Commentary

The War on Drugs: A War Against Women

Bernida Reagan†

INTRODUCTION

In any war, there must be a designated enemy. In the “War on Drugs” the enemies are the alleged drug users as well as those who simply find themselves in an area of drug activity. Local police, national armed forces, social service workers, and legal service advocates have been inducted into the fight, and funds to prosecute this war are taken from other programs which have proven much more effective at combating drug abuse and addiction. While called a war against drugs, it is in fact a war against people, usually poor people of color. This Commentary focuses on this war’s impact on its female victims.

The War on Drugs disproportionately impacts communities of color even though the incidence of drug use is no greater in those communities. Drug use crosses all gender, racial, economic, and social lines. Yet scenes of gunplay, gang violence, and innocent children killed in drive-by shootings in Black neighborhoods pervade the news media’s coverage of drug abuse. Consequently, even though 82% of illicit drug users in this country are white, the drug problem is depicted as unique to poor urban communities of color.

† Bernida Reagan is the Executive Director of the Berkeley Community Law Center and a Lecturer in Housing Law at Boalt Hall School of Law, U.C. Berkeley. She is on the Executive Board of the San Francisco Lawyer’s Committee for Urban Affairs and has worked in public interest law for 12 years.

1 The “War on Drugs” refers to federal, state and local government policies that are designed to eradicate drug use in affected communities. This “war” has targeted the activities of inner-city youth and small-time drug dealers who are highly visible but generally not responsible for importing the massive quantities of drugs that devastate low-income communities.

2 Erica E. Tollett, Drug Abuse and the Low Income Community, 24 Clearinghouse Rev 496, 497 (Special Issue, 1990), citing to data from the 1988 Household Survey on Drug Abuse, National Institute on Drug Abuse, US Dept of Health & Human Services (“NIDA Survey”), which concludes that racial groups are very similar in their incidence of illicit drug use.

3 Id.

While no one would dispute that drugs, particularly alcohol and crack cocaine, are destroying our communities, hysterical reactions to the problem will not provide meaningful solutions. Because women of color are particularly subject to public scrutiny, they are the easiest targets in the War on Drugs and therefore suffer the greatest casualties. Like their sons, husbands, brothers, and fathers, women are being incarcerated for alleged involvement in drug activity. In addition, they are denied and evicted from housing, sterilized, denied welfare benefits, separated from their children, and victimized by police and other authorities—all as a result of the War on Drugs. Throughout all of this, few efforts are directed at the underlying problems of poverty and discrimination.

I. Drug Use Among Women

In every category (race, age and income) fewer women than men use drugs. However, a notable number of women do engage in drug use. According to a study by the National Institute on Drug Abuse, 34.8% of the white women surveyed had used drugs. Black and Latina women had used some illicit drug 29.6% and 26.9% of the time, respectively, in the same time period. Within the past year, 12.1% white, 10.5% Black, and 11.7% Latina women reported using drugs. Of women surveyed, 8.9% white, 5.9% Black, and 8.1% Latina women reported using cocaine. In the past year, cocaine use was reported at 2.7%, 2.8%, and 4.1% for white, Black, and Latina women, respectively. In the past month, 0.9% white, 1.2% Black, and 1.5% Latina women reported using drugs. Thus white women used drugs in greater percentages than Black and Latina women in all but one category.

Employment statistics shed further light on the demographics of drug use. The less men earn, the more likely they are to use drugs. For women the converse is true. These statistics, combined with the statistics on drug use for women discussed above, indicate that poor women of color do not fall into any categories with the highest incidence of drug use. However, the consequences of addiction to or any association with drugs can be much harsher for poor women of color due to poverty and discrimination.

Drug use affects all women (regardless of race or class) differently.
than drug use affects men. A woman who uses drugs while she is pregnant may impair the health of her fetus. Women are also more likely to be the primary caretakers of their children as well as single heads of households, so drug use further jeopardizes their social and financial security.

For poor women of color, however, many of these problems are exacerbated by their socially vulnerable status. First of all, their drug use is more likely to be detected and reported than is drug use by white and/or upper class women. As I explain in Part II, this fact makes them the primary targets of strategies which criminalize drug use during pregnancy. Furthermore, poor women of color have little or no access to the special kinds of support necessary to overcome drug addiction and its attendant problems. Because pregnant addicts fear being turned in to the authorities for their abuse of drugs or alcohol, many of these women refuse to seek prenatal care. This decision increases the risk that the babies will suffer from illness or addiction after birth. Crack cocaine, which is more commonly used by poor women than the more expensive drugs of choice of upper class white women, has particularly adverse effects on fetuses. Babies born with crack in their systems do not nurse well, are frequently unresponsive, irritable, and difficult, and may suffer strokes before birth and heart attacks after delivery. The cocaine also decreases the flow of blood to their organs while in the womb, so they frequently have malformed kidneys and genitals.

Because these babies are also born with abnormally small heads, experts predict that they will experience long-term developmental delays. It is unclear, however, whether drug exposure or the poor environmental factors which usually accompany drug use cause the developmental delays which appear in babies exposed to crack during pregnancy. In either event, mothers of these babies may need support and training in how to care for their infants after delivery.

Poor women who abuse drugs may also suffer from sexually transmitted diseases. Women who exchange sex for crack cocaine (commonly

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9 Id at 499-500.
10 Id.
11 See id at 499, discussing the results of a study of pregnant white and Black women in Pinellas County, Florida:
   While the study concluded that the use of illicit drugs is common among pregnant women, regardless of race and socioeconomic status, black women and poor women were more likely to be reported to health authorities after their deliveries for substance abuse during pregnancy.
   See also Dorothy E. Roberts, Mother as Martyr, Essence 140 (May, 1991) ("Because poor Black women must often give birth or seek medical attention in public hospitals and clinics, they are in closer contact with government agencies").
12 Lockwood, What's Known—and What is Not Known—About Drug Exposed Infants, Youth L News 13, 18 (Special Issue, 1990).
13 Tollett, 24 Clearinghouse Rev at 500 (cited in note 2).
14 Id.
15 Id.
referred to as "toss-ups") may contract and spread congenital syphilis. Penicillin-resistant gonorrhea has also increased in urban areas where there is a high incidence of crack use. In addition, the cocaine-addicted drug user who shares needles with other intravenous drug users risks becoming infected with the AIDS virus. Intravenous drug users, their partners, and their children are quickly becoming the newest group of AIDS victims.

II. THE WAR STRATEGY

While drug use by women presents society with new and complicated challenges, the War on Drugs fails to address any problems except the public's need for a seemingly quick cure. Lack of job opportunities, rampant and increasing discrimination against women and minorities, lack of affordable housing, health and child care, and resulting hopelessness and despair are the real problems that are being ignored by the commanders-in-chief in the war against drugs. Instead, criminal prosecution, sterilization, separation of families, and termination of housing and other benefits are the government's primary responses to the problems of drug and alcohol abuse in women.

The War on Drugs disproportionately impacts minority women living in inner cities for a variety of reasons. Due to the feminization of poverty and the lack of meaningful housing choices for women of color with children, it is inevitable that many of them live in high crime, drug-infested areas. If they are not involved in the drug trade directly, they are found guilty by association— with their children, other family members, friends, and associates. In both the criminal and the civil context, the law is used to destroy families and neighborhoods without attempting to address the underlying causes of drug addiction and abuse.

An example from the criminal context is the prosecution of pregnant women who use drugs. Criminal prosecution for fetal abuse, like all of these other War tactics, is exercised in a racially discriminatory manner: 70% of all women charged with fetal abuse are African-American. The most commonly proffered reason for such action is purported concern for the child's welfare, but this sudden concern for the welfare of Black babies prompts suspicion.

This particular strategy in the current War on Drugs is a continuation of the dehumanization of the Black woman that has its roots in slavery. In those times, the slave master controlled reproduction through forced breeding, manipulation of marital choices, and rape. After giving

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16 Id at 500 ("In 1988, 691 cases of congenital syphilis were reported—357 cases in New York City alone. 39% of the mothers giving birth to infected babies had used cocaine or crack").
17 Id.
18 Roberts, Essence at 140 (cited in note 11).
birth, slave women were often denied the right to keep or care for their children.\textsuperscript{19} More recently, poor women of color have been subject to forced sterilization while their ability to choose other means of reproductive control, such as abortion, has been severely limited.\textsuperscript{20} Thus, while it solves few of the problems causing, related to or resulting from drug addiction, punishment for fetal abuse is consistent with the rest of the policies emanating from the War on Drugs in that it perpetuates the victimization and oppression of women of color.

In the civil context, one of the most visible aspects of the drug war strategy (and one with which I have become intimately familiar in the last few years) is the policing of public housing projects and other subsidized housing units. Subsidized housing was targeted as one of the first battlegrounds for the War on Drugs. Jack Kemp drew up his military strategy as one of his first acts as Secretary of Housing. Examples of his plan to eradicate drugs from housing projects include termination of a family's right to an administrative hearing where there are allegations of drug use or other drug-related activities,\textsuperscript{21} implementation of new regulations which added drug use as a basis for termination of a Section 8 certificate,\textsuperscript{22} and seizures of subsidized housing units without any kind of hearing prior to seizure.\textsuperscript{23}

Local housing authorities, landlords, and managers who participate in subsidized housing programs have followed Kemp's lead by seeking to evict tenants or terminate their housing benefits based on nothing more than allegations by neighbors, unidentified informants or housing authority personnel regarding drug use on the premises.\textsuperscript{24}

In many cases, the evidence of drug activity is nothing more than the allegations of someone who simply had a grudge against the subsidized housing recipient. Furthermore, many of the police agencies involved commit criminal and abusive acts. In Oakland, California, for example, four members of the Oakland Housing Authority's special drug task force were recently convicted of theft, assault, battery, and false arrest related to their activity as housing authority police.\textsuperscript{25} Their

\textsuperscript{19} See Angela Y. Davis, \textit{Women, Race, and Class} 6-10 (Vintage, 1983).
\textsuperscript{20} Id at 202-21.
\textsuperscript{21} See David B. Bryson and Roberta L. Youmans, \textit{Crimes, Drugs and Subsidized Housing}, 24 Clearinghouse Rev 435 (Special Issue 1990).
\textsuperscript{22} See, for example, 24 CFR § 882.118(b)(4), 882.210 (1991). The Section 8 housing program is part of the National Housing Act, codified at 42 USC § 1437(f) (1991). Under this program, the federal government provides subsidies to the local Public Housing Authority which then selects participants based on household composition, income, and other factors. The recipient, once approved for participation, receives a certificate which allows her to locate a landlord who will rent to her under Section 8. The program is sometimes called the "finders/keepers" program because of the difficulty of getting a certificate and locating housing.
\textsuperscript{24} For numerous horror stories reported by legal advocates regarding these punitive and inefficient policies, see Bryson and Youmans, 24 Clearinghouse Rev at 440 (cited in note 21).
actions included clubbing an unresisting woman over the head with a flashlight, assaulting others who did not even live on the housing authority premises, and planting evidence on others to implicate them in drug activity. In these and other cases, innocent citizens became prisoners of the War on Drugs, while those responsible for enforcement became perpetrators of war crimes which further jeopardized the safety and security of communities already under siege.

The demographics of subsidized housing reveal that these abuses often fall most heavily on women. In Berkeley, California, for example, women with children are the overwhelming majority of subsidized housing recipients. The appalling and recurring violations of these women's human, civil and constitutional rights resulting from the so-called War on Drugs should outrage every human and civil rights advocate.

A. A Case Study of War Victims: Berkeley's "Drug Mitigation Policy"

The city of Berkeley's two-year-old "Drug Mitigation Policy" illustrates some of the worst civil rights violations. Beginning in 1989, the city of Berkeley adopted a drug mitigation policy which called for cooperation among the various city departments to rid the city of drugs. As part of its policy, the city targeted subsidized housing recipients, particularly Section 8 certificate holders. The city's drug task force embarked upon a policy of controlled drug buys from suspected drug dealers in "high crime areas." More often than not, the "high crime areas" included large numbers of Section 8 units.

The controlled drug buys followed a similar pattern in every case: members of the drug task force would identify an area known for heavy drug activity, direct a confidential, unidentified informant to the suspected location (usually an apartment in a high crime and drug activity area), tell the informant who the suspected drug dealer was, provide the informant with drug task force funds to purchase crack cocaine, and drop the informant off near the suspected unit. The informant would more often than not return after several minutes with rock cocaine and inform the police from whom the cocaine was purchased. The police would then prepare an affidavit with the information on the alleged drug buy, obtain a judge's signature for a search warrant, and then search the suspected unit.

In most cases, the police were unsuccessful in finding drugs or other evidence of drug business activity in the suspected unit. Nevertheless,

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26 Phone Interview with Murlene Grant, Housing Specialist with the Berkeley Housing Authority, March 23, 1991. Ms. Grant estimates that at least 85% of the recipients of Section 8 in the City of Berkeley are female heads of households.

27 Section 8 has become the largest subsidized housing program in Berkeley.
the holder of the Section 8 certificate would be threatened with termination of the certificate, based not on the drug search, but on the alleged controlled drug buy by the confidential informant.

In the early stages of the program, the Housing Authority sent out notices threatening termination of benefits that did not specify the true basis of the decision to terminate, nor inform the recipient of her right to review the material on which the threatened termination was based, nor adequately inform the recipient of the appeal procedure following the initial decision to terminate. If the residents found legal representation, they were sometimes able to get a hearing on the threatened termination. The Housing Authority based its decisions on double and triple hearsay. A typical hearing went something like this: the officer at the hearing attempted to introduce information from a police report that he neither prepared nor had any knowledge of and which was based on another officer's recounting of what an unidentified, confidential informant told him or another officer. If the resident was represented by counsel, objections were made. If not, the hearing examiner usually admitted the hearsay and based the decision to terminate on such information. The resident might also be cross-examined by a police officer, who may or may not have had any connection with the information contained in the hearing file. Through such cross-examination, the officer would try to get into the record information he may have had, based on past interaction with the resident or acquaintances of the resident, but which was not necessarily included on the notice of termination or in the resident's file.

Furthermore, in these early hearings, most of the residents threatened with termination were mothers and grandmothers. These women were being punished for acts of their children or grandchildren, of which they had no actual knowledge nor any reason to know. One grandmother's subsidy was being terminated for the acts of a 15-year-old grandson who had imprisoned her in her own bedroom so that he could use the unit for drug activity. Rather than work with the grandmother to find alternatives for dealing with the abusive grandson, the Housing Authority was prepared to terminate her subsidy. Such action would have certainly sentenced her to homelessness, since her income, approximately $300 per month, would have been insufficient to allow her to obtain affordable housing in the unsubsidized market.28

Because of the disproportionate numbers of female-headed households participating in the Section 8 program in the City of Berkeley, a seemingly neutral policy disproportionately affected women of color. The termination of these women's benefits will simply result in more

28 Federal housing benefits typically provide that the resident pay no more than 30% of her income for rent, with the federal government making up the difference.
homelessness, overcrowding, and a greater incidence of women living in substandard housing.

After lengthy negotiations with public interest attorneys, the city radically altered its policy. However, approximately 30 families receiving Section 8 certificates had already been terminated. The city is currently attempting to terminate another 50 or so subsidies.

For many of these mothers and grandmothers, termination of their housing subsidies due to the acts of their family members is yet another injustice in their lives. Often they are already caring for a drug-addicted family member’s child or children, sometimes when they are past their 70th or 80th birthday; the problems of child-rearing resurface just when they thought they might be able to see some peace and quiet. Often they are brought into court to testify or otherwise address the many problems that drug addiction and crime bring into the family. While these women may not be responsible for the alleged conduct that leads to the loss of their subsidies, they sometimes seem resigned to the absurdity of their situations and become unable to confront the reality of their impending evictions. Many of them also hesitate to admit that a family member is having problems with drugs for fear that they will say or do something that might hurt that person. It is a challenge for the advocate to get these women to start thinking about themselves; for many clients, this has never been an alternative.

While writs have been filed in superior court to challenge some of the housing terminations, it is not clear what a superior court judge might do when faced with these cases. It is rare that a superior court judge wants to listen to a landlord-tenant case; in my experience, the judge makes every attempt to find a reason why the superior court is the wrong forum for such a case. Either the case is too inconsequential for a superior court’s time and therefore should be filed in municipal court, or there are “federal questions” and the case should be brought in federal court. The reality is that superior courts currently are flooded with felony criminal cases (usually drug cases) and there is no room on the dockets for “insignificant” landlord-tenant cases.

Furthermore, as advocates, we would be naive to think that the issue of drug dealing or drug activity is going to meet with any sympathy in these courts where street-wise, repeat offenders appear on a daily basis. The fact that there may be no personal guilt on the part of the resident or that the resident may have dealt with and overcome her problems does not necessarily prevent homelessness, which is the ultimate result if an unsympathetic judge handles the case.

Because of the uncertainty regarding how courts will deal with these cases, many recipients of Section 8 benefits choose to settle their cases with the Housing Authority rather than jeopardize their valuable certificates. Housing costs for these families will usually triple or quadruple if
they are forced out of subsidized housing and many would therefore become homeless. Settlements in these cases have included continued assistance in exchange for the parents obtaining temporary restraining orders against the offending household member (or other measures to bar that person from the household), intrusive visits by Housing Authority personnel or police to make sure no drug activity is occurring on the premises, enrollment of children in under-funded and frequently useless or ineffective social programs, and waivers of confidentiality of their assistance files to ensure “effective enforcement” of the terms of the settlement. While such terms have been quite offensive to their advocates, many clients are eager to enter into such agreements to protect their valuable housing subsidies.

B. Defense Against the War: Challenges for the Advocate

There is a typical dance that usually takes place between the advocate and the client at the beginning of a representational relationship when the client understandably is reluctant to share all the information which the advocate would normally find pertinent. Many advocates are not even aware of the deep invasion of privacy that a client experiences when seeking legal assistance or other social services. Some recognize the privacy issue but fail to identify techniques that ensure that the client will not feel violated by the very person she has approached for assistance.

This problem is even more pronounced when the client has sought assistance for issues involving alleged drug use or drug activity. Legal and social workers face tremendous frustration in representing women involved with drugs and drug-related behavior, such as dealing, prostitution, and child abuse and neglect. Addiction many times brings with it mistrust, denial, and deceit, making it impossible to gain the client’s confidence so help can be provided. Most women will deny the allegations and some will admit they used to use drugs, but state they don’t do so anymore.

In order to assist such a client effectively, the advocate must find ways to overcome mistrust so that the client feels comfortable discussing her deepest, darkest secrets. The problem is compounded when the woman is a mother who fears her children will be taken away if her drug problem is revealed. Suggesting meaningful alternatives to continued drug use will certainly help bridge the communication gap where the woman wants to get help, but the current emphasis on punishment rather than rehabilitation and treatment makes it nearly impossible to provide these alternatives for the substance-abusing client. Such alternatives would include basic, remedial and vocational education, counseling and
other emotional support, job training and placement, child care, education, affordable housing opportunities, and health care.

Restrictions placed on advocates, particularly those whose work is funded by the Legal Service Corporation (LSC), further complicate their ability to assist drug-addicted clients or clients threatened with termination of benefits. Most of these advocates routinely deal with problems such as access to medical care, family law matters, and welfare and housing problems. However, the LSC, whose board is appointed by the President of the United States, is hostile to the needs of poor people—as evidenced by the Corporation's actions over the past ten years to defund or significantly reduce funding of legal services programs.

The LSC has also placed restrictions on the types of activities that legal services attorneys can undertake. The LSC Board has effectively prohibited any attempts to address the root causes of poverty by condemning as "social engineering" activities which involve redistricting, abortion, and school desegregation. Recently, the LSC Board has attempted to impose restrictions on LSC-funded attorneys who represent anyone with drug-related problems. Initially, the Board proposed an absolute prohibition on assisting anyone alleged to be involved in drug activity. The final resolution which passed was much weaker, although it still restricted representation somewhat.

In addition to trying to prevent LSC attorneys from representing poor people alleged to be involved in drug activity (this includes evictions, custody cases, and health care matters), the Corporation seems to be advocating its own brand of "social engineering." The Corporation has tried to enlist LSC-funded attorneys to fight the War on Drugs themselves by assisting community groups in ridding their neighborhoods of drugs, strengthening eviction procedures, and assisting organizations in the implementation of drug testing procedures.

As an advocate for the poor for over 12 years, I have found that most clients find it extremely difficult to represent themselves effectively in legal proceedings without some sort of training or preparation. It should always be a goal of legal service advocates to help clients develop the skills to represent themselves. However, in the current climate of hysteria surrounding the drug situation, it is ridiculous to assume that clients will have a fair opportunity to prevent illegal benefit terminations or other inappropriate actions by authorities which can easily result in family destruction, homelessness or death.

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31 Ann Bailey, Legal Services, Poor Clients, and the "War on Drugs", 24 Clearinghouse Rev 504 (Special Issue, 1990).
III. What Can Be Done

Advocates for the poor can help the communities they serve confront the many issues surrounding drugs in their communities without waging a war against victims. It is important to identify the issues and construct meaningful ways for addressing problems without adding to the numbers of people who are homeless or living in broken families.

Advocates can fight for equity in access to health care; demand equality in testing; seek equity in day care centers; work with parents of children in school; advocate that babies born addicted to drugs be granted handicapped status; represent clients in eviction cases; and fight repressive legislation or regulations which deprive poor people, especially women, of their constitutionally protected rights.

In addition to potentially harming their children or fetuses, many women, as a result of addiction, engage in activity that is seriously harmful to themselves, such as prostitution to support their habits. Such activity exposes them to AIDS, physical abuses, and countless other dangers. Again, advocates must press for innovative and comprehensive programs to get these women off drugs and into meaningful and productive lifestyles.32

When I talk with my clients about the steps they have taken to turn their lives around, they repeatedly mention rehabilitation programs with comprehensive support as the most important part of their recovery. The support they get both from job training and educational referrals and from talking with other women facing similar difficulties gives them new hope. In parenting classes, they discover better ways to relate to their children and to help direct them away from drugs and into constructive youth and young adult programs. Some clients have had to learn the lessons of “tough love” to help their children and to allow them to focus on their own needs rather than jeopardizing their housing, welfare benefits or family stability because of the children’s (particularly their adult children’s) behavior.

In response to the phenomenon of mothers and grandmothers caring for their children and grandchildren abandoned by drug-addicted parents, some community groups have begun to participate in interdisciplinary efforts to provide support for these care-givers. A wonderful example is the Grandparents Support Group of Alameda County which has sponsored conferences and resource fairs for care-givers. The group not only provides these types of supportive group meetings but also has developed a manual for grandparents and care-givers. Assistance includes information, advice and referrals on issues such as custody, fos-

32 See Brenda V. Smith, Improving Substance Abuse Treatment for Women, 24 Clearinghouse Rev 490 (Special Issue, 1990). At the end of her article, Smith includes a helpful list of successful comprehensive drug treatment programs for women.
ter care, welfare and medical benefits, housing, domestic violence, and education. Participating groups include health care providers, welfare agencies, county supervisors, lawyers, educators, and housing advocates.

Publicly-funded programs providing desperately needed treatment and rehabilitation services are the first to go in times of budget cutbacks, while prisons and other corrective institutions flourish. Privately funded residential treatment centers are extremely vulnerable to the whims of the philanthropic. One such project in Oakland, Keller House, is a successful program aimed at pregnant women who are drug-addicted. When the project sought a permit to house women in the Oakland hills, neighborhood groups organized to prevent the group from getting a permit to do so, limiting the number of women who could be assisted at Keller House to six. This example of the “not-in-my-backyard” syndrome that has so long prevented the well-intentioned from placing innovative programs in under-utilized suburban areas exacerbates the problems created by government policies which place low priority on the needs of the disadvantaged.

As individuals and groups concerned about the ravages of drugs, particularly in low-income communities, we need education and better communication between neighbors to assist us in understanding how our lives are interconnected. Financial support for programs that prevent and end addiction will result in long-term savings for everyone. We must stop the destruction wrought on our communities by both drugs and the War on Drugs. We must initiate and follow through on peacetime strategies that ensure our safety and our survival.