PRIVACY OR SAFETY: A CONSTITUTIONAL ANALYSIS OF PUBLIC HOUSING SWEEP SEARCHES*

INTRODUCTION

Today, many people are prisoners in their homes.[1] Having to dodge the bullets of drug dealers, they fear entering and exiting their homes.[2] Drug dealers harass them and dictate their movement to and from their apartments in order to avoid interference with their drug deals.[3] Some tenants cannot use their mailboxes because drug dealers use them to store weapons.[4] Children have no place to play because of the gunfire and drug paraphernalia littering the streets.[5] These are just some of the problems facing residents of public housing in major cities.

The Chicago Housing Authority ("CHA") is the third largest public housing authority ("PHA") in the United States.[6] In 1986, reports of violent crime in CHA developments increased thirty-one percent, to twice the rate of city-wide crime.[7] The CHA responded to this "increasing violence" by implementing "Operation Clean Sweep."[8] On September 20, 1988, "sixty Chicago police officers and dozens of CHA employees staged a surprise assault on one of the CHA's ravaged buildings."[9] Armed officers sealed off the building entrances and exits and searched each apartment for drugs, weapons, and illegal residents.[10] The officers did not obtain warrants for these searches and did not give the tenants prior notification.[11]

The CHA was the first PHA in the country to utilize warrantless, nonconsensual home searches.[12] The American Civil Liberties Union ("ACLU") immedi-

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* I dedicate this note to my parents, Lawana Pressley-Lawson and Peter Levi Pressley, for their love and endless support.

[1] *See Safety and Security in Public Housing: Field Hearing Before the Subcomm. On Housing and Community Dev. of the House Comm. on Banking, Finance Urban Affairs*, 103d Cong. 113 (1994) (Statement of Henry G. Cisneros, Secretary, HUD), 1994 WL 266124, [hereinafter Cisneros Statement].

[2] *See id.*

[3] *See* Clarence Page, *For CHA Residents, A Fight to Keep Their Constitutional Rights*, CHI. TRIB., Apr. 13, 1994, at 21.

[4] *See* Cisneros Statement, *supra* note 1.

[5] *See id.*

[6] *See* Erika R. George, *The Fourth Amendment's Forcing of Flawed Choices: Giving Content to Freedom for Residents of Public Housing*, 30 HARV. C.R.-C.L. L. REV. 577, 578 (1995).

[7] *See id.* at 579.

[8] *Id.*

[9] Steven Yarosh, Comment, *Operation Clean Sweep: Is the Chicago Housing Authority 'Sweeping' Away the Fourth Amendment?*, 86 NW. U. L. REV. 1103 (1992).

[10] *See id.* at 1103.

[11] *See id.*

[12] *See id.*

ately filed a class-action suit on behalf of the estimated 150,000 CHA tenants challenging these warrantless searches.[13] In 1989, the City of Chicago, the CHA, and the ACLU settled the suit with a consent decree.[14] The decree allowed the searches to continue, but restricted the CHA from searching people (both tenants and guests), personal effects, or the contents of property.[15] Neither a warrant nor the consent of tenants, however, was required under this decree.[16]

The CHA, since then, implemented a "search policy," which defined appropriate preconditions for ordering "sweeps."[17] Some preconditions were reports of "random gunfire from building to building and/or intimidation at gunpoint or by shooting if weapons were taken into the buildings."[18] A sweep could also be authorized if a police officer did not know which apartment contained weapons.[19] These sweeps were conducted by performing door-to-door apartment searches.[20]

During the summer of 1993, a number of violent episodes occurred at CHA developments.[21] At the Robert Taylor Homes, a CHA development, gunfire erupted in the middle of a construction project.[22] As a result, several residents were shot, including a mother and her infant son.[23]

In response to this incident, Vincent Lane, Chairman of the Board of Commissioners of the CHA, determining that the preconditions for a sweep had been met, authorized sweeps of twelve CHA buildings.[24] Officers thoroughly searched all of the apartment units within these buildings.[25] In violation of the consent decree, they inspected personal effects and the contents of property.[26] These sweeps, furthermore, occurred several days after the shootings, not within the forty-eight hours following "alleged criminal activity," as required by the decree.[27] The CHA explained that this was due to the "logistical difficulties of coordinating sufficient police."[28]

These incidents illustrate an increasingly difficult situation facing the residents of public housing. Many residents are tired of dealing with the rampant crime on

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[13] *See id.*

[14] *See* George, *supra* note 6, at 579.

[15] *See* Yarosh, *supra* note 9, at 1105. Examples of property included in the "contents of property" are such things as "closets, dresser drawers, medicine cabinets, boxes, or other containers." *Id.*

[16] *See id.* at 1106.

[17] Pratt v. Chicago Hous. Auth., 848 F. Supp. 792, 794 (N.D. Ill. 1994).

[18] *Id.*

[19] *See id.*

[20] *See id.*

[21] *See* George, *supra* note 6, at 580.

[22] *See id.* at 580-81.

[23] *See id.* at 581.

[24] *See* Pratt, 848 F. Supp. at 793.

[25] *See id.*

[26] *See id.* at 793-94.

[27] *Id.* at 793.

[28] *Id.*

a daily basis and are willing to accept increased measures to ensure their security.[29] The government's response, however, presents public housing residents with an unattractive choice: Either give up their Fourth Amendment[30] right to be free from unreasonable search and seizure, or live among gunfire and drug dealers.

This Note examines the constitutionality of public housing sweeps. Part I illustrates a lawsuit that evolved from the sweeps; Part II discusses the Clinton administration's response to this lawsuit; Part III analyzes the constitutionality of sweeps, specifically investigating the Clinton administration's sweep policy; Part IV explores another area of concern regarding the privacy of PHA residents — utilization by PHAs of private security guards, who are not constrained by the Constitution. This Note concludes by pointing to more effective and constitutional alternatives to sweeps.

I. *PRATT V. CHICAGO HOUSING AUTHORITY*

The violations of the CHA consent decree during the 1993 raid resulted in a suit filed by the ACLU on behalf of four CHA tenants against the CHA.[31] Plaintiffs alleged that the CHA search policy violated their Fourth Amendment right to be free from unreasonable search and seizure, and sought to enjoin the search policy.[32] Eighteen of the nineteen CHA Local Advisory Council Presidents, who were CHA residents and comprised the CHA Central Advisory Council ("CAC"), were named as defendant-interveners.[33] The "CAC" adopted a resolution on February 14, 1994 in favor of the sweeps, contending that the sweeps did not violate the Fourth Amendment.[34]

The United States District Court for the Northern District of Illinois held that warrantless home searches are "presumptively unconstitutional" unless both "probable cause for the search and exigent circumstances that excuse its failure to obtain the warrant" exist.[35] The court found that the sweeps occurred several days after a shooting, and never within the required forty-eight hour period after an incident.[36] Based on this finding, the court concluded that the exigent circum-

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[29] *See* DeNeen L. Brown, *Tenants See Pros, Cons in Clinton Anti-Crime Plan; Many in Public Housing Support Proposal on Searches; Others Fearful of Abuses by Police*, WASH. POST, Apr. 19, 1994, at B7.

[30] The Fourth Amendment states:

"The right of 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.

[31] *See* George, *supra* note 6, at 581. The lawsuit was Pratt, 848 F. Supp. 792.

[32] *See* Pratt, 848 F. Supp. at 794.

[33] *See id.* at 793.

[34] *See id.*

[35] *Id.* at 795.

[36] *See id.*

stances necessary to justify the sweeps were simply not present in this case.[37] Also, probable cause was absent because many apartments were searched when there was no reason to believe that a search would prevent the commission of a crime or lead to an arrest.[38] Therefore, because the CHA was unable to show both probable cause and exigent circumstances, the "presumption that a warrantless search of a home is unconstitutional" was not overcome.[39]

Because these residents would be subject to unconstitutional warrantless searches if the CHA was not enjoined, the court determined that irreparable injury existed.[40] In addition, testimony revealed that these occasional searches failed to effectuate a long-term reduction in criminal activity.[41] The court concluded that the public has a "powerful interest in the maintenance of constitutional rights, particularly the right to be secure in one's home from unconstitutiona l invasions by the government."[42] Therefore, when the court balanced the privacy interests of the individual tenants against the state's interest in effective law enforcement, it found that the potential for violation of the tenants' constitutional rights outweighed the possible increased safety resulting from the sweeps.[43] The court, therefore, enjoined the CHA and its agents, employees, and all those acting in concert with it from implementing the CHA search policy of warrantless, nonconsensual searches.[44]

II. THE CLINTON ADMINISTRATION SECURITY POLICY

In response to the *Pratt* decision, President Bill Clinton directed Secretary of Housing and Urban Development, Henry Cisneros, and Attorney General Janet Reno, to devise an effective and constitutional national policy for dealing with violent crime in urban public housing developments ("Clinton Policy").[45] The Clinton Policy outlines seven security guidelines related to warrantless searches of public housing developments.[46] These options are designed so that PHAs may avoid running the risk of violating the residents' constitutional rights when combating violent crime.[47]

In addition, as part of the Clinton Policy, the administration will fund both security and crime prevention measures for public housing developments.[48] Although these measures were initially targeted at Chicago, the President's crime

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[37] *See id.*

[38] *See id* (the court mentioned that without probable cause the searches are unconstitutional even if there had been exigent circumstances).

[39] *Id.*

[40] *See id.* at 796.

[41] *See id.*

[42] *Id.*

[43] *See id.*

[44] *See id.* at 797.

[45] *See* 140 Cong. Rec. § 4660 (daily ed. Apr. 21, 1994) (hereinafter Security Options).

[46] *See id.*

[47] *See id.*

[48] *See* Cisneros Statement, *supra* note 1, at *3.

bill will ultimately suggest their use in other communities.[49]

The first security option is to secure building entrances and lobbies.[50] The Clinton Policy suggests that PHAs accomplish this goal by erecting fences around buildings, issuing identification cards to residents, and installing metal detectors at building entrances.[51] Packages and clothing may be searched, and anyone who refuses to be subjected to such inspections may be refused entry.[52]

Consensual searches constitute the second security option.[53] Consent clauses are to be incorporated into apartment leases. Such clauses authorize periodic inspections of apartments without prior notice to tenants to determine the presence of unlicensed and unauthorized weapons.[54] The searches should be conducted routinely, during daylight hours, and with advance notice.[55] The Clinton Policy states that these factors should help minimize the intrusiveness of the searches, thereby reducing the likelihood of constitutional objections.

The plan also suggests that tenant associations endorse the measures to demonstrate widespread tenant support and assist in defending against constitutional objections by other tenants. The Clinton Policy analogizes these consent clauses to a standard consent clause in a lease that permits maintenance and emergency services to be performed in a tenant's apartment.[56]

The third security option allows a PHA to search common areas and vacant apartments at anytime without consent or a warrant.[57] The fourth security option allows security or police officers to frisk "suspicious-looking" persons for weapons if they believe such persons may be involved in criminal activity or may be armed.[58] This option does not define "suspicious-looking."[59]

The fifth security option states that police officers may conduct searches of apartments with judicial warrants when they have probable cause to believe that an apartment contains evidence of a crime.[60] This option allows police officers to use expedited techniques, such as telephone warrants and readily available magistrates for obtaining these warrants.[61]

The sixth security option allows PHAs to conduct warrantless searches based on exigent circumstances.[62] Finally, the seventh security option allows housing or police officers to enter an apartment to arrest a fugitive who they believe may

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[49] *See id.* at *4-5.

[50] *See* Security Options, *supra* note 45.

[51] *See id.*

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See id.*

[58] *Id.*

[59] *Id.*

[60] *See id.*

[61] *See id.*

[62] *See id.*

be housed inside the dwelling.[63]

In April, 1994, the Senate endorsed these security options for PHAs.[64] Before the endorsement, Senator Robert Dole proposed an amendment to the Act, which stipulated that the consent clause should be non-coercive.[65] Senator Paul Wellstone offered an amendment to Senator Dole's amendment, which clarified that acceptance into public housing should not be contingent upon signing a consent to search waiver.[66] The Senate endorsed Senator Dole's amendment after it was modified to include Senator Wellstone's clarification.[67] The security options are the same recommendations that the Department of Housing and Urban Development ("HUD") had previously compiled for PHAs; therefore, it was not necessary for HUD to officially adopt them.[68] Furthermore, the Clinton Policy consolidates and reinforces them.

A. *Public Reaction*

Reaction from the media and public housing tenants to the Clinton Policy has been mixed. Alverta Munlyn, a twenty-five year public housing tenant in Washington, D.C. and an Advisory Neighborhood Commissioner, rejoiced when she heard about the Clinton Policy.[69] She believes that one's constitutional rights must not outweigh one's right to live in a peaceful neighborhood.[70] She stated that public housing projects have become "war zones," and children should have a right to play outside and travel between home and school without worrying about dodging bullets.[71] In fact, *many* tenants said that they would welcome the sweeps if they would really reduce crime.[72]

Alma Lark, an activist and three-time president of a public housing development in San Francisco, California, however, deemed the Clinton Policy "simplistic."[73] She believes that much of the violence at public housing develop-

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[63] *See id.*

[64] *See id.* § 4663 (endorsed in the Bankruptcy Amendment Act, § 540).

[65] *See id.* § 4657.

[66] *See id.* §§ 4658-4659.

[67] *See id.* § 4663.

The amendment will add the following to the Clinton Policy under the consent option: include noncoercive consent clauses in lease agreements permitting routine warrantless apartment-by-apartment police searches for illegal weapons and illegal drugs, so long as residency or continued residency in public housing is not contingent upon the inclusion of such consent clause as a provision of a lease agreement.

[68] *See* Telephone Interview with Elizabeth Cocke, Program Assistant, Department of Housing and Urban Development, Crime Prevention and Security Division (March 13, 1996).

[69] *See* Brown, *supra* note 29, at B7.

[70] *See id.*

[71] *Id.*

[72] *See id.*

[73] Marsha Ginsburg, *Clinton's Tough Plan on Guns in Projects; Residents of San Francisco Housing Skeptical About Searches*, S.F. EXAMINER, Apr. 17, 1994, at A1.

ments comes from outsiders and not residents, and therefore believes the sweeps will not do much good.[74] She also stated that "you don't just pick [on people] because they're poor . . . If you have sweeps in one place, you have to have them every place."[75]

Freda Ligon, a resident of a public housing development in Virginia, said "[j]ust because you live in low-income housing doesn't mean you should be treated like an animal."[76] Abuse of power by the police concerns many public housing residents.[77] One resident of the Robert Taylor Homes stated "every time they come, I cry, because they couldn't do this to people with money."[78]

One Chicago Tribune writer argued that the debate over security in public housing should not be framed as a "trade-off between privacy and protection."[79] He said "no other segment of American society would accept such a trade-off. Why punish the poor who simply can't afford any better?"[80]

A Chicago Tribune editorial stated that President Clinton's motives are justifiable, but that no situation or circumstances justify creating a "second-class citizenry — one forced to surrender basic constitutional freedoms in order to be safe from gun-wielding thugs."[81] He stated that many of the non-public housing residents who support sweeps would not want to give up any of their constitutional rights in order to get a government benefit, such as Social Security or a federally insured mortgage.[82]

A Washington Post editorial explained that although crime is the number one problem plaguing Americans, many would not want to allow police to search their homes without their consent or without a warrant.[83] The editorial reminds us that the forefathers had experienced oppressive rule and composed the Fourth Amendment in an attempt to avoid similar oppression.[84] The editorial criticized President Clinton for backing such a plan since he is a lawyer and a former constitutional professor of law.[85]

III. FOURTH AMENDMENT ANALYSIS OF THE CLINTON POLICY SECURITY OPTIONS

The Clinton Policy security options pose unique Fourth Amendment problems. The Fourth Amendment prohibits unreasonable searches and seizures, and it ap-

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[74] *See id.*

[75] *Id.*

[76] Brown, *supra* note 29, at B7.

[77] *See id.*

[78] Maudlyne Ihejirika, *CHA Crime Drops; Major Offenses Hit 5-year Low; Murders Down 26.7%*, CHI. SUN-TIMES, Feb. 12, 1993, at 1.

[79] Clarence Page, *For CHA Residents, A Fight to Keep Their Constitutional Rights*, CHI. TRIB., Apr. 13, 1994, at 21.

[80] *Id.*

[81] Editorial, *Safety-For-Rights A Bad Trade*, CHI. TRIB., Apr. 19, 1994, at 22.

[82] *See id.*

[83] *See* Editorial, *Projects and Police Raids*, WASH. POST, Apr. 19, 1994, at A14.

[84] *See id.*

[85] *See id.*

plies to the states via the Fourteenth Amendment.[86] "The simple language of the Amendment applies equally to seizures of persons and to seizures of property."[87] "When a [case] involves a home and some type of official intrusion into that home, . . . an immediate and natural reaction is one of concern about Fourth Amendment rights and the protection which that Amendment is intended to afford."[88] Warrantless searches are per se unlawful with a few "specifically established and well-delineated exceptions."[89] The four exceptions are: searches based on consent; exigent circumstances; special government needs; and administrative inspections.[90]

A. *Consensual Searches*

Although consent precludes the need for a warrant, the consent must be valid.[91] In order for consent to be valid it must be voluntary[92] and able to be withdrawn at anytime.[93] Courts assess the voluntariness of consent by examining the "totality of the circumstances" under which it was given.[94] Any type of coercion invalidates consent.[95] Overt acts, threats of force, and even subtle forms of coercion may be deemed coercive.[96] If a reasonable person would believe that they could disregard the consent request and walk away, then consent will generally be considered voluntary.[97] Courts may consider personal characteristics, such as the sex,[98] race,[99] lack of education,[100] and low intelligence[101] of the person consenting to determine voluntariness.[102]

Waiver of a constitutional right must not only be voluntary, it must also be done knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences.[103] Under this waiver standard, courts determine whether there has been "an intentional relinquishment or abandonment of a known right or privilege" by assessing the particular facts and circumstances

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[86] Mapp v. Ohio 367 U.S. 643, 655 (1961).

[87] Payton v. New York, 445 U.S. 573, 585 (1980).

[88] Wyman v. Gordon, 400 U.S. 309, 316 (1971)

[89] Kate v. United States, 389 U.S. 347, 357 (1967).

[90] *See id.* at 358.

[91] *See* Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973).

[92] *See id.* at 227.

[93] *See* United States V. Jachimko, 19 F.3d 296, 299 (7th Cir. 1994).

[94] Schneckloth, 412 U.S. at 227.

[95] *See id.* at 228.

[96] *See* United States v. Watson, 423 U.S. 411, 424 (1976).

[97] *See* United States v. Mendenhall, 446 U.S. 544, 557 (1980).

[98] *See id.* at 558.

[99] *See id.*

[100] *See* Payne v. Arkansas, 356 U.S. 560 (1958).

[101] *See* Fikes v. Alabama, 352 U.S. 191 (1957).

[102] *See* Mendenhall, 446 U.S. at 558.

[103] *See* Brady v. United States, 397 U.S. 742 (1970).

surrounding the case.[104]

This waiver standard was rejected by the Supreme Court in *Schneckloth v. Bustamonte* because the Court concluded that the waiver standard only applies to rights related to preserving a fair criminal trial.[105] *Schneckloth* involved the search of an automobile during a traffic stop on a highway.[106] The Court stated that this type of situation was impractical for informing subjects of their Fourth Amendment rights because of the informal and unstructured conditions that develop quickly.[107]

The circumstances under which the Clinton Policy's consent option would be employed, however, would be the exact opposite of those in *Schneckloth*. The request for consent would be conducted in the formal and structured environment of a PHA office and would not be for an imminent search, only for future searches. Because the Court has refused to extend the waiver standard to any situation beyond those relating to criminal trials, the Clinton policy type of waiver may not pass constitutional muster. This security option, however, also has other flaws.

The Clinton Policy's consent option involves the renunciation of a fundamental right.[108] When a fundamental right is infringed upon, the courts perform a strict scrutiny analysis.[109] Strict scrutiny requires that the governmental entity show it has a compelling state interest in infringing upon this constitutional right, and that the means by which it is being done are narrowly tailored.[110] It appears that PHAs have a compelling interest in law enforcement. Nevertheless, the consent clause is not narrowly tailored to achieve its goal because the clause would allow PHAs to conduct random searches without probable cause at any time.

Although the consent option specifically states that the consent clause should be non-coercive, subtle forms of coercion are likely to come into play and make the consent involuntary. It is possible, for example, that prospective tenants would sign such a waiver due to their fear of being considered suspicious if they were to refuse. This is especially likely when one considers that many prospective tenants lack a post-secondary education.[111] Lack of education may make these prospective tenants more susceptible to believing that they must consent. When pressure is applied on a person of weak will or mind, their consent cannot

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[104] Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

[105] 412 U.S. 218, 237-38 (1973).

[106] *See id.* at 232-33.

[107] *Id.*

[108] *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618, 638 (1969).

[109] *See, e.g., id.*; Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 279-280 (1986).

[110] *See, e.g., id.*; Wygant, 476 U.S. at 274.

[111] *See* Hearing on Gun Sweeps in Public Housing Before the House Banking, Finance and Urban Affairs Committee on "Safety and Security in Public Housing," 1994 WL 266623 at 4 (Apr. 22, 1994) (statement of Senator Carol Moseley-Braun) [hereinafter Moseley-Braun Statement].

be considered voluntary because their will is depleted.[112]

This same lack of education may cause a public housing tenant to misinterpret the clause, assuming they are literate and can actually read the clause. They may not understand that signing the clause authorizes the PHA to conduct random searches without probable cause or reasonable suspicion that their apartment unit contains weapons. They may think that the PHA will only search their apartment if it is believed that weapons exist inside.[113] Therefore, even a consent clause signed without coercion might be invalid if it is signed without knowledge or by a person with low intelligence.

In addition, a key test of validity of consent is whether the person was informed that consent could be refused.[114] Thus, in order for such a waiver to be knowing and intelligent, a PHA must advise a prospective tenant of the Fourth Amendment right, the consequences of waiving that right, and that residency in public housing is not contingent on signing the clause. The consent option, however, does not compel PHAs to explain the Fourth Amendment to tenants, nor does it specifically state that PHAs must inform tenants that they do not have to agree to the clause in order to enter into a lease.[115] Consequently, many PHAs will probably not perform this additional task where it is likely to deter people from assenting to the clause. Furthermore, compelling PHAs to divulge this information would be difficult to enforce.

It is unlikely that every tenant would consent to these searches. Uniform consent, however, would most likely be necessary for the searches to be truly effective. Even if the majority of the tenants consent, this would not eviscerate the non-consenting tenants' right to assert Fourth Amendment protection against these warrantless searches of their apartment units, as suggested by the Clinton Policy's consent option.[116]

1. Unconstitutional Conditions

Under the doctrine of unconstitutional conditions, the "government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, even if the government may withhold the benefit altogether."[117] The Supreme Court, however, has been inconsistent in its application of this doctrine.[118] The Supreme Court most recently used the doctrine to invalidate a city zoning scheme requiring landowners to dedicate a portion of their property to the city

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[112] *See* Fikes, 352 U.S. at 198.

[113] *See generally* Brady, 397 U.S. at 748.

[114] *See* Gentile v. United States, 419 U.S. 979 (1974) (Douglas, J. & Marshall, J., dissenting); *See also* United States v. Calhoun, 49 F.3d 231 (6th Cir. 1995).

[115] *See* Security Options, *supra* note 45, at 4660.

[116] *See* Pratt, 848 F. Supp at 796.

[117] Monica L. Selter, *Sweeps: An Unwarranted Solution to the Search for Safety in Public Housing*, 44 AM. U. L. REV. 1903, 1939 (1995) (citing Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1415 (1989)).

[118] *See id.*

for public use in exchange for a building permit.[119] If the consent is involuntary, then the consent would effectively be a condition of receiving public housing. This would be in violation of the doctrine of unconstitutional conditions. This is offensive because housing, like food and water, is a necessity.[120] People should not have to choose between a constitutional right and a necessity.

This option also fails to provide tenants with a procedure for exercising their right to withdraw their consent in the future, which is a key factor for valid consent.[121] Therefore, given the above analysis, the consent will fail to satisfy constitutionality.

The consent clause is not narrowly tailored. It would not, in all likelihood, be given voluntarily, knowingly, or intelligently, and it violates the unconstitutional conditions doctrine. Therefore, consent under such a clause would not be valid.

B. *Searches Based on Exigent Circumstances*

The Supreme Court has defined an exigent circumstance as an emergency or dangerous situation.[122] "Hot pursuit" of suspects and preventing harm to police officers are examples of exigent circumstances.[123] Exigent circumstances justify warrantless nonconsensual searches.[124] Even when exigent circumstances exist, however, they do not erase the additional prerequisite of probable cause.[125] Without probable cause for a search, the search is unconstitutional, no matter how exigent the circumstances.[126]

The exigency exception should only be employed in homes where there is probable cause to believe that a major offense has been committed therein,[127] that the commission of a crime can be prevented,[128] or an arrest made.[129] There must be probable cause to support the search of each individual unit.[130] When a minor offense is involved, it is very difficult to justify a warrantless search as reasonable.[131] The Clinton Policy option of allowing warrantless searches based on exigent circumstances would, therefore, likely be deemed unconstitutional because it ignores the fact that probable cause must exist to justify even a search based upon exigency.

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[119] *See* Dolan v. City of Tigard, 512 U.S. 374, 392 (1994).

[120] *See* Forman v. Community Services, Inc., 500 F.2d 1246, 1254 (2d Cir. 1974); Cole v. Hous. Auth. of the City of Newport, 435 F.2d 807, 811 (1st Cir. 1970); and Mays v. Burgess, 147 F.2d 869, 875 (D.C. Cir. 1945).

[121] *See* Jachimko, 19 F.3d at 299.

[122] *See* Payton, 445 U.S. at 583.

[123] Warden v. Hayden, 387 U.S. 294, 298-99 (1967).

[124] *See* Kate, 389 U.S. at 357.

[125] *See* Pratt, 848 F. Supp. 7 at 795.

[126] *See id.*

[127] *See* Welsh v. Wisconsin, 466 U.S. 740, 753 (1984).

[128] *See* Hayden, 387 U.S. at 298-99.

[129] *See id.*

[130] *See* Pratt, 848 F. Supp at 796.

[131] *See* Welsh, 466 U.S. at 753.

As previously stated in section I, the *Pratt* court concluded that exigent circumstances did not exist in that case because the sweeps were usually conducted several days after the shooting activity due to the logistical problems of coordinating sufficient police.[132] These logistical difficulties were probably due to the fact that Chicago is a major city and along with that comes a wealth of crime. One could assume that other public housing authorities in major cities will not fare any better in coordinating these searches in a timely manner. Conducting these searches in an untimely manner drastically reduces the probability that the measures will prevent the commission of a crime or lead to an arrest. Consequently, there is no justification for such searches without exigency, which appears to be difficult to satisfy for PHAs in major cities.

Secondly, for PHAs to legally conduct apartment-to-apartment searches, they must have probable cause for each and every unit. One example of an acceptable multiple unit search, as evinced by the *Pratt* Court, is a door-to-door search beginning immediately after an armed and firing gang enters a building.[133] In such a situation, it is appropriate to search each unit in an attempt to apprehend the suspect. If possible, however, the officers should request a search warrant while the search is being conducted.[134] This option will also not be effective unless both probable cause and exigency exist.

1. Stop and Frisk

The Fourth Amendment also applies to search and seizure of individuals on the street, otherwise known as "stop and frisk."[135] In *Terry v. Ohio*,[136] the Supreme Court upheld the warrantless stop and frisk of three people by a police officer, who based his belief that a robbery was being planned on the individuals' suspicious behavior.[137] The Court described this incident as involving "necessarily swift action . . . which . . . could not be subjected to the warrant procedure."[138] Therefore, rather than apply the "probable cause" test, the Court applied a balancing test for reasonableness and concluded that governmental interests outweighed the intrusion on the defendants' rights.[139] The Court created a two-step test for reasonableness.[140] The inquiry involved determining first whether the stop and frisk was "justified at its inception," and second whether the search was "reasonably related in scope to the circumstances which justified the interference in the first place."[141]

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[132] Pratt, 848 F. Supp at 793, 795.

[133] *Id.* at 797.

[134] *See id.*

[135] *See* Terry v. Ohio, 392 U.S. 1, 16-20 (1968).

[136] *Id.* at 1. The officers on the scene testified that the two suspects paced repeatedly in front of the store windows and engaged in other suspicious behavior. *See id.*

[137] *See id.* at 5-7.

[138] *Id.* at 20.

[139] *Id.* at 20-21.

[140] *See id.* at 19-20.

[141] *Id.* at 20.

The Court concluded that the stop and frisk involved here was not a full search, but a limited "pat-down," which the Court found not as intrusive as a full search.[142] The Court thus found that when an officer, acting in a reasonable and prudent manner, has reason to believe that his safety or the safety of others is in danger, he can perform a stop and frisk for weapons.[143]

The Clinton Policy option that suggests securing building entrances and lobbies has the potential for success, but goes too far because it does not stipulate the constitutional standards necessary to execute some of the procedures. For instance, in order for a security guard to detain people and use hand-held metal detectors as well as search their clothing and packages, the guard must have a reasonable belief or suspicion that the people to be searched are armed and poses a threat to public safety. The same requirements apply for the Clinton Policy option of conducting frisk searches of suspicious persons. This option carries much potential for abuse because the plan does not define "suspicious." Therefore, a security guard could interpret "suspicious" as meaning "any minority." Such security measures are usually only performed in sensitive areas such as airports, where the governmental interest in abating crime and terrorism is extremely high and the privacy intrusion is slight.[144] Moreover, stand-alone and hand-held metal detectors used without individual consent evinces prison conditions and a presumption that those residing and living at such developments are not law abiding citizens.

Implementing similar security mechanisms such as those used at non-public housing developments would appear to be a better solution. For example, security officers positioned at a front desk and patrolling the facility, a fenced-in facility, and sign-in procedures, are mechanisms commonly employed by several medium and large (non-public) apartment complexes. These security measures would not subject residents and their guests to unreasonable searches and seizures and prison-like environments.

C. *Searches Based on Special Government Needs*

Courts utilize the special government needs exception when "special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."[145] Under this exception, courts determine the reasonableness of searches by balancing the government's interest in maintaining order against an individual's privacy and security interests.[146]

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[142] *Id.* at 29-30.

[143] *See id.* at 27.

[144] *See* United States v. Pulido-Baquerizo, 800 F.2d 899, 901-02 (9th Cir. 1986). *See also* U.S. v. Sokolow, 490 U.S. 1 (1989).

[145] New Jersey v. T.L.O., 469 U.S. 325, 351 (1985) (Blackmun, J., concurring). *See, e.g.*, Griffin v. Wisconsin, 483 U.S. 868, 875 (1987) (supervision of probationers is "special need" of the state); Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 449-50 (1990) (citing Treasury Employees v. Von Roob, 489 U.S. 656, 665-66 (1989)).

[146] *See* T.L.O., 469 U.S. at 337; Griffin, 483 U.S. at 875, 876; Sitz, 496 U.S. at 447.

In *New Jersey v. T.L.O.*,[147] the Court used the special government needs exception to uphold a warrantless search of a high school student's purse.[148] The Court concluded that the warrant requirement would "unduly interfere" with the need for discipline in school.[149] The Court emphasized that the existence of a supervisory relationship, like a teacher-student relationship, is an important consideration.[150]

In *Griffin v. Wisconsin*,[151] the Court relied upon the special-needs exception to uphold a probation officer's warrantless search of a probationer's apartment, which resulted in criminal charges against the probationer.[152] The Court concluded that the relationship between a probation officer and probationer is supervisory.[153] The Court further noted that the special government needs exception generally applies when a decreased expectation of privacy exists, as is the case with a probationer who enjoys a conditional liberty "dependent on observance of special parole restrictions."[154]

The factors allowing warrantless searches under the special government needs exception do not exist in public housing sweeps. The PHA's government interest in supervising and curbing crime in their developments do not outweigh the Fourth Amendment privacy interest of residents.

The warrant/probable-cause requirement, for instance, does not compromise the goal of the searches except in cases of true exigency. Also, a PHA and a public housing resident have a landlord-tenant relationship that is not supervisory, unlike those of teacher-student or probation officer-probationer. A public housing resident, furthermore, does not have a decreased expectation of privacy just by living in public housing. Residence in public housing is not a conditional liberty granted in exchange for accepting a decreased constitutional expectation as illustrated by *Griffin*. Therefore, the Clinton administration guidelines will not likely pass the test for the special needs exception.

D. *Administrative Searches*

An administrative inspection has been characterized as "a routine inspection of the physical condition of private property . . . ."[155] The primary purpose of these inspections is to find regulatory infractions;[156] however, "discovery of evidence

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[147] 469 U.S. at 325.

[148] *Id.* at 340.

[149] *Id.*

[150] *See id.* at 339-40 ("We have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.").

[151] 483 U.S. at 868.

[152] *Id.* at 873-75.

[153] *See id.* at 873-74.

[154] *Id.* at 874 (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)).

[155] Camara v. Mun. Court of San Francisco, 387 U.S. 523, 530 (1967).

[156] *See* New York v. Burger, 482 U.S. 691, 700 (1987).

of crimes in the course of an otherwise proper administrative inspection does not render the search illegal or the administrative scheme suspect."[157]

The Supreme Court extended Fourth Amendment protections to administrative searches in *Camara v. Municipal Court.*[158] A tenant, on three occassions, refused to allow a housing inspector to perform a warrantless search of his apartment unit.[159] The housing inspector had reason to believe that the tenant's occupancy in a ground floor unit violated the apartment building's occupancy permit.[160] The Court held that a warrant is required for administrative searches, and that under the circumstances, the tenant had a right to refuse entry to the inspector.[161]

The probable-cause test used by the *Camara* Court was less demanding.[162] The Court stated that probable cause should be determined by balancing the reasonableness of the need to search against invasion of privacy.[163] The Court considered three factors supporting the reasonableness of the state's housing code-enforcement inspections.[164] First, the Court concluded that these inspections have a long history of judicial and public acceptance.[165] Second, the public interest demands the abatement and prevention of all dangerous conditions.[166] Third, the inspections are not personal or aimed at discovering evidence of a crime, but involve a limited invasion of a tenant's privacy.[167] Thus, such inspections are a less hostile intrusion than criminal searches.[168]

Later administrative inspection cases eliminated the warrant requirement in certain instances. In *Colonnade Catering v. United States,*[169] the Supreme Court upheld a statute allowing warrantless searches of the premises of those holding federal liquor licenses.[170] The Court based its conclusion on the fact that the liquor industry has "long been subject to close supervision and inspection."[171]

The Court expanded the *Colonnade* exception in *United States v. Biswell,*[172] which involved a pawn shop operator/gun dealer.[173] The Court emphasized the enforcement needs of the federal government in regulating the interstate traffic of firearms, rather than the history of gun regulation.[174] The Court held that a

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[157] *Id.* at 716.
[158] 387 U.S. at 523.
[159] *See id.* at 526-27.
[160] *See id.* at 526.
[161] *See id.* at 540.
[162] *See id.* at 535-37.
[163] *See id.*
[164] *See id.* at 537.
[165] *See id.*
[166] *See id.*
[167] *See id.*
[168] *See id.* at 530.
[169] 397 U.S. 72 (1970).
[170] *Id.* at 77.
[171] *Id.*
[172] 406 U.S. 311 (1972).
[173] *Id.*
[174] *See id.* at 315.

warrant was not required because it would frustrate inspections due to easy concealment of violations.[175] The Court further concluded that implied consent existed.[176] According to the Court, one who chooses to engage in a pervasively regulated business and accepts a federal license, has knowledge that her business will be subject to continued inspection.[177]

In *Donovan v. Dewey*,[178] the Court upheld a statute that authorized the Secretary of Labor to make warrantless inspections of mines.[179] The Court based this decision on the frustration and implied consent arguments in *Biswell*.[180] The Court emphasized the "certainty and regularity" of the statute's inspection program.[181] The Court noted that the statute specified in detail the frequency, purpose, scope, and procedure of inspections.[182] The Court did not see the need for any additional protection from requiring a warrant in this case.[183]

In *Wyman v. James*,[184] the Court upheld a requirement that public assistance beneficiaries allow home visits by caseworkers.[185] The Court held that these home visits did not constitute a "search" in the traditional Fourth Amendment sense; therefore, no Fourth Amendment rights were relinquished.[186] The Court concluded that even if these home visits constituted a traditional search, they were reasonable.[187] Some of the reasons articulated by the Court were that such home visits do not unnecessarily intrude on privacy rights; they are not conducted by law enforcement officials, but rather by caseworkers; the beneficiary receives written notice several days before the visits; the visits are not criminal investigations; and "snooping" is prohibited.[188]

The searches outlined in the Clinton administration's guidelines do not qualify as administrative searches under the Supreme Court decisions that permit warrantless searches. Public housing does not have a long history of close supervision and inspection for firearms. Although there are enforcement needs in regulating illegal and unauthorized firearms, obtaining a warrant would not frustrate a PHA's efforts in non-exigent circumstances. Also, simply living in public housing does not imply consent to warrantless searches. When one lives in public housing, one is not engaged in a pervasively regulated business; consequently, there is no justification for presuming consent.

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[175] *See id.* at 316.
[176] *See id.*
[177] *See id.*
[178] 452 U.S. 594 (1981).
[179] *Id.* at 606.
[180] *Id.*
[181] *Id.*
[182] *See id.* at 604.
[183] *See id.* at 605.
[184] 400 U.S. 309 (1971).
[185] *Id.* at 318.
[186] *Id.*
[187] *See id.*
[188] *Id.* at 318-24.

Although the Clinton Policy Security Options specify, in detail, that firearm inspections "should be conducted on a routine basis, during daylight housing, and should be no more intrusive than absolutely necessary . . . ."[189] the sweeps do not constitute certain and regular inspections like those in *Dewey*. Therefore, additional protection can be gained by requiring a warrant.

Sweep searches, for instance, are more intrusive than traditional administrative searches such as housing code-enforcement inspections, and inspections of mines, junkyards, and gun and liquor stores/warehouses. Unlike administrative inspections, which are regulatory in nature, sweeps focus on combating crime. Sweeps are performed by law enforcement officers and typically include inspecting closets, drawers, refrigerators, cabinets, and personal effects.[190] Searches for weapons, furthermore, are even more intrusive than routine maintenance inspections for things such as gas leaks and plumbing problems. There is no risk of criminal penalty as there is with sweeps when a resident consents to maintenance inspections. Thus, the sweeps authorized by the Clinton Policy guidelines do not constitute true administrative searches.

E. *The Facially Constitutional Security Options*

The remaining three security options, searches of common areas, warrant searches based on probable cause, and entries to execute arrest warrants, ostensibly appear to be legitimate options. No real privacy issues are vulnerable in vacant apartment units or common areas.[191] As long as officers have true probable cause, the warrant/probable cause option is constitutional. The same is applicable to the option for executing valid arrest warrants. Therefore, these last three options appear facially legitimate and do not pose constitutional problems.

IV. SUGGESTIONS

The Clinton Policy is designed to restore the rights of public housing residents. In attempting to accomplish this, however, the Clinton Policy deprives public housing residents of their rights under the Fourth Amendment. The policy denotes an erroneous reaction to crime in poor areas. The Clinton Policy, in effect, proposes giving the residents one right, while taking away another. The potential for the violation of constitutional rights as concluded by the *Pratt* court outweighs the enhanced safety that searches might bring, especially because sweeps seem to be an ineffective means of securing the long-term safety of tenants.[192]

Long-term measures that go beyond searches are also promulgated as part of the Clinton Policy.[193] For instance, the Department of Housing and Urban Devel-

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[189] Security Options, *supra* note 45, at 4660.

[190] *See* Pratt, 848 F. Supp. at 793.

[191] *See* David E.B. Smith, *Clean Sweep or Witch Hunt?: Constitutional Issues in Chicago's Public Housing Sweeps*, 69 CHI.-KENT L. REV. 505, 545 (1993).

[192] *See* Moseley-Braun Statement, *supra* note 111.

[193] *See* Cisneros Statement, *supra* note 1, at *3.

opment and/or the Department of Justice would provide monies to provide other security measures, as well as prevention measures, to PHAs through the national crime bill.[194] Under the crime bill, for example, police officer building patrol teams would be funded.[195] Private security guards would be replaced with police officers.[196] Vacant units would be rehabilitated with a twenty-four hour repair program in an attempt to prevent vandalism before construction is finished.[197] Modernization funds would be allocated to PHAs to demolish and replace dilapidated, dense, and ill-designed buildings.[198] These structural changes are an attempt to reduce concentrations of poor people by building small-scale, well- designed, economically integrated housing.[199] Recreational programs such as "Midnight Basketball," youth counseling, cultural activities, after-school activities, and Boys and Girls Clubs would be funded.[200]

These security and prevention measures are effective, constitutionally permissible ways to combat crime in public housing or any other area. Investment is definitely a viable alternative to warrantless searches.[201] Having police officers regularly patrol the building instead of security guards would be more effective in deterring wrongdoers who often intimidate security guards.[202]

Nothing negative may be envisioned from either rehabilitation efforts or from providing positive and rewarding activities for children and teens. The restructuring of public housing will be the most beneficial rehabilitation because once these "fortresses of poverty" are destroyed, public housing residents, whose hopes have been destroyed and wills broken, may regain respect for themselves.

In addition to the above suggested recreational programs directed at children and teens, programs that target adults should be funded. In CHA developments 1993, the unemployment average was sixty percent, the number of adults with more than a high school education was thirty-two percent,[203] and drug abuse continued to be a major problem. The implementation of job, education, and drug abuse and prevention programs could be highly effective.

Another crime-reducing solution for PHAs is a gun exchange program.[204] Several communities have this type of program in place.[205] This encourages people to turn in weapons in exchange for toys, food, or sports and concert tickets.[206]

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[194] *See Id.*

[195] *See Id.* at *3-4.

[196] *See Id.* at *4.

[197] *See Id.*

[198] *See Id.* at *5-6.

[199] *See Id.*

[200] *Id.* at *4

[201] *See id.*

[202] *See id.* at *2.

[203] Moseley-Braun Statement, *supra* note 111, at *2.

[204] *See* Selter, *supra* note 117, at 1947.

[205] *See id.* at 1947-48.

[206] *See id.*

V. PUBLIC HOUSING AUTHORITY POLICE POWERS

The contracting out of services by government entities currently proves very popular because it is generally more cost effective and less burdensome.[207] Under many state statutes, including that of Illinois, a state's PHA has police powers to establish, appoint, or support a police force to police and protect its property and residents.[208] Utilization of private security guards by PHAs instead of PHA police officers, however, poses threats to the Fourth Amendment rights of PHA residents.[209] Here exists another public housing privacy issue that triggers constitutional concerns.

People have the right to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution, which applies to the states via the Fourteenth Amendment.[210] However, these constitutional provisions only constrain federal and state actors, not private individuals.[211] That is, the action must be carried out by the government in order for there to be a constitutional violation.[212] The Court has determined state action by assessing whether the action falls under the public function doctrine.[213] Under the public function doctrine, the Court considers whether the private individual performs functions exclusively reserved for the states, or functions that are governmental in nature.[214] Another consideration is whether the activity meets a public need.[215] That is, whether the private actor enforces the law of the state, or just protects its employer's property or business interests.[216]

To secure Fourth Amendment rights, the Supreme Court adopted the exclusionary rule.[217] The exclusionary rule initially only applied to federal agents and only excluded the admission of unconstitutionally seized evidence in federal proceedings.[218] Evidence that state officials seized and turned over to federal officials, however, could be used in federal and state proceedings; this was coined the "silver platter doctrine."[219] Later, the Court extended the exclusionary rule to unlawful searches by state agents in federal proceedings, and effectively en-

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[207] *See* Lynn M. Gagel, *Stealthy Encroachments Upon the Fourth Amendment: Constitutional Constraints and Their Applicability to the Long Arm of Ohio's Private Security Forces*, 63 U. CIN. L. REV. 1807, 1831 (1995).

[208] *See, e.g.*, Ill. Ann. Stat. ch. 310, para. 10/8.1a. (Smith-Hurd 1996).

[209] *See* People v. Stormer, 518 N.Y.S.2d 351, 352 (1987).

[210] *See, e.g.*, Mapp v. Ohio, 367 U.S. 643, 655 (1961).

[211] *See* Burdeau v. McDowell, 256 U.S. 465, 475 (1921).

[212] *See id.*

[213] *See* Marsh v. Alabama, 326 U.S. 501 (1946).

[214] *See id.* at 506-07; *see also* Evans v. Newton, 382 U.S. 296, 299 (1966); and White v. Scrivner Corp., 594 F.2d 140, 142 (5th Cir. 1979).

[215] *See* Marsh, 326 U.S. at 506-07.

[216] *See id.*

[217] *See* Weeks v. United States, 232 U.S. 383, 391-93 (1914).

[218] *See id.*

[219] Lustig v. United States, 338 U.S. 74, 78-79 (1949).

ded the silver platter doctrine.[220] Finally, the Court extended the exclusionary rule to state officials in state proceedings.[221]

In rationalizing the extension of the exclusionary rule, the Court cited deterrence.[222] The Court concluded that "[t]he rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it."[223] The Court also cited judicial integrity as a reason for the extension.[224] The Court stated that "[t]he State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution, which it is bound to uphold."[225]

Unlike PHA police officers, private security guards employed by PHAs generally have not been deemed state actors subject to constitutional restraints.[226] However, in order to safeguard individual privacy rights, courts should find that these private security guards fall within the definition of state actors under the public function doctrine.[227] By protecting public housing developments, these private security guards perform a government function. In addition, this function concerns protecting public property for the public's benefit. Because these private security guards carry out the same functions as a police force established by a PHA, courts should consider them state actors under the public function doctrine, and therefore, subject them to the same constitutional restraints.

Furthermore, if courts choose not to deem these private security guards state actors, they should at least exclude evidence seized by these guards in violation of a PHA resident's Fourth Amendment rights under the exclusionary rule. Otherwise, we risk reviving the silver platter doctrine.[228]

Courts should extend the exclusionary rule to private security guards at public housing developments who conduct sweep searches or other security functions for the same reasons that the Supreme Court extended the exclusionary rule to include federal as well as state actors — deterrence and judicial integrity. We cannot allow PHAs to violate the rights of its residents by utilizing private security guards because doing so encourages circumvention of the Fourth Amendment's prohibition against illegal searches.

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[220] *See* Elkins v. United States, 364 U.S. 206, 223-24 (1960).

[221] *See* Mapp, 367 U.S. at 655.

[222] *See id.* at 657-58; and Elkins, 364 U.S. at 217.

[223] Elkins, 364 U.S. at 217.

[224] *See id.* at 222; Mapp, 367 U.S. at 659.

[225] Mapp, 367 U.S. at 657.

[226] *See, e.g.*, Wade v. Byles, 83 F.3d 902, 907 (7th Cir. 1996); People v. Perry, 327 N.E.2d 167, 175 (Ill. 1975); *See also* Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982); Blum v. Yaretsky, 457 U.S. 991, 1011-12 (1982); Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 161-66 (1978).

[227] *See* Marco Caffuzzi, *Private Police and Personal Privacy: Who's Guarding the Guards?*, 40 N.Y.L. SCH. L. REV. 225, 247 (1995).

[228] *See* Gagel, *supra* note 207, at 1848 (citing John M. Burkoff, *Not so Private Searches and the Constitution*, 66 CORNELL L. REV. 627, 671 (1981)).

CONCLUSION

It is irresponsible to suggest that law-abiding citizens living in public housing deserve nothing more than a band-aid and a practical repeal of their Fourth Amendment rights in order to solve the problems in public housing developments.[229] Violent crime is not unique to the poor or to public housing developments. It is a problem we all face no matter what type of neighborhood we live in. The solutions for solving crime in public housing projects should not be any different from those in other areas.

The solution must come over a period of time. People should not be treated differently simply because the government supports them in some way. Only when people are treated with respect will society be close to solving its problems as well as the problems in public housing facilities. Until then, people's right to be free from unnecessary searches and seizures, especially where PHAs are concerned, will continue to be violated.

Furthermore, when a state governmental entity, like a PHA, employs private security guards to perform the same functions as PHA police officers, these private security guards should be similarly constrained by the Fourth Amendment. Otherwise, we provide a loophole for PHAs, and this compromises PHA residents' constitutional rights.

Zionne N. Pressley

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[229] *See* Moseley-Braun Statement, *supra* note 111, at *2.