern Division, declared the Chicago Housing Authority's (CHA) search policy in violation of the Fourth Amendment.

I am ordering Attorney General Reno and Secretary Cisneros to develop -- within the next 10 days -- a search policy for public housing that is both constitutionally permissible and effective, and that can be implemented on a nationwide basis. We must not allow criminals to find shelter in the public housing community they terrorize.

I have also asked the Attorney General and Secretary Cisneros to explore what other resources we can provide for sweeps by localities and by federal agencies.

During the last weekend in March, 13 people died violently in Chicago -- 3 of them in the Robert Taylor Homes -- and more than 300 gun incidents were reported to local police. The people in the Robert Taylor Homes have asked us to help protect them, and within constitutional limits we will do so.

Date: 04/07/94 Time: 16:32

CHICAGO (AP) Police must have warrants to conduct gun sweeps

CHICAGO (AP) Police must have warrants to conduct gun sweeps in public housing projects even if residents support warrantless searches, a federal judge decided Thursday.

U.S. District Judge Wayne Andersen last month temporarily halted warrantless searches, calling the policy a ``greater evil than the danger of criminal activity.'' Thursday's ruling continued that injunction.

The decision was the latest in a battle that has pitted city officials against the American Civil Liberties Union, which argues people don't give up their constitutional rights when they move into public housing.

But Chicago Housing Authority officials contend efforts to stamp out gang and drug activities in all 17 developments are being frustrated by drawn-out legal procedures.

``If you're trying to determine where gunshots are being fired from, it wouldn't serve law enforcement or anyone well to run to the judge's chamber, get a warrant and then come back to look for the shooter,'' agency spokesman Steve Canty said.

Violence last summer prompted the agency to ask police to conduct random, door-to-door gun searches. The ACLU responded with a class-action lawsuit against on behalf of the estimated 150,000 tenants.

Gang warfare last month in the huge Robert Taylor Homes project hammered home the issue. Police said more than 300 instances of gunfire rang out in the 28-building, 12,320-tenant complex during a five-day period.

Canty said efforts to root out the shooters were hampered when a judge refused to issue search warrants without first talking to the ACLU, which worked out an agreement with the CHA 3 1/2 years ago to allow for such possibilities.

Relative quiet prevailed Thursday at Robert Taylor, but residents predicted violence would flare up again when increased police presence in the buildings and neighborhood declined. CHA Chairman Vince Lane has said the authority has neither the manpower nor the money to keep a constant presence.

Any tenants caught with guns, registered or unregistered, in their apartments face immediate eviction under terms of their lease.

APNP-04-07-94 1631EDT

Date: 03/30/94 Time: 16:12

Pressure mounts to curb Chicago gang war

CHICAGO, March 30 (March 30) UPI - Pressure mounted Wednesday to curb renewed gang violence at one of Chicago's largest public housing projects, following the death of a 10-year-old child caught in the crossfire of bloody turf battles.

Chicago Housing Authority Chairman Vince Lane wants a federal judge to modify a court order preventing unannounced searches for weapons in the apartments of CHA residents, saying that is the only way to curb the violence. But the American Civil Liberties Union stood firm in its opposition to such searches.

Chicago Mayor Richard Daley announced stepped up police patrols at the 28 high-rise buildings. "These are not sweeps. They are not searching apartments," Daley said. "They are patrolling the common areas."

Police Superintendent Matt Rodriguez said the strategy "is designed to take CHA properties back from the gangbangers building-by-building."

Tenants at the Robert Taylor Homes who support the housing authority's search policy planned to present their case in U.S. District Court Thursday.

"It's certainly worse than I've ever seen it," Lane said of the violence. He said 300 shooting incidents were reported during the weekend at the South Side development, adding the situation is so bad that only 150 of the 800 or 900 youngsters registered at a nearby elementary school attended classes.

"And these are kids who are basically used to a war zone," he said.

Lane went before U.S. District Judge Wayne R. Andersen Monday to ask him to modify the order he issued last month prohibiting warrantless searches. The judge refused to reverse his order but said he would be willing to give the CHA some latitude if the violence escalates.

"We have a plan developed and we are monitoring the situation by the minute," Lane said.

"We could get it (the violence) under control but we will absolutely have to go to sweeps. There is no other way," said Lane, who noted the latest round of violence apparently was sparked by a disagreement in a neighborhood bar.

ACLU spokeswoman Valerie Phillips said the ACLU does not believe sweeps are the answer.

"There is a security problem at the CHA," Phillips said. "Sweeps don't work. Metal detectors aren't used. The doors are not secured and there is no professional security or ongoing police presence."

Rodney Collins, 10, was shot in the head Tuesday evening as he rode his bicycle near his South Side home - the fourth child killed in gang crossfire this week.

Chicago Police Cmdr. Donald Hilbring characterized the violence as a deadly rite of spring.

"In the winter, they (gang members) basically stay indoors and out of the hallways, and now they're fighting over their drug spots," Hilbring said.

(Written by Marcy Kreiter and Jay Sapir; edited by Al Swanson)

Date: 03/30/94 Time: 16:51

New Gang War Ignites Calls for Renewed Gun Sweeps

CHICAGO (AP) A gang war rages in a high-rise public housing project. Gunshots ring out as many as 300 times in a matter of days, killing one person and wounding six. Tenants cower in their apartments, afraid to venture out.

Officials believe they have a partial answer to the violence: Let police search the project's apartments for guns, with no search warrants required.

The episode has renewed a legal battle with civil libertarians who oppose plans for the searches, arguing that people don't give up their constitutional rights when they move into the projects.

But many of the tenants themselves don't buy that argument.

"I know if nobody tries to help us, more people will be killed innocent people," said Tammera Evans, who lives in the massive Robert Taylor Homes project. "That's terrible. This is the United States of America, and we can't get no help. We're not free. We're here trapped."

Police said more than 300 instances of gunfire have been reported in the 28-building, 12,320-tenant complex since last Thursday. Authorities don't agree on the origins of the gang war, but they say the Gangster Disciples and the Black Disciples are likely battling over drug turfs.

Since Saturday, housing police using metal detectors at the project's doors seized 26 weapons.

Evans says since the warfare broke out, she has had to dodge bullets just to buy groceries. She calls police to report more shootings, but says they tell her to stay away from the windows. That can be difficult in a one-bedroom apartment.

Violence last summer in the city's housing projects prompted the Chicago Housing Authority to ask police to conduct random gun searches. The American Civil Liberties Union responded with a class-action lawsuit against the CHA on behalf of its 135,000 tenants.

ACLU lawyers argue that gang violence should be confronted with a strong police presence in the projects, not an end run around the Constitution.

"If the same level of violence occurring in and around CHA developments was occurring around upscale residential housing, there would be a constant police presence," said Harvey Grossman, the ACLU's legal director in Chicago.

U.S. District Judge Wayne Andersen temporarily halted the searches last month and called the policy a "greater evil than the danger of criminal activity."

On Monday, after the weekend violence, he refused to lift his restraining order. He said he would allow limited searches for specific reasons after showing probable cause, immediate danger or with the consent of the tenant. But the judge emphasized he would not grant the housing authority "carte blanche" to raid the projects.

Andersen's rulings incensed city and housing officials who support the warrantless searches.

"We are trying to get the guns and drugs out of public housing," Mayor Richard M. Daley said Wednesday. "Public housing is owned by the people. They do not want guns, gangbangers and drugs in their buildings."

CHA chairman Vincent Lane said police don't have enough manpower or money to keep a constant presence. He said the housing authority's private police force are often scared or bribed by gang

members.

At a hearing scheduled for Thursday, city officials planned to ask Andersen once again to lift the restraining order.

``I would hope somebody out there realizes that we have not ceded over Robert Taylor to anybody,'' Lane said. ``We will do whatever is necessary to protect life and limb and to protect our property.''

Some tenants hope the apartment searches will start sooner rather than later.

``When they swept the building twice last summer, there weren't anymore shootings,'' said Deron Williams, a father of two infants.

Evans, who lives in another of the broken-down high-rises, said more manpower is needed for the searches to work.

``We need the National Guard out here,'' she said. ``We need help. The police can't do nothing about it. There's not enough of them.''

APNP-03-30-94 1652EST

APR 07 '94 15:37 AT&T FAX 9022FX

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**MARK PRATT, EASTER REDMAN,
ETHEL WASHINGTON and BARBARA
MOORE**

Plaintiffs,

v.

THE CHICAGO HOUSING AUTHORITY,

Defendant.

and

**EVERETT ALEXANDER, MARY
BALDWIN, DEVERRA BEVERLY,
MAMIE BONE, LOUIS BROWN,
HATTIE CALVIN, ANNIE DAVIS,
BEVERLY DORSEY, HELEN FINNER,
BEATRICE HARRIS, MYRA KING,
JEROME PRICE, ARTENSA
RANDOLPH, CHARLES REYNOLDS,
DOROTHY SHELTON, ESTHER
WHEELER, GLORIA WILLIAMS,
JULIA WIMMS,**

Defendant-Intervenors.

No. 93 C 6985

Judge Wayne R. Andersen

PRELIMINARY INJUNCTION ORDER

Plaintiffs Mark Pratt, Easter Redman, Ethel Washington and Barbara Moore have brought this action on behalf of all tenants and lawful residents of property owned and operated by defendant Chicago Housing Authority ("CHA"). Plaintiffs' complaint is a civil rights action for declaratory and injunctive relief arising under 42 U.S.C. §§1983, 1988, and 28 U.S.C. §§2201, *et. seq.*, due to defendant's alleged violations of the tenants' rights guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States. Defendant-intervenors are CHA residents who are Local Advisory Council ("LAC") Presidents for eighteen of the nineteen

CHA developments and who contend that the CHA's policy and practice as described in the complaint does not violate the Fourth Amendment. Each CHA development has a LAC and LAC members and presidents are elected by each development's residents. The LAC Presidents, in turn, comprise the CHA Central Advisory Council ("CAC"), representing CHA residents from all CHA developments. The CAC adopted a resolution on February 14, 1994 indicating its official support for the CHA's searches and sweeps and authorizing the representation of counsel to pursue the intervenors' interest in this case.

On February 14, 1994, this court granted plaintiffs' request for a temporary restraining order. Plaintiffs now seek to convert the temporary restraining order into a preliminary injunction. Based on the pleadings, affidavits, testimony and arguments submitted to the court, the plaintiffs' motion for a preliminary injunction is granted for the following reasons.

I. BACKGROUND

The CHA is an Illinois municipal corporation and a duly authorized housing authority of the State of Illinois created and existing under the Illinois Housing Authorities Act, 310 ILCS 10/1, *et seq.* Its police department has "all powers possessed by the police of cities, and sheriffs" pursuant to Section 8.1a of that Act. 310 ILCS 10/8.1a. Beginning in the summer of 1993, the CHA ordered its police department to "sweep" twelve residential buildings. Those "sweeps" took place on four different dates. The sweeps included searches of all residential units located within the buildings. The sweeps were conducted by searching entire apartment units, including closets, drawers, refrigerators, cabinets and personal effects. The normal procedure of obtaining search warrants from a judge was not attempted, so all searches were without court sanction. The sweeps themselves, due to the logistical difficulties of coordinating sufficient police to search properly, normally took place several days after the emergency circumstances arose and never occurred earlier than forty-eight hours after the alleged criminal

activity. Although the CHA obtained consent to search from many tenants, it concedes that consent was not obtained from some tenants, such as those who were not home when the searches occurred.

The sweeps were explicitly authorized and directed by Vincent Lane, acting in his capacity as Chairman of the Board of Commissioners of the CHA, when he determined that the appropriate preconditions for a sweep had been met. Those preconditions include random gunfire from building to building and/or intimidation at gunpoint or by shooting if weapons were taken into buildings. If CHA police officers could not ascertain into which apartments weapons had been taken, they would request that a sweep be authorized. The most notorious instance triggering a sweep was random gunfire threatening the lives of workers installing window guards on buildings at the Robert Taylor homes.

Although no written policy has been adopted by the CHA, the CHA has advised the court that it intends to order these sweeps if the appropriate preconditions exist in the future. The CHA has defined these preconditions and the subsequent sweeps as its "Search Policy." The court, the plaintiffs and the intervenors accept this definition of "Search Policy."

It is this Search Policy that the plaintiffs seek to enjoin in the case of Pratt, et al. v. CHA, 93 C 6985. Plaintiffs contend that searches conducted pursuant to the Search Policy violate the Fourth Amendment's constitutional guarantee against unreasonable search and seizure. The common denominator of the events triggering implementation of the Search Policy is the perceived need to respond on a dramatic basis to criminal activity which threatens the lives and safety of innocent persons in and around the CHA buildings.

Plaintiffs in the Pratt case do not seek to limit CHA actions taken pursuant to the Consent Decree entered in the related case of Summeries, et al. v. CHA, 88 C 10566. Searches authorized by the Summeries decree are not in response to particular criminal activity. The

Summeries case was brought by CHA tenants alleging constitutional violations in connection with (1) emergency housing inspections of CHA properties by CHA and the City of Chicago Police Department, and (2) CHA's policy regarding visitors and guests to CHA properties which have been inspected and secured. Since the entry of the Summeries Consent Decree, the CHA has conducted numerous housing inspections at buildings throughout its system in order to identify and remove unauthorized occupants, inspect the condition of apartment units, distribute resident identification cards and secure the entranceways to the buildings. The CHA personnel and police officers are not allowed to search drawers, closets or personal effects under the Summeries Consent Decree.

II. DISCUSSION

In order to grant a preliminary injunction, the court must find that: (1) the plaintiffs have at least a reasonable likelihood of success on the merits; (2) plaintiffs have no adequate remedy at law and will be irreparably injured if the defendants are not enjoined; (3) the balance of hardships favors granting the preliminary injunction; and (4) the public interest will not be disserved if the injunction is granted. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Salvano, 999 F.2d 211, 214 (7th Cir. 1993); Wesley-Jessen Div., Etc. v. Bausch & Lomb, Inc., 698 F.2d 862, 865 (7th Cir. 1983). Plaintiffs have the burden of proving each of these factors. Roland v. Air Line Employees Ass'n. Int'l, 753 F.2d 1385, 1392 (7th Cir. 1985). In this case, the court is satisfied that plaintiffs have carried their burden of demonstrating that the circumstances meet each of the four requirements.

A. Likelihood of Success

In this case, there is a reasonable likelihood that plaintiffs will succeed in proving that the CHA's Search Policy violates the requirements of the Fourth Amendment that non-consensual searches of a home for law-enforcement purposes be based in all cases upon probable

cause, and that such searches be made pursuant to a warrant, except in cases of extreme immediate urgency known as "exigent circumstances." The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.¹ As the United States Supreme Court has stated:

The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home--a zone that finds its roots in clear and specific constitutional terms: "The right of the people to be secure in their . . . houses . . . shall not be violated." That language unequivocally establishes the proposition that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." (citation omitted).

Payton v. New York, 445 U.S. 573, 589-90 (1980). Thus, "the chief evil against which the [Fourth] amendment is directed is the physical entry of the home." United States v. Berkowitz, 927 F.2d 1376, 1385 (1991) aff'd, 972 F.2d 352 (7th Cir. 1992). Accordingly, a warrantless police search inside a home is presumptively unconstitutional. Payton, 445 U.S. at 586; Reardon v. Wroan, 811 F.2d 1025, 1027 (7th Cir. 1987).

¹ The Illinois Constitution of 1970 contains a parallel provision which provides:

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

Ill. Const., art. I, § 6. This provision has been held to be coextensive with the scope of the constitutional proscription of unreasonable searches and seizures contained in the Fourth Amendment to the United States Constitution. See, e.g., People v. Reincke, 84 Ill.App.3d 222, 405 N.E.2d 430 (5th Dist. 1980); People v. Estrada, 68 Ill.App.3d 272, 386 N.E.2d 128 (2d Dist. 1979). Although plaintiffs have not brought suit under the Illinois Constitution, the CHA's Search Policy also violates Article I, § 6 of the Illinois Constitution.

In order to overcome the presumption that a warrantless search of a home is unconstitutional, the defendant must show that it had both probable cause for the search and exigent circumstances that excuse its failure to obtain the warrant. See, e.g., Reardon, 811 F.2d at 1028. Exigent circumstances alone cannot suffice. See, e.g., Payton, 445 U.S. at 588-89; Reardon, 811 F.2d at 1028; United States v. Paul, 808 F.2d 645, 647 (7th Cir. 1986).

In this case, the fundamental requirement of probable cause is fatal to the Search Policy because the Search Policy actually orders searches where there is no probable cause to believe that a search of any particular apartment will prevent the commission of a crime, unveil evidence of a crime, or lead to an arrest. The testimony demonstrated that numerous apartments were searched even though the CHA had no reason to suspect that the tenants or lawful residents of that particular apartment had committed a crime.

The CHA argues that exigent circumstances exist which justify its search of every apartment in a building. However, based upon the evidence presented to this court, we find that exigent circumstances did not exist when the twelve searches at issue in this case were conducted. The sweeps usually took place several days after the shooting activity and in no instance occurred within forty-eight hours after the gunfire.

Moreover, even when they exist, exigent circumstances do not erase the additional prerequisite of probable cause. Without any probable cause for searching particular apartments, the searches under the Search Policy are unconstitutional, no matter how exigent the circumstances. See Arizona v. Hicks, 480 U.S. 321, 327 (1987); United States v. Howard, 828 F.2d 552, 555 (9th Cir. 1987).

Search warrants are invalid if they authorize searches of multiple units in an apartment building or hotel, without probable cause to support the search of each of the units. "Federal courts long have held that police officers, before they constitutionally may search a separate

W^a

residential unit within an apartment building, must have probable cause to do so that is specifically related to that unit." United States v. Dorsey, 591 F.2d 922, 928 (D.C. Cir. 1978).

As the Seventh Circuit has held:

For purposes of satisfying the Fourth Amendment, searching two or more apartments in the same building is no different than searching two or more completely separate houses. Probable cause must be shown for searching each house or, in this case, each apartment. . . . [P]robable cause must be shown for searching each residence unless it be shown that, although appearing to be a building of several apartments, the entire building is actually being used as a single unit.

United States v. Higgins, 428 F.2d 232, 235 (7th Cir. 1970).

In sum, an overwhelming body of law demonstrates a substantial likelihood that the Search Policy violates the Fourth Amendment. Thus, there is enough likelihood of success to warrant the issuance of a preliminary injunction.

B. Irreparable Harm

The tenants and lawful residents will be irreparably injured if the Search Policy is not enjoined because they will be subject to having their apartments searched without warrants, without their consent, and without probable cause justifying the search. Violations of constitutional rights, including the Fourth Amendment, suffice to prove irreparable injury and inadequacy of remedy at law for purposes of injunctive relief. See, e.g., National People's Action v. Village of Wilmette, 914 F.2d 1008, 1013 (7th Cir. 1990).

C. Balance of Hardships

The balance of hardships favors granting the preliminary injunction. Because the court finds that the possibility of warrantless home searches without consent and the potential for the violation of constitutional rights outweighs the enhanced safety that those searches might bring, a balancing of hardships favors granting the preliminary injunction. The testimony has shown that the searches conducted pursuant to the Search Policy are an ineffective means to secure

long-term safety in the CHA developments. Because the CHA lacks the resources necessary to provide security at building entrances or to patrol common areas in and around buildings, the implementation of the Search Policy has created a chaotic invasion of privacy without any chance of effecting a long-term reduction of criminal activity.

D. Public Interest

The public interest would not be disserved by granting the preliminary injunction. The public has a powerful interest in the maintenance of constitutional rights, particularly the right to be secure in one's home from unconstitutional invasions by the government. See, e.g., O'Brien v. Town of Caledonia, 748 F.2d 403, 408 (7th Cir. 1984).

CONCLUSION

This Court is asked to sanction warrantless searches, without consent, of the homes of CHA residents.

The government officials who are responsible for maintaining safe conditions in public housing find themselves without adequate resources to do the job right. CHA Chairman Vincent Lane, who has said that he would rather be "damned if I do than if I do not," cannot do nothing while conditions deteriorate.

Many tenants within CHA housing, apparently convinced by sad experience that the larger community will not provide normal law enforcement services to them, are prepared to forgo their own constitutional rights. They apparently want this court to suspend their neighbors' rights as well.

Finally, many Americans are simply fed up with crime. Although they would not dream of allowing police to search their own homes without their consent or without warrants, they support police sweeps of inner city neighborhoods.

The decision of this Court are guided by several principles:

First, I am sworn to uphold and defend the Constitution, not to use the power of this office to override it, amend it or subvert it.

Second, all Americans are bound together in law and in fact. The erosion of the rights of people on the other side of town will ultimately undermine the rights of each of us.

Third, this Court has confidence that the government officials charged with providing safe housing will do the job effectively and within Constitutional restraints. Chairman Lane is intelligent, aggressive and charismatic. Citizens of Chicago are blessed with a large, well-trained police force led by dedicated professionals. Supporting both the CHA and the Chicago Police Department is an enlightened Mayor who has demonstrated an ability to tackle problems that would undue lesser politicians.

Finally, this Court has faith that parents and grandparents living in and around CHA housing will reclaim their families and restore to their children self respect and respect for other human beings. If they do, government efforts will succeed; if they do not, all efforts of government, whether within or without constitutional restraints, will fail.

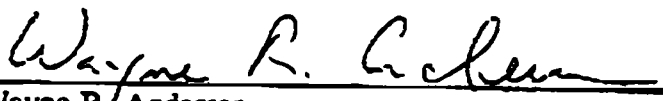
IT IS THEREFORE ORDERED THAT the CHA, its agents, employees, and all those acting in concert with it, are enjoined from implementing its Search Policy under which the CHA conducts warrantless searches of apartments without resident consent. Nothing in this order is intended to enjoin the CHA, its agents, employees, and all those acting in concert with it from:

1. conducting searches pursuant to valid search warrants;
2. conducting searches pursuant to resident consent, either oral or written;

3. conducting searches in common areas throughout CHA buildings and in space not leased to tenants;
4. conducting searches in response to an existing emergency or clear and present danger when there is probable cause to believe that a crime has been committed;²
5. conducting searches pursuant to the Consent Decree entered in the related case of Summeries, et al. v. CHA, 88 C 10566; or
6. conducting searches reasonably required to assure the safety of any individual or law enforcement officer while law enforcement officers or CHA administrative personnel are engaged in a lawful search.

For the reasons stated above, plaintiffs' motion for a preliminary injunction is granted. Because plaintiffs are indigent and because wrongful entry of a preliminary injunction will cause the CHA no monetary injury, bond is hereby waived.

E N T E R:


Wayne R. Andersen
United States District Judge

DATE _____
TIME _____

² If, for example, an armed gang engaged in shooting enters a building which is then promptly surrounded, a door-to-door search which begins immediately thereafter, is appropriate to apprehend the criminals and restore safe conditions. The key factors are the timeliness of the response by the police and the probability of valid arrests and weapon confiscation. While beginning the search, time permitting, a search warrant should be requested.

Date: 11/18/93 Time: 08:46

PUBLIC HOUSING: What to Do About the Shootings

CHICAGO (AP) Public housing tenant Artensa Randolph has no problem with warrantless searches or her landlord's threat to evict the parents of truant children.

She said the memory of her 16-year-old grandson, Roosevelt Bohannon, slain in a drive-by shooting last year, makes it easy to embrace the Chicago Housing Authority's crime-fighting measures.

"We want to live in a safe and sanitary place just like anybody else," Ms. Randolph, the president of a CHA tenants group, said Wednesday.

But at what price? The American Civil Liberties Union charged in a federal lawsuit Tuesday that warrantless police "sweeps" of more than 1,000 CHA apartments last summer violated tenants' civil rights.

And the truancy eviction policy adopted Tuesday is "unconstitutional and unwise," according to ACLU lawyer Harvey Grossman.

"Rich people with truant children don't lose their housing, and neither should poor people," he says.

Like the sweeps, the policy is supported by CHA tenants' organizations.

"Even if a majority of tenants support it, they cannot waive the constitutional rights of the tenants who oppose it," Grossman said.

Jay Miller, executive director of the ACLU of Illinois, said his organization will intervene if a family is threatened with eviction and seeks representation. "If they ask us to represent them, we will," Miller said.

The debate has again turned a spotlight on the tough-love housing philosophy of Vincent Lane, the CHA's chairman since mid-1988. His view, admired by the Bush and Clinton administrations and emulated in other cities, is that crime-ridden housing projects are war zones requiring extraordinary measures.

"If a terrorist calls in a bomb threat, you don't wait to get a warrant, you go in and look for the bomb," Lane said of the July and August sweeps at two housing developments. Those raids were prompted by shots fired at workers installing child-proof windows. They turned up 15 weapons.

They were the first police sweeps since the CHA agreed in a 1989 settlement with the ACLU to halt blanket searches for guns, drugs and unauthorized tenants.

The truancy eviction policy, passed unanimously, is intended to get loitering, and often menacing, youths back in school.

Truants' parents will be fined \$15, \$25 and \$50 for the first three offenses, after which the CHA will refer the cases to the state's attorney for prosecution. Once charges are pressed for the habitual truancy of a child, the CHA may begin eviction proceedings against the tenants.

The policy should be viewed as an obligation, not a threat, said Ed Marciniak, president of the Institute of Urban Life at Loyola University in Chicago.

"A family with kids that gets into public housing has more obligations than you or I have in private housing," he said. "What they're trying to do is get parents to do what they ought to be doing."

But a family evicted from public housing may well end up homeless with bigger problems than a truant child, said Tim Huizenga, a Legal Assistance Foundation lawyer.

``You've simply pushed the problem somewhere else,'' he said.
``You end up punishing a whole family because of the bad conduct of one member.''

CHA spokeswoman Kristin Anderson said Lane's get-tough measures, which also include entry guards, identity cards and metal detectors, have reduced crime in the city's public housing projects for five straight years.

But Huizenga points out that tenant numbers also have declined, as damaged units are sealed off, rather than repaired and re-rented.

Ms. Randolph, who lives in public housing on Chicago's near south side, said CHA tenants know best what measures are right.

``What really gets on my nerves is the ACLU,'' she said. ``They do not come in our development. They should come in there and spend a night, should walk through the development and see what happens.

``Those of us who live there try to better our lives,'' she said. ``We know the problems; now help us with the solutions.''

APNP-11-18-93 0847EST

AARR FAX

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American Alliance for Rights & Responsibilities

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Date:

Pages, including this cover page:

AARR

American Alliance for Rights & Responsibilities

**Advocates for a
new balance
between rights and
responsibilities**

April 8, 1994

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Janet Reno
Attorney General of the United States
Washington, D.C. 20530
Henry Cisneros
Secretary of Housing and Urban Development

Dear Attorney General Reno and Secretary Cisneros:

Today's Washington Post states that President Clinton has asked you to examine the urgent plight of residents in Chicago public housing. The purpose of this letter is to summarize the situation, especially in light of yesterday's decision by Federal District Court Judge Wayne Anderson, and make suggestions on what the Department of Justice and Housing and Urban Development should do.

Summary and recommendations: We face an emergency in public housing in Chicago. 300 gunfire incidents were reported in the Robert Taylor Homes on February 25 - 26 alone. On Thursday a federal judge blocked Vince Lane's plan of building wide sweeps, despite the unprecedented intervention in the lawsuit by tenants represented by former U.S. Attorney Tom Sullivan of Jenner & Block. We urge you to take action as follows:

(a) The Department of Justice should intervene in the two lawsuits, one of which (Summeries v CHA) has blocked metal detectors and a photo ID system, the other of which (Pratt v CHA) blocked building sweeps; the Department of Justice should ask the judge to specifically permit installation of metal detectors, and to permit the CHA representatives to require photo-ID's of visitors who are unaccompanied by lease-holders. The Department should also ask the court to clarify the circumstances under which the CHA can search buildings in response to an "existing emergency", beyond following an "armed gang engaged in shooting".

(b) HUD should immediately release funds to implement the Secret Service report *which you have had in your hands since last year*, to secure the lobbies of the high rise public housing developments, install metal detectors, and provide 24 hour armed, trained guards.

(c) Both DOJ and HUD should urge the White House to place a higher priority on legislation to repeal the "escalation clause", also known as the Brooke Amendment, which has driven the working poor out of public housing in Chicago as well as other parts of the country.

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Recent Court Developments:

Yesterday afternoon (April 7), Federal District Judge Wayne Anderson issued a Preliminary Injunction to block warrantless searches of apartments by the Chicago Housing Authority (CHA). The judge also took an unusual step to decertify the class (the ACLU had brought the case as a class action on behalf of all 144,000 public housing residents), and describe specific circumstances which would permit the CHA police or Chicago Metropolitan Police Department to conduct building-wide sweeps.

The controversy started in 1989, when Vince Lane initiated "Operation Clean Sweep". His strategy was to search every apartment in a building for guns and drugs, make needed repairs, secure the lobbies, install metal detectors, and institute a photo-ID system similar to that for federal office buildings.

The ACLU filed suit (Summeries v ACLU) on behalf of three named plaintiffs, which was certified as a class action on behalf of all residents. After a hearing, the CHA entered into a consent decree which prevented, among other things, extension of the metal detectors and photo-ID systems.

In early 1993, violence escalated anew, and Lane went before Judge Wayne Anderson (the original judge in the case is deceased) with a plan to institute sweeps of buildings in response to repeated gunfire. CHA also asked to reopen the consent decree to require metal detectors and a photo-ID system. Judge Anderson concluded that the planned sweeps were not included within the scope of the consent decree in the Robert Taylor require a photo-ID of all.

The ACLU promised to file suit to prevent the sweeps, but no suit materialized. In July and August CHA police conducted building-wide searches looking for guns. These searches were welcomed by the tenants -- only one person declined to give permission, according to the CHA police. Tenants also claim that the searches put the gangs on the defensive and reduced the frequency of gunfire. It is not clear what caused the reduction in violence at the end of last summer -- some cite a gang truce, for example -- but gun violence was somewhat reduced.

In October, 1993, ACLU sued to block the sweeps (Pratt v CHA). On February 7, the ACLU moved for a Temporary Restraining Order. In late January, my organization, the American Alliance for Rights & Responsibilities (AARR), met with residents of public housing and their elected representatives, the Residents Advisory Council, and discovered that they were totally in support of the sweeps and bitter that the ACLU purported to represent their interests. We presented the case to Tom Sullivan of Jenner & Block and he agreed to represent the Tenants. A motion to intervene was filed on February 14, which was objected to by the ACLU, and granted on February 24.

On February 14, the Judge issued a temporary restraining order. On February 24, the TRO was extended over the objections of the CHA and Tenants. Sarajevo-like conditions exploded over the following weekend, and the local press went after the ACLU and the judge with a vengeance. Yesterday the judge issued his Preliminary Injunction, which barred sweeps except "in response to an existing emergency or clear and present danger when there is probable cause to believe that a crime has been committed." (The above quoted sentence appeared in the judge's original Temporary Restraining Order. A footnote appears in the Preliminary Injunction

as follows: "If, for example, an armed gang engaged in shooting enters a building which is then promptly surrounded, a door-to-door search which begins immediately thereafter is appropriate to apprehend the criminals and restore safe conditions.")

What to do now: We urge you to consider the following:

1. Find the money to secure the lobbies, put in metal detectors, have trained, armed police screen all visitors who should show a photo-ID or be accompanied by a tenant. Nothing will work until you secure the lobbies. The cost, variously estimated at \$150 to \$180 million, should be viewed as a down payment on a debt owed to those whose blood has been spilled and whose lives have been destroyed as a result of failed federal polices. Mr. Sullivan has prepared a detailed statement on this issue which you will receive soon.

2. File a motion with Judge Anderson to intervene in *both* Summeries and Pratt.

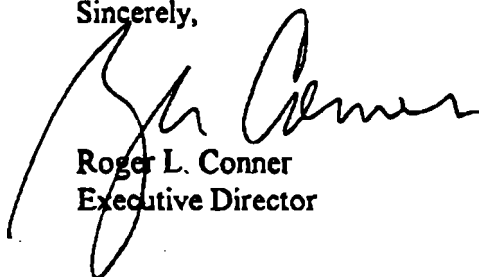
(a) DOJ should urge the judge to re-open the consent decree in Summeries (the earlier case), which currently prevents both metal detectors and a photo-ID system. I strongly suspect the judge would be willing to issue an order to permit both if pressed; the CHA's pending motion for modification of the consent decree has simply not yet been acted on. The money cannot legally be spent for metal detectors until this decree is modified.

(b) DOJ should examine ways to clarify and expand the "emergency or clear and present danger" exception in his order; or, in the alternative, urge the Judge to permit CHA to institute a system which allows tenants to opt out in advance or otherwise be presumed to have consented to emergency searches.

3. As a long term matter, we need to reduce the concentration of at-risk families in public housing or security will be elusive. The Administration has supported a modification of the Brooke Amendment, which requires public housing residents to pay one third of their incomes for rent, even if this formula forces them to pay above market rents. The Administration should give higher priority to urging the Congress to act on this amendment at the earliest possible time.

I would be happy to provide you with any additional information and respond to questions. The Central Tenants Council has requested a meeting with you through their attorney, Tom Sullivan. I urge you do so at your earliest opportunity.

Sincerely,



Roger L. Conner
Executive Director

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Jose Cerda

(Liz Arky)

*Here's the other
letter I was
talking about*

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The White House, Washington, DC

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TELECOPIER: 202-456-7028

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Thomas P. Sullivan

ATTY NO.: 120

DATE:

April 8, 1994

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AARR, No. 61053-10005

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THOMAS P. SULLIVAN, LTD.

April 8, 1994

The President
The White House
1600 Pennsylvania Avenue
Washington, DC 20006

Dear Mr. President:

This morning's news contains reports that you have asked Mr. Cisneros and Ms. Reno to formulate strategies for dealing with public housing crime. At the request of the American Alliance for Rights and Responsibilities, I have agreed to serve without fee as counsel to the residents' Advisory Council of the Chicago Housing Authority (CHA); they have been granted leave to intervene in Pratt v. CHA, the case involving the so-called "sweeps".

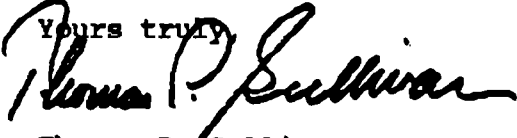
With regard to the problems of crime in the housing developments, I enclose a statement I made on April 4, 1994, which sets out my concerns about the emphasis being put on "sweeps", when the real problems of security must be addressed - in the short term at least - by the expenditure of money, through HUD, to secure the building lobbies, erect fences, and hire an adequate trained police force, all as recommended last year in a report prepared by the Secret Service.

Having discussed this matter with Vincent Lane, Chairman of the CHA, I know he is in agreement that these funds ought to be provided now. I have also discussed this with Senator Carol Moseley Braun, and she has assured me of her support for this effort. It is my sincere hope that the necessary funding will be made available promptly, before violence erupts again and more lives are irreparably damaged.

I am of the view that the failure of the CHA and HUD to provide a safe place for the residents to live is a breach of legal duties owing to the residents.

April 8, 1994
Page 2

I ask that you convene a meeting among interested parties, including myself as counsel for the residents, to discuss this matter and agree on solutions.

Yours truly,

Thomas P. Sullivan

Enc.

CC: Senator Carol Moseley Braun
P. W. Caruso, Attorney, Chicago Housing Authority
The Honorable Henry G. Cisneros, Urban Development
Secretary
Roger L. Conner, Executive Director, American
Alliance for Rights and Responsibilities
Vincent Lane, Chairman, Chicago Housing Authority
Artensa Randolph, Chairperson, Chicago Housing
Authority Advisory Council
The Honorable Janet Reno, Attorney General

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STATEMENT OF THOMAS P. SULLIVAN

April 4, 1994

In the past few weeks, the media, commentators and politicians have declaimed extensively about the Chicago Housing Authority police "sweeps," designed to confiscate weapons secreted by members of street gangs who have been carrying on gun battles in CHA buildings. The debate has centered around the legality of the sweeps and the wisdom of the American Civil Liberties Union devoting its resources to challenge them in court.

It is unfortunate but true that the reams of rhetoric on these issues miss the important point. As so often happens in matters of crime and punishment, we are attracted to glitzy, superficial quick fixes. We fail to address the underlying problems or provide real solutions.

While the sweeps have a good short term effect, they have no lasting effect on building security. They are like putting a band-aid on a serious wound. Because each sweep involves hours of careful planning and dozens of well-equipped, trained police, the gangs receive advance notice and an opportunity to move weapons from the targeted building. After the sweep, the gangs move their paraphernalia back in the "swept" building, and business resumes as usual.

Several months ago, I was asked to act, on a pro bono basis, as attorney for almost all of the council members elected to represent CHA tenants. I visited CHA buildings

and interviewed CHA tenants. The stories they recounted brought tears to my eyes and anger to my heart: parents teaching their children to fall to the ground and move away from windows when they hear gunshots; sleeping on mattresses rather than beds to avoid gunfire through windows which are constantly being shot out; fear of having children walk to school; gangs extracting "tax" from elderly residents to allow them to use elevators or bring groceries in; gang members frisking tenants before allowing them to enter; gang turf wars over narcotics sales, with sophisticated, automatic weapons; and gang members invading apartments, terrorizing and evicting rightful tenants. The stories go on and on, of buildings controlled by lawless thugs, some in their early teens, wielding weapons freely and having little or no regard for the rights or safety of others. All these conditions cause indelible, emotional trauma to the tenant-victims.

More than 150,000 Chicagoans live in CHA housing. The vast majority are peaceful and law-abiding. They have the same desires for themselves and their children as residents of Oakbrook, Bridgeport, Winnetka and Darien. If this kind of lawlessness occurred in those communities, strong, prompt measures would be taken to end it. The money would be found for real solutions, not just a few widely publicized but largely ineffective sweeps.

What needs to be done, in the short term at least, is to secure the lobby of each CHA building. CHA security officials tell me that there is no real lobby security in

over 65% of the 167 CHA buildings more than 3 stories high. Ground floor entrances are open to anyone, without any check for identity or weapons. There are not enough CHA police (who seem to be dedicated and well trained) to protect the buildings. Additional guards are hired from outside security services, at \$6 an hour, but because of fear or lack of training, they are unable to enforce lobby security.

Each lobby must be reconstructed so that there is only one entrance; metal detectors must be installed and maintained; photo IDs for tenants and visitors must be required; sign-in books for visitors must be used. Security measures must be enforced by adequate numbers of CHA police, 24 hours a day, 7 days a week. Decorative but strong fences must be installed around each building. These and other recommendations are contained in a report prepared last year for HUD by the U.S. Secret Service, a report which received little publicity and has not been implemented. Instead, publicity and debate over "sweeps" take center stage, and the real problems and their solutions are ignored.

Obviously, money will be needed to do these things. The CHA's funding is largely from HUD; it is grossly insufficient, and additional money is sorely needed. Part of the funds now allocated for badly needed repairs and improvements (heating, elevators, tuck pointing, etc.) is switched to pay for security - Peter is robbed to pay Paul.

How much will it cost to make these changes? CHA officials estimate that the necessary structural lobby

changes (not including fences) will cost about \$40 million, and the cost to properly police the CHA buildings is about \$180 million annually.

The aged, decrepit, unsafe CHA buildings ought to be demolished and the residents relocated to appropriate housing located throughout the city. But in the meantime, this community can and emphatically must provide protection from violence and shootings to the families living in CHA developments. Our public servants and our media ought to put forth their best efforts to see that this is done. We find money to send troops and equipment around the world to protect people in other countries. Surely we can afford the relatively few dollars needed to protect our fellow citizens from lawless, violent gangs in the center of our own community.

- END -

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

FAX TRANSMISSION

DATE: 4/18/94

NUMBER OF PAGES (including this page) 8

TO: Jose Cerda

FROM: Liz Arky

PHONE: 456-7028

708-3161

COMMENTS: THIS IS NOT FOR DISSEMINATION

**HUD/Justice Report to the President
Combatting Violent Crime in Public Housing
Questions and Answers**

QUESTION:

Does the federal government support Vince Lane's sweep-search policy?

ANSWER:

The district court in Chicago (Judge Anderson) has already struck down these searches. We are looking beyond that. Our objective is to propose effective, alternative means of combating violence in public housing developments. I certainly support Mr. Lane's efforts to address this serious problem and I would note, as did the President, that he is a virtual hero to the residents of these embattled developments.

QUESTION:

Does this policy support the types of searches that the Judge found unconstitutional in Chicago?

ANSWER:

This policy emphasizes that there is a range of constitutional options, many of which were identified by the Court in its opinion, which are available to PHA's seeking to develop effective ways to respond to violence and the use of firearms on the PHA's premises.

PHAs can secure buildings and lobbies, search vacant apartments and common areas, search apartments with tenant consent and conduct warrantless searches in emergency situations.

The Chicago searches that were struck down fit under this last category. Clearly the judge said that there were certain fact situations which would support that type of warrantless search -- hot pursuit of fleeing gang members, for example. Our policy confirms that.

QUESTION:

If CHA appeals Judge Anderson's ruling, will the federal government support CHA?

ANSWER:

The federal government will have to address that issue if it arises. We note, however, that CHA is already well represented and the appeal process can be lengthy. We therefore believe that it is more important to find alternative solutions that can be implemented immediately.

QUESTION:

Can a public housing authority require a tenant to submit to an entry search in order to gain access to his or her apartment?

ANSWER:

Yes. The courts have upheld the use of metal detectors and follow-up searches at airports, in federal buildings, and in other settings as long as they are legitimately necessary to protect the safety of the public. Certainly, the need for these measures is manifest in projects in which violent crime is pervasive.

QUESTION:

Can you condition the receipt of public housing on the tenant's consent to inspections of his or her unit for unauthorized or unlicensed firearms?

ANSWER:

It depends on the reasonableness of the inspections program that the tenant is being asked to consent to. Almost all lease agreements allow routine inspections for unsafe conditions, and a tenant can be denied an apartment if he or she refuses to agree to permit inspections of that type.

Whether routine inspections for unlawful firearms is a reasonable lease terms depends on the circumstances. Where the circumstances are as extreme as they are in projects such as Robert Taylor Homes and Stateway, we think that a lease term requiring the tenant to consent to apartment inspections for firearms, under carefully enunciated terms, is reasonable

QUESTION:

But won't an inspection for firearms be more intrusive than an inspection for leaking pipes?

ANSWER:

Perhaps. But the overwhelming need for such inspections makes the consent reasonable. We cannot restore safety

to these public housing developments without tenant cooperation.

QUESTION:

Under what conditions can an individual unit be searched under your policy announced today?

ANSWER:

The most common way is through the consent of the tenant in that unit. That consent can come in two ways:

First, the tenant can consent, pursuant to a clause in a lease agreement, to a periodic inspection of the unit for unlicensed or unauthorized firearms. This provision is much like the common provision for regular maintenance inspection, and would occur routinely during daylight hours.

Second, the tenant can consent orally or in writing to a request to search the unit as part of a door-to-door response to an emergency situation. In fact, most of the searches in Chicago were done pursuant to tenant consent.

QUESTION:

Is this lease language optional?

ANSWER:

It would be the PHA's option to include it in the lease, and as proposed here, it would be "optional" for a particular project. However, it would not be "optional" for the individual resident in a development that had chosen to utilize this provision.

QUESTION:

Will it apply to just developments with high crime or will it be at all developments?

ANSWER:

The lease provisions will be in all leases, if the PHA decides to utilize this approach, but they will have a "local option" in that they will not go into effect unless the Resident Council of the development approves them.

QUESTION:

Will HUD have to approve this lease language?

ANSWER:

No (HUD does not have a role in lease approval. It is offered to the tenants for a 30 day comment period and it is adopted by the Board of Commissioners)

QUESTION:

If the lease language is adopted and a resident signs, then refuses to allow the inspection, will CHA go ahead and do the search?

ANSWER: Yes.

QUESTION:

Will they terminate the lease for the refusal?

ANSWER:

Those types of issues will have to be resolved by the local PHA and their counsel. Our purpose here is to encourage local PHAs to investigate the use of these types of inspections as a means of addressing these problems. The Justice Department has advised us that such lease provisions, properly drawn, could be effective.

QUESTION:

Under what circumstances would the lease provide for these types of inspections?

(a) there could be regular administrative inspections for weapons, which would be during daylight hours, and could have notice provisions similar to those for maintenance inspections, that is 48 hour notice.

(b) there could be administrative inspections prompted by gunfire from a building area. The lease could indicate that an incident of violent gunfire would be the basis for an administrative inspection for weapons within a specific time period (say 24-72 hours).

Or there could be others. It would be up to the local PHA, in consultation with their lawyers and residents, to determine whether this approach should be used and how it could be implemented.

STATEMENT REGARDING A NATIONAL SEARCH POLICY AND THE REPORT TO
THE PRESIDENT ON COMBATting CRIME IN PUBLIC HOUSING IN CHICAGO

- o As you know, this morning the President announced a new policy to help ensure public housing residents can be safe and secure in their homes.
- o At the direction of the President yesterday I went to Chicago to provide emergency funds for enforcement and crime prevention in some of the most violent public housing developments in the country.
- o These steps are a part of the President's larger effort to take tough measures to seek out violent criminals and make all communities -- including public housing communities -- safe and liveable places, as well as to give young people throughout the country something to say "yes" to.
- o Over the course of the last year I have visited public housing in Chicago several times; on two separate occasions residents were kind enough to allow me to stay overnight in their homes. And on this trip I joined the Chicago Housing Authority and Chicago Police on targeted searches for guns and drugs.
- o I found that mothers have to cower behind darkened windows in their own living rooms and be "cleared" into their own buildings by gang members who control the entrances and lobbies; teenagers have to play basketball on courts filled with glass; and some days children can't leave their apartments until the shooting stops so they can go to school. The residents cry for relief from conditions as truly deadly as a Third World war zone. These conditions are not acceptable for anyone in America today.
- o The Chicago Housing Authority engaged in a "sweep search" policy in an effort to maintain order and combat gang violence. On April 7th a federal court held that certain types of searches were unconstitutional.
- o The President asked me and Attorney General Reno to outline law enforcement measures that would be effective and constitutional valid. During the past week we worked together productively and our efforts provided the basis for the President's announcement today.
- o First, we feel it is critical that we regain control of the building lobbies and common areas by using identification cards, metal detectors and entry searches and by ensuring that security guards have sufficient protection to do their screening work effectively. Presently, gang members control access to many public housing buildings, and security guards are unable to stem the flow of unauthorized persons and firearms into the buildings.

- o Second, it is clear that searches are constitutionally valid when there is tenant consent. That can be given orally or in writing. We are strongly urging the public housing authorities to amend their leases to authorize reasonable routine inspections for unauthorized or unlicensed firearms.
- o We are also urging that tenant associations endorse the use of building entrance security devices and consent clauses in lease agreements. Such support will strengthen the inevitable court challenges that will ensue in the aftermath of these leases.
- o In addition, public housing authorities can search without a warrant common areas and vacant apartments, which are often taken over by gangs. They can also employ a series of well-established law enforcement techniques, including weapons frisks of suspicious persons.
- o Finally, we recognize that public housing agencies can conduct warrantless searches in emergency situations.
- o The policy basically gives public housing agencies, public housing residents, local law enforcement and others clear guidance on the range of lawful techniques that can be used to combat violent crime in public housing developments.
- o In addition to the policy on searches announced today, the Attorney General and I have developed an action plan for Chicago focusing on enforcement and prevention measures that would assist the residents of CHA to reclaim their community.
- o The report identifies approximately \$29 million that HUD and the Department of Justice will make available to the City of Chicago and the Chicago Housing Authority immediately to stabilize the situation and provide public housing residents, particularly young children, with an alternative to the gangs.
- o This immediate funding provides a "down-payment on the crime bill" and will demonstrate how a combination of enforcement and prevention measures will enable communities to mobilize against violent crime.
- o Funding would be used to:
 - create additional B.I.T.E. teams, comprised of local police and housing police, to wrest control of the buildings away from the gangs;
 - replace private security guards;
 - combat gun trafficking;

provide additional funds for tenant patrols;

provide additional funds for reducing vacancies; and

provide funds for a series of prevention measures including playground reconstruction, midnight basketball, drug rehabilitation and other services.

4/28/94

To: List

From: David Kusnet

Re: Article about "sweeps" of housing projects

FYI...Amitai Etzioni sent this to me -- an article making the case for "sweeps" of housing projects to protect the residents from drugs and guns.

List:

Don Baer

Liz Bernstein

Jose Cerda

Carolyn Curiel

David Dreyer

Bill Galston

Lissa Muscatine

Bruce Reed

Alan Stone

Carter Wilkie

those who graded our exams probably had a substantially different view.⁴⁰ Finally, a retort⁴¹ for those students who wish to defend themselves against the onslaughts in this article: "'Tis not every question that deserves an answer."⁴²

COMMENT

Operation Clean Sweep: Is the Chicago Housing Authority
'Sweeping' Away the Fourth Amendment?

Steven Yarosh

I. INTRODUCTION

It is the summer of 1988. On the West Side of Chicago, a decaying thirteen-story public housing project is turned into a war zone as rival streetgangs battle for control of the high rise. The fighting escalates, forcing maintenance workers to abandon the 138-unit building. Fear and panic spread among the residents. Many resort to sleeping in their bathtubs in an effort to avoid stray gunfire. Some seek refuge in closets. Others simply give up and move out.¹

Meanwhile, on Capitol Hill, Congress issues a strongly worded report condemning the Department of Housing and Urban Development (HUD) for its "woefully inadequate" response to the drug crisis in public housing, and its failure to provide public housing agencies with the resources desperately needed to win the war on drugs.² With its residents under siege from within, and receiving little outside guidance or assistance from HUD, the Chicago Housing Authority (CHA)³ decided it was time to act.

On September 20, 1988, the CHA responded. In a scene best described as "controlled pandemonium,"⁴ sixty Chicago police officers and dozens of CHA employees staged a surprise assault on one of the CHA's ravaged buildings.⁵ Immediately upon arrival, the police sealed off all

¹ This scenario was originally detailed in a comprehensive article discussing the proliferation of gangs and crime throughout Chicago Housing Authority buildings: Jorge Casuso, *High Hopes*, CHU TRIB., July 22, 1990, (Magazine), at 12.

² H.R. REP. NO. 702, 100th Cong., 2d Sess. 8 (1988).

³ The CHA is a duly organized and authorized housing authority of the state of Illinois, and is responsible for the promotion of decent, safe, and sanitary public housing for its estimated 150,000 low income residents. ILL. REV. STAT. ch. 67 1/2, para. 2, 3 (1989). At present, the CHA manages 155 high-rise buildings containing a total of 46,000 residential units. Paul Glastis, *Chicago's Housing Czar*, U.S. NEWS & WORLD REP., Aug. 26, 1991, at 56; John McCormick, *Chicago Housecleaning*, NEWSWEEK, Aug. 19, 1991, at 58. It is estimated that of these 46,000 total residential units, more than 6,000 apartments remain perpetually vacant. Sharman Stein, *Chicago 'Sweeps' its Public Housing*, NEWSDAY, Sept. 4, 1989, at 7.

⁴ Stein, *supra* note 3, at 7.

⁵ Casuso, *supra* note 1, at 12; Jane Juller, *Clean Sweep's Dirty Secret*, CHU READER, OCT. 5, 1990, § 1, at 1; Seth Mydans, *Powerful Arms of Drug War Arousing Concern for Rights*, N.Y. TIMES,

⁴⁰ Professor Loss, please do not dig out my old Securities Regulation exam. I will wash your car, cook your meals, do anything that you ask if you spare me the humiliation of having to reread what I wrote on that exam. And please do not let my students see it. They think I know what I'm doing. (O.K., I admit it. Not all of them think that.)

⁴¹ Do students who fail Torts have to take Retorts?

⁴² THOMAS FULLER, GNOMOLOGIA ¶ 5094 (1732). Note the last of a series of obscure quotations. It's amazing how four or five quotation books and a good research assistant can cover for my lack of education.

building entrances and exits. Then, the CHA employees and police conducted systematic, door-to-door searches of every apartment in the building, looking for drugs, weapons, and illegal residents.⁶ The searches were conducted without warrant and without prior notification.⁷ Armed officers simply showed up, sealed off the building, and entered apartments at will.⁸

These warrantless home searches, dubbed by the CHA as "Operation Clean Sweep" (Sweeps), were the first of their kind to be used by any public housing agency in the country.⁹ The warrantless, nonconsensual manner in which the searches took place triggered immediate and outspoken community protest.¹⁰ Nevertheless, CHA Director Vince Lane vowed to make Sweeps "an ongoing operation until we have made public housing safe for our residents."¹¹

Almost immediately after the CHA began implementing Operation Clean Sweep, the American Civil Liberties Union (ACLU) filed a class-action suit, on behalf of the CHA residents, challenging the warrantless housing inspections.¹² The complaint alleged that the warrantless and indiscriminate nature of the searches violated the Fourth Amendment's constitutional guarantee against unreasonable search and seizure.¹³ The

Oct. 16, 1989, at A1; William Recktenwald, *Kemp Praises CHA for its Crime Sweeps*, CHI TRIB., Mar. 24, 1989, at C3; Stein, *supra* note 3, at 7.

⁶ Stein, *supra* note 3, at 7.

⁷ *Id.*

⁸ Casuso, *supra* note 1, at 12; Juffer, *supra* note 5, at 1; Mydans, *supra* note 5, at 1; Stein, *supra* note 3, at 7.

⁹ Secretary of HUD, Jack Kemp, Address at National Drug Control Policy Press Conference (Apr. 10, 1989), reprinted in FED. NEWS SERV., Apr. 10, 1989, at 4.

¹⁰ Casuso, *supra* note 1, at 12.

¹¹ Juffer, *supra* note 5, at 1.

¹² Plaintiff's Complaint, *Summeries v. Chicago Hous. Auth.*, No. 88 C 10566 (N.D. Ill. filed Dec. 16, 1988). The suit was filed on behalf of the estimated 150,000 residents who live in CHA projects. Plaintiffs sought relief in the form of an injunction against future warrantless housing sweeps as well as an award of actual and punitive damages. *Id.*

¹³ The Fourth Amendment states

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

U.S. CONST. amend. IV.

By its very terms, the Fourth Amendment protects against unreasonable government searches and seizures. See *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921) (stating that the Fourth Amendment was "intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies . . ."); *Weeks v. United States*, 232 U.S. 383, 398 (1914) (finding that the Fourth Amendment limits the federal government, not private individuals). The Fourth Amendment is enforceable against states through the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949). Additionally, state constitutions may also contain clauses similar to the Fourth Amendment, limiting the search and seizure powers of that state. See, e.g., CAL. CONST. art. I, § 13; N.Y. CONST. art. I, § 12.

The Fourth Amendment requires that any given search or seizure be reasonable at both inception

complaint sought to enjoin the CHA from any further use of warrantless housing sweeps.¹⁴

In answer to the complaint, the CHA argued that the warrantless searches did not violate the Fourth Amendment.¹⁵ The CHA contended that the searches occurred in response to emergency circumstances, and therefore qualified as an exception to the warrant requirement.¹⁶

Out of a mutual desire to avoid protracted and costly litigation, the parties reached a compromise and entered a court-approved consent decree prior to discovery.¹⁷ Under the terms of the decree, the CHA no longer may inspect the person or personal effects of any individual (tenant or guest).¹⁸ Contents of property such as closets, dresser drawers, medicine cabinets, boxes, or other containers likewise are not to be searched.¹⁹ Additionally, police officers no longer may act as an investigating party.²⁰ Instead, the police simply will accompany the CHA staff members that conduct the door-to-door inspections.²¹

Despite these concessions, Sweeps remain otherwise unchanged.

tion and execution. *Tennessee v. Garner*, 471 U.S. 1, 8 (1985), see also Nadine Strossen, *The Fourth Amendment in the Balance: Accurately Setting the Scales Through the Least Intrusive Alternative Analysis*, 63 N.Y.U. L. REV. 1173, 1179 n.23 (1988). Though clearly imposing a standard of reasonableness in searches and seizures, the amendment does not define what makes a search or seizure "reasonable." JOHN W. HALL, JR., SEARCH AND SEIZURE § 1.3, at 7 (1982) ("[t]he language of the Fourth Amendment is inscrutable" in determining whether a search or seizure is reasonable); JACOB W. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT 20 (1966) ("[T]he words of the [F]ourth [A]mendment do not address themselves with a clarity sufficient to forestall constitutional controversy . . ."); WILLIAM E. RINGEL, SEARCHES & SEIZURES, ARRESTS AND CONFESSIONS § 1.1 (1990) ("Nothing in the language of the amendment indicates . . . what constitutes a 'reasonable' search . . ."). Consequently, the courts have focused much of their attention on defining reasonableness. See *infra* notes 37-56 and accompanying text.

¹⁴ Plaintiff's Complaint at 19, *Summeries*, No. 88 C 10566. The complaint alleged a total of four different violations. The first and second counts were based upon a claim of unreasonable search and seizure in violation of the Fourth Amendment. *Id.* at 17. The third count stated an invasion of privacy claim, in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments. *Id.* at 17-18. The final count was a claim of unlawful deprivation of the rights of association in violation of the First and Fourteenth Amendments. *Id.* However, only the Fourth Amendment counts regarding unreasonable search and seizure are within the scope of this Comment.

¹⁵ According to the CHA's answer, the emergency inspections were reasonable measures necessary to ensure the safety and security of the tenants. Defendant's Answer at 31-32, *Summeries v. Chicago Hous. Auth.*, No. 88 C 10566 (N.D. Ill. filed Dec. 16, 1988). The defendant's answer claimed that "[a]n emergency situation existed which threatened the CHA's ability to provide its tenants with decent, safe, and sanitary housing, and which required immediate corrective and preventive action which could only be achieved through emergency inspections authorized pursuant to the lease contracts of the various Plaintiffs herein." *Id.*

¹⁶ The CHA was claiming the traditionally recognized exception to the warrant requirement known as "exigency." See *infra* notes 52-56 and accompanying text.

¹⁷ *Summeries v. Chicago Hous. Auth.*, No. 88 C 10566 (N.D. Ill. Nov. 30, 1989) (order approving consent decree).

¹⁸ Consent Decree, Appendix B at 7, *Summeries*, No. 88 C 10566.

¹⁹ *Id.*

²⁰ *Id.* at 8-9.

²¹ *Id.* at 9.

Under the consent decree, searches still take place without either warrant or tenant's consent.²² Furthermore, the power to order an emergency sweep continues to be vested solely in the discretion of the Director of the CHA.²³ If the Director believes that an immediate threat to the safety and welfare of the tenants of a building exists, then he or she may order a sweep of that building.²⁴

The CHA continues to implement the warrantless housing sweeps on an ever-increasing scale. Since the fall of 1988, the CHA has conducted more than fifty sweeps of its buildings.²⁵ The CHA has said that it intends to expand Sweeps to include all 128 of the CHA's buildings.²⁶ Moreover, HUD Secretary Kemp has called the warrantless searches a "progressive" and "innovative" response,²⁷ and has stated that he intends to implement Sweeps at other public housing agencies on a national scale.²⁸

This Comment addresses the constitutionality of the warrantless housing inspections—whether Sweeps violate the Fourth Amendment of the United States Constitution. Part II provides a brief historical account of the origins of the Fourth Amendment and examines the traditionally recognized exceptions to the warrant requirement in the context of criminal and administrative searches. Part III traces the origin and development of the "special needs" doctrine, under which a warrantless search is permissible if it takes place pursuant to a special government need beyond the capability of normal law enforcement.²⁹ In Part IV, this Comment analyzes the CHA public housing sweeps in light of the "special needs" doctrine, and concludes that the warrantless CHA searches fit within the Supreme Court's "special needs" exception to the warrant requirement. Thus, the CHA searches do not appear to violate the Fourth Amendment's guarantee against unreasonable search and seizure.

II. AN OVERVIEW OF FOURTH AMENDMENT LAW

The Fourth Amendment to the Constitution of the United States provides:

The right of the people to be secure in their persons, houses, papers, and

²² *Id.* at 1.

²³ *Id.*

²⁴ *Id.*

²⁵ McCormick, *supra* note 3, at 58.

²⁶ Stein, *supra* note 3, at 7.

²⁷ Jack Kemp, *Drug-Free Housing for the Nation's Poor*, WASH. POST, Apr. 17, 1989, at A19.

²⁸ Secretary Jack Kemp stated:

I am asking . . . public housing authorities around the country, to engage in those types of operations that can clear out and secure public housing projects from drug users and abusers and dealers . . . It is based upon the project that was so successful in Chicago at Rockwell Gardens initiated by the public housing authority in Chicago.

Address by Secretary of HUD, *supra* note 9, at 4.

²⁹ See *infra* notes 91-168 and accompanying text.

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.³⁰

Rather than constructing the amendment upon considerations of abstract political theory, the drafters crafted it with the pragmatic desire to establish enforceable safeguards against the colonial abuses which "had done violence to the ancient maxim that '[a] man's house is his castle.'" ³¹ The amendment was a direct response to the rampant abuses suffered by colonists at the hands of ruling British officers.³² Prior to the American Revolution, Crown officers subjected colonists to widespread and discretionary searches authorized by writs of assistance.³³ The infamous Writ of Assistance Act empowered officials to invade citizens' homes at will and ransack the premises in search of evidence of crimes—particularly evidence of illegally imported goods.³⁴ Granting virtually unlimited power to search anyone, anywhere, these writs remained valid six months past the lifetime of the issuing sovereign.³⁵ It was against this backdrop of wholesale and indiscriminate rummaging for evidence of criminal activity that the Fourth Amendment was created.³⁶

³⁰ U.S. CONST. amend. IV.

The most frequent context in which a Fourth Amendment claim is raised occurs in "proceedings to determine whether the fruits of search and seizure are to be admitted into evidence . . ." 1 WAYNE R. LAFAVE, *SEARCH & SEIZURE* § 1.1 (2d ed. 1987). This process is embodied in the "exclusionary rule," which holds that property seized in violation of the Fourth Amendment may not be used as evidence in a criminal trial. *Id.* The exclusionary rule originated in the case of *Weeks v. United States*, 232 U.S. 383 (1914), where a unanimous Court held that when federal officers seize property in a wrongful manner, the evidence is inadmissible at trial. In *Mapp v. Ohio*, 367 U.S. 643 (1961), the Court held the Fourth Amendment to be enforceable against the States through the Due Process Clause of the Fourteenth Amendment. Thus, the exclusionary rule now makes all unconstitutional seizures of evidence, whether by state or federal officials, inadmissible at trial.

³¹ LANDYNSKI, *supra* note 13, at 20; see also Lawrence A. Benner, *Diminishing Expectations of Privacy in the Rehnquist Court*, 22 J. MARSHALL L. REV. 825, 828 (1989).

³² NADINE LASSON, *THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES* 53-54 (1937); Jacob W. Landynski, *In Search of Justice: Black's Fourth Amendment*, 45 FORDHAM L. REV. 453, 462 (1976). Landynski states that "[t]he main object behind the drafting of the amendment was to prevent the recurrence of the detested general warrant which had been employed by the British in an attempt to stamp out smuggling in the American colonies . . ." *Id.* at 462.

³³ HALL, *supra* note 13, at 15; Landynski, *supra* note 32, at 462.

³⁴ LANDYNSKI, *supra* note 13, at 31 ("The warrant was in effect a lifetime hunting license in the hands of the officer, requiring neither probable cause nor particularity of description of persons or premises, nor even judicial approval prior to the search"); LASSON, *supra* note 32, at 53-54.

³⁵ HALL, *supra* note 13, at 15.

³⁶ Justice Frankfurter offered this recount of the historical origins of the Fourth Amendment:

The history of the constitutional protection against official invasion of the citizen's home makes explicit the human concerns which it was meant to respect. In years prior to the Revolution leading voices in England and the Colonies protested against the ransacking by Crown officers of the homes of citizens in search of evidence of crime or of illegally imported goods. The vivid memory by the newly independent Americans of these abuses produced the Fourth

A. Criminal Searches and the Warrant Requirement

Ironically, in the Framers' desire to provide an unequivocal guarantee against unreasonable searches and seizures, they gave birth to a powerfully ambiguous amendment.³⁷ As one constitutional historian has put it, the Fourth Amendment shares "the virtue of brevity and the vice of ambiguity."³⁸

The difficulty courts have struggled with in interpreting the meaning of the Fourth Amendment stems from the divided nature of the provision.³⁹ The amendment separates into two distinct clauses.⁴⁰ The first

Amendment as a safeguard against such arbitrary official action by officers of the new Union, as like provisions had already found their way into State Constitutions.

In 1765, in England, what is properly called the great case of *Entick v. Carrington*, 19 Howell's State Trials, col. 1029, announced the principle of English law which became part of the Bill of Rights and whose basic protection has become imbedded in the concept of due process of law. It was there decided that English law did not allow officers of the Crown to break into a citizen's home, under cover of a general executive warrant, to search for evidence of the utterance of libel. Among the reasons given for that decision were these:

"It is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust, and it should seem, that search for evidence is disallowed upon the same principle"

These were not novel pronouncements to the colonists. A few years earlier, in Boston, revenue officers had been authorized to use Writ of Assistance, empowering them to search suspected places, including private houses, for smuggled goods. In 1761 the validity of the use of the Writs was contested in the historic proceedings in Boston. James Otis attacked the Writ of Assistance because its use placed "the liberty of every man in the hands of every petty officer." His powerful argument so impressed itself first on his audience and later on the people of all the Colonies that President Adams was in retrospect moved to say that "American Independence was then and there born."

Frank v. Maryland, 359 U.S. 360, 363-64 (1959) (citations omitted)

³⁷ See *infra* notes 38-50 and accompanying text.

³⁸ LANDYNSKI, *supra* note 13, at 42.

Another commentator has described Fourth Amendment analysis in the following terms.

Perhaps more so than most areas of law, attempting to comprehend the [F]ourth [A]mendment cases is rather like stepping through the Looking Glass with Alice. Precedents and analytical approaches appear and disappear like the Cheshire Cat. Words and phrases acquire new meanings in the context of these analytical progressions. In particular, the word "reasonable" takes on two distinct meanings in [F]ourth [A]mendment analysis. Students of the [F]ourth [A]mendment quickly learn that for courts and commentators "reasonableness" is both a term of art synonymous with constitutionality and a convenient shorthand denoting a process of rational analysis.

Ronald J. Bacigal, *The Fourth Amendment in Flux: The Rise and Fall of Probable Cause*, 1979 U.I.L. 1, F. 763, 763

³⁹ One commentator stated that "[t]he [F]ourth [A]mendment has two clauses, the unreasonable searches clause and the warrant clause On its face, one cannot determine whether the two clauses are to be read together or separately." HALL, *supra* note 13, § 1.3. "The root of the conflicting and evolving interpretations of the Fourth Amendment derives from the ambiguous phrasing of the amendment itself. The amendment consists of two conjunctive clauses Nothing in the language of the amendment indicates any relationship between the two clauses I RINGETT, *supra* note 13, § 1.1. "The Supreme Court's attempts to delineate the parameters of [F]ourth [A]mendment protection have spawned a longstanding controversy over the relationship between the amendment's two conjunctive clauses Bacigal, *supra* note 38, at 763-64. "Grammatically, the amendment consists of two clauses, one prohibiting illegal searches and seizures and the other setting requirements for warrants. The relationship between these clauses has been the subject of inconsistent interpretation by the Supreme Court." John W. Collins & Sandra N. Hurd,

clause, the "reasonableness" clause, guarantees individuals freedom from unreasonable searches and seizures.⁴¹ The second clause, the "warrant" clause, sets out the requirements for issuance of search or arrest warrants.⁴²

Understanding the appropriate relationship between these two clauses is essential in determining the precise meaning of the amendment.⁴³ Yet, a plain reading of the amendment fails to reveal what relationship exists between the two clauses.⁴⁴ As a result of this ambiguity, courts have often struggled with competing interpretations of Fourth Amendment guarantees.⁴⁵

The "conventional interpretation" of the relationship between the two clauses of the Fourth Amendment is that the "reasonableness" clause is defined at least in part by the "warrant" clause.⁴⁶ Under this interpretation, any nonconsensual search conducted without warrant is considered unreasonable, unless exigent circumstances exist.⁴⁷

In contrast to the "conventional interpretation," an alternative interpretation suggests that the two clauses are read independently.⁴⁸ Under this interpretation, the reasonableness of a search does not hinge upon the use of a warrant, but rather upon the overall facts and circum-

Warrantless Administrative Searches: It's Time to be Frank Again, 22 AM. BUS. L.J. 189, 189 n.1 (1984)

⁴⁰ See *supra* note 30 and accompanying text.

⁴¹ HALL, *supra* note 13, § 1.3; LANDYNSKI, *supra* note 13, at 42; I RINGETT, *supra* note 13, § 1.1; Bacigal, *supra* note 38, at 763-64; Strossen, *supra* note 13, at 1178; Silas J. Wasserstrom, *The Incredible Shrinking Fourth Amendment*, 21 AM. CRIM. L. REV. 257, 281 (1984); Michael R. Beeman, Note, *Investigating Child Abuse: The Fourth Amendment and Investigatory Home Visits*, 89 COLUM. L. REV. 1034, 1036 (1989). Note, *Formalism, Legal Realism, and Constitutionally Protected Privacy Under the Fourth and Fifth Amendments*, 90 HARV. L. REV. 945, 954 (1977).

⁴² HALL, *supra* note 13, § 1.3; LANDYNSKI, *supra* note 13, at 43; LASSON, *supra* note 32, at 102-03; I RINGETT, *supra* note 13, § 1.1; Bacigal, *supra* note 38, at 763-64; Beeman, *supra* note 41, at 1036-37; Lynn S. Searle, *The "Administrative" Search from Dewey to Burger: Dismantling the Fourth Amendment*, 16 HASTINGS CONST. L.Q. 261, 261 (1989); Strossen, *supra* note 13, at 1178; Wasserstrom, *supra* note 41, at 282; Note, *supra* note 41, at 954.

⁴³ See *supra* notes 38-42 and accompanying text.

⁴⁴ See *supra* notes 38-42 and accompanying text.

⁴⁵ One commentator has referred to the Supreme Court's struggles at interpreting the Fourth Amendment as "supreme judicial schizophrenia." Judge Charles E. Moylan, Jr., *The Plain View Doctrine*, 26 MICHIGAN L. REV. 1047, 1052 (1975); see *supra* notes 38-39 and accompanying text.

⁴⁶ LANDYNSKI, *supra* note 13, at 42-43 ("[T]he 'reasonable' search is one which meets the warrant requirements specified in the second clause"); Strossen, *supra* note 13, at 1178-79 (under the conventional interpretation, a warrantless "search or seizure is presumptively unreasonable, and hence unconstitutional"); Wasserstrom, *supra* note 41, at 282 (Fourth Amendment "reasonableness turns on the presence of a validly issued warrant . . . has come to be regarded as the conventional interpretation of the [F]ourth [A]mendment").

⁴⁷ The exceptions of exigency and consent are discussed *infra* note 52 and accompanying text.

⁴⁸ HALL, *supra* note 13, § 1.3; LANDYNSKI, *supra* note 13, at 42-43; Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MICH. L. REV. 349, 394 (1974); Bacigal, *supra* note 38, at 764-65; Landynski, *supra* note 32, at 458; Strossen, *supra* note 13, at 1180.

stances of the search.⁴⁹ Thus, the existence or nonexistence of a warrant is merely one of many factors considered in determining the overall reasonableness of a search.⁵⁰

Despite these interpretative struggles, the United States Supreme Court's prevailing view of Fourth Amendment protections in the context of criminal searches was explicitly stated in *Katz v. United States*⁵¹ more than twenty years ago: "[criminal] searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the [F]ourth [A]mendment—subject only to a few specifically established and well-delineated exceptions."⁵²

⁴⁹ *United States v. Rabinowitz*, 339 U.S. 56, 86 (1950) ("[T]he relevant test is not whether it is [practical] to procure a search warrant, but whether the search was reasonable."), overruled on other grounds by *Chimel v. California*, 395 U.S. 752, 768 (1969).

⁵⁰ See, e.g., *Landynski*, *supra* note 13, at 42-43 ("[T]he first clause provides an additional search power, authorizing the judiciary to find some searches 'reasonable' even when carried out without warrant."); *Bacigal*, *supra* note 38, at 765 (explaining that under the alternate approach, reasonableness supersedes warrant clause requirement and is determined by circumstances of each case); Peter S. Greenberg, *The Balance of Interests Theory and the Fourth Amendment: A Selective Analysis of Supreme Court Action Since Camara and See*, 61 CAL. L. REV. 1011, 1028 (1973) (discussing constitutionality of government searches in absence of warrant); *Strossen*, *supra* note 13, at 1180 (existence of search warrant is simply one constituent factor of reasonableness of a search).

⁵¹ 389 U.S. 347 (1967). *Katz* was convicted of transmitting wagering information over telephone lines. *Id.* at 348. The government gathered its evidence against *Katz* through an electronic recording device attached to a public telephone booth. *Id.* Finding the government wiretap to be a search and seizure within the meaning of the Fourth Amendment, the Court overturned the conviction on the basis of the government's failure to procure a warrant for the wiretap. *Id.* at 353-359.

Although the phone calls were placed in a public phonebooth, the Court nevertheless held that *Katz* had a "reasonable expectation" of privacy under the Fourth Amendment. *Id.* at 352-53 ("[W]hat [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."). In his now-famous concurring opinion, Justice Harlan offered the following two-prong test for reasonable expectations of privacy under the Fourth Amendment: "[F]irst, that the person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'." *Id.* at 361 (Harlan, J., concurring).

⁵² *Katz*, 389 U.S. at 357.

The "well-delineated exceptions" referred to by the *Katz* Court are those of consent and exigency. *Id.* at 358. Consent vitiates the need for a warrant. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *Haynes v. Washington*, 373 U.S. 503 (1962). Consent, however, must be given freely and voluntarily in order to be valid. See *Bumper v. North Carolina*, 391 U.S. 543, 548 (1967) ("When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given.") The test for voluntary consent is an essentially ad hoc assessment in which no single fact is considered controlling. See *Schneckloth*, 412 U.S. at 227 ("[T]he question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.")

Exigency, the other traditional exception to the warrant requirement, refers to emergency circumstances which pose an immediate and real threat to the lives of others. See *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967) ("The [F]ourth [A]mendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others."). *McDonald v. United States*, 335 U.S. 451 (1948) (defining exigency); *Carroll v. United States*, 267 U.S. 132 (1924) (same). The entry and search of a residence by police in "hot pursuit" of a fleeing

For example, if the CHA Sweeps were compelled by exigent circumstances, a warrant would not be required.⁵³ Indeed, in an apparent attempt to circumvent the warrant requirement, the CHA claimed exigency in its answer to the ACLU complaint.⁵⁴ However, the CHA also articulated purposes that are inconsistent with exigency: (1) identification and removal of unauthorized occupants; and (2) inspection of the physical condition of the tenant's unit.⁵⁵ Rather than being of an emergency nature, these purposes appear routine and limited in scope. Thus it is unclear how any inspection program aimed at achieving these limited ends could justify excepting a citizen's Fourth Amendment rights under a claim of exigency.⁵⁶

B. Administrative Searches and the Warrant Requirement

Administrative searches are defined as "governmental inspections and searches other than those made by law enforcement officers in connection with criminal prosecutions."⁵⁷ Unfortunately, the judicial distinction between administrative searches and criminal searches is not as clear as this definition might imply. Generally, an administrative search is an investigation or inspection conducted pursuant to some specific statutory or regulatory scheme, or conducted within the context of a particular supervisory relationship.⁵⁸ Typical examples of such investigative plans include government inspections of automobile junkyards as a regular method of discovering stolen vehicles,⁵⁹ or periodic home inspections by municipal health inspectors seeking to ensure compliance with local codes.⁶⁰

Unlike criminal searches, administrative searches do not focus upon

suspect is a classic example of a warrantless search under exigent circumstances. *Warden*, 387 U.S. at 298-99; *Katz*, 389 U.S. at 358. Similarly, the entry into a home by firemen seeking to extinguish a blaze also qualifies as an exigency exception to the warrant requirement. See *Michigan v. Clifford*, 464 U.S. 287, 293 (1984) ("A burning building of course creates an exigency that justifies a warrantless entry by fire officials to fight the blaze.") The Court has even applied the exigency exception to uphold warrantless searches of a burned home conducted by arson investigators the day after the fire. *Michigan v. Tyler*, 436 U.S. 499, 511 (1978). However, subsequent searches by arson investigators conducted weeks after the fire were held to be unreasonable, because the immediate emergency had subsided and the burden of obtaining a warrant would not have frustrated the purpose of the investigation. *Id.* at 511.

Note that Operation Clean Sweep does not fit into either exception. See *infra* notes 81-90 and accompanying text.

⁵³ See *supra* note 52 and accompanying text.

⁵⁴ Defendant's Answer at 31-32; *Summeries v. Chicago Hous. Auth.*, No. 88 C 10566 (N.D. Ill. filed Jan. 5, 1989); see *supra* note 16 and accompanying text.

⁵⁵ Consent Decree, Appendix B at 6, *Summeries*, No. 88 C 10566.

⁵⁶ See *infra* notes 82-90 and accompanying text.

⁵⁷ *Collins & Hurd*, *supra* note 39, at 190.

⁵⁸ *Id.*; see also *Greenberg*, *supra* note 50, at 1016.

⁵⁹ See *New York v. Burger*, 482 U.S. 691 (1987).

⁶⁰ See *Camara v. Municipal Court*, 387 U.S. 523 (1967).

what would traditionally be considered criminal activity.⁶¹ Administrative searches can, however, directly bear on matters which subsequently fall within the criminal arena.⁶² For example, if one inadvertently uncovers evidence of criminal activity during an administrative inspection, the inspection nevertheless remains administrative in nature, even though the State may use the same evidence to prosecute.⁶³

Until recently, the Supreme Court did not recognize the applicability of the Fourth Amendment to administrative inspections. Under the Court's earlier view, Fourth Amendment protections applied only to criminal investigations and not to administrative searches.⁶⁴ But in the landmark case of *Camara v. Municipal Court*,⁶⁵ the Court discarded its earlier position and expressly extended Fourth Amendment protections to administrative inspections.⁶⁶ In doing so, the Court held that the standard of protection for administrative searches was distinctly different

(and far less demanding) than that applied to criminal searches.⁶⁷

In contrast to the rigid probable cause requirement for warrants in the criminal context,⁶⁸ the *Camara* Court held that the standard for administrative searches conducted on an area-wide basis pursuant to a statutory inspection program, only need conform to a flexible balancing test of reasonableness. According to the Court, to test whether a warrant is required for an administrative search, a court balances the government's need to search against the individual invasion of privacy caused by the search.⁶⁹

In assessing whether the government was justified in conducting a warrantless search, the *Camara* Court considered whether the search was in furtherance of a legitimate public interest and whether the burden of obtaining a warrant was likely to frustrate that purpose.⁷⁰ Against the government's need to conduct the search the Court examined whether the inspection posed a significant risk of criminal prosecution for the person being inspected.⁷¹ Additional factors weighing in the balance were whether the government's actions fell within a "traditionally recognized" supervisory capacity with a long history of public acceptance,⁷² and whether the inspection program was being conducted on an "area-wide" basis, pursuant to statutory authority.⁷³

After establishing this balancing test for "reasonableness," the *Camara* Court carefully pointed out that nothing in its holding "is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations"⁷⁴ The Court continued:

On the other hand, in the case of most routine area inspections, there is no compelling urgency to inspect at a particular time or on a particular day. Moreover, most citizens allow inspections of their property without a war-

⁶¹ One commentator noted "[t]he phrase 'administrative search' encompasses governmental investigatory intrusions that are not the traditional searches for criminal evidence; there is no single type of administrative search." Greenberg, *supra* note 50, at 1016.

⁶² *Wyman v. James*, 400 U.S. 309, 323 (1971); *Camara v. Municipal Court*, 387 U.S. 523, 531, 533 (1967).

⁶³ *Wyman*, 400 U.S. at 323; *Camara*, 387 U.S. at 533.

⁶⁴ An example of the Court's earlier stance can be found in *Frank v. Maryland*, 359 U.S. 360 (1959).

In *Frank*, a city health inspector had reason to believe that rats infested the defendant's house. When the inspector asked for permission to enter the house and conduct a warrantless search of the basement, Frank refused. As a result of his refusal, Frank was arrested. In a 5-4 decision, the U.S. Supreme Court ruled that the Baltimore City Code did not violate the Fourth Amendment's constitutional protection against unreasonable search and seizure. *Id.* at 372.

Finding that "it was on the issue of the right to be secure from searches for evidence to be used in criminal prosecutions . . . that the great battle for fundamental liberty was fought," Justice Frankfurter concluded that unlike searches for criminal evidence, administrative inspections only "touch at most upon the periphery of the important interests safeguarded [by the Fourth Amendment]" *Id.* at 365-67.

⁶⁵ 387 U.S. 523 (1967).

⁶⁶ *Id.* at 534. In *Camara*, a housing inspector for the City of San Francisco sought to perform a warrantless inspection of Camara's ground-floor apartment pursuant to the San Francisco Municipal Code. *Id.* at 526. Because the inspector lacked a warrant, Camara refused to allow the search. *Id.* The City responded by filing a criminal complaint against Camara, charging him with refusal to permit a lawful inspection in violation of the San Francisco Municipal Code. *Id.* at 527.

With resounding clarity, the Court expressly rejected its prior reasoning in *Frank*:

[W]e cannot agree that the [F]ourth [A]mendment interests at stake in these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the [F]ourth [A]mendment only when the individual is suspected of criminal behavior. . . . In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the [F]ourth [A]mendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the [F]ourth [A]mendment guarantees to the individual, and that the reasons put forth in *Frank v. Maryland* and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the [F]ourth [A]mendment's protections.

Camara, 387 U.S. 523, 530, 534. See also *See v. City of Seattle*, 387 U.S. 541 (1967) (companion case).

⁶⁷ Though the Court framed the required standard for issuance of an administrative search warrant in the familiar language of "probable cause," it was not the same "probable cause" required in the context of criminal investigations. *Camara*, 387 U.S. at 538-39; see also I RINGEL, *supra* note 13, § 14.2.

In determining administrative searches to be inherently less intrusive than searches designed to uncover criminal evidence, the Court held that a general "reasonableness" requirement was an acceptable alternative to the traditional probable cause requirement. *Camara*, 387 U.S. at 538.

⁶⁸ See *Katz v. United States*, 389 U.S. 347, 357 (1967) (warrantless criminal searches are per se unreasonable unless consent or exigency exists); see *supra* notes 51-52 and accompanying text.

⁶⁹ *Camara*, 387 U.S. 523, 536-37.

⁷⁰ *Id.* at 533. For example, a legitimate purpose is frustrated when the evidence sought by a search is likely to be destroyed or removed before a warrant can be obtained. See, e.g., *Schmerber v. California*, 384 U.S. 757 (1965) (waiting to get a warrant for a blood alcohol test frustrates the purpose of the search).

⁷¹ *Id.*

⁷² *Id.* at 537.

⁷³ *Id.* at 535. Significantly, the Court also noted that specific knowledge of the condition of a particular dwelling was not necessary for issuance of a warrant under the "reasonableness" test. *Id.* at 538.

⁷⁴ *Id.* at 539.

rant. Thus, as a practical matter and in light of the [F]ourth [A]mendment's requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is satisfactory reason for securing immediate entry.⁷⁵

An examination of Operation Clean Sweep under *Camara* suggests that an administrative search warrant is probably required. The purpose of the search certainly falls within the bounds of a legitimate state interest—stemming a widespread outbreak of gangs, drugs, and crimes in public housing. Additionally, the CHA conducts the searches on an area-wide basis, pursuant to statutory authority.⁷⁶ However, the focus of the inspection, including gangs, drugs, weapons, and unauthorized activities, places tenants at risk of criminal penalty. Under *Camara*, risk of criminal penalty indicates a high degree of individual intrusion and weighs heavily in favor of a warrant requirement.⁷⁷ Moreover, the CHA has neither indicated nor argued that the burden of obtaining a warrant would frustrate the purpose of the search.⁷⁸ Thus, unless the CHA can position its housing inspections under one of *Camara*'s "traditional exceptions" to the warrant requirement,⁷⁹ the warrantless searches would appear to fail *Camara*'s balancing test for reasonableness.⁸⁰

Certainly, the CHA could avoid the warrant requirement altogether if it were to obtain free and voluntary consent from each tenant it wished to search. This, however, is a highly improbable scenario. It is extremely unlikely that every tenant would voluntarily consent to a warrantless search of their premises.⁸¹

Under the exigency exception, however, a different situation unfolds. In an apparent attempt to fall within *Camara*'s emergency exception to the warrant requirement, the CHA has described these searches as "emergency housing inspections" necessary to protect the immediate safety and welfare of tenants.⁸² However, two problems exist when invoking the exigency exception for a housing sweep.

First, the CHA's stated purposes for conducting the inspections—

⁷⁵ *Id.* at 539-40.

⁷⁶ An Illinois statute authorizes the CHA to investigate into the living and housing conditions of tenants, and grants the CHA the power to enter into any building or property in order to conduct the investigation. ILL. REV. STAT. ch. 67-1/2, para. 8.1, 8.6 (1989).

⁷⁷ *Camara*, 387 U.S. at 530-33.

⁷⁸ See Defendant's Answer, *Summeries v. Chicago Hous. Auth.*, No. 88 C 10566 (N.D. Ill. filed Jan. 5, 1989).

⁷⁹ See *supra* notes 74-75 and accompanying text.

⁸⁰ For a discussion of *Camara*'s balancing test, see *supra* notes 70-73 and accompanying text.

⁸¹ See 4 LAFAYE, *supra* note 30, § 10.1(f) (discussing the inability to determine in advance which householders will not give consent); W. John Glancy, Note, *The Fourth Amendment and Housing Inspections*, 77 YALE L.J. 521, 527 (1968) (discussing the tendency of a solitary rebel with "temerity to demand a search warrant of a housing inspector").

⁸² Consent Decree, Appendix B at 1, *Summeries v. Chicago Hous. Auth.*, No. 88 C 10566 (N.D. Ill. Nov. 30, 1989).

identification and removal of unauthorized occupants, and the inspection of the physical condition of the unit⁸³—are insufficient to give rise to a claim of exigency. These are strictly administrative purposes which would not be significantly frustrated by a warrant requirement.⁸⁴

Second, even assuming that some degree of urgency does exist regarding the need to conduct these searches, the CHA housing sweeps nevertheless fail to qualify for an exigency exception to the warrant requirement. Unlike other instances in which the Court has granted exigency exceptions,⁸⁵ the CHA housing sweeps are imposed in a subjective and discretionary manner.⁸⁶ The searches are not conducted in response to specific, articulable emergencies.⁸⁷ Instead, the consent decree leaves the determination of exigent circumstances to the discretionary judgment of the CHA Director based upon subjective and generalized impression.⁸⁸ As *Camara* makes clear, the use of the exigency exception is confined to a narrow range of "carefully defined classes of cases."⁸⁹ Thus, it is unlikely that the housing sweeps would be upheld under the exigency exception.⁹⁰

⁸³ *Id.*

⁸⁴ *Camara v. Municipal Court*, 387 U.S. 523, 533 (1967) ("It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement"); 4 LAFAYE, *supra* note 30, § 10.1(f) ("[A]n emergency is very seldom likely to be present in the housing inspection context, particularly when the inspection contemplated is nothing more than part of a larger area or periodic inspection program"); Glancy, *supra* note 81, at 534 (discussing the lack of exigency relating to periodic inspection plans).

⁸⁵ See *supra* note 52 and accompanying text.

⁸⁶ See *supra* notes 23-24 and accompanying text.

⁸⁷ See *supra* notes 23-24 and accompanying text.

⁸⁸ Consent Decree, Appendix B at 1, *Summeries v. Chicago Hous. Auth.*, No. 88 C 10566 (N.D. Ill. Nov. 30, 1989).

⁸⁹ *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967); see also *Katz v. United States*, 389 U.S. 347, 357 (1967).

⁹⁰ In *Wyman v. James*, 400 U.S. 309, 317 (1971), the Supreme Court appeared to soften its stance against warrantless administrative inspections, holding that constitutional guarantees against unreasonable searches do not extend to home inspections by welfare caseworkers because such visits fail to constitute a "search" under the meaning of the Fourth Amendment.

In *Wyman*, plaintiff James, a recipient of assistance under the Aid to Families with Dependent Children (AFDC) program, received advance notification that her home would be visited by a welfare caseworker. *Id.* at 320. Under governing New York statutory and administrative provisions, consent to caseworker home visits was a requirement in order to qualify for AFDC benefits. N.Y. SOC. SERV. LAW §§ 343-363 (McKinney 1966 & Supp. 1969-1970). James refused to consent to the caseworker visit and pursuant to state regulations, her assistance was terminated. *Wyman*, 400 U.S. at 313-14.

The Court concluded that welfare visits are not "searches" because (a) the visitation is neither forced nor compelled, and (b) denial of permission does not result in a criminal violation. *Id.* at 317. The Court did not offer further elaboration as to why these two factors compelled the conclusion that a home caseworker investigation is not a search. As a result, some commentators have dismissed the *Wyman* holding as little more than a constitutional aberration. See HALL, *supra* note 13, § 11.12 ("It is difficult to determine how or whether *Wyman* will be applied in the future. *Wyman* may be nothing more than a constitutional aberration"); 4 LAFAYE, *supra* note 30, § 10.3(a) ("The *Wyman* Court is unquestionably incorrect in its assertion that a home visit is not a search"); 1 RINGEL,

III. THE DEVELOPMENT OF THE SPECIAL NEEDS DOCTRINE

In stark contrast to the narrow range of circumstances that permit an exigency exception, a newly emerging and broad ranging third exception to the warrant requirement was recently embraced by the Supreme Court. Labeled "special government needs," this exception to the warrant requirement has been acknowledged and implemented by the Court

supra note 13, § 14.4(b) (noting the dissonance between the Court's conclusion in *Wyman* and its previous cases on regulatory inspections).

The Court did, however, offer an alternative analysis in dicta, based upon the hypothetical assumption that a caseworker's home visit constituted a search. *Wyman*, 400 U.S. at 318. In this analysis, the Court maintained that even assuming a caseworker visit "does possess some of the characteristics of a search in the traditional sense," such warrantless caseworker visits are nevertheless "reasonable" searches under the Fourth Amendment. *Id.* In reaching this conclusion, the Court weighed the government's interest in conducting the AFDC inspections against the individual intrusion upon the AFDC recipient. *Id.* Factors weighing in favor of the government included a strong desire to assure that the needs of dependent children are met. *Id.* at 318. The Court also cited the paramount duty the state owes to its taxpayers in "assuring that the intended and proper objects of . . . [AFDC] assistance are the ones who benefit from the aid it dispenses." *Id.* at 319. As for the intrusion suffered by the individual, the Court pointed to the manner in which the inspections are conducted, noting that the AFDC recipient receives written notice several days in advance of the visit. *Id.* at 320. The Court also stated that the visit itself "is not forced or compelled, and that the beneficiary's denial of permission is not a criminal act." *Id.* at 317. In light of these factors, reasoned the Court, the AFDC inspections are nothing more than "a gentle means, of limited extent" which the state requires in order to achieve its important and necessary ends. *Id.* at 319.

Attempting to distinguish the *Wyman* holding from its earlier decision in *Camara*, the Court pointed to the criminal prosecution which resulted from *Camara*'s refusal to permit the search. *Id.* at 325. "In contrast," stated the Court, "Mrs. James is not being prosecuted for her refusal to permit the home visit and is not about to be so prosecuted." *Id.* at 325. Emphasizing the importance of this factual difference, the Court added that "if a statute had made her refusal a criminal offense, and if this case were one concerning her prosecution under that statute, *Camara* would have conceivable pertinency." *Id.*

The *Wyman* decision is analogous to the CHA housing sweeps. Each involves the conditioning of a government benefit upon the recipient's agreement to undergo periodic administrative searches of the home. This in turn raises issues of "unconstitutional conditions" which are further explored in Part IV. *Wyman* and the Sweeps also share a strong similarity in terms of the government's interest in conducting the searches. Just as the state of New York claimed a paramount interest in meeting the needs of its dependent children and assuring the taxpayers that the intended beneficiaries are the ones who actually receive the assistance, *Wyman*, 400 U.S. at 318-19, the CHA could fashion a similarly compelling argument. Indeed, in light of conditions which threaten the immediate physical well-being of its tenants, the CHA could likely establish an even stronger governmental interest than existed in *Wyman*. Finally, in both *Wyman* and the Sweeps, the government is acting pursuant to statutory provisions authorizing the home searches.

Despite these strong similarities, a crucial factual difference exists between *Wyman* and the CHA housing inspections. In *Wyman*, the searches were neither forced nor compelled. *Wyman*, 400 U.S. at 317. If the AFDC recipient objected to the search, it did not take place. *Id.* at 317-18. Under the Sweeps, however, the tenant has no option of refusal. The search takes place regardless of consent. See *supra* notes 4-11 and accompanying text. Thus, in terms of individual intrusion, the CHA housing inspections appear to be far more invasive than the AFDC visits in *Wyman*. Consequently, *Wyman* is of limited relevance in determining the constitutionality of the warrantless housing sweeps.

only within the past seven years.⁹¹ The roots of the special needs doctrine, however, emanate directly from *Camara*.⁹²

A. The Balancing Test Takes Root

In *Terry v. Ohio*,⁹³ decided the year following *Camara*, the Court appeared to suggest that its newly crafted "balancing test of reasonableness" was not strictly confined to the administrative context, but applied to certain criminal searches as well.⁹⁴ In *Terry*, the Court relied on the *Camara* balancing test to uphold a police officer's warrantless "stop and frisk" search of three individuals.⁹⁵

Terry involved a police detective who observed a trio of men loitering on a street corner.⁹⁶ Although the officer could not specifically explain why his suspicions were aroused, he nevertheless had a feeling that the three men might be planning a robbery.⁹⁷ The detective approached the trio, identified himself and proceeded to frisk them.⁹⁸

Since the search was intended to gather criminal evidence, and was conducted without consent and without any apparent sign of exigency, a warrant would appear to be required under the Fourth Amendment.⁹⁹ Yet the Court held that such "limited search[es]"¹⁰⁰ do not require warrants, but need only adhere to the amendment's balancing test for reasonableness.¹⁰¹

The Court drew a fine line in distinguishing the pat-down search as "something less than a 'full' search."¹⁰² In the Court's view, because the officer merely patted down the outer clothing of the suspects, the pat-down search did not rise to the level of a "full search."¹⁰³ Applying a balancing test for reasonableness, the Court found that the social and governmental interest in crime prevention outweighed the individual in-

⁹¹ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

⁹² See Silas J. Wasserstrom, *The Court's Turn Toward a General Reasonableness Interpretation of the Fourth Amendment*, 27 AM. CRIM. L. REV., 119, 126-27 (1989).

⁹³ 392 U.S. 1 (1968).

⁹⁴ *Id.* at 20-21.

⁹⁵ *Id.*

⁹⁶ *Id.* at 5.

⁹⁷ *Id.* at 5-6.

⁹⁸ *Id.* at 6-7. Two of the three men were found to be carrying firearms. *Id.* at 7. The detective, who had thirty-nine years experience as a police officer, testified at the trial that he frisked the men because, "they didn't look right to me." *Id.* at 5.

⁹⁹ See *supra* note 52 and accompanying text.

¹⁰⁰ *Terry*, 392 U.S. at 25-26.

¹⁰¹ The Court held that "there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.'" *Id.* at 21 (quoting *Camara v. Municipal Court*, 387 U.S. 523, 536-37 (1967)).

¹⁰² *Id.* at 26.

¹⁰³ *Id.* at 29-30. The Court noted that the officer "did not place his hands in their pockets or under the outer surface of their garments until he had felt weapons, and then he merely reached for and removed the guns." *Id.*

trusion caused by the search.¹⁰⁴ Thus, the Court held that the warrantless criminal search remained "reasonable."¹⁰⁵

In an attempt to determine the proper balance between the competing interests, the Court fashioned and applied the following two-step inquiry of reasonableness: (1) whether the action was "justified at its inception;"¹⁰⁶ and (2) whether the search as actually conducted was "reasonably related in scope to the circumstances which justified the interference in the first place."¹⁰⁷ Subsequently, the Court has used this twofold inquiry, known as the "reasonableness under the circumstances" standard,¹⁰⁸ to uphold full-scale searches and seizures without a warrant in cases where the government has acted pursuant to some pressing special need.¹⁰⁹

B. Supervision: A Special Government Need

In *New Jersey v. T.L.O.*,¹¹⁰ the Court invoked the *Terry* "reasonableness under the circumstances" standard to uphold a warrantless search

¹⁰⁴ *Id.* at 30-31.

¹⁰⁵ *Id.* at 31. The contextual nature of the *Terry* decision is particularly interesting. *Camara* provided the basis for *Terry*'s balancing test. *Terry*, 392 U.S. at 21. Yet *Camara* was strictly an administrative inspection, and the *Camara* balancing test was constructed and justified solely in terms of administrative searches. *Camara v. Municipal Court*, 387 U.S. 523, 534 (1967). *Terry*, on the other hand, involved an exclusively criminal search. *Terry*, 392 U.S. at 27. Implicitly, this seems to suggest that, at least in the case of "stop and frisk" searches, the Court does not recognize a functional difference in the standard of reasonableness to be applied in the administrative versus criminal context. The difficulty with this view is that *Camara* distinctly qualified its balancing test for reasonableness within the context of broad, area-wide inspections which are "neither personal in nature nor aimed at the discovery of evidence of crime . . ." *Camara*, 387 U.S. at 537. Indeed, it was the very fact that criminal charges could result from the housing code violations that prompted the *Camara* Court to impose a warrant requirement for the administrative search in question. *Id.* at 533.

An additional irony exists in the overall manner in which the *Terry* Court applies *Camara*'s balancing test. In *Camara*, the Court established the balancing test as a mechanism for extending Fourth Amendment protections to administrative inspections. *Camara*, 387 U.S. at 538-40. Prior to this, the Court had maintained that the Fourth Amendment did not apply to administrative searches. *Frank v. Maryland*, 359 U.S. 360, 367 (1959). Thus, the *Camara* Court's balancing test of reasonableness was a means of heightening the protections of the Fourth Amendment. See *Camara*, 387 U.S. at 534. In contrast, *Terry* uses the same balancing test as a tool for reducing Fourth Amendment protections, and widening the circumstances under which the government can conduct warrantless searches. See *Terry*, 392 U.S. at 30.

¹⁰⁶ *Terry*, 392 U.S. at 20.

¹⁰⁷ *Id.*

¹⁰⁸ See, e.g., *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985); *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Warden v. Hayden*, 387 U.S. 294, 310 (1967); *Preston v. United States*, 376 U.S. 364, 367-68 (1964); *Agnello v. United States*, 269 U.S. 20, 30-31 (1925).

¹⁰⁹ See, e.g., *Michigan Dep't of State Police v. Sitz*, 110 S. Ct. 2481 (1990) (warrantless seizure pursuant to highway sobriety checkpoint); *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (warrantless search of probationer's home); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (warrantless search of student's purse by school official).

¹¹⁰ 469 U.S. 325 (1985).

of a student by a school official.¹¹¹ *T.L.O.* involved a high school teacher who discovered a student smoking cigarettes in a school restroom.¹¹² The student was escorted to the vice principal's office whereupon her purse was searched for cigarettes.¹¹³ A marijuana pipe was found, along with a small amount of marijuana.¹¹⁴

Applying *Terry*'s twofold test for reasonableness, the Court maintained that the overall circumstances of the incident justified the warrantless search.¹¹⁵ In reaching this conclusion, the Court pointed to "the difficulty of maintaining discipline in the public schools"¹¹⁶ and the prevalence of "drug use and violent crime in the schools."¹¹⁷ The educational context in which the search transpired weighed heavily in this balance,¹¹⁸ as did the need to maintain a supervisory relationship between the school and the student.¹¹⁹ Ultimately, the Court embraced "the dictates of reason and common sense"¹²⁰ to hold that the "special needs" of the school outweighed the student's expectations of privacy.¹²¹

In reaching this conclusion, the Court found that the special governmental interest in preserving order in the schools "require[d] some easing of the restrictions to which searches by public authorities are ordinarily subject."¹²² Significantly, the Court added that individualized suspicion is unnecessary in order for a warrantless "special needs" search to remain "reasonable," stating, "the Fourth Amendment imposes no irreducible requirement of such suspicion."¹²³

¹¹¹ *Id.* at 341-42.

¹¹² *Id.* at 328.

¹¹³ *Id.* The assistant vice principal found a package of cigarettes along with some cigarette rolling papers in the student's purse. *Id.* After taking these items from the student, the assistant vice principal conducted another search of the purse in an effort to uncover criminal evidence—possession of marijuana. *Id.*

Interestingly, the assistant vice principal had no "official" authority to conduct the search. Possession of cigarettes by a student was not a violation of any existing rule or policy of the school. *Id.* at 348 n.12.

¹¹⁴ *Id.* at 328.

¹¹⁵ *Id.* at 343-47.

¹¹⁶ *Id.* at 338.

¹¹⁷ *Id.* at 339.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 339-40.

¹²⁰ *Id.* at 343.

¹²¹ *Id.*

One might argue that *T.L.O.* does not apply to CHA Sweeps because the *T.L.O.* student had a diminished expectation of privacy on school grounds. However, the Court expressly rejected the State's argument that students enjoy a diminished expectation of privacy within the school. *T.L.O.*, 469 U.S. at 337-39. Indeed, the Court reiterated that "even a limited search of the person is a substantial invasion of privacy." *Id.* at 337. "A search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy." *Id.* at 337-38.

¹²² *Id.* at 340 (emphasis added).

¹²³ *Id.* at 342 n.8 (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-61 (1976)).

T.L.O. seems to make clear what *Terry* implied: in certain fact-dependent situations, the government will act "reasonably" when conducting warrantless searches without consent or exigency, regardless of whether those searches occur within a criminal or an administrative context.¹²⁴ *Camara's* balancing test for reasonableness, as applied by *Terry* and *T.L.O.*, appears to be the accepted standard by which the Court will measure any such warrantless inspection.

C. Special Government Needs and the Home

Only two years after *T.L.O.*, in *Griffin v. Wisconsin*,¹²⁵ the Court used the special needs doctrine to uphold a warrantless search of a probationer's home by state parole officers.¹²⁶ Citing *T.L.O.* as precedent, the Court declared the state's special need to maintain an effective probation system "may justify departures from the usual warrant and probable cause requirements."¹²⁷ The Court reasoned that the state's probationary system presented "special needs beyond normal law enforcement"¹²⁸ which made the warrant requirement both impracticable and detrimental.¹²⁹

Griffin marks a significant extension of the special needs doctrine. In *Terry*, the Court allowed the balancing test for reasonableness to displace the warrant requirement based upon the view that the "stop and frisk" search was a lesser Fourth Amendment intrusion.¹³⁰ Yet in *Griffin*, the Court allowed the same balancing test to be used to justify the warrantless search of a home.¹³¹ Such a search can hardly be dismissed as a "lesser intrusion."¹³² Fourth Amendment protections traditionally have reached their zenith in the context of the home.¹³³ *Camara* referred to administrative searches of the home as "significant intrusions upon the

¹²⁴ Though the search in *T.L.O.* ultimately focused on discovery of criminal evidence (possession of marijuana), the Court nevertheless held the search to be administrative in nature. *Id.* at 340. The Court maintained that because the initial motivation to conduct the search was administrative in nature, the entire search (including the subsequent inspection of the purse for marijuana) remained administrative. *Id.* at 343-48.

¹²⁵ 483 U.S. 868 (1987).

¹²⁶ *Id.* at 879-80.

¹²⁷ *Id.* at 873-74. As in *T.L.O.*, the Court again suggested that individualized suspicion was not necessary to justify a warrantless administrative search, stating "[i]t is irrelevant whether the probation authorities relied upon any peculiar knowledge which they possessed of the petitioner in deciding to conduct the present search." *Griffin*, 483 U.S. at 879 n.6.

¹²⁸ *Id.* at 873-74.

¹²⁹ *Id.* at 876 ("[T]he special needs of the Wisconsin's probation system make the warrant requirement impracticable A warrant requirement would interfere to an appreciable degree with the probation system").

¹³⁰ *Terry v. Ohio*, 392 U.S. 1, 26 (1968).

¹³¹ *Griffin*, 483 U.S. at 873.

¹³² See *supra* notes 31-36 and accompanying text; see *infra* notes 162-63 and accompanying text.

¹³³ See *infra* notes 162-63 and accompanying text.

interests protected by the Fourth Amendment,"¹³⁴ adding that every citizen possesses "a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority."¹³⁵ The *Griffin* decision appears to ignore *Camara's* declarations of heightened Fourth Amendment protections in the home, and in doing so, marks the first time the Court has upheld as "reasonable" the warrantless entry and search of a home without probable cause.¹³⁶

D. Effectiveness and the Special Needs Doctrine

The Court's latest consideration of the special needs doctrine involved the warrantless search and seizure of automobiles pursuant to a state highway sobriety checkpoint program.¹³⁷ In *Michigan State Police v. Sitz*,¹³⁸ the Court upheld the constitutionality of the checkpoint program,¹³⁹ applying its flexible test of reasonableness.¹⁴⁰ The Court thus balanced the state's interest in combating drunken driving against the degree of intrusion on individual motorists.¹⁴¹

After balancing the competing interests at stake, the Court determined that the sobriety checkpoint program represented a special need of the government beyond that of normal law enforcement,¹⁴² and was therefore exempt from the warrant requirement.¹⁴³ However, unlike the earlier special needs balancing tests of *T.L.O.* and *Griffin*, the *Sitz* Court

¹³⁴ *Camara v. Municipal Court*, 387 U.S. 523, 534 (1967).

¹³⁵ *Id.* at 531.

¹³⁶ *Wasserstrom*, *supra* note 92, at 128.

One might argue that *Griffin* does not apply to the constitutionality of CHA Sweeps because a probationer has a diminished expectation of privacy. See *infra* notes 164-67 and accompanying text. The Court did note that the "conditional" nature of a probationer's liberty depended on proper adherence to special regulations. *Griffin*, 483 U.S. at 874. However, at no point did the Court find a probationer's legitimate expectations of privacy to be any less than that of a nonprobationer. Indeed, the Court expressly stated, "A probationer's home, like anyone else's, is protected by the [F]ourth [A]mendment's requirement that searches be 'reasonable'." *Id.* at 873. Thus, the Court's decision to uphold the warrantless search of *Griffin's* home was not based on any theory of diminished expectations of privacy. Rather, it was founded on the "special need" of the state to operate an effective probationary system. *Id.* at 875-76. "We think it clear that the special needs of Wisconsin's probation system make the warrant requirement impracticable . . ." *Id.* at 876.

¹³⁷ *Michigan Dep't of State Police v. Sitz*, 110 S. Ct. 2481 (1990).

¹³⁸ *Id.*

¹³⁹ *Id.* at 2488.

¹⁴⁰ *Id.* at 2485-88.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 2488. The Court concluded that because the checkpoint stops were not random, they constituted only a slight intrusion on each individual driver. *Id.* at 2486. Under the checkpoint program, police officers stop every vehicle approaching the checkpoint. *Id.* Thus, the Court reasoned that "the motorist can see that other vehicles are being stopped . . . he is much less likely to be frightened or annoyed by the intrusion." *Id.* at 2486-87 (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976)).

considered an additional factor: the effectiveness of the program.¹⁴⁴

The Court defined effectiveness as "the degree to which the seizure advances the public interest."¹⁴⁵ Although this language implies that the special needs doctrine requires some connection between the means used and the desired ends, it remains unclear how substantial this nexus must be. In *Sitz*, the Court deferred to empirical data which showed that 1.5% of all drivers that passed through the sobriety checkpoints were alcohol impaired. According to the Court, these figures were sufficiently compelling to warrant the conclusion that the sobriety checkpoints were "effective" and thus constitutional.¹⁴⁶

IV. WARRANTLESS HOUSING SWEEPS AND THE SPECIAL NEEDS DOCTRINE

An analysis of the CHA housing sweeps under the special needs doctrine indicates that the warrantless searches should withstand judicial scrutiny. Under *Griffin* and *T.L.O.*, the CHA need only establish that a special need exists, beyond that of normal law enforcement.¹⁴⁷ The overwhelming problem of gangs, drugs, and crimes in public housing buildings should suffice to establish this special need. The Court already has acknowledged a special governmental need to preserve order in the schools;¹⁴⁸ to maintain effective probationary programs;¹⁴⁹ and to establish safety on the highways.¹⁵⁰ It is equally likely that the Court would consider the maintenance of a safe and drug-free public housing environment to constitute a special governmental need.

A. "Reasonable" Standards

Once the government shelters itself beneath the special needs exception, it need only adhere to standards which in retrospect could be judged reasonable under the circumstances.¹⁵¹ *Griffin* indicates that the Court is prepared to uphold warrantless intrusions into the home pursuant to a special government need.¹⁵² Under *T.L.O.* and *Sitz*, the Court

did not require the government to justify its special needs searches with individualized suspicions of wrongdoing.¹⁵³ Thus, under the special needs doctrine, the CHA is not required to justify its searches with a showing of probable cause regarding individual tenants.

Although *Sitz* stands for the proposition that the special needs doctrine requires an empirical showing of effectiveness regarding the means used to achieve the special governmental needs,¹⁵⁴ this requirement should pose little problem for the CHA. In *Sitz* the Court applied a very lenient test for effectiveness.¹⁵⁵ Less than two out of every one hundred drivers stopped at the checkpoints were found to be alcohol impaired. The Court held that these figures were sufficient evidence of the effectiveness of the checkpoint program.¹⁵⁶ Comparatively, Secretary of HUD, Jack Kemp has cited figures indicating that the CHA housing sweeps reduced overall crime at one CHA building by thirty-two percent.¹⁵⁷ Thus, in similar fashion the housing sweeps appear to be an "effective" means of achieving special governmental needs.

T.L.O., *Griffin*, and *Sitz* theoretically may be distinguished on the basis that all three cases involved situations in which the government acted in a supervisory capacity.¹⁵⁸ In contrast, the Sweeps of public housing might be viewed as existing within the pre-established context of a landlord-tenant relationship. However, to view the government's role in public housing as merely that of a landlord is a distortion. The CHA operates under the legislative mandates of the State of Illinois.¹⁵⁹ Its responsibilities and duties are statutorily prescribed, and include overall administration and supervision of the public housing system for the City of Chicago.¹⁶⁰ Moreover, the CHA is statutorily charged with maintaining and supervising a decent, safe, and sanitary public housing environ-

nevertheless maintained that the special needs balancing test was an appropriate substitute for the warrant requirement. *Coler*, 603 F. Supp. at 1553-56, 1558-59. The court found the state's interests in ensuring the welfare of the child, along with its desire to stabilize the home environment and preserve family life, outweighed the resulting intrusion on family privacy. *Id.* at 1558. Thus, the court ruled that the warrantless searches were "reasonable" under the Fourth Amendment. *Id.* at 1558-59.

¹⁵³ In *T.L.O.*, the Court specifically stated that individualized suspicion of wrongdoing was unnecessary. See *supra* note 123 and accompanying text. In *Sitz*, the sobriety checkpoint inspections took place without regard to the condition of the individual drivers. All vehicles approaching the designate checkpoint site were required to submit to the inspection. *Sitz*, 110 S. Ct. at 2484.

¹⁵⁴ *Sitz*, 110 S. Ct. at 2487-88.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ See Kemp, *supra* note 27, at A19.

¹⁵⁸ In *T.L.O.*, the Court referred to the need to maintain the supervisory relationship between school and student. *New Jersey v. T.L.O.*, 469 U.S. 325, 339 (1985). In *Griffin*, the government was acting pursuant to the statutory mandates of its probationary program. *Griffin v. Wisconsin*, 483 U.S. 868, 870-71 (1987). *Sitz* involved policing of the state's highways—a traditional supervisory capacity. *Sitz*, 110 S. Ct. at 2484.

¹⁵⁹ ILL. REV. STAT. ch. 67½, para. 2, 3 (1989).

¹⁶⁰ Chapter 67½, para. 3.

¹⁴⁴ *Sitz*, 110 S. Ct. at 2487-88.

¹⁴⁵ *Id.* at 2487 (quoting *Brown v. Texas*, 443 U.S. 447, 51 (1979)).

¹⁴⁶ *Id.* at 2487-88. The Court also made reference to expert witness testimony given at the trial court level, which indicated that sobriety checkpoints established by other states generated an arrest rate of approximately one percent. *Id.*

¹⁴⁷ See *supra* notes 110-36 and accompanying text.

¹⁴⁸ *New Jersey v. T.L.O.*, 469 U.S. 325, 352 (1985) (Blackmun, J., concurring).

¹⁴⁹ *Griffin v. Wisconsin*, 483 U.S. 868, 873-74 (1987).

¹⁵⁰ *Sitz*, 110 S. Ct. at 2485 (1990).

¹⁵¹ See *supra* notes 92-124 and accompanying text.

¹⁵² The United States Court of Appeals for the Seventh Circuit has also applied the special needs doctrine to uphold a warrantless home search by state officials pursuant to a child abuse investigation. *Darryl H. v. Coler*, 801 F.2d 893 (7th Cir. 1986), *aff'd* E.Z. v. Coler, 603 F. Supp. 1546 (N.D. Ill. 1985).

While conceding that such searches do constitute "significant intrusions," the district court

ment.¹⁶¹ The housing sweeps undertaken by the CHA would thus appear to fall within a supervisory capacity of the government similar to that which existed in *T.L.O.*, *Griffin*, and *Sitz*.

B. Sanctity of the Home

Although Supreme Court precedent under the special needs doctrine supports an argument in favor of the constitutionality of warrantless public housing sweeps, an appealing counter-argument nevertheless exists. The Supreme Court has recognized on multiple occasions that expectations of privacy are greatest within an individual's own home.¹⁶² Thus, the special needs exception and its flexible reasonableness test would seem particularly inappropriate in the context of administrative home searches.¹⁶³

In light of this "sanctity of the home" issue, the Court's approval in *Griffin* of a warrantless home search under the special needs exception might be explained through a narrow factual interpretation. Because *Griffin* himself was a probationer, he arguably was entitled to a lesser-degree of Fourth Amendment protection.¹⁶⁴ Indeed, the Court suggested that parolees do not enjoy "the absolute liberty to which every citizen is entitled."¹⁶⁵

The difficulty with distinguishing *Griffin* on this basis is that the Court's decision did not turn on the issue of constitutional rights of parolees.¹⁶⁶ Rather, the special needs exception granted by the Court was predicated on the state's special interest in effectively achieving the supervisory goals of its probationary system.¹⁶⁷ Thus, the analogy between the Court's approval of warrantless administrative searches of the home in *Griffin*, and the warrantless home searches conducted by the CHA is not a strained one. In each case, the state acts in a supervisory capacity, pursuant to legitimate governmental interest and specified statutory guidelines. One might even argue that the warrantless home searches

¹⁶¹ Chapter 67½, para. 8.1.

¹⁶² See, e.g., *Griffin*, 483 U.S. at 883 (Blackmun, J., dissenting) (home is "the place that traditionally has been regarded as the center of a person's private life, the bastion in which one has a legitimate expectation of privacy protected by the [F]ourth [A]mendment"); *Payton v. New York*, 445 U.S. 573, 589 (1984) ("The [F]ourth [A]mendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . ."); *Silverman v. United States*, 365 U.S. 505, 511 (1961) (the Fourth Amendment stands at the core of "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion").

¹⁶³ The special needs doctrine is "inapposite to a search of the home." *Griffin*, 483 U.S. at 884 (Blackmun, J., dissenting).

¹⁶⁴ *Id.* at 874.

¹⁶⁵ *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)).

¹⁶⁶ The Court expressly refused to engage in any assessment of how probationer's constitutional rights differed from that of other citizens. *Id.* at 880.

¹⁶⁷ *Id.* at 875-76.

conducted under the Sweeps are less-intrusive than the search in *Griffin*. In *Griffin*, the government searched a privately owned residence. In contrast, the CHA owns the very property it seeks to search.¹⁶⁸

C. Social Policy Considerations

The policy arguments over public housing sweeps are powerful and multi-dimensional. Constitutional scholars contend that such measures are part of a gradual erosion of civil liberties and constitutional principles.¹⁶⁹ Civil libertarians have likened the crisis atmosphere surrounding

¹⁶⁸ To conclude that the government can conduct a search in any manner it chooses merely because it owns the buildings being searched is to overlook the fundamental principle of "unconstitutional conditions." "Unconstitutional conditions" refers to "[t]he right not to be required to waive the exercise of a constitutional right in order to receive a privilege or benefit." PAUL BREST & SANFORD LEVINSON, *PROCESSES OF CONSTITUTIONAL DECISIONMAKING* 743 (2d ed. 1983).

In *Wyman*, the Court upheld the termination of James' welfare benefits due to her refusal to submit to a warrantless search of her home. *Wyman v. James*, 400 U.S. 309, 326 (1971). The Court insisted that no constitutional issues were raised by conditioning AFDC benefits upon acquiescence to warrantless home searches. "The choice is entirely hers," observed the Court, "nothing of constitutional magnitude is involved." *Id.* at 324.

As pointed out in dissent, the Court's conclusion seems to directly conflict with the doctrine of "unconstitutional conditions." *Id.* at 327-28 (Douglas, J., dissenting). The Court, however, insisted that James was not required to waive her constitutional rights in order to continue receiving her AFDC benefits. *Id.* at 326. Rather, she simply had to submit to what the Court ultimately termed as a constitutional caseworker visit that "violate[d] no right guaranteed by the Fourth Amendment." *Id.* Thus, according to the Court, the state never attempted to condition a benefit upon an unconstitutional act. *Id.*

This same analysis applies equally in the case of public housing searches. The "unconstitutional conditions" issue is salient only if the searches are found to violate the Fourth Amendment. If, however, the public housing searches are deemed "reasonable" under the Fourth Amendment, no unconstitutional act will have occurred, and conditioning tenancy upon submission to these searches would appear to be entirely permissible.

¹⁶⁹ One Fourth Amendment commentator has stated:

Though many may not have noticed, the [F]ourth [A]mendment is under siege. The Supreme Court is undermining this cherished liberty by its narrow interpretation of the provision. Recognizing the mood of the Court, and under political pressure to do something about rising drug and crime statistics, some police officials have followed the Court's lead by undertaking measures that disregard fourth amendment freedoms.

M. Tracy MacLin, *The Fourth Amendment is Under Attack—Does Anybody Care?*, 17 CORNELL L. & 7 (1990). See also Mark A. Leslie, *The Graduation of Fourth Amendment Doctrine in the Context of Street Detentions: People v. DeBour*, 38 OHIO ST. L.J. 409, 436 (1977) ("[D]ivergence from traditional [F]ourth [A]mendment principles and doctrines unreasonably endangers privacy-security rights historically valued as essential to the very existence of a free society"); Strossen, *supra* note 13, at 1174 ("In recent terms, Supreme Court decisions have steadily reduced the scope of the privacy and liberty rights that the [F]ourth [A]mendment protects"); Wasserstrom, *supra* note 41, at 257.

Professor Mark A.R. Kleiman observes that "American citizens have clearly given up very substantial rights in the context of illicit drug dealing and law enforcement." Dawn M. Weynich, *Drug War Alarms Civil Libertarians*, WASH. TIMES, Sept. 5, 1990, at A1. Professor Yale Kamisar contends that the government is "doing a better job winning the war against the Fourth Amendment than winning the war against drugs." Jack Kelley, *Drug Tactics Raise Rights Fears*, USA TODAY, May 17, 1990, at 3A; see also Thomas F. Liotti, *War on Drugs: At What Cost to Our Liberty?*, 203 N.Y. L.J. 2 ("The forecast is not good for our civil rights and liberties. It is predicted that the War

public housing sweeps to the Nuremberg Codes of 1933 or the apartheid laws of South Africa.¹⁷⁰

In defense of housing sweeps, former CHA Director Vince Lane asserted that "[w]e are not infringing on rights; we are restoring rights. We are restoring our residents' rights to a safe and decent environment."¹⁷¹ Lane noted the strong support he received from CHA tenants who favored continued use of public housing sweeps: "I have received requests for sweeps from every development in the city. The people want it."¹⁷² Indeed, the tenant support for Sweeps has been extremely strong, with few dissenters among the residents. The resident of a recently swept public housing building offered this description of life before and after the CHA searches: "There used to be hundreds of people standing around the lobby, asking me if I wanted to buy drugs. . . . All night, there was no peace. I was afraid to let my children go downstairs. . . . Now it's quieter, there's less shooting, and less people are getting murdered."¹⁷³

One aspect of the CHA housing sweeps has become increasingly apparent to those on both sides of this issue: buildings that have been swept by the CHA are safer places to live.¹⁷⁴ Police statistics show that the Sweeps have had a profound effect on crime.¹⁷⁵ Typically, following the sweep of a high-rise building, incidents of violent crime within that structure will fall by fifty percent or more.¹⁷⁶ Thus, public housing sweeps appear to be a capable means of meeting the special needs of the CHA—

on Drugs . . . will eventually erode the [C]onstitution in favor of some higher purpose which they claim takes precedence over individual liberties.").

¹⁷⁰ See Steven Wisotsky, *Crackdown: The Emerging "Drug Exception" to the Bill of Rights*, 38 HASTINGS L.J. 889, 910 (1987). Eric Sterling, president of the Criminal Justice Policy Foundation in Washington, D.C., states that "fear of drugs generates political support for extraordinary measures. Courts are more willing to make changes in [F]ourth [A]mendment protections in the context of drug cases." David G. Evans, *How Many Liberties Are We Losing?*, 17 HUM. RTS. Q. 14, at 14-15 (Summer 1990); see also Lee A. Schaffer, Casenote, *United States v. Markham: The Attack on the Drug War Becomes an Attack on the Fourth Amendment*, 22 AKRON L. REV. 445, 454 (1989) (arguing that constitutional rights have fallen victim to prevailing social policies).

Professor James Fyfe compared public housing sweeps to the "[r]ed scares" early in the century and the incarceration of Japanese-Americans in World War II, all of which are now seen as having violated the civil rights of the victims." Mydans, *supra* note 5, at A1.

¹⁷¹ Mydans, *supra* note 5, at A1.

¹⁷² Sharon Cohen, *When Right Goes Wrong: Aggressive War On Drugs Hits Home for the Guilty and Innocent Alike*, L.A. TIMES, June 11, 1989, at 2.

¹⁷³ Stein, *supra* note 3, at 7.

¹⁷⁴ Chicago Police Superintendent LeRoy Martin has stated that buildings which have been swept by the CHA have shown reductions in violent crime by as great as 50%. *Eyewitness Forum* (WLS-Ch.7 (Chicago) television broadcast, Jan. 6, 1991).

¹⁷⁵ Police statistics indicate that one building swept by the CHA (2822 South Calumet) experienced a 61% drop in violent crime in the year following the sweep. Juffer, *supra* note 5, at 18. Another CHA building (Rockwell Gardens) experienced a 32% drop in crime the year following its initial sweep. Sheri T. Prasso, *Housing Boss Squeezing Thugs Out of Projects*, L.A. TIMES, Aug. 27, 1989, at 4. Similarly, Secretary of HUD, Jack Kemp, points to the effectiveness of Operation Clean Sweep, citing crime reduction figures in excess of 30%. Kemp, *supra* note 27, at A19.

¹⁷⁶ Police figures indicate that reports of shootings, thefts, and robberies are down by 50% or

needs which were beyond the capability of normal law enforcement.¹⁷⁷

That a majority of CHA tenants have embraced the CHA's warrantless searches as a necessary measure of ensuring the safety of their buildings is not surprising.¹⁷⁸ Indeed, as a recent Washington Post-ABC News poll demonstrated, a majority of Americans are willing to sacrifice some of their constitutional rights in exchange for reductions in drugs and related crime.¹⁷⁹ More than half of the poll's respondents stated that they would favor warrantless home searches of suspected drug dealers even if it meant that their own homes were searched in the process.¹⁸⁰

Some commentators called the results of this survey "disturbing," arguing that the war on drugs need not be waged at the expense of our constitutional rights.¹⁸¹ They accuse politicians of using the Bill of

more in buildings which have been swept. Stein, *supra* note 3 at 7; see *supra* notes 173-75 and accompanying text.

¹⁷⁷ See *supra* notes 110-61 and accompanying text.

¹⁷⁸ Professor Laurence H. Tribe explained this phenomenon by stating that "[w]hole communities in public housing, because they see themselves as victims of drug violence, willingly invite the police to cut procedural corners. . . ." Joseph B. Treaster, *Is the Fight On Drugs Eroding Civil Rights?*, N.Y. TIMES, May 6, 1990, at 5. Professor Gary Orfield, a public policy specialist at the University of Chicago, pointed to "the social decay" and "the frustration of tenants" as explanation for heavy tenant endorsement of the warrantless searches. Prasso, *supra* note 175, at 4. "It's a lot better than doing nothing," he added. *Id.*

Secretary of HUD, Jack Kemp, offered the following story as typical of the strong tenant support for the CHA housing sweeps:

On my tour of Rockwell Gardens, I asked one of the tenant leaders if she thought her rights had been violated by the Chicago Housing Authority resolve. She indicated that she never had any rights prior to the sweep, as the elderly and single-parent mothers in the building lived in a state of perpetual fear and were forced to pay gangs "for protection" when they used the elevators. Only since Operation Clean Sweep could the residents enjoy their rights to life and the pursuit of happiness in a drug-free community.

Kemp, *supra* note 27, at A19.

¹⁷⁹ 62% of the respondents stated that they would be "willing to give up 'a few of the freedoms we have in this country' to significantly reduce illegal drug use." Richard Morin, *Many in Poll Say Bush Plan Is Not Stringent Enough, Mandatory Drug Tests, Searches Backed*, WASH. POST, Sept. 8, 1989, at A1.

¹⁸⁰ *Id.*

¹⁸¹ Loren Seigel, national director for the ACLU's public education program on drugs and civil liberties, stated the following:

[M]artial law has been declared in our cities, with police raids, curfews, and warrantless searches being the order of the day. At the same time, almost nothing is being done to ameliorate the grinding poverty and despair that are the causes of much of the drug abuse that the government claims it wants to end.

Evans, *supra* note 170, at 15.

"[T]he real hope for reducing drugs and violence is found in dealing with the poverty of spirit and opportunity that produces such crime. Encouraging dragnet police procedures is no way to lift the spirit of the underprivileged." Machin, *supra* note 169, at 9; "It behooves us . . . to educate our fellow citizens so they can 'fight the war' without having our constitutionally protected rights become a casualty of the battle." Samuel Dash & Sharon R. Guretsky, *We Don't Need to Give Up Our Constitutional Protections to Fight the War on Drugs*, CRIM. JUST. Q., Spring, 1990, at 3. "Lamentably, the war on drugs has simultaneously become a war on the Constitution. In an atmosphere that approaches national hysteria over drug and crime problems, the public and the organized bar seem not to understand or appreciate the clear and present danger to long cherished constitutional and

Rights "as a scapegoat for their own failure to address the crime problem honestly,"¹⁸² and warn that unless leaders "begin to shape public opinion instead of pandering to it, the real casualty of our war on drugs will be the Bill of Rights."¹⁸³

Meanwhile, law enforcement authorities point to the spiraling drug problem and assert that procedural constraints often impede¹⁸⁴ their ability to effectively combat drug-related crime.¹⁸⁵ Consequently, they consider measures like the CHA's warrantless housing sweeps to represent an effective means of achieving special law enforcement needs.¹⁸⁶

V. CONCLUSION

The CHA's warrantless housing sweeps do not appear to violate the Fourth Amendment. Because the Sweeps take place pursuant to a special governmental need beyond the capability of normal law enforcement, and occur within the specified context of a supervisory relationship, the warrantless home searches fit well within the "special needs" exception to the warrant requirement. Although constitutional scholars and civil libertarians have expressed grave concern over such warrantless inspections, the Court has recently indicated that it is prepared to uphold the constitutionality of warrantless searches (including warrantless searches of the home) which take place pursuant to a well-articulated, special gov-

civil rights." Neal R. Sonnett, *War on Drugs—or the Constitution?*, TRIAL, Apr. 1990, at 24. Professor Burt Neuborne questions Fourth Amendment incursions by asking "[w]hat price are we willing to pay to fight the drug problem? Do we have a right to mortgage our legal future?" Kelley, *supra* note 169, at 3A. "The failure of our War on Drugs [is] that we are lashing out against the enemy without considering priorities, resources and constitutional impact." Iioti, *supra* note 169, at 2.

¹⁸² Dash & Goretsky, *supra* note 181, at 3.

¹⁸³ Sonnett, *supra* note 181, at 27.

¹⁸⁴ But see, Joseph Tybor & Mark Eissman, *Illegal Evidence Destroys Few Cases—Justice in Chicago*, CHI. TRIB., Jan. 5, 1986, at 1.

Fewer than 1% of Chicago defendants accused of violent crimes have their cases thrown out because the evidence was illegally obtained. . . . [T]he exclusionary rule plays a significant role only in drug cases where violence is not involved. In 13% of such cases, evidence is excluded. The rule has little impact on other kinds of cases.

Id.

¹⁸⁵ In response to criticisms that drug enforcement measures are trampling on citizens' rights, former drug czar William Bennett pointed to what he perceives as a double-standard, stating that "if [wide-spread, drug related crime] were going on in the suburbs, residents would raise holy hell and say, 'Call in the police!' But if we're talking about the inner city, people are saying, 'Well, this sounds repressive.'" Richard Lacayo, *A Threat to Freedom? Civil Liberties Could be a Casualty of Bush's War on Drugs*, TIME, Sept. 18, 1989, at 28. Federal District Judge Robert Bonner of the Central District of California similarly maintains that fears over rampant police intrusions are greatly distorted. *Id.* Jeff Eisenach, a visiting fellow on drug policy at the Heritage Foundation, stated that "libertarians are throwing up a lot of straw men, saying they imagine police coming to our doors. Despite the hysterical talk, I don't see any substantive way in which we've infringed on civil rights." Weyrich, *supra* note 169, at A1.

¹⁸⁶ Former Attorney General Richard Thornburgh, Address at National Drug Control Policy Press Conference (Apr. 10, 1989), in FED. NEWS SERV., Apr. 10, 1989 at 2.

ernmental need. The universally acknowledged problem of gangs, drugs, and crimes in public housing buildings should suffice to establish this "special need."

In Chicago, a Battle Over Rights Reignites

Crime-Fighting 'Sweeps' Have Public Housing Officials Under Challenge Anew by ACLU

By Edward Walsh
Washington Post Staff Writer

CHICAGO—Dozens of law enforcement officers, looking for weapons, swept into several high-rise buildings at the Robert Taylor Homes public housing project here last summer. They did not have search warrants, and the man in charge, Chicago Housing Authority Police Chief Hosea Crossley, candidly asserted that the searches technically were illegal.

"We're in an emergency situation out here," Crossley told reporters at the time. "Any time you're prevented from installing measures to save lives because of some young punks with guns, it's an emergency."

The weapons "sweeps" at Robert Taylor Homes and other public housing developments here have reignited a longstanding legal battle over the safety and constitutional rights of residents of one of the nation's largest and most troubled public housing systems.

On one side is the American Civil Liberties Union (ACLU), representing several housing authority tenants who charged in a lawsuit filed in federal court last month that the weapons searches trampled the rights of public housing residents to be secure in their own homes. Residents of luxury, high-rise apartments lining Chicago's lakefront would not be expected to tolerate such intrusions, and public housing tenants should be treated no differently, ACLU lawyers argued.

"There really is only one Constitution, and the beauty of the model is it applies to everyone," said Harvey M. Grossman, the ACLU's legal director here.

On the other side are Chicago Housing Authority (CHA) officials, claiming support of the vast majority of their tenants, who say the grim reality of life in crime-infested buildings justifies extraordinary measures to combat heavily armed gangs.

"You can't compare life in Robert Taylor and Henry Horner [another housing project] to life in Lake Forest," a wealthy Chicago suburb, CHA Chairman Vince Lane said. "The majority of people in these communities say they didn't have any rights before 1988, the gangs took them all. . . . I'd like to see Harvey live in Robert Taylor. I'd bet he'd ask for the Marines, not security."

The setting for this dispute is bleakly modern, towering and foreboding CHA buildings where drugs and gunfire are part of everyday life. But the issues involved are as ageless as the conflict between individual liberty and social order.

Soon after becoming CHA chairman in 1988, Lane said in an interview, he learned that a 7-year-old girl had been burned severely when a molotov cocktail was thrown into her family's public housing apartment.

"I realized that, no matter how many management improvements I made, I would never be able to implement them because we didn't control the buildings," he said.

Lane soon launched "Operation Clean Sweep," a massive undertaking that attracted national attention. After police secured building perimeters, CHA inspection teams entered the buildings, rooting out illegal tenants, checking the physical condition of apartments and issuing photo-identification cards to legal residents.

The ACLU, representing a few CHA tenants and visitors to CHA buildings, sued to stop "Operation Clean Sweep," charging that the "inspections" actually were illegal, warrantless

"We had to pay [gang members] to get our groceries upstairs. Where was the ACLU then?"

—Artensa Randolph,
who heads tenant advisory board

"searches" and that the CHA was illegally restricting visitor access.

After lengthy negotiations, the two sides agreed to a court-approved consent decree in 1989. Under it, the CHA agreed to stop demanding that people entering the buildings produce identification and to restrict sweeps to cases involving an "immediate threat" to safety of tenants or property.

For the next three years, the ACLU and housing authority observed a truce. But then, two dramatic events intervened, sending the two sides back to court.

One was the death in October 1992 of Dantrell Davis, 7, struck by random sniper fire as he walked to school with his mother from their home in the Cabrini-Green public housing complex. In the ensuing uproar, CHA lawyers asked that the consent decree be modified to allow them to resume demanding identification of everyone entering the buildings and to install metal detectors at entrances.

While that case is pending, the CHA has installed metal detectors in most buildings, which Grossman contended "raised serious constitutional issues" because an apartment, even in a public housing complex, is not the same as an airport or a courthouse.

Last summer, several young CHA tenants fell from open windows of high-rise buildings, and some died. It seemed, Lane said, that it was "raining children." In response, Lane began an emergency program to install window guards. But when crews arrived at Robert Taylor Homes in August, gang members drove them away with gunfire.

That incident, Lane later testified at a court hearing, persuaded him to adopt a "firm policy" of responding to random gunfire with massive weapons searches.

According to Artensa Randolph, head of an advisory board composed of presidents of tenant

councils in each CHA complex, tenants strongly support the sweeps. Life in public housing here, she said, "is a little better" since Lane began the security crackdown five years ago.

Before then, Randolph said, "we had to pay [gang members] to get our groceries upstairs. Where was the ACLU then?"

Similarly, Randolph cited strong tenant support for a CHA policy, adopted last month, that calls for a series of fines and eventual eviction of parents whose children are chronically absent from school. This may lead to yet another legal clash with the ACLU when the policy is implemented next year.

"Rich people don't lose their homes because their kids have behavioral problems," Grossman said. "Poor people shouldn't either."

As for the sweeps, Grossman said, "the question here is the choice of weapons. How do you fight crime? The CHA has shown a willingness to try short cuts around the Constitution. We believe adequate, competent law enforcement is the answer. We don't want less security. We want more security."

Grossman said that, in addition to the CHA's 350-member police force, Chicago police should be redeployed to put more officers in high-crime areas, which include most public housing developments. "If serious, violent crime is the most significant issue we have to deal with, serious, violent crime should be the primary factor in the assignment of police officers," he said.

F. Willis Caruso, CHA general counsel, contended that the Constitution allows warrantless searches as long as the methods do not violate the Fourth Amendment's prohibition against "unreasonable searches and seizures." When random gunfire erupts from undetermined locations in public housing developments, he said, "our argument is that, under these circumstances, these searches are reasonable."

Caruso also rejected Grossman's contention that public housing tenants are being subjected to police searches that would not be tolerated in wealthier neighborhoods. "If what is going on in public housing was going on along the lakefront, you'd have to do the same thing there," he said. "If some crazed gunmen went into a high-rise and started shooting, I don't think people would be shocked to find the police went in and searched every inch of the building until the gunmen were found."

The CHA spends \$67 million of its almost \$300 million budget for security, funding its own police force, a separate security force and about 900 private security guards whom Lane derisively calls "rent-a-cops." A larger police presence in the public housing developments "would be nice," he said, "but as a practical matter, are you going to pay more taxes to put them out there? No, I don't think that's the mood of this country."

And if more police are not the immediate answer, Lane added, "the next time someone is killed, I hope Harvey can live with it. I can't live with it, and I'm not going to unless I'm ordered to by the courts."