

EXPERT REPORT OF BARRY KRISBERG, PH.D

INTRODUCTION

The plaintiffs in this case retained me as an expert witness to assess whether the Antioch Police Department engaged in practices that had a racially disproportionate impact. In my opinion, as outlined in this report, the Antioch Police Department, through its Community Action Team (CAT), engages in practices that have an disproportionate impact on Section 8 households and African-American Section 8 voucher holders.

QUALIFICATIONS AND BACKGROUND

I have been the President of the National Council on Crime and Delinquency (NCCD) since 1983. The NCCD is the nation's oldest criminal justice research organization. I and the NCCD are frequently called upon by elected officials, criminal justice practitioners, the media, and concerned citizens for advice on designing crime control programs that are safe, fair, humane, and economically sound.

See attached resume for details related to the following summary.

Education and Teaching

My master's degree in criminology and Ph.D. in sociology were completed at the University of Pennsylvania. I have held several educational posts at U.C. Berkeley in the School of Criminology, the Legal Studies Department, and the Law School. I am presently an Adjunct Faculty member at the U.C. Berkeley Law School. I have taught undergraduate and graduate classes in research methods, undergraduate courses in criminal justice policy, and an advanced seminar for law students on prisoner reentry. I was recently named as a Visiting Fellow at the Center on Race and Justice at John Jay College in New York City.

Appointments

In 1979, upon request by California Health and Welfare Secretary Mario Obledo, I served on a statewide Task Force on the Over-Representation of Minorities in California Prisons. In 1991, I was named by the California Legislature to serve on the Blue Ribbon Commission on Inmate Population Management. In 1999, upon his request, I chaired Attorney General Bill Lockyer's Research Advisory Committee.

In 2007, upon request by the California Department of Corrections and Rehabilitation, I served on an Expert Panel on Adult Offender Reentry and Recidivism Reduction Programming. In 2003, upon request from Attorney General Bill Lockyer, I lead an independent investigation of the California youth prisons. Also in 2003, the Alameda County Superior Court appointed me as a subject matter expert in a consent decree involving the California Division of Juvenile Justice.

Research and Writing

I have researched and written extensively on race and ethnicity in the adult and juvenile justice systems. Most recently, I supervised an analysis of race and ethnic disparities in federal and state criminal justice systems. This study was commissioned by the Open Society Institute. I have directed projects by the NCCD that were designed to reduce racial disparity in the Probation Departments of San Mateo, Alameda, and Ventura Counties in California. I am often called upon by the State of California Corrections Standards Authority to provide training on this topic. I have offered similar training for the New York Criminal Justice Agency and Florida Blue Ribbon Commission on Juvenile Justice.

I have directed a 40-city effort by the U.S. Department of Justice on reducing youth violence. I currently co-direct a 13-city effort in California designed to prevent and reduce gang violence. With Professor Frank Zimring of U.C. Berkeley, I co-direct the Center on Culture, Immigration, and Youth Violence Prevention.

I have conducted research studies of police responses to domestic violence, evaluated law enforcement programs focused on children exposed to violence, and provided consultation to a number of law enforcement agencies on police-public relations. I have numerous books and articles in criminology.

Awards and Affiliations

I was honored by the American Society of Criminology in 1993 with the August Vollmer Award, one of its highest honors. The Jessie Ball DuPont Fund named me their 1999 Grantee of the Year. I serve on the editorial board of a number of prestigious journals in the field. I am a Past President of the Western Society of Criminology.

My memberships have included the Juvenile Justice Committee of the International Association of Chiefs of Police, the American Corrections Association, and the Association of Criminal Justice Researchers of California.

Compensation

My hourly rate for work on this report and testimony in this case is \$250 per hour.

Staff Assistance

Under my supervision, Chris Hartney contributed data processing and analysis work for this report. Mr. Hartney is a Senior Research Associate at the NCCD. He has 15 years of

professional experience in research and statistics. He has worked at NCCD since 2001. See attached resume for additional details about Mr. Hartney's career.

Mr. Hartney's NCCD data management projects include: the development of a Structured Decision Making system for the District of Columbia; management of the multiyear national evaluation of Parents Anonymous, funded by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP); data management for the mental health component of the OJJDP's nationwide Survey of Youth in Residential Placement; a study of incarceration characteristics and recidivism in the Hawaii Youth Correctional Facility for the State of Hawaii; a survey of the probation and mental health departments of every California county; and two studies of assessment centers, one on behalf of OJJDP, the other on behalf of the State of California Board of Corrections.

Mr. Hartney was lead author on several NCCD publications documenting disproportionate representation of people of color, youth, and women in the juvenile and criminal justice systems, including "Created Equal: Racial and Ethnic Disparities in the US Criminal Justice System," "And Justice For Some: Differential Treatment of Youth of Color in the Justice System," "The Nation's Most Punitive States for Women," "Youth under Age 18 in the Adult Criminal Justice System," and "US Rates of Incarceration: A Global Perspective." He is co-author of numerous published articles and has presented study findings before a variety of professional, governmental, and community groups. Mr. Hartney has a B.A. from University of California at Berkeley and has completed all master's level coursework in Experimental Psychology at San Francisco State University.

Mr. Hartney's rate for work on this report is \$150 per hour.

ANTIOCH EXPERT REPORT

I was retained by the plaintiffs in the current case to be an expert witness in these proceedings. I have reviewed many documents, depositions, interrogatories, and statistical data produced by the Antioch Police Department (APD) and Housing Authority of the County of Contra Costa (HACCC or “Housing Authority”). (See data sources list below.)

Methodology

Before describing my findings, I will briefly describe my methods for the inquiry here. I focused my assessment on two time periods. The first, 2006, is the year with the most complete household information from all sources and the year the Antioch Police Department established its Community Action Team (CAT). The second, a composite analysis of data from 2006 through 2009, provides the broadest picture of APD and CAT activities across all Section 8 and CAT locations (defined below).

The unit of measurement in this report is most often “households” because APD designates a location, rather than an individual, as a CAT location or “CAT house.” The latest U.S. Census data that disaggregates households by race is from 2000. I estimated more recent racial proportions among households as follows: I assumed the proportion of African-American households among all Antioch households changed from 2000 to 2006 and 2007 at the same rate as the proportion of African Americans among the general population of Antioch in those time periods. Absent new estimates or surveys of household race statistics, my techniques are reliable estimates of current racial breakdowns. For composite analyses of 2006 to 2009 CAT and Housing Authority data, I used U.S. Census data for 2007 (and my estimates derived there from)

as a proxy for the average population data for that time period. 2007 is the latest year available for which the US Census provides population, household, and renter counts. It is also the year of the highest level of CAT activity, with 133 new CAT houses designated that year. 2006 data was not always available for analyses in this report, in which case I report my findings regarding only the longer time period, 2006 to 2009.

The standard I used for determining “statistical significance” was the one most commonly applied in the social science literature, $p < .05$ (probability value). This standard indicates observed values or difference have at most a 5% (5 in 100) probability or likelihood of being explained by chance alone. However, most of the tests I ran produced probabilities much smaller than those, often approximately 1 in 10,000.

A few CAT locations are not residences, but rather businesses or public spaces. While most of my analyses will focus on households (both “CAT house” households and households in the general population or for a particular segment, such as White households), in some analyses, I considered *all* CAT locations, as appropriate to the point being discussed or as necessitated by the data available.

The key terms I use in this document are as follows. “Housing Authority” is the Housing Authority of the County of Contra Costa (also referred to as HACCC), which administers the Section 8 program in Antioch. “Police Department” is the Antioch Police Department. CAT is the Antioch Police Department’s Community Action Team. CAT designates certain residences or locations as “CAT houses,” indicating those locations are a source of concern to the department. I generally use the term “CAT location” to refer to all CAT locations, whether residence, business, or public space (referred to elsewhere as “CAT houses”). I may sometimes

use “CAT household” to indicate a residence rather than one of the nonresidential types of CAT locations.

Data Sources

For most of the following analyses, I used Section 8 household data from the Housing Authority, CAT location data from Antioch Police Department, and U.S. Census data. The Police Department and its CAT unit do not systematically compile data regarding the racial characteristics of individuals who have not been arrested. The Housing Authority, however, does keep records regarding the race of all Section 8 voucher holders. By cross-referencing the Housing Authority race data with CAT data, the race of all CAT Section 8 households can be estimated.¹ While there are some minor differences between the Housing Authority and Antioch Police data, particularly in the number of referrals to the Housing Authority, these differences are not significant and do not affect my conclusions. I specifically relied upon the following data and documents:

1. 3.17.09 HACCC database: Provides names, race, and addresses for all current and former Section 8 recipients in Antioch from January 1, 2004 to December 31, 2008.
2. 2.10.09 HACCC database: Provides name, race, and addresses for locations referred by CAT to the Housing Authority for termination.
3. 5.13.09 HACCC supplemental database: Provides address and termination status for additional locations referred to the Housing Authority.

¹ While the Antioch Police Department and its CAT unit have had interactions with tenants, including Section 8 voucher holders, at locations other than CAT designated locations, there is no comprehensive data maintained by the Antioch Police Department from which the racial impact of such interactions can be estimated. There is likewise no comprehensive data available regarding the race of non-Section 8 CAT locations. However, the data I have examined indicates a disproportionate focus on Section 8 African-American households by the Antioch Police Department and its CAT unit.

4. CAT Referral Database (Produced 7.13.09): List of locations referred to the Housing Authority, as well as the date that a referral was made, a short description of “violations” cited, the date of termination hearing (if applicable), the disposition of a referral, and whether a target moved.
5. List of CAT Locations (353), D0010395-D0010401.
6. Response to Second Set of Interrogatories #16: List of assigned CAT locations and designation (HUD, Rental, Owner Occupied, or Other) from July 1, 2006 to April 26, 2009.
7. Response to Second Set of Interrogatories #17: List of assigned CAT locations and ZIP code from July 1, 2006 to April 26, 2009.
8. CAT location Files: APD maintains a paper file for each CAT location that contains CAD event reports, incident report write ups, JAWS printouts, RMS printouts, ParcelQuest printouts, “Master Name Summaries,” and received complaints and other documentation regarding the location.²
9. Deposition of CAT Supervisor Sergeant Mitch Schwitters and Rudy Tamayo.

FINDINGS

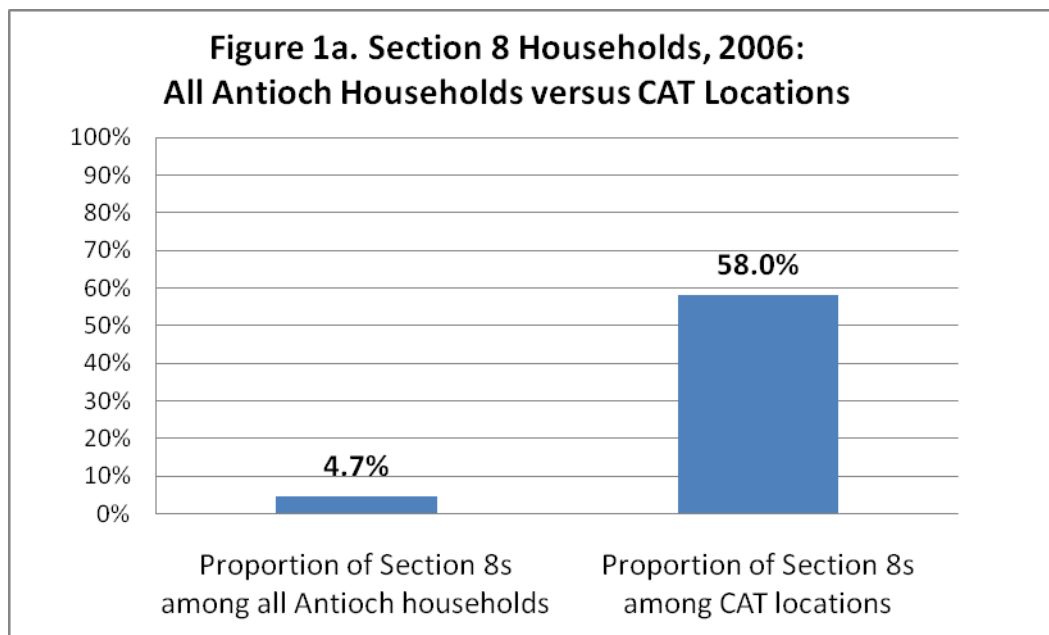
The Antioch Police Department’s Community Action Team claims to focus on quality of life issues regardless of housing status or race, but it actually focuses on Section 8 households and their African-American residents. I have come to this conclusion through several avenues of inquiry, which are described below.

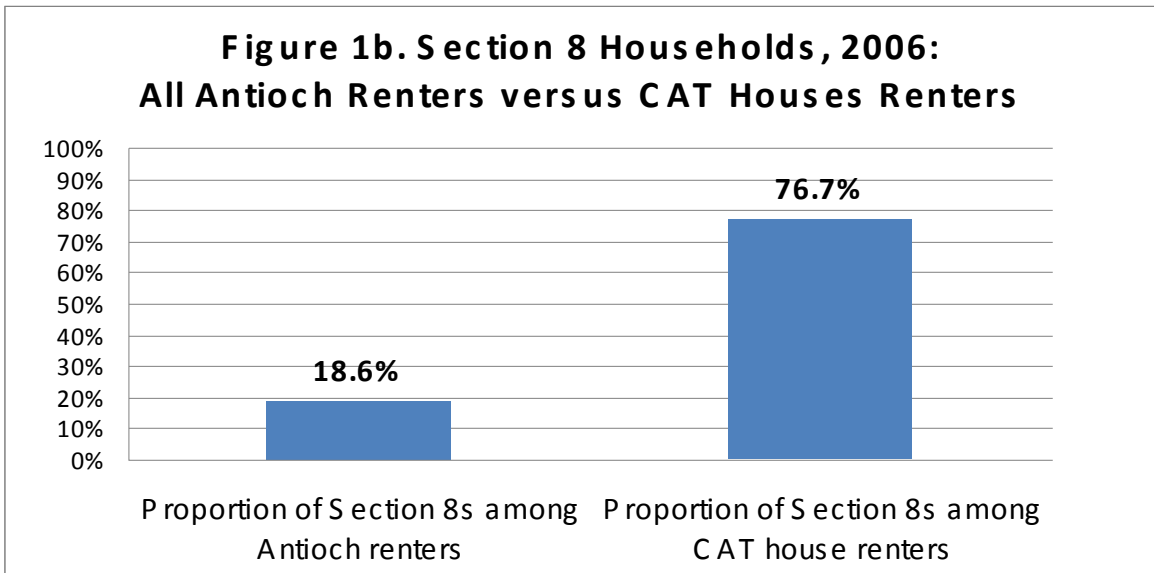
² I received this data from class counsel. Tony Dang, a paralegal with the Impact Fund, provided compilations of data and reviewed the CAT files as directed by my associate Christopher Hartney.

1. CAT disproportionately focuses on Section 8 households more than on non-Section 8 households.

In two sets of analyses, I assessed the data for 2006 and for 2006 through 2009 to explore the focus of CAT activities. The designation of a residence or location as being a “CAT house” is a key consideration, since being designated a “CAT house” results in residents being subject to heightened police scrutiny, neighborhood alert campaigns by the CAT team, intimidating letters to occupants and landlords, legal action, and referrals to the Housing Authority or other agencies.

In 2006, there were 31,335 households overall, 7,895 rental households, and 1,470 Section 8 households in Antioch. The Antioch Police Department reported 119 CAT locations, including 90 rental residences, 69 of which were Section 8 residences. Therefore, Section 8 households represented 4.7% (1,470 of 31,335) of all Antioch households and 18.6% (1,470 of 7,895) of Antioch rental households, but 58.0% (69 of 119) of all CAT locations and 76.7% (69 of 90) of renter CAT households. (See Figures 1a and 1b.)





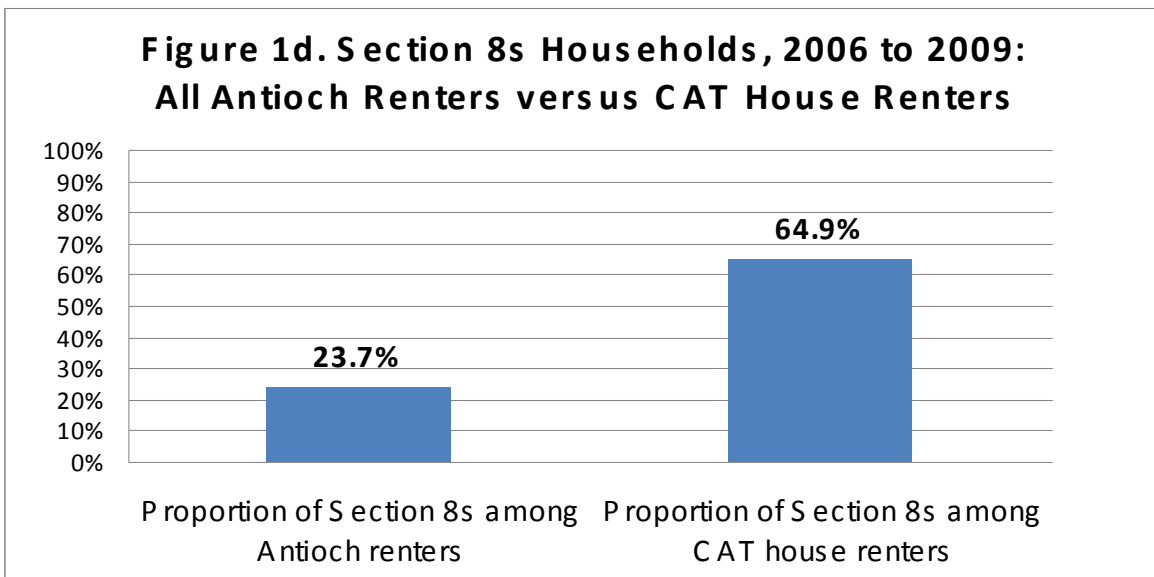
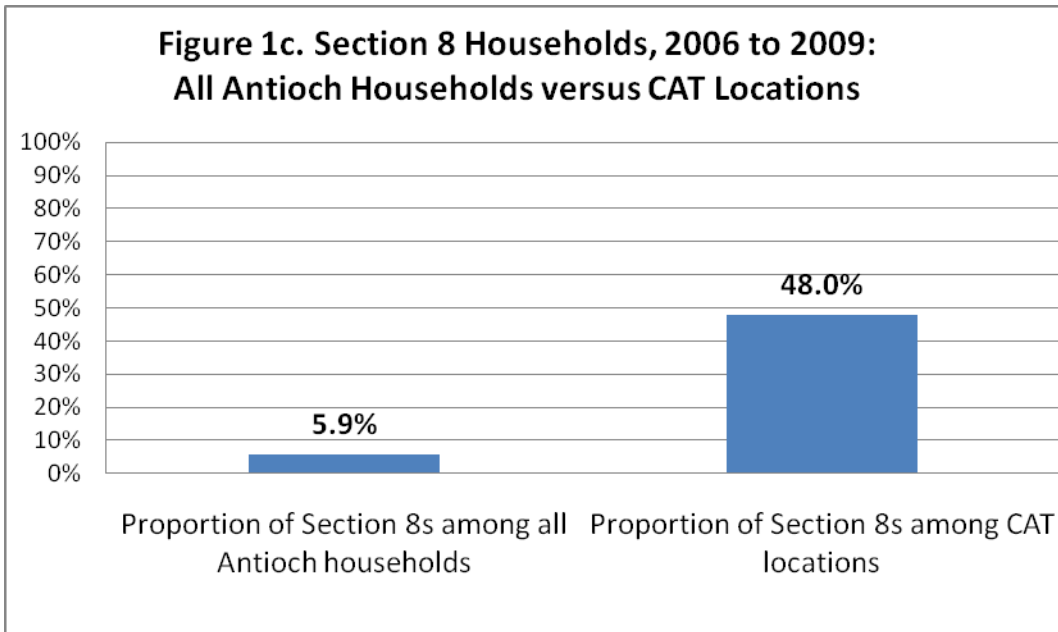
The fact that Section 8 households comprised 5% of all households, but 58% of all CAT locations suggests a strong CAT focus on Section 8. Even more telling is the renter-only comparisons, since all Section 8 households are renters. If CAT focused on all renters equally, we would expect approximately 20% of CAT rental locations to be designated Section 8. In fact, CAT Section 8 locations comprised three quarters of all rentals designated as CAT locations.

To assess whether these differences were due to chance alone, I applied a chi square statistic in which I compared the observed number of Section 8 CAT locations to the number that would be expected if proportionality were present. This statistical test sought to answer the question: Does the observed proportion of Section 8 households among CAT locations (69 of 119, or 58%) fall within an expected range based on the observed proportion of Section 8 households among all Antioch households (1,470 of 31,335, or 5%)? This test produced a chi square value of $X^2=754.29$ (df=1), $p<.0001$. This indicates a very tiny likelihood that the observed differences were due to chance—less than 1 in 10,000. I ran the same test for the renter-only analysis, finding a chi square of $X^2=200.43$ (df=1), $p<.0001$, which also indicates a

very tiny likelihood that the observed differences were due to chance—less than 1 in 10,000. These statistical tests show highly significant disparities.

I found similar disparities in the second set of analyses regarding the focus of CAT on Section 8 households, using Housing Authority and CAT data from mid-year 2006 to the start of 2009. In order to perform a thorough assessment of this data, I included all Section 8 households reported, including those which left the program during this time period for whatever reason (moved, voluntary termination, Housing Authority termination, etc.). I also included all CAT locations, whether or not the case remained open throughout the time period. For Antioch population statistics in these analyses, I used 2007 data, the latest year for which data is available from the U.S. Census and the year in which the highest number of locations were designated as CAT locations (n=133).

For these analyses, there were 32,067 Antioch households overall, 8,041 rental households, of which 1,902 were Section 8 households. During this time period, the Antioch Police Department reported 354 CAT locations, including 262 rental residences, 170 of which were Section 8 residences. Therefore, Section 8 households represented 5.9% (1,902 of 32,067) of all Antioch households and 23.7% (1,902 of 8,041) of Antioch rental households, but 48.0% (170 of 354) of all CAT locations and 64.9% (170 of 262) of renter CAT households. (See Figures 1c and 1d.)



I ran chi square analyses on these apparent differences to assess whether they were due to chance. For Section 8 houses in the Antioch population versus Section 8 CAT locations, the chi square indicated a highly statistically significant disparity, $\chi^2=1131.34$ (df=1), $p<.0001$. For Section 8 houses among Antioch renters versus Section 8 CAT houses among other CAT renters, chi square again indicated a highly statistically significant disparity, $\chi^2=245.76$ (df=1), $p<.0001$.

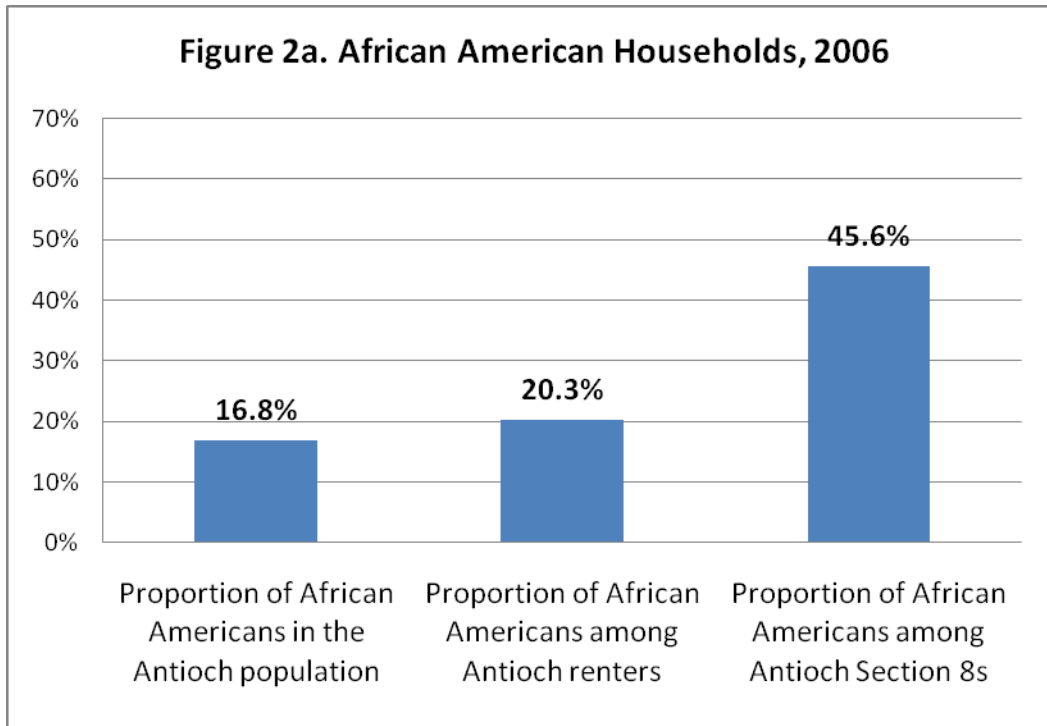
This indicates a very tiny likelihood that the observed differences were due to chance—less than 1 in 10,000.

2. Because African Americans inhabit almost half of Section 8 houses, a CAT focus on Section 8 will necessarily disproportionately impact African Americans.

To assess the racial composition of Section 8 houses in Antioch, I again conducted two sets of analyses, one of data for 2006, the other of data for 2006 through 2009.

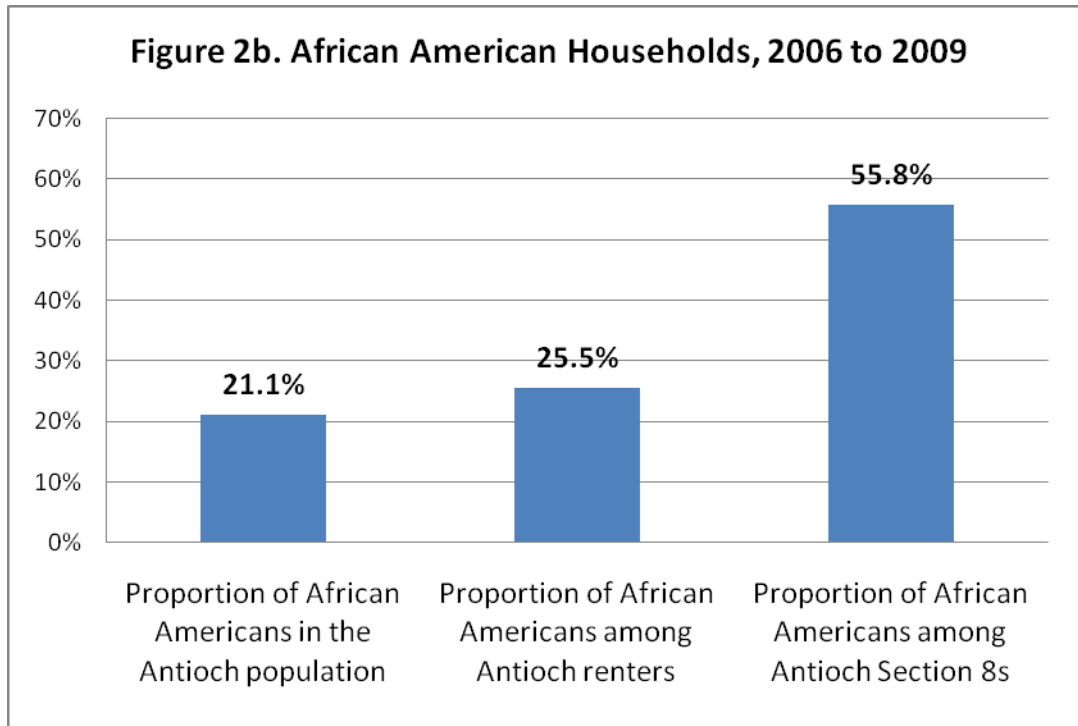
Given that CAT activities disproportionately target Section 8 residents, it is expected they would also disproportionately impact African Americans, since Housing Authority data shows African Americans make up a large percentage, almost one half, of all Section 8 recipients in Antioch. Therefore, disproportionate focus on Section 8 most likely means disproportionate focus on African Americans. (See Figure 2a.)

In 2006, African Americans represented 16.8% of all Antioch households (5,258 of 31,335), 20.3% of all Antioch rental households (1,603 of 7,895), and 45.6% of all Antioch Section 8 households (670 of 1,470).



Statistical tests found both of these differences to be strongly significant. The chi square comparing the proportion of African-American Section 8 households to their proportion among all Antioch households found $X^2=870.99$ (df=1) and a $p<.0001$. The chi square comparing the proportion of African-Americans Section 8 households to their proportion among renters found $X^2=580.57$ (df=1) and a $p<.0001$. These tests indicate strongly statistically significant over-representation of African Americans among Section 8 households compared to their representation among all Antioch households and Antioch renters.

I drew the same conclusions after analyzing data for the longer time period, 2006 to 2009. In 2007, African Americans represented an estimated 21.1% of all Antioch households (6,753 of 32,067) and 25.5% of all Antioch rental households (2,054 of 8,054). Over the course of 2006 to 2009, African Americans represented 55.8% of all Antioch Section 8 households (1,061 of 1,902).



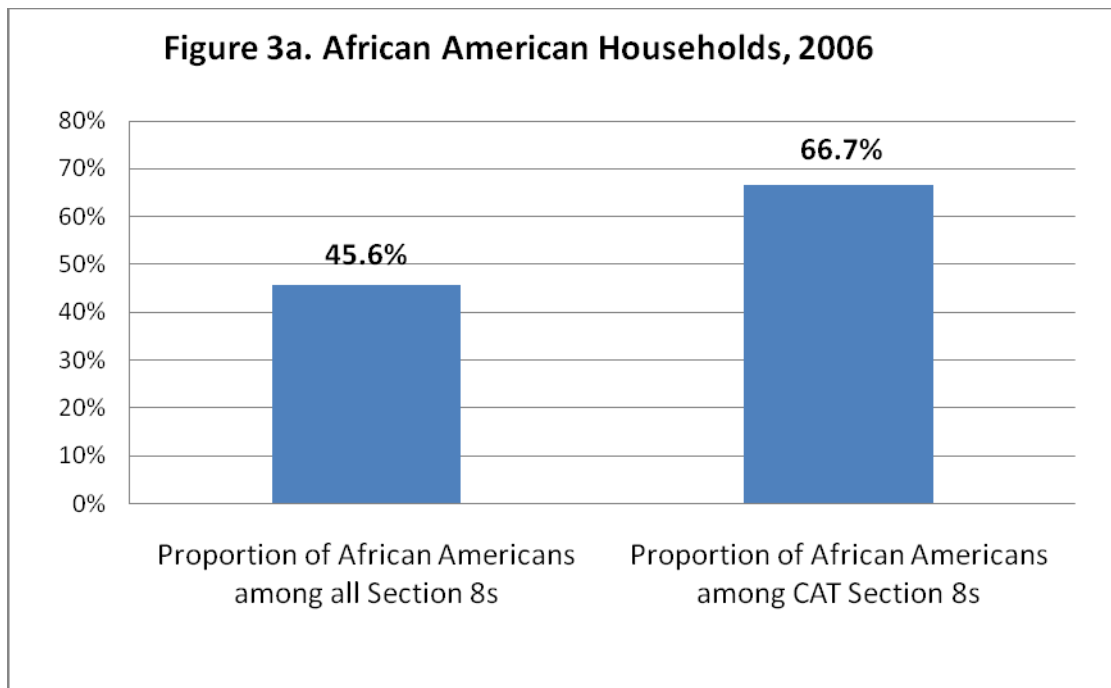
Chi squares again confirmed these differences were statistically significant. For the difference between African Americans in the Antioch population and among Section 8 households, $X^2=1374.34$ (df=1) and a $p<.0001$. For the difference between African Americans among Antioch renters and among Section 8 households, $X^2=918.17$ (df=1) and a $p<.0001$.

3. African Americans are even more disproportionately represented among CAT Section 8 cases than they are in the overall Section 8 population.

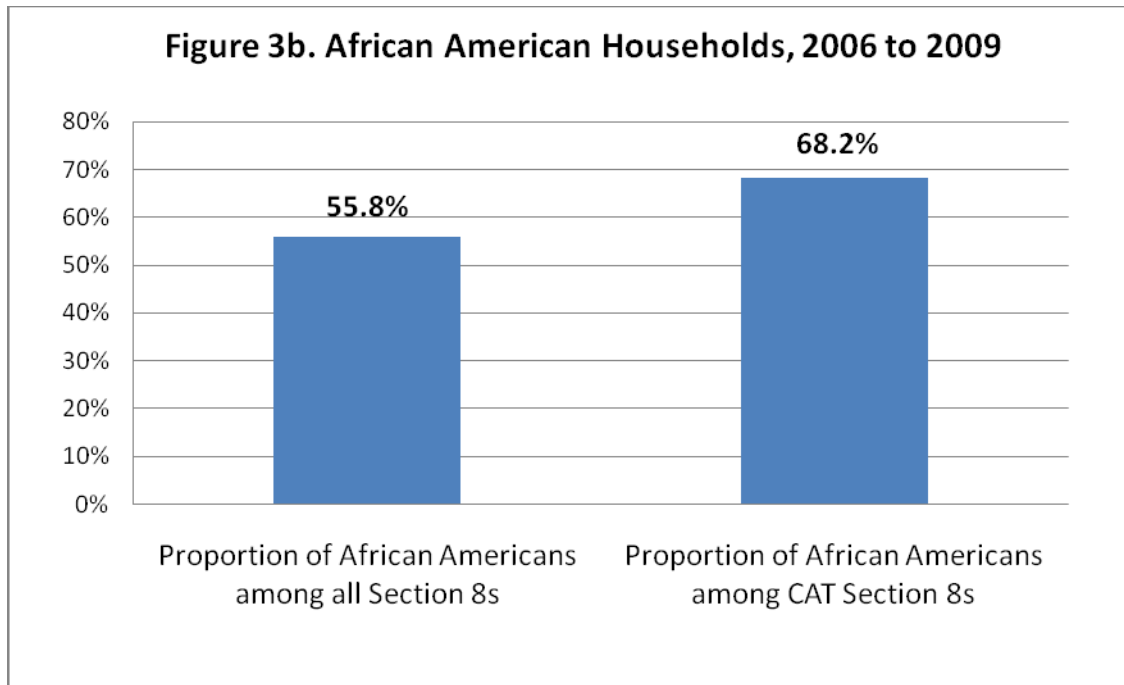
As I discussed above, if there were no racial disproportionality in the impact of CAT team activities other than that resulting from a targeting of Section 8 households generally, African Americans would be expected to represent almost half of CAT Section 8 households (that is, about the equivalent of their percentage of the total Section 8 population in Antioch). In fact, the data suggests CAT focuses on African-American Section 8 households to an even

greater degree than would be expected from the racial composition of Section 8 households. I ran analyses for both 2006 and for 2006 to 2009.

In 2006, African Americans represented 45.6% of Section 8 households in Antioch (670 of 1470), but 66.7% of CAT Section 8 locations (46 of 69). The chi square test suggests highly statistically significant disparity, $X^2 = 12.35$, $df=1$, $p<.0004$, indicating a very small likelihood that the observed differences were due to chance—less than 4 in 10,000. (See Figure 3a.)



For 2006 to 2009, African Americans represented 55.8% of all Antioch Section 8 households (1,061 of 1,902), but 68.2% of CAT Section 8 locations (116 of 170). The chi square test suggests highly statistically significant disparity, $X^2=10.66$, $df=1$, $p<.0011$, indicating a very small likelihood that the observed differences were due to chance—less than 11 in 10,000. (See Figure 3b.)



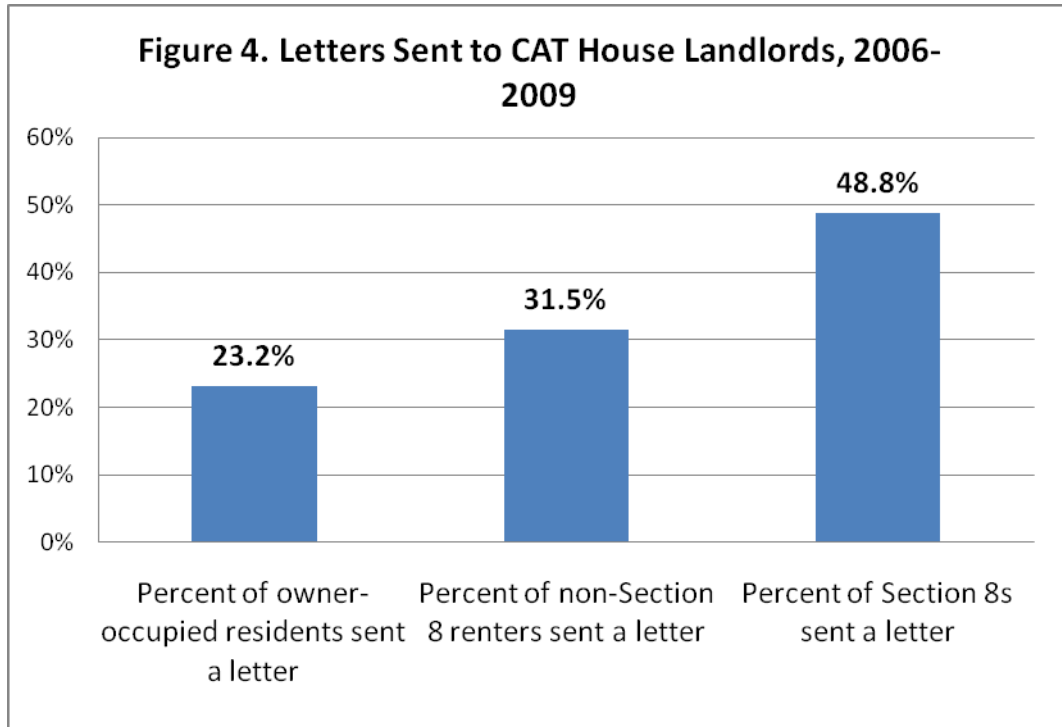
4. Section 8 households are disproportionately represented among CAT Locations for which the Antioch Police Department sent warning letters.

CAT’s disproportionate focus on Section 8 residents in general and African-American Section 8 residents in particular was further demonstrated by letters sent to landlords between 2006 and 2009. These letters are sent to renter-occupied (whether Section 8 or not) and owner-occupied locations, although the majority of the letters went to landlords of Section 8 residents (66.4%, 83 of 125). The letters describe issues reported by neighbors and police and alert the landlord that the police were initiating steps to resolve the issues, usually including warning that the landlord could be liable for the tenant’s conduct.

While the head of the CAT unit asserts that these landlord letters are sent in nearly all CAT cases,³ the data shows otherwise. Section 8 landlords were much more likely to receive one: 48.8% (83 of 170) of Section 8 CAT locations received a letter versus 31.5% (29 of 92) of

³ Deposition of Sergeant Mitch Schwitters, Volume I, at 125: 15-23.

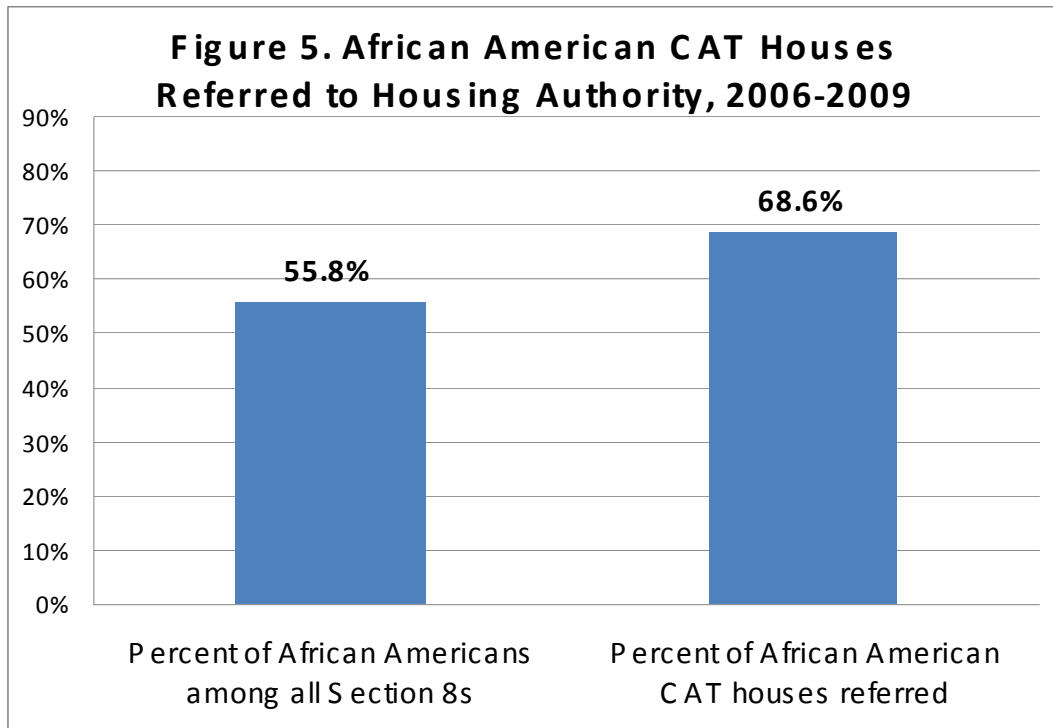
non-Section 8 renters and 23.2% (13 of 56) of owner-occupied locations. The chi square testing the key difference--between Section 8 and non-Section 8 renters--indicated this disparity was highly statistically significant, $\chi^2 = 7.30$, $df=1$, $p<.0069$. (See Figure 4.)



5. African Americans are disproportionately represented among Section 8 CAT locations which were referred to the Housing Authority.

Both the Housing Authority and the Antioch Police Department maintained data regarding Section 8 households that the Police Department had referred to the Housing Authority with allegations of illegal conduct, nuisance activities, or violations of Section 8 rules. Being referred to the Housing Authority has major consequences on Section 8 residents, since a referral can lead to a termination process. These referrals disproportionately impacted African-American tenants to an extent greater than would be expected from their representation among Section 8 households in Antioch.

Between 2006 and 2009, African Americans represented approximately 55.8% of Section 8 households in Antioch (1,061 of 1,902), but 68.6% of CAT Section 8 referrals to the Housing Authority (94 of 137). The chi square test shows this is a highly statistically significant disparity, $X^2 = 9.12$, $df=1$, $p<.0025$, which indicates a very small likelihood that the observed differences were due to chance—less than 25 in 10,000. (See Figure 5.)



6. Among CAT Households referred for termination by the Antioch Police Department, the Housing Authority was more likely to reject the referrals of African Americans than of non-African Americans.

The data on Housing Authority terminations of Section 8 vouchers raises questions of equity regarding the Antioch Police Department’s process for designating a household as a “CAT house.” My findings above showed overrepresentation of African Americans among Section 8 “CAT locations”, letters to landlords, and referrals to the Housing Authority.

However, despite being referred to the Housing Authority at higher rates than others, African Americans were eventually terminated (removed from Section 8 status) by the Housing Authority at significantly lower rates than other Section 8 CAT location residents. In most cases where referrals did not lead to a termination, investigation by the Housing Authority found insufficient support for the termination.⁴ That more African-American referrals were rejected by the Housing Authority than non-African-American referrals suggests the APD was more likely to have lesser cause or weaker evidence when referring African Americans than when referring non-African Americans.

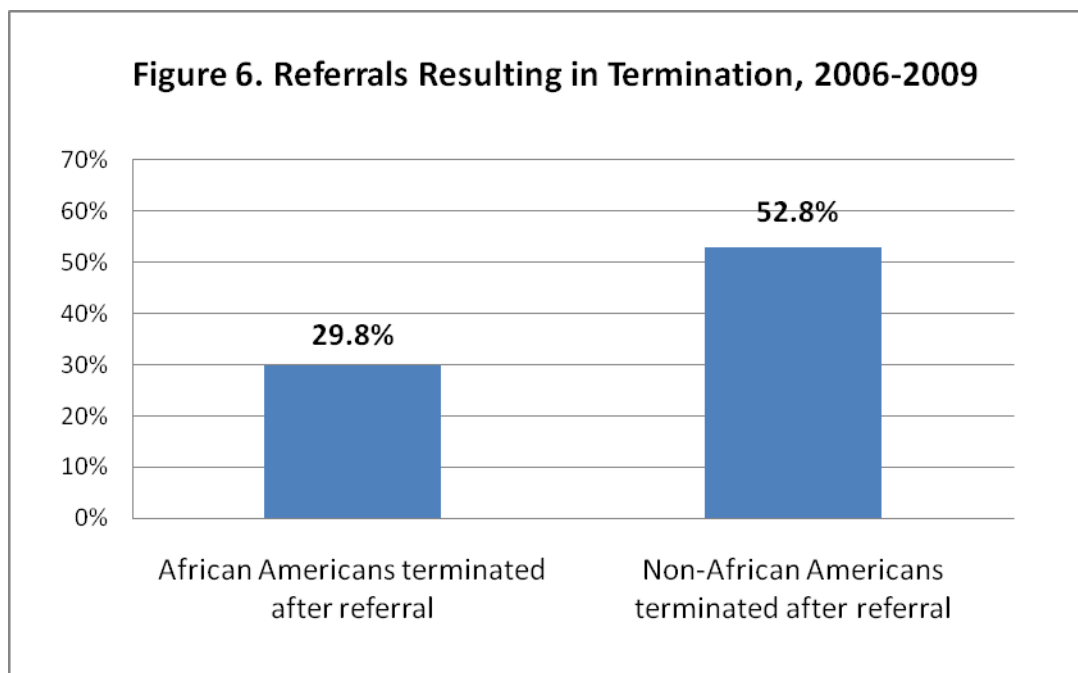


Figure 6 shows that 29.8% (28 of 94) of African Americans who were referred to the Housing Authority by CAT were terminated, whereas 55.6% (15 of 27) of whites and 52.8% (19 of 36) of all non-African Americans were terminated. This difference in termination rates is statistically significant. The chi square in this instance measured whether the rate (or percentage) of African-American terminations were statistically lower than those of other races. This was

⁴ In some cases, a Housing Authority revocation was reversed after an appeal to the Superior Court.

found to be the case, with the chi square, $X^2 = 5.96$, $df=1$, $p<.0146$, indicating the differences were statistically significant.

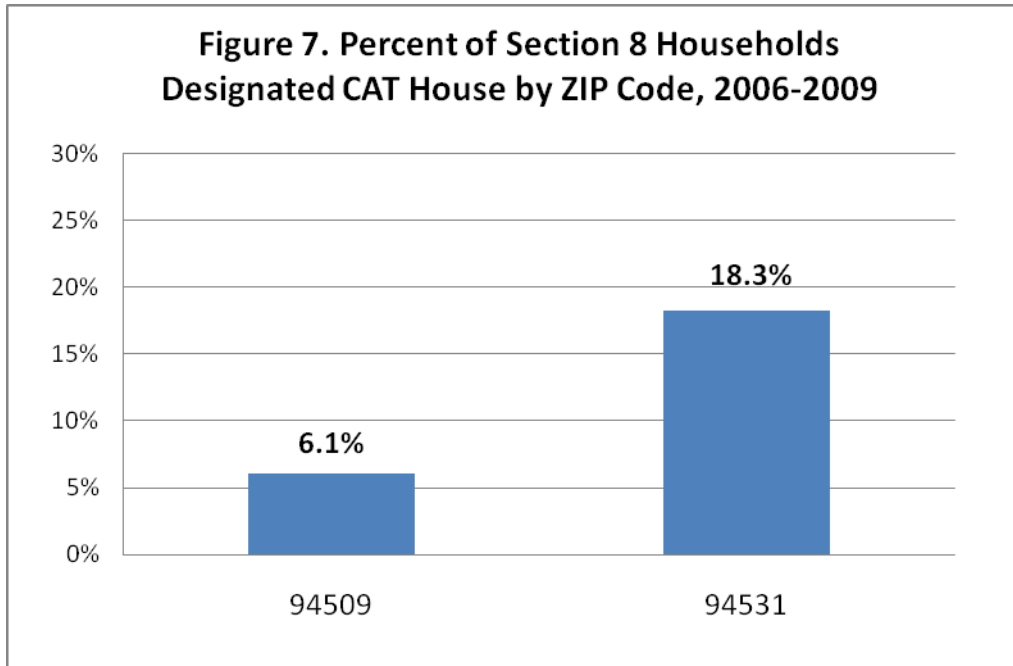
7. Section 8 households in the more affluent section of Antioch were most likely to be designated as CAT locations.

Antioch is divided into two different zip codes. Zip Code 94531 is more affluent, with a median household income of \$102,943, versus \$58,285 in the zip code 94509.⁵ The majority of Section 8 households are in 94509.

From 2006 to 2009, Section 8 households located in the more affluent 94531 zip code were three times more likely to be designated CAT locations than Section 8 households located in the 94509 zip code. (See Figure 7.)

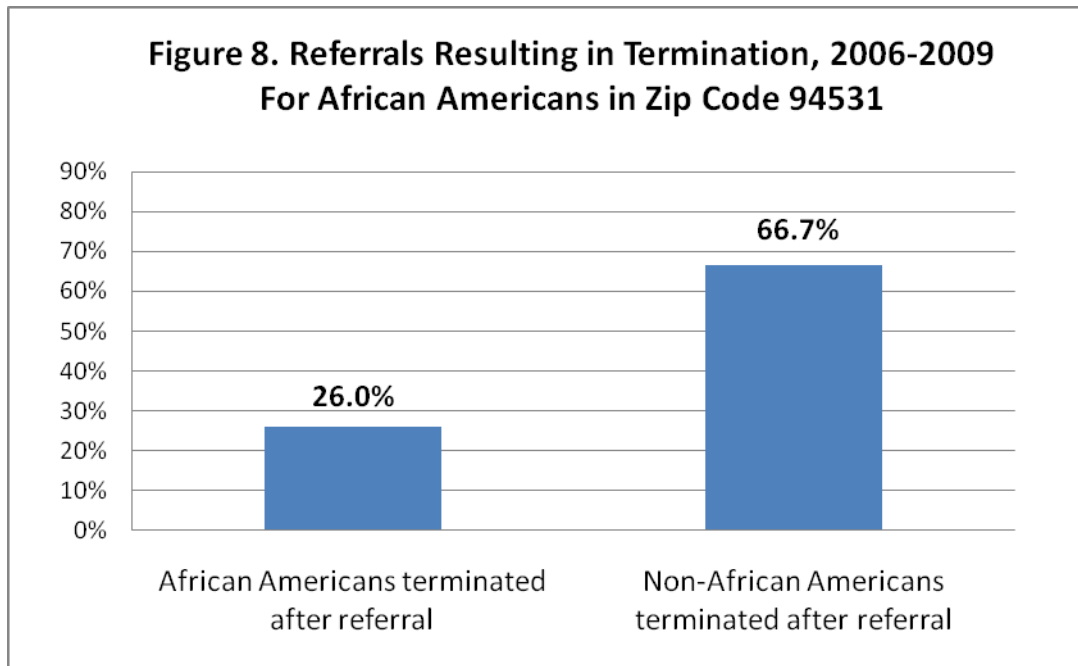
In 94531, 18.3% (80 of 437) of Section 8 households were designated CAT locations. In 94509, 6.1% (90 of 1,465) of Section 8 households were designated CAT locations. The chi square, $X^2=60.38$, $df=1$, $p<.0001$, indicates this was a highly statistically significant disparity.

⁵ Tamayo 30(b)(6)–Exhibit 21.



8. African-American Section 8 households in the more affluent section of Antioch were most likely to have a referral not resulting in termination.

The pattern reported earlier in this report, of African Americans being referred to the Housing Authority at higher rates, but actually being terminated at lower rates, was particularly pronounced within the more affluent 94531 zip code. From 2006 to 2009, just 26.0% (13 of 50) of referred African Americans in this area were terminated while 66.7% (6 of 9) of referred non-African Americans (including 83.3% of referred Whites) were terminated by the Housing Authority. Unfortunately, statistical tests cannot provide reliable results for groups as small as this subset of referrals (n=10 non-African Americans), although this observed pattern is consistent with, if more pronounced, that described above in section 8. (See Figure 8.)



SUMMARY

I analyzed Antioch Police Department CAT data, Housing Authority of the County of Contra Costa Section 8 housing voucher data, and U.S. Census population data to assess possible disparities in CAT activities and their impact on segments of the Antioch community. To statistically assess possible disparities, I compared the proportions of Section 8 households and/or African-American households in the Antioch population (general or renters) to their proportion among CAT houses. I found statistically significant evidence that CAT disproportionately focuses on Section 8 residents. Since African Americans make up a disproportionate portion of Antioch’s Section 8 households, I concluded it was likely that CAT activities disproportionately targeted African Americans. This conclusion was further evidenced by my finding that African-American Section 8 households were overrepresented among CAT

houses at rates even higher than their racial disproportions among Section 8 households. I found similar disparities in related CAT activities involving referrals to HACCC and warning letters to landlords.

I then explored some other characteristics of CAT and its activities as they relate to Section 8 household and African Americans. I found that the Housing Authority, after investigating APD referrals, was less likely to uphold the terminations of African Americans than of non-African Americans. This suggests that the evidence the APD used to support African-American referrals was not as strong as for non-African-American referrals. A possible alternative explanation for the disparities revealed itself in my finding that the CAT focus on Section 8 households and African Americans was more pronounced in the most affluent part of Antioch.

A handwritten signature in cursive script, reading "Barry Krisberg". The signature is written in black ink and is positioned above a horizontal line.

Barry Krisberg