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Jim Moye

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CAN'T STOP THE HUSTLE: THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S "ONE STRIKE" EVICTION POLICY FAILS TO GET DRUGS OUT OF AMERICA'S PROJECTS

JIM MOYE*

Abstract: In Department of Housing and Urban Development v. Rucker, the United States Supreme Court upheld the agency's use of the "one strike" eviction policy, which requires housing authorities to issue leases with the condition that tenants who engage in any drug-related criminal activity are subject to eviction. Moreover, the court held that a tenant's ignorance of the activity is not a defense to eviction. Although this ruling appears consistent with the Court's decision in Goldberg v. Kelly, the seminal case delineating the government's ability to terminate public assistance, the one strike eviction policy nevertheless suffers from several problems that limit its effectiveness. In particular, housing authorities have excessive discretion when implementing the policy; the policy does not define "engaging" in drug-related criminal activity; and the policy fails to prevent non-residents from participating in drug-related criminal activity in the housing community. This Article proposes means of alleviating these problems to increase the effectiveness of the one strike eviction policy.

* B.A., University of Southern California, 1995; J.D., The Catholic University of America, Columbus School of Law, 1999. Trial Attorney, District of Columbia Office of Corporation Counsel, Child Abuse and Neglect Section. The views and opinions expressed in this Article in no way reflect the views and opinions of the Government of the District of Columbia. The author would like to take this opportunity to dedicate this Article to Margie Harrell, Executive Director, Diboll, Texas Public Housing Authority. Mrs. Harrell's technical assistance was greatly appreciated and her tireless, selfless, and boundless efforts on behalf of her tenants are an exemplary model to be followed throughout the United States. Those efforts reflect proven leadership and are the kind necessary to regain control of the public housing community.
Some critics say the law is too harsh. "The only way they can get away with it is because it affects poor people."

—Sheila Crowley, head of the National Income Housing Coalition

The United States is involved in a costly war. It does not involve Afghanistan, the Balkans, Iran, Iraq, or Pakistan. This long, complex war is the "War on Drugs." Many Americans do not realize just how expansive and costly this war effort has become. The United States government spends approximately $26 billion a year on the drug war.\(^1\) That money has led to approximately 1.5 million drug arrests per year and a drug-related prison population of 400,000.\(^2\) In the 2002 federal budget, $357 million in spending was earmarked for the drug war and related activities.\(^3\) In a recently signed defense bill, President Bush appropriated more than $156 million for drug interdiction programs, a decrease from $204 million allocated in 2001.\(^4\) Of all the money spent on fighting the drug war, only four cents of every dollar budgeted is spent on drug prevention and treatment.\(^5\)

The incarceration rates for drug-related offenders are just as staggering as the dollar amounts spent on the drug war. The number of drug-related offenders in American prisons grew from 45,000 in 1980 to over 450,000 in 2001.\(^6\) From 1990 to 1997, the drug offense incarceration rates for African-Americans, Whites, and Hispanics increased by 60%, 46%, and 32%, respectively.\(^7\) The war on drugs has led to an incarceration rate of more than 70% for nonviolent offenders.\(^8\)

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4. See *Treat Addiction*, SALT LAKE TRIB. Feb. 18, 2002, at A10, available at 2002 WL 4251634. Two-thirds of this amount, $224 million, would be earmarked for treatment. "This represents a sea change from the tired emphasis on law enforcement, imprisonment and interdiction that has done nothing to stem the demand—and flow—of illicit drugs into this country." Id.
The drug trade has become so pervasive in American culture that it has now made its way into popular culture. One of the biggest movies of 2000 was *Traffic*, a critically-acclaimed ensemble film, centered around the drug trade and its effect both domestically and internationally. Home Box Office, a premium cable channel, recently introduced a drama series entitled *The Wire*, which follows the plight of a successful Baltimore, Maryland drug dealer, his drug dealing soldiers in the public housing projects of the city, and the police force in its efforts to bring him to justice.

In the wake of the September 11, 2001 terrorist attacks in New York and Washington, D.C., the U.S. drug war has taken on a decidedly international flavor. For example, during the 2002 Super Bowl, the Office of National Drug Control Policy released commercials that effectively linked drug usage to terrorism. In one such ad, a young woman states, "On Wednesday, I played tennis, went shoe shopping, and helped smuggle a load of AK-47s into Colombia." The agency spent an estimated $3 million for a total of 60 seconds of commercial time. The total value of the new campaign linking drugs to the war on terrorism was an estimated $10 million.

Over the last thirty years, Congress has intensified its efforts to combat the drug problem in this country. In 1986, Congress adopted the Anti-Drug Abuse Act, popularly known as the "crack statute."

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13 Id. The network matched commercial time purchased by the government with time slots that, while not appearing during the Super Bowl, were nevertheless of equivalent value. Thus, the tax-payer funded agency "enjoy[ed]some of Madison Avenue’s most expensive advertising time for half price." Id.


The Act adopted the controversial "hundred-to-one ratio," which equates one gram of crack cocaine to one hundred grams of powder cocaine for purposes of sentencing.\textsuperscript{18} Congress passed another piece of infamous legislation in 1986—the mandatory minimum sentencing guidelines embodied in the Narcotics Penalties and Enforcement Act.\textsuperscript{19} These guidelines foreclose the possibility of judicial discretion in sentencing federal drug offenders, and instead, provide a sliding scale of punishment depending on the offense and other extenuating circumstances.\textsuperscript{20}

Another less known, but equally important, legislative effort to crack down on drugs was neatly tucked away in both the Anti-Drug Abuse Act of 1988 and in the U.S. Department of Housing and Urban Development’s (HUD) implementing regulations.\textsuperscript{21} The Act and regulations include provisions requiring public housing authorities to issue leases with the condition that tenants who engage in any drug-related criminal activity are subject to eviction.\textsuperscript{22} This legislative effort has become known as the one strike eviction policy.\textsuperscript{23} The United States Supreme Court weighed in on the drug war and Congress’ effort to stem the flow of drugs in \textit{Department of Housing \& Urban Development v. Rucker}.\textsuperscript{24} The Court upheld, by a vote of 8–0, the right of the federal government to employ these one strike leases. Moreover, the

\textsuperscript{18} William Spade, Jr., \textit{Beyond the 100:1 Ratio: Towards a Rational Cocaine Sentencing Policy}, 38 \textit{ARIZ. L. REV.} 1233, 1233–34 (1996); see 21 U.S.C. § 841(b)(1)(A)(i)–(iii) (2000); Gillmer, \textit{supra} note 17, at 501. The sentencing provisions in the crack statute mandate a ten-year minimum sentence for individuals convicted of possessing and distributing fifty grams of crack. A defendant convicted of possessing and distributing five thousand grams of powder cocaine receives the same sentence. Thus, both provisions punish crimes involving cocaine, but the penalty for a crack offense is one hundred times harsher than the penalty for an offense involving powder cocaine. \textit{Id}.


\textsuperscript{20} See \textit{id}.


\textsuperscript{22} See 42 U.S.C.A. § 1437d(l)(6) (West Supp. 2001), which provides that each "public housing agency shall utilize leases ... providing that ... any drug-related criminal activity on or off [federally assisted low-income housing] premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy ... ." \textit{Id}.


\textsuperscript{24} See generally 122 S. Ct. 1230 (2002).
Court held that ignorance of any drug related criminal activity by a fellow tenant or houseguest is not a defense to eviction.25

This Article evaluates the effectiveness of the one strike eviction policy in curbing drug activity in public assistance housing. Part I scrutinizes the Anti-Drug Abuse Act of 1988, and in particular, considers provisions intended to eradicate drug-related crime in public housing. Part II examines Goldberg v. Kelly, the U.S. Supreme Court decision defining the scope of the government’s ability to terminate public benefits. Part III analyzes the Court’s decision in Rucker, which upheld the termination of public housing benefits if the tenants or tenants’ guests participated in drug-related activity. Part IV discusses whether Goldberg and Rucker can be reconciled and highlights some of the policy problems with one strike eviction. Finally, Part V suggests viable alternatives to help government leaders win the drug war in public housing. The Article concludes that, although Congress may have acted with good intentions when it passed the one strike eviction policy, this legislation ultimately will fail to make the difference that residents in public housing have long demanded and sorely need.

I. CONGRESS FIGHTS BACK: THE ANTI-DRUG ABUSE ACT OF 1988

On November 8, 1988, Congress enacted the second Anti-Drug Abuse Act, which immediately created new resources for the war on drugs.26 First, the law established the Office of National Drug Control Policy that is supervised by a presidentially appointed and Senate approved Director, popularly known as the “Drug Czar.”27 The legislation allows the Director to attend and participate in meetings of the National Security Council,28 gives the Director authority to designate

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25 See id. at 1236.
27 §§ 1002(a), 1002(b) (1), 1003(a) (1). “There is established in the Executive Office of the President the ‘Office of National Drug Control Policy.’” § 1002(a). “There shall be at the head of the Office of National Drug Control Policy a Director of National Drug Control Policy.” § 1002(b) (1). “The Director, the Deputy Director for Demand Reduction, the Deputy Director for Supply Reduction, and the Associate Director for National Drug Control Policy shall each be appointed by the President, by and with the advice and consent of the Senate.” Id.
28 § 1003(a) (3) (f). “The Director of National Drug Control Policy may, in his role as principal adviser to the National Security Council on national drug control policy, and
certain neighborhoods "high intensity drug trafficking area[s]," and even requires that the Central Intelligence Agency work closely with the office and Director.  

A second, and more important, provision of the Act deals with the drug abuse epidemic and public housing. The law requires the Secretary of HUD to submit a report to Congress on the impact of regulations that direct legal action against public housing tenants who engage in illicit drug activity. Next, the law amended the Omnibus Crime Control and Safe Streets Act of 1968 by providing block grants to housing authorities to combat drug trafficking and the production of illegal drugs in public housing. The third proviso

subject to the direction of the President, attend and participate in meetings of the National Security Council." Id.

29 § 1005(c)(1). "The Director, upon consultation with the Attorney General, heads of National Drug Control Program agencies, and the Governors of the several States, may designate any specified area of the United States as a high intensity drug trafficking area." Id. This provision also gave the Director broad powers to direct the temporary reassignment of federal personnel, provide federal funding, and determine the effect the "high risk" area was having upon the drug policy of the rest of the country. § 1005(c)(1)-(2).

30 See § 1004(a)(2)(A)-(B).

The authorities conferred on the Office of National Drug Control Policy and its Director by this Act shall be exercised in a manner consistent with provisions of the National Security Act of 1947. The Director of Central Intelligence shall prescribe such regulations as may be necessary to protect information provided pursuant to this Act regarding intelligence sources and methods. . . . The Director of Central Intelligence shall, to the fullest extent possible in accordance with subparagraph (A), render full assistance and support to the Office of National Drug Control Policy and its Director.

Id.

31 § 5103.

The Secretary of Housing and Urban Development shall submit to the Congress a report on the impact of the implementation of the public housing tenancy and administrative grievance procedure regulations issued under section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d(k)) on the ability of public housing agencies to evict or take other appropriate action against tenants engaging in criminal activity, especially with respect to the manufacture, sale, distribution, use, or possession of controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). The report shall be submitted not later than 12 months after the date of the enactment of this Act.

Id.


amended the Controlled Substances Act\textsuperscript{34} to include leasehold interests in asset forfeiture.\textsuperscript{35} The law also made funds available to public housing authorities to combat the drug trade\textsuperscript{36} and established the Public Housing Drug Elimination Program.\textsuperscript{37} That program was passed pursuant to Congressional findings that drug dealers were imposing a "reign of terror" on tenants in public housing; that the government had a responsibility to provide safe, drug-free public housing; and that local law enforcement agencies usually lacked the resources to counteract the drug trade occurring in these neighborhoods.\textsuperscript{38}
In an effort to address these concerns regarding drug use in public housing, Congress amended 42 U.S.C.A. § 1437d. The statute now prohibits the use of unreasonable terms and conditions in public housing leases and requires that public housing authorities write lease provisions affirming that the housing authorities will provide residents a decent, safe, and sanitary place to live. Moreover, public housing tenants are now subject to eviction if the tenant or guest under the tenant’s control engages in illegal drug activity on or off the premises. Under Goldberg v. Kelly, the constitutionality of the eviction policy would appear questionable. In Department of Housing a Urban Development v. Rucker, however, the Supreme Court affirmed the constitutionality of the policy.


The Supreme Court delineated the ability of the government to terminate public assistance to a citizen in Goldberg v. Kelly. The Goldberg plaintiffs were New York City residents whose public benefits had been terminated or were about to be terminated. The residents brought suit, alleging that their due process rights had been violated because they had not been given notice or a hearing prior to the termination of benefits. Following initiation of this action, the state of New York and the city adopted procedures for notice and hearings. The residents subsequently challenged the constitutionality of the newly created procedures. They filed suit in the Southern District of New York, and a three-judge panel heard the case. The panel ruled in favor of the residents, and the state and city authorities appealed that decision. The Supreme Court ultimately granted certiorari to consider whether the Due Process Clause required that recipients of

Id.

40 See id.
42 Id. at 255–56. Each resident was receiving financial assistance pursuant to Aid to Families with Dependent Children, a federal program, or New York State’s general Home Relief program. Id.
43 Id. at 256.
44 Id. at 257.
45 Id. at 267.
47 Id. at 895.
48 Goldberg, 397 U.S. at 254.
public assistance be afforded an evidentiary hearing before the termination of rights.\textsuperscript{49} The Court, in a decision authored by Justice Brennan, affirmed the District Court’s ruling.\textsuperscript{50} The Court found that public assistance benefits were a matter of statutory entitlement, that procedural due process was applicable to those benefits, and that compliance with procedural due process required a pre-termination evidentiary hearing.\textsuperscript{51} Although the Court opined that some government benefits could be administratively terminated without an evidentiary hearing, welfare benefits were not in this category.\textsuperscript{52} For welfare recipients, procedural safeguards are necessary because public assistance provides for the basic needs of clothing, housing, and medical care.\textsuperscript{53}

III. \textit{Department of Housing and Urban Development v. Rucker: Putting Congress’s Will to the Test}

In \textit{Rucker v. Davis},\textsuperscript{54} the plaintiffs challenged the one strike eviction provision of the Anti-Drug Abuse Act of 1988.\textsuperscript{55} The \textit{Rucker} plaintiffs were Barbara Hill, William Lee, Pearlie Rucker, and Herman Walker, four public housing tenants of the Oakland, California Housing Authority (OHA).\textsuperscript{56} The OHA had instituted eviction proceedings in state court against each of these residents in late 1997 and early 1998, claiming that other tenants or guests in these individuals’ homes had engaged in drug-related criminal activity.\textsuperscript{57} Specifically, the OHA asserted that Hill and Lee’s grandsons were caught in the apartment complex parking lot smoking marijuana.\textsuperscript{58} Pearlie Rucker’s daughter was allegedly found three blocks away from the complex with crack cocaine and a crack cocaine pipe.\textsuperscript{59} Finally, the OHA claimed that Herman Walker’s caregiver and two others were caught

\begin{itemize}
\item \textsuperscript{49} Id. at 260.
\item \textsuperscript{50} Id. at 271.
\item \textsuperscript{51} See id. at 261–62.
\item \textsuperscript{52} See id. at 263–64.
\item \textsuperscript{53} Goldberg, 397 U.S. at 263–64. (citations omitted).
\item \textsuperscript{55} See id.
\item \textsuperscript{56} See id. at *5–6.
\item \textsuperscript{57} See id.
\item \textsuperscript{58} See id.
\end{itemize}
in the disabled Mr. Walker's apartment with cocaine. These individuals were not even listed on Mr. Walker's lease.\footnote{See id. Hill and Lee's grandsons and Pearlie Rucker's daughter, however, were listed on Hill, Lee, and Rucker's leases, respectively. See id.}

After the OHA initiated the eviction proceedings, these four tenants brought their own suit in the U.S. District Court against OHA, HUD, and OHA's Director.\footnote{See id. at *1.} The tenants argued that HUD had misinterpreted the statute under the Administrative Procedure Act, and that even if the statute was properly applied, it was unconstitutional.\footnote{See id. at *7–8. Respondents argued that HUD had misinterpreted the Act according to the Administrative Procedures Act because 42 U.S.C. § 1437d(l)(6) requires lease terms authorizing the eviction of "innocent" tenants. See Rucker, 1998 U.S. Dist. LEXIS 9345 at *7–8.} The District Court agreed with the respondents and issued a preliminary injunction against OHA, prohibiting the housing authority from terminating leases where the drug-related activity did not occur in the tenant's home or where the tenant was unaware of the activity.\footnote{See id. at *39.}

The Ninth Circuit Court of Appeals reversed the District Court's decision, finding that the lease terms described in the statute were unambiguous and permitted eviction of tenants, regardless of their knowledge of the drug-related activity.\footnote{See 203 F.3d 627, 637–38 (9th Cir. 2000).} Subsequently, an en banc panel of the Ninth Circuit Court of Appeals reversed the decision and affirmed the District Court's decision. The court held that HUD's interpretation of the statute was inconsistent with Congressional intent and did not comport with Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., which guides judicial review of an administrative agency's interpretation of the statute it administers.\footnote{See Rucker v. Davis, 237 F.3d 1113, 1119 (9th Cir. 2001). See generally Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 468 U.S. 1227 (1984). In Chevron, the Court upheld the Environmental Protection Agency's interpretation of its enabling statute. See id. In upholding the agency's interpretation, the Court created a two-part inquiry to be used during judicial review of an administrative agency's interpretation of the statute it administers. See id. First, the Court inquired "whether Congress has directly spoken to the precise question at issue [and] if the statute is silent or ambiguous [on] the specific issue. . . . [The second question is] whether the agency's answer is based on a permissible construction of the statute." Id. at 842–43.} HUD appealed the decision and the Supreme Court granted certiorari.\footnote{See Dep't of Hous. & Urban Dev. v. Rucker, 533 U.S. 976, 976 (2001).}

In a unanimous decision, the Court reversed the Ninth Circuit Court of Appeals.\footnote{Dep't of Hous. & Urban Dev. v. Rucker, 122 S. Ct. 1230, 1236 (2002).} In an opinion authored by Chief Justice
Rehnquist, the Court held that the statute unambiguously required lease terms that gave local housing authorities the power to evict tenants for their own drug-related criminal activity or the drug activity of their guests. The Court reasoned that because Congress had not placed a knowledge qualification in the statute and that the word "any" was used to modify "drug activity," knowledge of the activity was not required. Furthermore, the Court found that the en banc Ninth Circuit panel reached an erroneous conclusion by stating that a plain reading of the statute would lead to absurd results and that the Due Process Clause was not violated even though tenants were "deprived of their property interest without any relationship to wrongdoing."

IV. GOOD INTENTIONS, BAD OUTCOME: POLICY PROBLEMS WITH THE ONE STRIKE POLICY EVICTIONS

On the one hand, the one strike eviction policy does seem to conform to the standards set forth in Goldberg v. Kelly. In Rucker, the Court notes the applicability of the Due Process Clause and points out that there has been no indication that tenants would be evicted with-

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68 See id. at 1233. "42 U.S.C. § 1437d(l)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity." Id.
69 See id.
70 See id. at 1235.

The statute does not require the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from "rampant drug-related or violent crime, the seriousness of the offending action, and the extent to which the leaseholder has ... taken all reasonable steps to prevent or mitigate the offending action. It is not 'absurd' that a local housing authority may sometimes evict a tenant who had no knowledge of the drug-related activity. Such 'no-fault' eviction is a common 'incident of tenant responsibility under normal landlord-tenant law and practice.'"

Rucker, 122 S. Ct. at 1235.
71 See id. at 1236.

But, in the present cases, such deprivation will occur in the state court where OHA brought the unlawful detainer action against respondents. There is no indication that notice has not been given by OHA in the past, or that it will not be given in the future. Any individual factual disputes about whether the lease provision was actually violated can, of course, be resolved in these proceedings.

Id.
out notice and an opportunity to be heard.\textsuperscript{72} In addition, the lan-
guage of the Anti-Abuse Drug Act of 1988 clearly expresses Congress' intent to provide residents in public housing with the security and safety that they had demanded.\textsuperscript{73} On the other hand, the one strike eviction provision causes additional problems that ultimately lessen the effectiveness of the statute. First, by giving overwhelming discre­tion to authorities, the law fails to assure uniform application of the one strike lease clause. In addition, the law does not adequately explain how an individual "engages" in drug-related criminal activity and, practically speaking, does nothing to rid public housing communities of outsiders who use and sell drugs on the premises.

A. Housing Authorities Given Excessive Discretion

One problem with the "one strike" eviction policy is that housing authority officials are given too much discretion in determining when, if at all, the lease provision will be invoked. As Justice Rehnquist noted in the \textit{Rucker} decision, "[the] statute does not require the eviction of any tenant who violated the lease provision."\textsuperscript{74} Rather, that decision is left up to the housing authority based upon, \textit{inter alia}, the level of drug-related crime in the housing complex, the seriousness of the of­fense, and the steps taken to mitigate the offending action.\textsuperscript{75} In determining whether a particular tenant will be evicted, however, local housing authorities are not obliged to consider these or any other set of certified factors before evicting a tenant. A housing authority with a substantial number of residents may not remove residents who engage in drug-related activities simply because the housing authority does not have the resources to monitor its residents. By the same token, a smaller housing authority, on the other hand, may move swiftly and aggressively because there are fewer residents to monitor and infor­mation is accessed more quickly.

Given that there are no factors consistently applied by housing authorities, it would be virtually impossible for tenants to determine what issues are relevant to their evictions. Without such information, tenants are unable to properly defend themselves against the eviction. This inconsistency is exemplified by the eviction processes of the Bos­ton and Oakland housing authorities. In Boston, the housing author-

\begin{itemize}
\item \textsuperscript{72} See \textit{id}.
\item \textsuperscript{73} See \textit{id}. at 1235.
\item \textsuperscript{74} 122 S. Ct. at 1235.
\item \textsuperscript{75} \textit{Id}.
\end{itemize}
ity has essentially rejected the one strike policy, choosing to evict a tenant only when there is a pattern of destructive behavior or where the tenant had clear knowledge of illegal activities. By contrast, the Oakland Housing Authority moved aggressively to evict the four plaintiffs in the Rucker case although none of them had actual knowledge of the illegal drug activity, some of the drug activity occurred off the premises, and one of the participants was merely a caregiver to one of the respondents. Examples such as these illustrate the lack of consistency in how the one strike policy is applied from one housing authority to another.

Inconsistent enforcement of the one strike policy exacerbates the effects of administrative discretion. For example, the statute does not require law enforcement authorities to notify local housing authorities when a tenant or a guest is implicated in a drug-related activity. Additionally, there is no auditing process to determine whether housing authorities are actually removing residents who engage in such activity. Finally, no accountability standard exists to assure that housing authorities give notice that the residents have violated their leases. In sum, the one strike policy gives housing authorities the ability to remove residents without any mechanism to ensure consistency and fairness in the application of the law.

B. No Definition of “Engaging” in Drug-Related Criminal Activity

Another disturbing aspect of the statute is that it fails to define the meaning of “engaging” in drug-related criminal activity. The statute provides:

[T]hat any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.  

76 Drug-Induced Evictions, BOSTON GLOBE, Mar. 1, 2002, at A16. The Boston Housing Authority also generally brings eviction proceedings under state law, which allows heads of household to raise mitigating circumstances, such as lack of knowledge of the crime. Id.


The statute further defines "drug-related criminal activity" as the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, a controlled substance. However, the statute does not clarify whether the tenant or guest who engages in such activity must be convicted of such a crime or whether a mere arrest is sufficient to trigger an eviction. This distinction is crucial.

If the term "engaging" refers to any tenant or guest who is arrested, then the statute lacks fairness because the individual has not yet been convicted of a drug-related criminal offense. At the arrest stage, there are no findings of fact concerning the individual's participation in any drug-related activity. Moreover, if eviction proceedings are initiated merely on an arrest, the charges may be dropped or the person may be acquitted after being evicted.

If the term "engaging" refers to any tenant or guest who is convicted of a drug-related criminal activity, then a different problem arises. A tenant who has been justly arrested, released, and is awaiting trial may threaten the aspirational drug-free environment sought in public housing neighborhoods. A trial may not ensue for a number of months, giving a person who may continue such activity continued access to public housing during that time.

C. Failure of Statute to Rid the Communities of Outsiders Who Use the Property for Drug-Related Criminal Activity

A third policy problem with the one strike eviction provision is that, even if properly enforced, it is ineffective in alleviating the problem of drugs in public housing. Even though the policy will remove some drug dealers and users, it does not remove those non-resident users and dealers who habitually spend time in the area. Congress admitted that the federal government has a duty to provide safe, decent, housing that is free from illegal drugs. Simply getting rid of tenants or guests, however, does not solve the problem.

A good example exists in Bucks County, Pennsylvania, a suburb of Philadelphia where Venice Ashby, the country's largest housing project, has become a notorious open air drug market. Many of the clientele who indulge in the drug culture do not live there, but actu-

79 Id.
ally drive in from Philadelphia and Southern New Jersey. In Washington, D.C., Earl Garner, a reputed drug boss, ran a large drug distribution ring in Southeastern Washington, D.C., which included a housing project of which Garner was not a resident. In Chicago, law enforcement cracked down in 1999 on a seniors’ housing project that had become plagued by drugs, prostitution, and other crime. Of the nineteen people arrested, none were leaseholders on the property.

These examples and vast others prove that the one strike eviction policy does not sufficiently protect the residents of public housing from drugs or the problems surrounding drug-related activity. The one strike policy is especially ineffective if many people engaging in drug-related criminal activities are not even residents in public assistance housing.

IV. RECOMMENDATIONS

There are a number of policy recommendations that may help alleviate the drug problem in America’s public housing system. These recommendations reflect the policy flaws discussed above, namely the need to limit the discretion of housing authorities, to define engaging and to rid communities of non-resident drug dealers and users.

A. Limit the Discretion of Housing Authorities in Applying the One Strike Policy

As discussed above, Congress granted housing authorities excessive discretion to decide when to apply the one strike eviction policy. The inconsistent application and enforcement of the policy fundamentally lacks fairness and does not necessarily alleviate the drug problem in public housing.

To avoid arbitrary application, the housing authority should be required to document all the factors that it will consider in determining whether a tenant will be evicted pursuant to the one strike policy.

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82 Id.
83 John Drake, Major Drug Ring Put Out of Action: 25 Held in $20 Million Heroin Bust, WASH. TIMES (D.C.), Aug. 9, 2000, at C1. This group primarily sold drugs in the Langston Dwelling Housing Complex, which is located near 21st Street and Benning Road NE, and is near Spingarn and Phelps high schools, Brown Junior High School, and Young Elementary School. Id.
85 Id.
86 See supra notes 75–78 and accompanying text.
This will ensure that the housing authority fairly applies the policy to each resident and that each resident receives advance notice of the type of evidence that must be produced to avoid eviction. The statute must also be amended to require that housing authorities immediately notify tenants when the agency intends to advance a drug-related eviction. These notification efforts should be carefully documented by the housing authority, in accordance with statutorily regulated standards. These changes are necessary to assure that all tenants accused of violating their leases are put on notice of the impending eviction.

A housing authority should also avoid erratic enforcement of the policy. To assist in this effort, local law enforcement authorities must be required to immediately notify the appropriate housing authorities when any public housing tenant is arrested for engaging in drug-related criminal activity. This would ensure that the housing authority has the requisite information to follow-up with the resident, monitor the situation, and consistently enforce the policy.

As a final point, HUD should be required to form governing bodies within project communities. These governing bodies could work with the local housing authorities to establish effective policies to combat the drug problem, identify residents and non-residents who may be contributing to the problem, and give the residents a voice in how their community will be run. Living in public housing should not foreclose a family's opportunity to have its voice heard.

B. The Need to Define "Engaging"

As discussed earlier, the one strike eviction policy applies to public housing tenants who "engage" in any drug-related criminal activity. There is no definition, however, of "engage" or "engaging." The law should be amended to define exactly what "engage" means. A clear definition of "engaging," within the scheme of the statute, should refer to someone who has been convicted of participating in drug-related criminal activity. An arrest should be insufficient to trigger eviction because there is no opportunity for fact-finding at that point, and the charges may subsequently be dropped or the individual may be ac-

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quitted. Requiring a conviction, however, would ensure that an innocent person would not be evicted from their apartment unjustly.

C. Ridding the Community of Outside Drug Dealers and Users

As stated earlier, individuals who are not residents of public housing participate in drug-related activity just as much, if not more than, the residents. To rid public housing communities of these individuals, the communities should be designated "high drug areas" by the Drug Czar, which will allow HUD to grant significant funds to local housing authorities. These funds, like the funds from the soon-to-be defunct Public Housing Drug Elimination Program, would be used to pay for equipment and an increased security presence within these high drug areas. There should be increased penalties for anyone who sells drugs on public assistance housing property. This would send a loud and clear message that such behavior will no longer be tolerated in the projects and places the blame on the individual breaking the law.

The federal drug policy would also be more effective if amended to evict only those individuals who directly engage in drug-related criminal activity. After the U.S. Supreme Court's decision in Rucker, every leaseholder is responsible and could be evicted if another tenant or guest is involved with drugs. This rule of law simply does not reflect reality. In families all over America, there are children, spouses, and relatives who have drug problems. In many circumstances, other family members may not be aware of the problem and consequently, there is no way to address it. Many times, the family may become aware of the problem only after a major incident. Even if the family is aware, it may be unable to control the individual. To find an example, there is no need to look any further than Florida Governor Jeb Bush's daughter, Noelle, who was arrested in January 2002 for allegedly attempting to secure prescription drugs with a fraudulent pre-

90 See generally Cary Aspinwall, Housing Officials Fear a Return of Drugs, Crime; Grant Used for Security, Special Programs Is Ending, TULSA WORLD, May 7, 2002, Metro, at 11, available at 2002 WL 7117743. This HUD program was meant to be used in combating drugs by providing money for security guards, police patrol, drug abuse prevention, youth intervention, and other programs. See id.
92 See id. at 183.
93 See generally 122 S. Ct. 1230 (2002).
scription. Even though Noelle is the daughter of a Governor and the niece of the President of the United States, she was not able to obtain much needed help until after she had allegedly committed a crime. It is not reasonable to suspect that families with far less influence and wealth could control a family member with a drug problem any more effectively. Under the one strike policy, one incident, such as the one involving Noelle Bush, would be enough to evict an entire family. By only evicting those individuals who directly engage in the drug-related activity, the law creates a mechanism by which to remove the troubled person without unnecessarily removing innocent people.

CONCLUSION

The goal of the one strike eviction policy is to get drugs out of public assistance housing. The policy, however, fails to achieve that goal because it gives far too much discretion to local housing authorities; it does not adequately define the term "engage;" and it does nothing to get rid of drug dealers and users outside of the public housing communities who use the property as drug markets. Moreover, the law goes too far by making innocent tenants casualties of the drug war. The drug war has been expensive, ineffective, and has many detractors. The one strike eviction policy is another misdirected approach that will fail to get drugs out of America's public housing communities. Stopping the drug "hustle" in public housing will happen only if Congress passes serious, thought-provoking legislation, rather than knee jerk reactionary public policy disasters.

A well-known 1994 study by the RAND Corp. found that treatment is 10 times more cost effective than interdiction in reducing the use of cocaine in the United States and that every dollar invested in treatment saves taxpayers $7.46 in societal costs such as police, prisons and medical services. Over the past 30 years, the United States has put about two-thirds of its massive drug war investment into interdiction and law enforcement, and one third into treatment and education. Reverse that, and maybe we'd get somewhere.


95 See Weil, supra note 91, at 183.
