

**Testimony of Julie Becker
Legal Aid Society of the District of Columbia**

**Committee on Housing and Urban Affairs
Council of the District of Columbia**

**Public Oversight Hearing
on Operations of the District of Columbia Housing Authority**

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The Legal Aid Society of the District of Columbia¹ supports the D.C. Housing Authority in its mission of housing those District residents most in need. For many years, Legal Aid and DCHA have enjoyed a cooperative relationship, as we both work toward increasing the supply and quality of affordable housing for low-income individuals and families.

At today's oversight hearing, however, we are here to testify on an issue that we do not believe DCHA has been handling well: "one-strike" evictions based on criminal activity of a family member. In its effort to combat crime in public housing – a goal we support – DCHA has been overbroad and overzealous, displacing families who have no connection to the criminal activity and whose eviction contributes little to the overall safety of the housing environment.

Background: Crime and Public Housing Eligibility

The Housing Authority's policy on crime and eviction arises from the federal "One Strike and You're Out" policy. Under the federal law, a housing authority may evict a tenant family based on the criminal activity of any household member or guest. The category of behavior triggering eviction is very broad, covering not only criminal activity on the premises but also any drug-related activity on or off DCHA property. Eviction does not require that the individual be convicted of or even charged with a crime; mere evidence of criminal activity is sufficient. Moreover, the rule applies not only to eviction

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 70 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following three priority areas: housing, family law, and public benefits.

from public housing, but also to termination of Section 8 voucher benefits and to eligibility for any public or subsidized housing program.

Under the federal law, a tenant may be evicted based on the activity of one of her family members even if she did not know – and had no way of knowing – about the criminal activity. In other words, no “innocent tenant” defense is available to prevent eviction; if any family member engages in criminal activity, the entire family loses its housing even if they had no involvement in the crime and no way of preventing it.

It is important to note, however, that the federal law permits but does not require eviction for all criminal activity. To mitigate the harshness of the one-strike policy, the U.S. Department of Housing and Urban Development has made clear that local officials retain significant discretion to consider individual family circumstances in making eviction decisions. These circumstances include the seriousness of the crime, the effect of eviction of the remaining family members, and the tenant’s willingness to remove a wrongdoing family member from the household.² In a 2002 letter to public housing authority directors following the Supreme Court’s upholding the one-strike policy, then-HUD Secretary Mel Martinez urged housing authorities applying the rule “to be guided by compassion and common sense” and to make eviction “the last option explored, after all others have been exhausted.”³

DCHA’s Aggressive Implementation

Despite this cautionary guidance from the federal government, the D.C. Housing Authority has taken an extremely zealous approach to implementing the federal “one-strike” policy. DCHA’s procedure for criminal-activity evictions, known as “Operation Fight Back,” provides for automatic information-sharing between the Metropolitan Police Department and DCHA anytime an arrested individual provides a public housing address. DCHA can then move forward to evict the family based on that incident, regardless of whether the arrest resulted in a charge or conviction.

As one of the few sources of representation for public housing tenants, the Legal Aid Society routinely assists tenants in “one-strike” eviction cases. In the course of our representation, we have seen little evidence that DCHA is following HUD’s mandate to “consider all circumstances” before moving toward eviction. In one case, for example, DCHA pursued eviction against an 82-year-old man based on the activity of his son and grandson, whom he directed to leave the home after learning of their actions. In another, the agency filed suit against a grandmother based on a single fight between her teenage granddaughter and a neighbor – a first offense for which the girl was placed in a pretrial diversion program in lieu of being criminally sentenced.

² Letter from Assistant Secretary Michael M. Liu to Public Housing Directors, June 6, 2002 (available at <http://www.hud.gov/offices/pih/regs/rucker6jun2002.pdf>). Secretary Liu admonished: “I know that you will continue to act in a manner that protects th[e] general welfare [of the tenant population], while giving consideration – when you deem it appropriate – to the interests of individuals who share a household with the wrongdoer, but were otherwise unconnected with the wrongdoing.”

³ Letter from Secretary Mel Martinez to Public Housing Directors, April 16, 2002.

The Housing Authority has no policy or practice of discussing these cases with tenants before filing suit, to determine whether some solution short of eviction is available. No do tenants have any forum for resolution after DCHA begins eviction proceedings. Criminal-activity cases are exempt from the administrative grievance process, and unless the tenant is lucky enough to find an attorney – as only one percent of tenants in Landlord-Tenant Court are – the family is trapped on a virtually unstoppable train toward homelessness.

Moreover, D.C. law has recently gotten worse for tenants defending one-strike claims. Last year, the D.C. Court of Appeals ruled that in one-strike cases, unlike any other case where the tenant is accused of violating the lease, the tenant has no right to avoid eviction by correcting the problem.⁴ Even where, for example, the tenant has put a stop to the activity by removing the only offending family member from the household, that fact will not help her keep her home.

The Result: More Evictions, but No Less Crime

Evicting families based on a member or guest's criminal activity often does little, if anything, to reduce crime in public housing. If, for example, a family member is engaged in neighborhood crime, expelling the family from its home does not ensure that the offender himself will keep away. To the contrary, if that individual's friends are located in a particular area, he or she will likely return there regardless of whether the family continues to live on the property. Conversely, if the justice system has incarcerated the family member, thereby removing him or her from the environment, the problem has been resolved; in that case, evicting the entire family has no deterrent effect but instead is entirely punitive.

We support the one-strike policy's goals of deterring crime in public housing. But in our experience, the negative effects of DCHA's administration of that policy outweigh the benefits. Because DCHA may evict tenants even if they had no way of preventing the activity in question, the policy punishes families for events over which they have no control. Additionally, because DCHA has shown neither compassion nor common sense in pursuing its one-strike policy, the policy penalizes entire families for the activity of one member – including one who may no longer even live at home.

We encourage this Committee, in its oversight role, to open a dialogue with DCHA about more sensitive and sensible approaches it might take to enforcing the one-strike policy. We are confident that DCHA could strike a better balance between preventing crime on the one hand and preventing homelessness on the other.

We look forward to discussing these issues with you, and we are happy to provide further information if it would be helpful. Thank you.

⁴ Scarborough v. Winn Residential LLP, 890 A.2d 249 (D.C. 2006)