Nita City Housing Authority

v.

Johnson

NITA Editorial Advisory Board

NITA City Housing Authority

v.

Johnson

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NITA®

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To Nina, Tori, Jeffrey, Annika, and Sonja.
Thank you for inspiring me and reminding
me of those things that are important.

Contents

Introduction

This is an action for eviction under Nita's public housing statutes. In July YR-0, Ladonna Johnson and her two grandchildren and great-grandchild received notice of eviction from Nita Gardens. Nita Gardens is Nita City's public housing project. The grounds for the eviction are violations of the lease, specifically, § 8 Resident Obligations (C), "refrain from engaging in, and cause members of the resident's household, any guest, or any other person under resident's control to refrain from engaging in, any criminal or illegal activity including . . . any criminal, illegal or other activity which threatens the health, safety or right to peaceful enjoyment of public housing premises by another NCHA resident or employee . . . ." Eight months before the eviction action, Ms. Johnson's grandson, Elroy, was arrested with several other young men for possession and sale of crack cocaine. Elroy Johnson was charged, but the District Attorney later dropped the charges when Elroy agreed to testify against other defendants. Several of the others in the group were convicted. None of those who were convicted live at Nita Gardens. It is alleged that people Elroy associates with constitute a "criminal street gang" under Nita law and that Elroy Johnson is a gang member. Elroy Johnson's activities as a tagger are also alleged to be in violation of the lease.

Ms. Johnson claims her eviction is a result of her activism with other tenants at Nita Gardens. In November of YR-1, Ms. Johnson formed a Tenant Action Committee for the specific purpose of having fire sprinklers installed at Nita Gardens. Ms. Johnson had lost a family member to an apartment fire, and when new guidelines for fire safety were introduced by the Fire Protection League of Nita, she was adamant about the installation of sprinklers regardless of cost. The Tenant Action Committee was unable to persuade the building manager to ask the City of Nita for the installation of a sprinkler system in the building. However, the tenant protests often disrupted daily life at Nita Gardens. Ms. Johnson alleges her eviction is retaliation for her community activism and a violation of the terms of her lease.

All factual years in these materials are stated in the following form:

- YR-0 represents the actual year in which the case is being tried (i.e., the present year);
- YR-1 represents last year (please use the actual year);
- YR-2 represents the year before last (please use the actual year), etc.

Stipulations:

- Nita Gardens is the only public housing in Nita City.
- The Nita City Housing Authority and Nita Gardens are in compliance with all state and federal regulations regarding public housing.
- The photographs and diagrams are accurate descriptions and depictions of what they represent on the dates in question.

LANDLORD/TENANT COURT, COUNTY OF DARROW, STATE OF NITA
Case No. LTC-1087
SUMMONS IN EVICTION

NITA CITY HOUSING AUTHORITY
Plaintiff,
vs.
LADONNA JOHNSON
Defendant.

To the above named Defendant: Take note that

1. On Wednesday, August 5, YR-0, at 10:00 a.m., in the Nita City Landlord/Tenant Court, 687 Main Street, Nita City, Nita, the Court may be asked to enter judgment against you as set forth in the Complaint.
2. A copy of the Complaint against you and an Answer form that you must use if you file an Answer are attached.
3. If you do not agree with the Complaint, then you must either
    a. Go to the Court, located at 687 Main Street, Nita City, Nita, at the above date and time and file the Answer stating any legal reason you have why judgment should not be entered against you, or
    b. File the Answer with the Court before that date and time.
4. When you file your Answer, you must pay a filing fee to the Clerk of the Court.
5. If you file an Answer, you must give or mail a copy to the Plaintiff or the attorney who signed the Complaint.
6. If you do not file with the Court at or before the time for appearance specified in this Summons, an Answer to the Complaint setting forth the grounds upon which you base your claim for possession and denying or admitting all of the material allegations of the Complaint, judgment by default may be taken against you for the possession of the property described in the Complaint; for the rent, if any due or to become due; for present and future damages; and for any other relief to which the Plaintiff is entitled.
7. If you want a jury trial, you must ask for one in the Answer and pay a jury fee in addition to the filing fee.
8. If you want to file an Answer or request a jury trial and you are indigent, you must appear at the above date and time, fill out a financial affidavit, and ask the Court to waive the fees.

Respectfully submitted this 2nd day of July, YR-0.

Attorney for the Nita City Housing Authority

This summons is issued pursuant to Rule 303, Rules of Landlord/Tenant Court Civil Procedure, as amended, and 15-10-231, N.R.S. A copy of the Complaint must be served with this Summons. This form should be used only for actions filed under Nita's Landlord/Tenant Act. WARNING: All fees are nonrefundable. In some cases, a request for a jury trial may be denied pursuant to law even though a jury fee has been paid.

LANDLORD/TENANT COURT, COUNTY OF DARROW, STATE OF NITA
Case No. LTC-1087
VERIFIED COMPLAINT FOR EVICTION

NITA CITY HOUSING AUTHORITY
Plaintiff,
vs.
LADONNA JOHNSON
Defendant.

COMES NOW, the Plaintiff by and through the attorney for Nita City Housing Authority, and states as follows:

1. Plaintiff, the Nita City Housing Authority (NCHA), is the owner of the public housing development, Nita Gardens, located at 874 Jackson Avenue, Nita City, Nita, the legal description of which is to wit: Lot 1–5, Kolp Subdivision, County of Darrow, Nita City, State of Nita.
2. Plaintiff is a participant in the Federal Government Housing Program commonly know as the Section 8 New Construction Program and receives rental subsidies from the United States Department of Housing and Urban Development (hereinafter know as "HUD"). As such, Plaintiff must comply with 42 U.S.C. § 1437d (1994), The Anti-Drug Abuse Act of 1988.
3. Plaintiff leased the premises to Defendant pursuant to a HUD-approved written lease. Rent is due on the first day of each month. Monthly rental of said premises at this time payable by tenant is $169.00
4. Defendant entered into occupancy of said premises.
5. Defendant breached the terms of Paragraph 8 Resident Obligations section (C) of the lease by failing to refrain from engaging in, or causing members of the resident's household, guests, or other people under the resident's control to refrain from engaging in, any criminal or illegal activity. Specifically, involvement in any violent or drug-related criminal activity on or off NCHA property, membership in a criminal street gang, and defacing public property without the consent of the owner.
6. Plaintiff has elected to terminate said tenancy on August 5, YR-0.
7. A Ten-Day Lease Notice of Material Noncompliance and Demand for Possession as required by Defendant's lease and statute were served upon the Defendant on July 2, YR-0, by posting in a conspicuous place upon the premises, to wit: under the front door of Apartment 715-E, Nita Gardens, 874 Jackson Avenue, Nita City, Nita, and by mailing a copy of the same to said address on the same date.
8. Defendant failed to surrender possession of said premises and unlawfully, wrongly, without force holds possession of the premises, contrary to the terms of the lease.

9. Defendant tendered the $169.00 tenant portion of rents to Plaintiff for June and July, which has been returned to the Defendant. The government subsidized rents for June and July are being held subsequent to resolution of the within action.

WHEREFORE, Plaintiff prays for recovery of possession of said premises, for judgment for rent due or to become due, present and future damages, attorneys fees, costs, and any other relief to which Plaintiff is entitled.

Dated this 2nd Day of July, YR-0.

Attorney for Nita City Housing Authority

Plaintiff's address:

Nita City Housing Authority
Legal Department
875 Main Street
AHEF-14
Nita City, Nita
000-423-6814

TEN-DAY LEASE NOTICE OF MATERIAL NONCOMPLIANCE*
and
STATUTORY NOTICE TO QUIT

(SUBSEQUENT BREACH FOR DRUG RELATED AND GANG ACTIVITY)
**WARNING: Pursuant to paragraph 9 (B)(3) of your lease and federal regulations, HUD-required notice periods and notice periods required by State law may run concurrently. Therefore, no additional notices will be served upon you.*

TO TENANT: Ladonna Johnson
ADDRESS: 874 Jackson Avenue, Apt. 715-E
Nita City, Nita

AND ALL OTHER OCCUPANTS OF THE PREMISES

Notice is hereby given that you have breached the covenants and conditions of Paragraphs 8 (C) (2) and 9 (B)(3) of the lease under which you hold possession of the above-described premises, and the Landlord proposes to terminate your lease for material noncompliance thereof, in the following particulars. On January 14, YR-1, your grandson, Elroy Johnson, was arrested for the possession and sale of crack cocaine under N.R.S 18-12-893.13 Prohibited acts; penalties. He was charged with a felony under Nita law. He is also associated with individuals believed to be involved in a "criminal street gang" as defined under Nita Revised Statute 18-23-101 et seq. He has also participated in defacing public property through graffiti. *These are material breaches under 42 U.S.C. § 1437d(l)(6) (1994 ed., Supp. V), The Anti-Drug Abuse Act of 1988. The Act, as later amended, provides that "each public housing agency shall utilize leases which . . . provide that 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."*

YOU ARE FURTHER NOTIFIED:

A. That Landlord of the above-described premises demands that you shall, within ten (10) days of the time this notice is served upon you, **SURRENDER** the possession of said premises that you occupy as tenant and that are know as Nita Gardens, 874 Jackson Avenue, Apartment 715-E, Nita City, Nita. This notice extends the statutory three-day Notice to Quit of N.R.S. Chapter 239 to ten days. No additional three-day Notice to Quit will be served.

B. You are hereby notified that your tenancy has been terminated on August 5, YR-0. The undersigned, as agent for the Landlord, demands that you shall deliver to the Landlord the possession of the Premises on or before that date and time, to wit: **you must vacate by midnight on Saturday, August 8, YR-0.**

C. You have ten (10) days within which to discuss the proposed termination of your tenancy with the Landlord/Landlord's agent; the Landlord/Landlord's agent shall discuss this matter with you upon request.

D. If the Landlord commences an action to evict you, you have the right to defend the action in Court.

This demand is made pursuant to N.R.S. 13-40-106 et. seq. as a result of your subsequent breach of the same conditions of your lease and pursuant to HUD regulation.

Monthly rent at this time is $169.00 payable on the first day of each month.

Dated this 2nd day of July, YR-0.

Attorney for Nita City Housing Authority

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing TEN-DAY LEASE NOTICE OF MATERIAL NONCOMPLIANCE and STATUTORY NOTICE TO QUIT, by placing in the U.S. Mail postage prepaid, this 2nd day of July, YR-0, to:
Ladonna Johnson
874 Jackson Avenue, Apt. 715-E
Nita City, Nita 00251

Attorney for Nita City Housing Authority

A posting of a true copy hereof was slipped under the door of the apartment.

LANDLORD/TENANT COURT, COUNTY OF DARROW, STATE OF NITA
Case No. LTC-1087
VERIFIED ANSWER IN EVICTION

NITA CITY HOUSING AUTHORITY
Plaintiff,
vs.
LADONNA JOHNSON
Defendant.

The Defendant, Ladonna Johnson, by and through her attorney, Nita Legal Services Inc. appearing, and as her answer to the Plaintiff's complaint states:

1. Defendant Ladonna Johnson admits items 1 through 4 of the complaint and denies items 5 through 9 of the Complaint;
2. Plaintiff is not entitled to possession of the property, and Defendant is entitled to retain possession for the following reasons:
    a. Defendant's grandson, Elroy Johnson, was wrongly accused of possession and sale of crack cocaine. He was not convicted in this matter. Defendant is therefore not in violation of Paragraph 8 (C)(2) of the lease;
    b. Defendant's grandson is not a member of a "criminal street gang." Defendant is therefore not in violation of Paragraph 8 (A) or C (1);
    c. Defendant's grandson has not been convicted, or even charged with, defacing public property. Defendant is therefore not in violation of Paragraph 8 (A).
    d. The Plaintiff's actions are retaliation, based upon legal actions by the Defendant in forming a Tenant Action Committee for the purposes of persuading Nita Gardens or the City of Nita to install fire sprinklers in the halls, public areas, and residences of Nita Gardens. The Defendant is entitled to her actions under Paragraph 7 (B) of the lease, *"Not interfere with Resident's constitutional rights to organize/join a tenant organization."* Plaintiff's actions are also in violation of Defendant's constitutional rights under the First Amendment of the U.S. Constitution.

WHEREFORE, Defendant prays for judgment that she is entitled to retain possession of Apartment 715-E, 874 Jackson Avenue, Nita City, Nita, and Plaintiff take nothing by its Complaint.

The Defendant demands trial by jury.

CERTIFICATE OF MAILING

I certify that a true copy of the answer was mailed, postage prepaid, to:

Nita City Housing Authority
Legal Department
AHEF-14
875 Main Street
Nita City, Nita 00244

Dated this 10th day of July, YR-0.

Attorney, Nita Legal Services Inc.

LANDLORD/TENANT COURT, COUNTY OF DARROW, STATE OF NITA
CASE NO. LTC-1087
MOTION TO PROCEED IN FORMA PAUPERIS

NITA CITY HOUSING AUTHORITY
Plaintiff,
vs.
LADONNA JOHNSON
Defendant.

Defendant, LADONNA JOHNSON, through her attorneys, Nita Legal Services Inc., moves to file her defense in this action without necessity of prepaying fees, pursuant to Chapter 221, N.R.S., for the reason that she is a poor person and unable to pay the costs and expenses thereof. As reason in support of her Motion, the Defendant states to the Court as follows:

1. The attached Affidavit [not included] of the Defendant indicates the Defendant is indigent.
2. The Defendant has a meritorious claim.
3. Due to Defendant's financial circumstances, her inability to pay fees would preclude her from presenting her claims.

The Defendant respectfully requests that this Court allow her to file this action without the necessity of prepaying fees.

Respectfully submitted,
Nita Legal Services Inc.

Attorneys for Ladonna Johnson

LANDLORD/TENANT COURT, COUNTY OF DARROW, STATE OF NITA
CASE NO. LTC-1087
ORDER FOR LEAVE TO PROCEED IN FORMA PAUPERIS

NITA CITY HOUSING AUTHORITY
Plaintiff,
vs.
LADONNA JOHNSON
Defendant.

THIS MATTER coming on to be heard upon Defendant to file her answer in this action without prepayment of fees, and to have determination thereon;

AND the Court having considered the same, finding that she is a poor person and unable to pay said fees, and that her Petition appears meritorious;

IT IS THEREFORE ORDERED that the she be allowed to file her Answer in the above entitled action without the payment of fees pursuant to Chapter 221, N.R.S.

ORDERED this 13th day of July, YR-0.

PRESIDING JUDGE

Witness Statements

Statement of Rachel Longly

My name is Rachel Longly. I am the administrator/manager of Nita Gardens, Nita City's public housing project. I have worked in this capacity for the past ten years.

I have a Bachelor of Arts degree, with a major in political science, from Nita State University. I also have a master's degree of Business in Management from Howard University, with a concentration in public housing.

During my college years I volunteered for the NAACP and helped with voter registration in Washington, DC. Doing voter registration was my inspiration for working in public housing. I received an award from the NAACP during my senior year at Howard as an Outstanding African-American Woman.

Before I began work with Nita City Housing Authority, I worked for the City of Pueblo, Colorado, in their Public Housing Department. I first worked in the main office as assistant to the director. My job responsibilities included developing public policy, working on budgets, coordinating contractors and scheduling major repairs in housing units, and acting as liaison with building managers. I worked in that office for approximately four years.

Approximately six months into my fourth year, I received a promotion to be manager for a small housing unit. My responsibilities as manager included negotiating leases with tenants; collecting rents; enforcing housing authority rules, regulations, and policies; scheduling repairs to units and the building in general; planning and maintaining a budget for the building; complying with city, state, and federal regulations regarding health and funding; supervising a staff that included an office clerk and maintenance workers; and serving as a contact with the police, fire, and sanitation departments.

During the next four years I continued to be promoted until I was manager of Pueblo's largest public housing development. I had been administrator/manager of that building for two years when I accepted my current position with Nita City Housing Authority.

My job description for Nita Gardens is substantially similar to that of my last position in Colorado. The biggest difference is that Nita Gardens is a much larger facility, and my staff is four times as large.

Nita Gardens is a large public housing development. The building houses 350 variously sized apartments. The building is configured into four wings: north, south, east, and west. The building has nine stories, of which eight are for apartments. There is a laundry room on each floor in each wing, for a total of thirty-two laundries. The main floor houses offices, a mail room, a large public meeting room, several all-purpose meeting and class rooms, a simple gymnasium that has some fitness equipment, a basketball court, and a volleyball court.

Residents of the building are all on public assistance. They pay on a sliding scale that is based upon their income or level of public assistance. We have people of all ages living in the building, from babies to senior citizens. We have tenants who live by themselves and families of up to ten people. The

building is an ethnic and religious melting pot. In short, we have a lot of diversity. This is both good and bad. I like seeing people of all races and religions living together, as it promotes a good living environment. It can also be a big problem as we try to cater to such a wide variety of tastes; we simply can't please every person all of the time. I can't tell you how many times I have acted as referee to try to help tenants settle disputes. Sometimes I just have to get tough and tell people what they must do to solve a problem. It's those times when I'm not a very popular person. Otherwise, I would say the tenants like and respect me.

Crime can be an issue in our building. Nita Gardens is located in what could be described as a "rough" part of town. We are constantly combating street-gang activity. This includes everything from our constant battle with removing graffiti to working with the police and drug enforcement agencies to stop drug sales. We regularly deal with many types of violence, including domestic and child abuse, assaults, and the occasional rape. Fortunately, we have never had a murder at Nita Gardens. We employ security officers and have a security team on-site twenty-four hours a day, seven days a week. Our goal is to protect our tenants and maintain a safe and happy environment. It doesn't always work, but we try hard to keep crime from taking root.

We constantly monitor a group of young men and women who call themselves the Vice Lords. They began making use of our parking lot as a place to congregate after Elroy Johnson invited them. They also make use of our recreational facilities as a couple of their members live in the complex. We do our best to discourage them from using our facilities and loitering in our parking lot. It is difficult when a resident invites them onto our property. Frankly, residents are intimidated by this group. They scare me. I do not want to have to deal with the fallout when someone gets seriously injured.

Tenants in our building do receive a wide variety of federal subsidies. Others receive subsidies from the State of Nita. Virtually everyone in the building receives some type of grant in aid to help pay for their housing. Because of this, we must be sure that we comply with federal and state law relating to funding. One of the most difficult, but important, laws we must enforce is the Anti-Drug Abuse Act of 1988. This law means that Nita Gardens has to include in our lease a provision that says that 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 shall be cause for termination of the tenancy. This is particularly strict because it covers behavior both on and off our premises and a wide range of people. This includes tenants, any member of the tenant's household, or any guest or other person under the tenant's control. To maintain our funding stream we must take an aggressive position on any criminal or drug activities. The tenants know about this policy, and I think most of them support it. Probably a couple of times each year we terminate a lease as a result of violating this policy.

I do know Ladonna Johnson. She has lived at Nita Gardens with her two grandchildren and great-grandchild for about five years. I like and respect Ladonna. She is a no nonsense type person who stands up for what she thinks is right. She is good with the children in the building, and many call her Gram. Most of the time she was a quiet tenant who was respected, and she lived by our rules. It is a sad situation that we have to evict her. In some sense, she is a victim of our anti-drug policy. Her grandson,

Elroy, runs with the Vice Lords. Many of the boys in the group have been in trouble with the police. I know of two other boys who live in the building. Most of the group does not live here, and until Elroy Johnson invited them onto the property, they stayed away. As soon as Elroy became involved they started to hang out in our public rooms or out in our parking lot. It all started in the fall of YR-1. All of a sudden I started seeing Vice Lords in our gym. Elroy Johnson was playing basketball with them. It was pretty clear to me he had invited them. Frankly, it's the outsiders who make the most trouble. They are the ones who got Elroy in trouble. Last November the police caught the group selling crack cocaine out in our parking lot. They arrested the whole group for possession and sale. I'm not sure of Elroy's status. I know he was arrested but do not know if he was convicted of anything. It really didn't matter. Our policy is pretty clear—get caught committing a crime or being involved in criminal drug activity and you and your family are out of Nita Gardens. This one action, combined with his association with gang activities, is sufficient. Because of Elroy's actions, the Johnson family has not refrained from activities that threaten the health, safety, or right to peaceful enjoyment of Nita Gardens. It's a shame that Ms. Johnson, her granddaughter, and great-granddaughter are being put out for Elroy's folly. My hands are tied; we must enforce our policies. If not, it would be anarchy here at Nita Gardens. I will not let street gang bullies intimidate me or the residents of this building.

We have not yet evicted someone for a single violation of the "criminal drug activity" provision of the lease. We also have not invoked the clause for simple misdemeanor convictions based on possession. However, we do place closer scrutiny on people convicted for simple possession—where there is smoke, there is fire. There have been a number of situations where there were single allegations of serious criminal activity, such as the sale of drugs, but no conviction. We have not evicted in those situations. We have employed the clause for both drug convictions and other serious criminal activity such as assault, domestic abuse, and rape. The reason we decided to employ the clause for the Johnson family was because we believe Elroy has attracted a street gang into the complex. The drug arrests last year were the first time the police made any arrests tied to drug and gang activity on our property. Clearly, this is interfering with other residents' rights to health, safety, and peaceful enjoyment of Nita Gardens.

I did have a series of encounters with Ms. Johnson that weren't especially pleasant. These occurred beginning in November YR-1 and continued for the next few months. It began when Ladonna came to my office for a meeting. She demanded that we install a sprinkler system for both common areas and all residences. She brought with her documents someone had downloaded from the internet, including something from the Nita Fire Department. Installing sprinklers in our building is an unreasonable demand that she pushed to the extreme.

We always do our best to meet and exceed government requirements for safety. Every part of the building currently meets standards for fire safety. I know there are attempts being made to require public housing to retrofit existing buildings with sprinkler systems. Some proponents want to have hallways and public areas fitted with sprinkler systems. Others want both public and living areas to have fire safety systems. Our building is older, having been built in the late 1960s. When it was built, it was

state-of-the-art for public housing. Over the years standards have changed. New public buildings have far stricter safety standards, especially for fires. Nita Gardens does not have a sprinkler system, either in public or private areas. We have installed smoke detectors in all public areas, including the main floor, hallways, and laundry rooms. We offer residents a substantial discount to purchase battery-powered smoke detectors for their apartments. The city has investigated the costs of installing sprinklers in Nita Gardens and found the costs would be excessive to retrofit the building. It would cost over a million dollars to make these changes, and we would have to close the building for more than six months to have a system installed. The building is reaching the end of its useful life, and the city does not want to make substantial investments in a building slated for demolition within the next ten years.

Ms. Johnson did not feel the same way. Because her daughter died in an apartment fire she was rabid about fire safety. She was petrified that a building fire would kill her granddaughter or great-granddaughter. She came to me and demanded that we install a new fire safety system that included sprinklers, smoke and carbon monoxide detectors, and voice alarms in each apartment. I told her the costs of installing such a system would be enormous and it did not make economic sense to make capital improvements in such an old building. I explained to her that the building was in compliance with all parts of city, state, and federal fire codes. I showed her the emergency plans for evacuating the building. I reminded her about our program to provide low-cost smoke alarms to any resident who wished to purchase them. I even offered to hold fire drills and fire safety programs for residents. She would have no part of my offers—it was refit the building, period.

Ms. Johnson went out and formed a "Tenant Action Committee" for the sole purpose of forcing the city to install a new fire safety system in the building. The action committee presented me with a petition in December YR-1 to have a system installed. When I told them I would not bend to their demands they started public protests. The group, led by Ms. Johnson, would congregate on the main floor with big signs. They would chant, "Don't let my baby burn." On a couple of occasions when I was present at the demonstrations, I had to have security disperse the group. Ms. Johnson was clearly the leader, and security went to her first to get the group to disband. During this time we had an increase in false fire alarms. I'm not making any accusations, but the coincidence seemed clear. We still have no plans to install sprinkler systems. Except for Ms. Johnson, most tenants have moved beyond this issue.

I do not hold Ms. Johnson's activism against her. She is entitled to her own opinions and to voice them through any tenant committee. Our policies and leases are quite clear that we do not retaliate against tenants for their activism—even if it is a problem for building administration. It is neither the building's policy nor my personal belief that we should hold a person's beliefs against them. Ms. Johnson's eviction is based solely on her grandson's violation of Paragraph 8 of our lease.

I was contacted by the police on November 10, YR-1, and was informed they were planning a large arrest in the Nita Gardens parking lot. They told me they suspected our parking lot was being used as a place to sell drugs and conduct other criminal activity. I let them know our security officers would be available to assist if needed. I also told them I would be on the premises that evening to make sure our

tenants were safe. At approximately 7:30 p.m., a member of our security force told me the police were in our parking lot. I immediately went out to the parking lot to observe what was happening.

When I got out to the parking lot, I saw a whole fleet of police vehicles. They were surrounding a group of men and women. I clearly saw Elroy Johnson in the group but did not see Jimmy Vasquez. Elroy was in handcuffs and was being led to a police van.

Later, I spoke with Detective Wherder about the arrests. He gave me a list of all of those who had been arrested. The list included Elroy Johnson. This was the last straw for me. Not only had Elroy invited those thugs into Nita Gardens, but now they were selling drugs.

On another occasion I spoke with Detective Wherder about the graffiti being painted on our building. He assured me that it was not gang related, but the work of a gang of taggers. He told me he thought it was the work of a group called Modern Neighborhood Art. He also told me he believed Elroy Johnson was involved with that group. I have suspicions he is at the heart of defacing our building. Whether he is a member of the Vice Lords or Modern Neighborhood Art, he is still in a gang.

I believe the gang members would not have been in the Nita Gardens parking lot but for the invitation of Elroy Johnson and maybe Jimmy Vasquez. Elroy's connection to those who were later convicted of drug charges is enough to trigger the clause in Ladonna Johnson's lease. Before we commenced the eviction I spoke with the Nita City Attorney about the Johnson lease. I wanted to be clear that the lease gave us the right to evict the Johnson family because a member of the family had engaged in criminal activity that threatened the health, safety, and right to peaceful enjoyment of our building. I am aware of the clause in our lease about retaliation of tenant activities and that an eviction within six months of any tenant activity is suspect. She confirmed my opinion that Elroy Johnson's activities were sufficient to trigger an eviction regardless of Ladonna Johnson's tenant activities. It was because of those assurances that I commenced the eviction.

Rachel Longly
August YR-0

Statement of Ernest Comstocke

My name is Ernest Comstocke. Some people call me "Deacon" because of my religious beliefs. I head the maintenance team at Nita Gardens Public Housing. I've held the job for about ten years and have worked at the complex for more than fifteen years. I report directly to Rachel Longly. I have a crew of ten people who work with me to keep the building clean and in good repair.

Besides supervising the maintenance and cleaning crew I also work around the building. I'm good with my hands and can fix 'most anything if you give me enough time. Four of my crew work full-time on cleaning. They maintain the common areas, including the first floor, the halls, and the laundry rooms. Two of the crew are assigned to painting. Mostly these two deal with graffiti painted by the local kids and gangs. We have a big problem with people painting gang signs on the building. My rule is any graffiti must be covered within twenty-four hours. We don't want any of those punks to think they own any part of our building. Two more employees work on maintenance. They do everything from clearing the garbage chutes to patching pavement in the parking lot. The other two employees are assigned to maintain the HVAC, or the building's heat and air conditioning systems. It's a pretty big job to keep the building's systems working on a twenty-four hour basis. We pride ourselves in keeping Nita Gardens in good shape—even if the building is getting to be an old lady.

I work twelve-hour shifts four days each week and am "on call" for the other three days. When I'm on call, I carry a beeper and a cell phone. If necessary, I come to the building to assist with emergency repairs or other issues. Because I work long hours, I know quite a few of the people who live in the building—either by name or by recognition. I know "Gram" Johnson. She's a pretty cool old gal. I see her around the building quite a bit when she isn't working. She's real good with the kids and the young mothers. She takes quite a few under her wing and helps them learn about taking care of their house and their kids. She'll tell you straight to your face what she thinks. I like that in a person, as I know exactly where they stand. She and I are in agreement about kids. She wants no part of gangs. I know it breaks her heart that her grandson hangs with the crowd that acts like they own our parking lot. I've helped the security guards chase those punks on more than one occasion.

"Gram" is really serious about fire safety. I know her daughter was killed in a fire. The rumor is she was smoking in bed and passed out due to drugs. Ms. Johnson is always after the cleaning crew to empty the trash bins in the common areas, laundry, and trash rooms. She bugs the maintenance guys about clearing clogs in the trash chutes. I would say she makes more complaints than any other resident in the building. Sometimes she can be a real problem with her complaints, especially when they take crews away from scheduled work. That really disrupts the whole maintenance plan. That's when I get upset. Fortunately, Gram has only done that a couple of times over the past few years.

Gram Johnson certainly did stir things up with her protests about a sprinkler system. While she was always a bit over the top about fire safety, she really pushed things starting in November YR-1. She cornered me one morning and told me the building needed a sprinkler system. She told me she

had been to a presentation at the fire department and that they had showed her how a fire prevention system would save lives and property. She told me she was going to make sure Nita Gardens got its own fire system. I told her it would be almost impossible to install a system without moving people out of the building and tearing up the place for months. She didn't want to hear anything about time, costs, or disruption. I know she met with Ms. Longly on the same subject in November YR-1. Ms. Longly also tried to discourage Gram. I guess all she did was to make her angry. Next thing I know these signs appeared all over the building. Then in December YR-1 the protests started. A couple hundred people appeared in the main lobby. They were carrying big signs and shouting things about the building being unsafe. I took exception to those comments as everything is up to code and follows what is required. The second protest was bigger and louder than the first. Ms. Longly lost her temper and asked security to break things up. She said if they couldn't get it done she would call the police. I saw Gram Johnson at the protests. It was clear she was the leader. The day after, I told her she had made a big mistake by organizing a protest. She let me know she was just exercising her rights as a tenant and that she would do what it took to get a sprinkler system. Christmas came and went, and the people in the building lost interest. I don't mind people asking for those things they are entitled to receive. I do mind when it disrupts other people's lives. Gram Johnson crossed that line with those protests.

I know both Sara and Elroy Johnson as well. Sara is a nice girl and her baby is a real cutie. I know Sara had her baby out of wedlock. Everyone, but a drug pusher, is entitled to a mistake. I think it taught her a lesson about life, and now she is a good church-going woman. Elroy is a different matter. He's a smart boy, but he is always into something that is trouble. I admit I neither like him nor trust him. When he first moved in, I caught him writing on a wall of the building next door with a big marking pen. He was doing some kind of "word art" thing. He was writing with a big marker and I took the pen from him. I told him if I ever caught him again, I would tell his Gram and she would deal with him, and then I'd get him thrown out of the building. Since then he has gotten real smart. I never see him with paint or markers, but I know he and his friends are behind the graffiti that gets painted on our building. I just can't prove it. I also yell at him and some of the other kids for riding their skateboards in the building. I don't mind if they ride outside, but it really messes up the floors and the railings the way they ride in the building. Besides, it's just not safe. Some day one of them will run into one of the older tenants, and then there will be real trouble.

The building has a strict policy on graffiti. By law my crew must remove graffiti within twenty-four hours of when it is discovered. We usually beat this limit because it really bothers me to see the building defaced. If I catch the little creeps writing on the building I make them clean it off and then call the cops. We get two kinds of writing on the building. The first type is that fancy, pretty kind of street art. Big letters with spray paint filling stuff in. The subject of that type of graffiti is usually something political—you know, "save the whales" or some other liberal message. It's much harder to remove this stuff because it's really big, and they often paint it on a surface that is hard to reach. Those are the ones I hate the most, but they are also the ones the police say are less dangerous. There is a different type of graffiti as well. It's usually done in those wide permanent markers. It's like some kind of code. You

can tell because some people either laugh or get angry when they see it. The ones that get people most upset are things like "187" and then a list of names like Smiley, Flaco, Goofy, or Dog. The police tell me this is some kind of a threat. Other times the graffiti is words like "Lords" or "T-Birds" and some numbers and crude drawings like pitchforks, stars, and moons. When we find this kind of graffiti we get rid of it as quickly as we can. The police tell us that if we paint over graffiti immediately it is less likely taggers will use that spot again.

There are some pretty tough characters that live in the neighborhood. Most of the young men and women who live in the building are decent people. It's the ones who are members of the group they call the Vice Lords who are the bad ones. They act pretty tough. I know many of the older residents are frightened when those hoods hang around. Most of them don't live in our building, thank goodness. Elroy Johnson and Jimmy Vasquez are the only building residents that I know who hang out with those punks. I can't say that they are definitely gang members. I do know that the Johnson boy was arrested in that big drug bust last November. I see him around the building, so I guess he got off. It doesn't matter much because his family is now being evicted. We don't need that kind of bad influence living in our building. Whether he was doing drugs or not, he invited those gang members to hang out in our parking lot and use our gym.

I don't always agree with Ms. Longly's enforcement of the drug use/criminal acts part of the lease. There have been times when someone who got arrested for doing drugs didn't get evicted. There have been times when the police arrested someone for beating their spouse or kid, and they didn't get evicted. That sounds like she is being pretty selective about using that clause. I think we should always evict a tenant who breaks the law.

Ernest Comstocke
August YR-0

Statement of Ladonna Johnson

My name is Ladonna Johnson. I'm fifty-six years old. I currently live at Nita Gardens apartments with my two grandchildren and my great-granddaughter. I've lived at Nita Gardens for the past five years. I live there because I can't afford to live anywhere else.

I work part-time as a cook for Tender Years Day Care. It gives me a little money, and I love working with all the babies. They are so special and cute. They just make me smile all the time! I've been a cook all my life. I've worked at lots of restaurants all over Nita City. About six years ago I got burned real bad on my legs when a hot kettle of soup spilled on me. I can't work full-time anymore. Because I can't work much I receive money from the government to help me get along. That's why I live at Nita Gardens—I get money to help me pay the rent, and I receive food stamps.

Like I said, I live with my two grandchildren and great-granddaughter. The kids live with me because their mother passed away. My daughter was a good soul, but she couldn't stay off the bottle and drugs. She died in a fire in her apartment. The fire department said she had been smoking in bed and passed out from the alcohol and drug intoxication. Nobody should die that way, and now I do everything I can to make sure it's safe where I live. I want to protect those children!

My granddaughter's name is Sara. She is eighteen years old and still in school. I want her to get her high school degree so she can have a good life. Sara is a bit like her mother. She got in with the wrong crowd a couple of years ago, and some boy got her with child. That young man wouldn't step up and take responsibility. He just split, and we never see him around. Somebody's got to take care of that child, so I do my best until Sara finishes school. I just love that baby. Anna is her name.

My grandson, Elroy, he's sixteen. He's a pretty good boy, but I worry he spends too much time with bad boys and girls. I'm always after that boy to get himself together. I've got to ride him hard to make sure he does what is right. He's not very good at most school subjects, except art and sports. I think he believes he can make a living being a basketball star. I keep telling him he's got to do more than play hoops to make his way in the world. I think he'll be all right. He has some talent as an artist. He is always drawing and making pretty pictures out of words. After he got in trouble last November, he's pretty scared of the police. Some other boys went to jail over that mess, and I know Elroy doesn't want to do time and ruin his life.

Elroy got himself into a tight spot in November YR-1. He was hanging out with some other boys. If you ask me, some of those boys are gang wannabes. They try to act real tough and talk with no respect. Some of those boys I just don't like. Well, this group likes to hang out after school, in the evening, and on weekends. They play basketball in our gym and mostly stand around outside the building. Last November Elroy was out in the parking lot with his friends. Next thing everyone knows, flashing lights and sirens. The cops came and arrested them all, even Elroy, for dope. I say the only dope was Elroy for getting caught up with troublemakers. The police said that Elroy was some kind of dope dealer. He has nothing to do with drugs. I guess the District Attorney thought so too, because she let Elroy go. Elroy

told me the DA dropped the charges after he agreed to tell a judge about what happened. He was lucky because they convicted a couple of those other boys. They went to prison. The DA told Elroy the next time he got caught, he was going to jail. That put the fear of God in him. Of course, I told Elroy that if he got in trouble again he would answer to me. I think that scared him even more. Bottom line—my boy doesn't have any convictions, he doesn't do drugs, and he's not a member of any gang.

It was about the middle of November YR-1 when the Nita City Fire Department held a community education meeting about sprinkler systems. I went to that meeting because I think we don't do enough about fire prevention and safety. Lives could be saved if landlords would only spend some money. The speakers told the group about how a sprinkler system could save lives and protect property. After that meeting I knew that if Nita Gardens would install a sprinkler system, it would make everyone in the building safer. The day after that meeting I went down and talked with Ms. Longly about the building installing a fire sprinkler system. She listened to what I had to say and then was very condescending. She told me the building was safe enough and didn't need sprinklers. She said it would cost millions to put a system in Nita Gardens and there was no money to pay for the costs. When I told her she thought more about money than people she got mad and asked me to leave. I couldn't believe she treated me that way. She just dismissed me as some crazy old lady. I won't put up with that kind of treatment from anyone.

I took things into my own hands. I called all my friends in the building and told them about how the city cared more about making rent money than our safety. I had Elroy get some information on the school's computers. I showed people those papers and told them about how Ms. Longly had blown me off and said the building was not worth upgrading. Everyone was really upset when they heard my story. In December YR-1 some of my friends went with me to ask Ms. Longly a second time. She tells us all the same thing—no sprinkler system. Some of us decided that if the building wouldn't help us, we would force them to make a change. I took a collection and had Elroy make up handbills and signs about sprinkler systems and the management's position. We put the handbills all over the building so folks would know about things. That poster really stirred things up. A lot of people were plenty mad. Then I organized some protests for the first floor. In December YR-1 we had about two hundred people who stood in the lobby and chanted. We did that a couple of times, and then the building security cops came and told us we couldn't stay. The building still hasn't done anything about the sprinklers. I guess it will never get done now.

Before the stuff about the sprinkler system I got along fine with Rachel Longly. She was nice to me and my kids. After we flexed our muscles she wasn't so nice. She stopped saying "hi" to us in the halls. I was watching my Ps and Qs, but it was too late. I came home from work one afternoon to find this paper stuffed under our door. It says because Elroy had been arrested for drugs and he was part of some gang, we had to move out. It's really unfair. The DA dropped the charges against Elroy. He's not guilty, and besides, all the troubles didn't even happen in the building. They claim Elroy is in a street gang. He spends some time with those boys playing basketball, but he has lots of friends. His best friends are not part of that group. I'm sure this is some retaliatory BS because of what I did to let people know

the building needs better fire protection. I know my rights. My lease says I can join any tenant group I please. I have the right to protest building policies and inaction. They aren't going to push me out. I'm here to stay. I can't afford to move somewhere else and keep my babies with me. This just isn't fair!

Ladonna Johnson
August YR-0

Statement of Elroy Johnson

My name is Elroy Johnson. I'm sixteen years old and live with my grandmother, Ladonna Johnson, in the Nita Gardens apartments. I've lived with my Gram since she moved here five years ago. My sister and her baby also live with us. I go to the Nita City vocational high school.

My Gram is something. She's old and crippled up, but she works hard to make a home for my sister and me. My mom died five years ago. She was a drunk and an addict and couldn't really raise us. Gram stepped in and gave us a place to stay. She wants the best for us. Even though she gets on my case all the time, I know she loves me and does what's best. Everyone in the building likes Gram. She's always doing something for people—making cookies or babysitting. I think everyone calls her Gram, and she likes it that way.

I'm an okay student at school, but my grades aren't great. Gram makes sure I do my homework and get ready for tests. She's kind of a pain, but I know if it weren't for her I'd have dropped out years ago. She keeps telling me that if I stay in school, I'll make something of myself. I guess she's right. I'm in the auto shop program at school, and when I graduate I'll be able to get a job as a mechanic. What I would really like to do is be an artist, but I know there isn't any money in art. I tell Gram that I want to be in the NBA, but I know I'm no star. Gram thinks I want to be a pro. I'm not good enough, but it's fun to think I'll make it. It'd be great if I could go to college on scholarship and get signed to the NBA. If I was a player, I'd buy Gram her own house. Gram would kick my butt if I dropped out of school. Besides basketball, mechanics, and art, I really like to skateboard. I ride all of the time. Mr. Comstocke yells at me when I ride inside. I like to grind on some of the stair rails.

I spend a lot of time with friends from school and guys in the neighborhood. Many of the guys I play street ball with are members of the Vice Lords, the local gang. There is a lot of pressure on the street to join the Vice Lords, but I'm not really a member. None of my best friends are in the gang, but some of the guys I play hoops with are members. Before the arrests, we hung out together after school and on weekends. Some nights I would go down and find them and shoot some hoops or mess around. Sometimes I would invite some of the Vice Lords to come over and play ball. I never thought they would do more than play basketball.

My best friends are from school, not the street. Their names are Michelle Burgess, Tiffany Fredericks, Angel Lopez, Walter Geoff, and Eddie Franklin. We call ourselves different names. Michelle is Ampersand, Tiffany is Factor, Angel is Sky, Walt is Chill, Eddie is Brush, and they call me Dr. Draw or Doc. We are a crew, and our name is Modern Neighborhood Art or MNA. We are taggers and not a street gang. There is a big difference. We don't do hard drugs, and our street art is about important social causes, like clean air and anti-war. We do our art on buildings, dumpsters, and public transportation. Some people call our work vandalism, but we know it is graffiti art. I can show you our log book about the places we tagged. We are starting to build a pretty big rep among taggers. Our specialty is "tagging the heavens," or things like overpasses and billboards. We are the first team to paint the new

overpass at I-34 and Ralston Road. We also did the roof on the new Priceco store. We don't do residences, but I don't consider Nita Gardens a residence. We often use the "Den," I mean Nita Gardens, as a practice canvas for our bigger projects. We design a statement in our sketch books and then try it out on the Den. I know Mr. Comstocke will paint over our practice canvas right away. He never leaves graffiti up more than twelve hours. We could never get any recognition from those tags.

I don't do hard drugs. Some of my friends do. I've only smoked some weed. I know I would break Gram's heart if I did drugs, and I don't want to end up like my mom. Last November I got myself in trouble with the police. I was hanging outside with some of the guys from the Vice Lords. We had just finished playing some hoops. The next thing I know there are cops everywhere with their guns out. I was scared. The cops arrested all of us for the sale and possession of crack cocaine. Two of the guys were regular users and were dealing. They took us all down to the police station. They charged everyone with either possession, possession with intent to deal, or conspiracy. I was charged with conspiracy. Gram let me sit in jail overnight as a lesson. The next day she bailed me out. I met with the District Attorney. She tried hard to scare me and succeeded. She let me sweat for some time and then came back and offered me a deal if I testified against the others. She made it sound like I would do some serious jail time if I didn't cooperate. The public defender told me it would be a good deal if I agreed. I accepted the offer and agreed to testify if the charges were dismissed. It turned out I didn't have to go to court because the others also agreed to plea bargains. I was really relieved. Just the same, I got my dose of punishment from Gram. From now on I'm staying away from anybody who's into drugs. I'm not really welcome around the Vice Lords anyway. Frankly, I'm pretty scared they will do something to me. I don't think they know I was going to testify against them. If they did, I think my life would be in danger.

Ms. Longly says the stuff I did threatened the health, safety, and right to peacefully enjoy the building. I don't think she's right. All I ever did was invite some guys to play basketball and to spend time with them hanging out in the parking lot. No one ever bothered other people from the building. Even the tagging didn't affect anyone except Mr. Comstock and the building painters. Those guys would only stand around if it wasn't for us making them do some work.

I didn't know at the time, but my trouble turned into my Gram's trouble. Because of me, we are getting evicted from our apartment. I don't think it's fair. I really didn't do anything wrong except for hang with the wrong people. The DA dismissed the charges! This is BS! I know the rules of the building, but I don't think I did anything to break the lease.

My mother's death really had an impact on Gram. She's pretty paranoid about fire since my mother was killed. She keeps our apartment spotless and makes us throw out any excess paper and keep everything spotless. She makes the maintenance men clean up the laundry and trash rooms. If there is a jam in the trash shoot, she calls and makes them clear it right away. She reads everything she can about fire prevention. Right after I was arrested in November YR-1, Gram went to this presentation at the fire department. She came back all excited about sprinkler systems. She told me that if they installed a sprinkler system in the Den it would save a whole bunch of lives and property if there was ever a fire.

The next day she went down and had a visit with Ms. Longly, the building manager. She came back really angry and upset, saying that Ms. Longly was only concerned about money and acting like a big shot.

When my Gram gets mad you better put your head down and get out of the way. She has some powerful anger. Gram calls all her friends and the people whose kids she watches and tells them all about her conversation with Ms. Longly. Gram asked me if I would do some computer research for her about sprinkler systems. I brought her some things from the Nita Fire Department and the National Fire Protection Association. Then she had me make up some flyers. I got the rest of the crew to help with those and some big signs. She used the extra household money and donations to get things printed. My Gram took part in the marches for civil rights. She is big on public protest if she don't get her way. Right away she starts this "Tenant Action Committee." Gram got lots of people together, and we protested about the sprinkler system in the lobby in December YR-1. It was really cool. The second time we did it, security came and made us leave. Unfortunately, the protests did nothing to change things. Nothing has happened to install sprinklers, and most of the people in the building have lost interest.

I know that Ms. Longly was really pissed off at Gram about the sprinkler protests. She stopped me in the lobby one afternoon in February YR-0 and asked me if I had anything to do with the posters. I told her I made them up. She told me that what I did wasn't right. If I really knew what the building staff did to prevent fires, I wouldn't be part of any protest. I told her I thought my Gram was right. Ms. Longly told me to be careful because some things can come back and bite you. I didn't know what she meant then, but I do now. I know she is using my bad luck to get back at Gram for the protests. I don't think that's fair.

I'm really worried what will happen now. Gram can't afford to rent a place that's big enough for all four of us. If this doesn't get fixed, I may have to drop out of school and get a job so I can help Gram pay the new rent. It sucks!

Elroy Johnson
August YR-0

Statement of James Wherder

My name is James Wherder. I'm a lieutenant for the Nita City Police Department currently assigned to the Gang Task Force. I've been a police officer for all of my career, including time served in the United States Army as a military police officer. I joined the Nita City Police Department in the spring of YR-20.

After graduating from the police academy, I was assigned to street patrol in the inner city. As a street officer I developed a good rapport with many people on my beat. I also began a life-long interest in the culture of street gangs. I am about a semester away from earning my Master's degree in sociology. My thesis will be on the use of graffiti by urban gangs. Obviously, my experience in the police force and work on the Gang Task Force helped me in my research and writing.

I have received four meritorious citations for my work in the inner city community. In YR-15 I received a citation for valor for stopping a liquor store robbery, where I was wounded in the process of subduing two suspects. I knew both of the boys who committed that robbery. They had just joined a gang, and the robbery was part of their initiation. I killed one of them, and the other is still serving time. It was this action that led me to work on the Gang Task Force and begin my academic studies.

Much of my work on the Gang Task Force now relates to the study and interpretation of graffiti. Many people mistake all graffiti as gang related. This is not true. While street gangs do make use of graffiti to mark territory, threaten individuals and other gangs, communicate with each other, or even to show worthiness to join a specific gang, some groups of graffiti writers are incorrectly identified as gangs. They are more accurately referred to as tagging crews. These groups have different motivations for creating graffiti. While the general public may refer to this type of graffiti as vandalism, tagging crews look at their work as street art.

True street-gang graffiti is a means of marking territory. Gangs leave their identification on fences, schools, sidewalks, walls, and even private homes. Primary gang hangouts are often heavily covered with graffiti, including buildings and street signs. Typically, graffiti includes the name of the gang, nicknames of the members of the gang, slogans or symbols exclusive to the gang, the territory claimed, and even the names of affiliated gangs. Sometimes gang graffiti presents threats or challenges to rival gangs or shows disrespect for rivals. This type of graffiti often provokes confrontations and violence. This is one of the reasons why we work hard to clean up graffiti, as it often multiplies as rivals cross out and add their own messages.

Street gangs use their own language to communicate through the use of graffiti. This language includes numbers, letters, words, and phrases that are easily understood on the streets. The name of the gang is often an abbreviation of two or three letters. Numbers have significant meaning in graffiti. For example, the numbers 187 represent the California penal code section for murder. Graffiti that includes those numbers is a death threat. Other numbers may represent the number of a letter in the alphabet that is the first letter of the gang's name. Numbers may also represent the street number for

the location of where the gang was founded. Direction coordinates such as E/S or W/S will show gang territory.

Graffiti is used to intimidate people and often makes local residents believe they are not safe. It reduces the value of business and residential property and, left unchecked, may result in a violent confrontation. Gang members view the messages left in graffiti as quite serious, and the longer graffiti is left up the greater the chance of a violent confrontation.

Even though many classify taggers' behavior as criminal, there is a significant difference between tagging crews and actual gangs. Tagging crews are motivated to write graffiti for the sake of art, not for actual criminal purposes. Members of tagging crews may not even be from the inner city. In Nita City, as well as other locations, taggers may come from middle and upper income homes in addition to those from less privileged backgrounds. For taggers, graffiti is a source of entertainment and political statement, some of which comes from vandalizing public and private property. Taggers often have risk-taking personalities. Many taggers also participate in high-risk activities such as those found in extreme sports—skateboarding and in-line skating, BMX bicycling, snowboarding, and skiing. One of the newer activities of taggers is freestyle walking, where the walker uses leaps and air moves, clever footwork, dance, or any non-traditional walking movement to move around the city. Some taggers may associate with street gangs as another means of risk taking. They are usually not street-gang members and can be referred to as gang wannabes. Street gangs sometimes hire taggers to advertise on the gang's behalf. In some states, taggers carry weapons to defend themselves from street gangs. However, taggers are usually not violent.

Taggers join together in groups called crews. The typical crew has between three and ten members. A crew is often co-ed, with males and females working side by side. Sometimes crews put up pieces by working together—one creating the outline of the design and others filling in the colors. Each member then signs his or her name to the completed "piece," which is short for "masterpiece." Taggers are often highly intelligent and have ironic senses of humor. Many will take on causes, such as saving the environment or freeing political prisoners.

Tagger graffiti is easily recognized and substantially different from street-gang graffiti. Tagger graffiti is more stylized and artistic—with fat, wild, or geometric letters. It usually contains brighter colors and has more details. Tagger graffiti may also incorporate pictures. In addition to spray paint, taggers make use of very wide markers, name tags or other stickers, paint sticks, and sharp objects, which are used to etch glass.

Tagger crews earn recognition through the number of tags they make, the size or area covered by the tag, and the degree of challenge to place the tag. Tagger crews are unlike street gangs in that they are not usually territorial and will attempt to display their work wherever they can find a clean wall. Favorite places for tags are freeways, trains and subways, and places that have never been hit by graffiti. The goal is to break new ground. Taggers get a rush from tagging in an unusual location like a rooftop or overpass.

Tagging is often a way of life and a culture unto itself. Many taggers believe they are creating a form of artwork, which they refer to as "aerosol art." There is often competition between tagging crews to

determine who is the best artist. Carrying sketch books, talking about tagging, and recording projects through photographs or videos are a big part of tagger culture. The internet provides a vast source of comparative ideas and a place for friends to view new hits.

Traditionally, the chances of taggers being caught are small. Times when they are creating new works are often when police presence is smallest. One of the thrills of tagging is staying one step ahead of the police. Frankly, many view tagging as far less of a problem than the crime created by street gangs. For every preventative action taken by the police, taggers find an alternative.

I am familiar with the street gang the Vice Lords. The members of that gang are some very tough individuals and are considered by the Nita City Police Department to be one of the worst street gangs in the state. They are loosely affiliated with a national street gang.

In terms of criminal activity, the Vice Lords have been connected with the manufacture and distribution of crack cocaine. They are also under investigation for extortion and prostitution. Vice Lords members are regularly arrested for assault, petty theft, and alcohol-related crimes. A number of their members have been convicted of serious crimes, including murder and rape. They are some very bad people. A large portion of the work of the Gang Task Force relates to the Vice Lords. I spend about 60 percent of my time working on matters related to the Vice Lords. This includes work in the schools and on the streets trying to keep younger children from becoming involved with the Vice Lords and their activities.

Not every member of the Vice Lords is a truly bad actor. The Vice Lords work hard to recruit new members. There is a great deal of pressure on the streets to force young men and women who live in the area of Jackson Avenue and Twentieth Street to join the gang. It takes real courage not to join the gang if you are a young man living in the heart of Vice Lords territory.

I was involved in the operation of November 10, YR-1, where we arrested a number of minors and adults for the possession and sale of crack cocaine. The arrests were based upon reports from residents of Nita Gardens and others in the area around that complex. These reports placed gang members either on the premises of Nita Gardens or in the parking lot of the complex for the purpose of selling illegal drugs. The arrests were part of an on-going investigation targeting the Vice Lords as one of the largest distributors of cocaine in Nita City. That campaign continues today. We have been successful in many of our efforts as our investigations have culminated in a series of arrests and convictions throughout Nita City. The arrests at Nita Gardens were targeted for November 10, YR-1. Twenty arrests were made in that operation. I consider this campaign very successful as we were able to get five convictions. It put a serious dent in the Vice Lords's drug operations for a number of months.

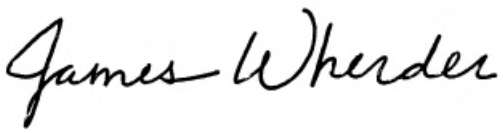
I was personally involved with the arrests at Nita Gardens on November 10, YR-1. There was a large group of people congregating in the parking lot, and we arrested them all. We decided it would be best to arrest everyone and sort things out at the station. As it turned out, that was a good decision, because we netted a number of serious criminals in that group. We also caught a break, because we were able to persuade some of those caught in the roundup to testify against others. One of the most helpful was Elroy Johnson. I honestly do not believe Elroy is a member of the Vice Lords. I

have suspicions he is the leader of the tagger group, Modern Neighborhood Art or MNA. The bottom line is, things really went our way with the bust at Nita Gardens as the two worst offenders ended up pleading guilty. The rest got a good scare and will think twice before breaking the law again.

As I said, I suspect Elroy Johnson is the leader of the tagger group MNA. This is one of the up-and-coming groups of taggers in Nita City. They have grown from being a local nuisance to gaining citywide notoriety. As urban artists, these kids are pretty good. They have a sharp sense of humor and some style. Their big projects make some blighted areas look far better. They take serious risks in choosing their targets and drive my colleagues in the department crazy—not to mention the Department of Sanitation, who paints over their work. Personally, I am not nearly as bothered about MNA tagging as I am about the serious crimes committed by street gangs. Graffiti is prohibited by a city ordinance, not a state statute. There will come a day when MNA goes too far, and we will have to put them out of business.

I spent some time interviewing Elroy Johnson about the graffiti in Nita City. He is passionate about the subject of urban art. He shared his sketch book with me and is quite proud of his work. I did not tell him I recognized some his work from around the city or that he was breaking the law. We discussed the differences between gang graffiti and tagger graffiti. I pressed him about the Vice Lords graffiti in the neighborhood around Nita Gardens. He claimed to have no knowledge about who was involved and was quite scornful about the quality. Elroy is also anti-drugs and alcohol. I think this was one of the reasons he was willing to work with us after his arrest. I was the one who recommended to the DA that she offer a deal to Elroy that she would dismiss the charges if he testified against the others.

I would like to see Elroy Johnson enrolled in art school. I believe he has the talent to become a professional artist. It would be a big shot in the arm for our gang program if we could use Elroy as a success story. Is his tagging criminal? Yes. Is he a bad kid? No.



James Wherder
September YR-0

EXHIBITS

EXHIBIT 1

Selected portions of Johnson lease
NITA CITY HOUSING AUTHORITY
PUBLIC HOUSING LEASE

1. DESCRIPTION OF THE PARTIES AND PREMISES

The Nita City Housing Authority (NCHA) hereby leases to (Tenant/Resident), Ladonna Johnson Apartment # 715-E, 874 Jackson Avenue, (address), Nita City, Nita (the Apartment/Premises) beginning March 1, YR-5.

2. AMOUNT AND DUE DATE OF RENTAL PAYMENTS

Resident agrees to pay the monthly rent of $ 169.00 in advance, on or before the fifth calendar day of each month beginning March 1, YR-5. Rent for any fraction of a month of occupancy at the beginning or end of the term will be charged on a pro rata basis. This rent will remain in effect until changed in accordance with NCHA policy. NCHA agrees to accept rental payments without regard to any other charge owed by Resident to NCHA, and to seek separate legal remedy for collection of any such charge. NCHA agrees to accept monthly rental payments in two (2) installments if Resident shows, in advance and in writing, good cause for the request. Resident agrees that acceptance of payments by NCHA shall not constitute a waiver of any claims made.

NCHA shall pay the full cost of the following utilities:

Natural gas for heating
Electricity
Water, sewer, and garbage collection

Resident shall pay the full cost of the following utilities:

Telephone

Cable television

Resident shall pay additional monthly charges for use of resident-supplied major appliances (for example, dryers, freezers) to the extent permitted by applicable NCHA policy. The following are the monthly charges for resident-supplied appliances; the addition of other major appliances will result in additional charges.

Appliance Charges Freezer @ $5 every two months

3. TERM OF LEASE; ANNUAL AND INTERIM REDETERMINATIONS

For residents in state-subsidized housing, the term of this Lease begins on the date first written above and continues until terminated pursuant to Section 9 of this Lease. For residents in federally-subsidized housing, the term of this Lease begins on the date first written above and continues for one year. Annually the lease will automatically be renewed for an additional one-year term, subject to Resident's compliance, and the compliance by members of Resident's household, with the provisions of NCHA's Community Service Policy and 42 U.S.C. 1437j(c). In the event of failure by Resident or any non-exempt adult member of Resident's household to cure noncompliance of this requirement within the period and in the manner specified by NCHA's Community Service Policy and 42 U.S.C. 1437j(c), NCHA will not renew this Lease and will proceed to evict the household pursuant to Paragraph 9(E), below. All provisions of this Lease related to NCHA's Community Service Policy that are not in effect at the time this Lease is executed will go into effect and become binding upon the Parties once said Community Service Policy is adopted, and after thirty days' notice by NCHA to Resident that such Policy has been adopted and its provisions are in effect.

7. NCHA OBLIGATIONS

NCHA will at all times and at NCHA's expense

A. Permit Resident quietly and peaceably to enjoy the leased premises, respecting Resident's right to privacy;

B. Not interfere with Resident's constitutional rights to organize/join a tenant organization;

C. Notify Resident, in writing, of the specific grounds for any proposed adverse action against Resident by NCHA, and notify Resident of Resident's right to request a hearing and the time period in which to make such a hearing request if NCHA's grievance procedure requires the NCHA to afford Resident the opportunity for a hearing;

D. Commence eviction proceedings against other residents or their household members, whose own conduct or the conduct of their guests has jeopardized the health or safety of Resident, household members, other NCHA residents, or of NCHA employees….

8. RESIDENT OBLIGATIONS

During the term of this lease, Resident agrees to

A. Conduct himself/herself, and cause other household members and any persons who are on or about the premises with his or her consent to conduct themselves, in a manner that will not disturb any other resident's or neighbor's peaceful enjoyment of his or her accommodations; will not harass, injure, endanger, threaten, or unreasonably disturb any other resident, any NCHA employee, or

any other person lawfully in the unit or on the NCHA's property or residing in the immediate vicinity of the NCHA's property; will not cause damage; and that will be conducive to maintaining the development in a decent, safe, and sanitary condition;

B. Conduct himself/herself, and cause other household members and any persons who are on or about the Premises with Resident's consent to conduct themselves, in a manner that will not violate the civil rights of any other resident, guest, NCHA employee, or other person lawfully on NCHA property;

C. Refrain from engaging in, and cause members of Resident's household, any guest, or any other person under Resident's control to refrain from engaging in, any criminal or illegal activity including

(1) Any criminal, illegal, or other activity that threatens the health, safety, or right to peaceful enjoyment of public housing premises by another resident or a NCHA employee, or that threatens the health or safety of any person residing in the immediate vicinity of the public housing premises;

(2) Any violent or drug-related criminal activity on or off NCHA property, or any activity resulting in a felony conviction;

D. Abide by all reasonable policies promulgated by NCHA for the benefit and well being of the housing development and all the residents;

E. Certify annually that he/she has received a copy of the NCHA's "Zero Tolerance Policy" (the "Policy"), understands it, agrees with the terms of the Policy, and will cause other household members and any persons who are on or about the Premises with Resident's permission to comply with the Policy.

9. TERMINATION / NON-RENEWAL OF LEASE

A. This lease may be terminated by Resident at any time by giving thirty (30) days' written notice.

B. This lease may not be terminated by NCHA except for one of the following reasons:

(1) Nonpayment of rent;

(2) Commission by the Resident, a member of Resident's household, a guest, or other person under Resident's control, of

(a) Any criminal or other activity that threatens the health or safety of another resident or a NCHA employee, or that threatens his or her rights to peaceful enjoyment of public housing premises, or that threatens the health or safety of any person residing in the immediate vicinity of the public housing premises;

(b) Any violent or drug-related criminal activity on or off NCHA property;

(3) Interference with the health, safety, or right to peaceful enjoyment of NCHA property by another resident, due to illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol by Resident or member of Resident's household;

(4) Violation of any of the material terms of this lease;

(5) Material failure to comply with any decision of the NCHA's Grievance Panel;

C. The NCHA shall give written notice of lease termination in all cases. The notice shall be given the following periods in advance of termination:

(1) Ten (10) days in the case of failure to pay rent;

(2) A reasonable time considering the seriousness of the grounds for termination (but not to exceed thirty (30) days) when the health or safety of other tenant(s), NCHA employee(s), or person(s) residing in the immediate vicinity of the premises is threatened; or in the event of any drug-related or violent criminal activity or any felony conviction; and

(3) Thirty (30) days in any other case.

D. The written notice of lease termination shall state specific grounds for termination, shall inform Resident of Resident's rights to make such reply as Resident shall wish, to examine relevant NCHA documents in Resident's file concerning the termination, and to request a hearing in accordance with NCHA's grievance procedure if NCHA's grievance procedure requires the NCHA to afford Resident the opportunity. In cases where the NCHA annuls and makes void this lease as authorized by N.R.S. §139, §19, the notice shall state the specific grounds for the termination, shall specify that eviction shall proceed in court under N.R.S. §239 or by commencing action for declaratory judgment as provided in N.R.S. §139, §19, and that HUD has determined that these eviction procedures contain the elements of basic due process.

E. If lease of Resident in federally subsidized housing expires and is not renewed due to Resident's failure to comply with, or the failure of any member of Resident's household to comply with, NCHA's Community Service Policy and 42 U.S.C. 1437j(c), NCHA shall give Resident thirty (30) days' notice to vacate, as well as notice terminating Resident's participation in the federal housing program. Such action shall be subject to NCHA's Grievance Procedures and Policy. If NCHA's action is upheld by the Grievance Panel, NCHA shall proceed to recover possession of Premises in accordance with N.R.S. §239.

10. LEGAL NOTICES

A. Any notice to Resident required by law or provided for in this lease, except such notices as provided in paragraph 13, shall be sufficient, and Resident agrees it shall constitute proper notice, if

(1) in writing; and

(2) (a) sent by first class mail, properly stamped and addressed, to the Resident at his or her address with a proper return address;

(b) given to any adult person answering the door at the Apartment and mailing a copy;

(c) if no adult responds, by placing the notice under or through the door, if possible, and mailing a copy; or

(d) by such other means of service permitted by applicable law.

B. Notice to NCHA shall be sufficient if

(1) in writing; and

(2) delivered to the local management office or sent by first-class mail to the development manager at the local management office.

11. LEGAL COSTS

All legal costs, fees, and charges authorized by law and actually incurred by NCHA in connection with any court action brought against Resident will be charged to Resident, and Resident hereby agrees to pay the same if the NCHA prevails in court. Legal costs, fees, and charges shall include all court costs and other expenses incident to the court action.

12. GRIEVANCE PROCEDURE

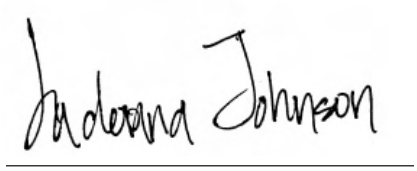
All grievances arising under this lease may be resolved in accordance with NCHA's then applicable Grievance Procedures and Policy.

13. AUTHORIZED FAMILY MEMBERS

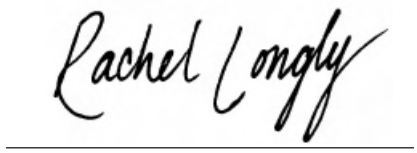
Except as otherwise provided by a written Lease Addendum, the individuals listed below shall be the only persons authorized to occupy the Apartment with Resident and shall comprise the Resident's household. If more than one party signs this lease as Resident, the agreements of Resident shall be the joint and several obligations of all such parties, and references to Resident shall include all such parties.

Elroy Johnson, 11 years old - grandson
Sara Johnson, 13 years old - granddaughter

IN WITNESS WHEREOF, the parties have executed this lease agreement this 17 day of April YR-5, at Nita City, Nita



(Resident)



(Nita City Housing Authority)
Title: Administrator/Manager, Nita Gardens
NCHA Lease Rev. Jan. 2000

EXHIBIT 2

Nita City Police Department **Offense Report**

File #: Nov - 1280
Offense: Possession of controlled substance; sale of controlled substance; conspiracy to sell a controlled substance
Victim: N/A
Location: Nita Gardens Public Housing, 874 Jackson Avenue, Nita City, Nita parking lot surrounding building
Date: November 11, YR-1
By: Lt. James Wherder—Gang Task Force

On November 9, YR-1, at approximately 1300, I received a call from a reliable confidential informant that the street gang the Vice Lords was using the parking lot at Nita Gardens to sell crack cocaine. The informant told me that he had arranged to purchase several rocks of crack from one Jerry Collins on November 10 at 1930.

Based upon this information, I assembled a strike force from the Gang Task Force to conduct a raid at the time of the proposed sale. Included in the strike force were detectives Wasilewski and Taggert and officers Smith, Fredericks, Robinson, and Gardini. Additional street units were secured from the 12th Precinct station.

On November 10, at approximately 1700, units were deployed to the location at 874 Jackson Avenue and surrounding area. These included two unmarked vans, two marked cruisers, and a command unit. Confidential informant (name redacted) was with the strike force and was equipped with a radio transmitter.

At 1905, a large group of people, later identified as suspects, emerged from the front entrance of Nita Gardens and congregated in the parking lot under a street light. Observation indicated that the group was twenty in number, including both male and female subjects of varying ages from teen to young adult. Subjects appeared to be in conversation.

At 1920 informant exited command vehicle and walked to subjects. Radio transmitter was intermittent and failed within five minutes. Command switched to direct observation of informant.

At approximately 1930, what appeared to be a transaction occurred between informant and member of group, later identified as Jerry Collins. I ordered officers to surround group and apprehend perpetrators. Four police vehicles proceeded into parking lot. Some of the group attempted to flee but were captured by officers.

Search of Jerry Collins and others in group found amounts of suspected drugs and drug paraphernalia. Decision was made to arrest all parties in the group. I called for sheriff's bus to transport suspects to 12th Precinct station for processing and interviewing. Bus arrived at approximately 2045.

Upon arrival at 12th Precinct station, detectives Wasilewski and Taggert and I began processing prisoners. Decision was made to charge each prisoner with one or all of the following drug-related offenses: possession of a controlled substance, possession with intent to sell a controlled substance, or conspiracy to sell a controlled substance.

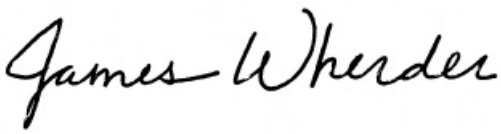
Processing of detained prisoners completed at 0120 on November 11, YR-1. The following individuals were booked at that time:

1.	Jerry Collins	Possession, possession with intent to sell, conspiracy to sell
2.	Albert Decalbe	Possession, possession with intent to sell, conspiracy to sell, resisting arrest
3.	Derrick Colby	Conspiracy to sell
4.	Jeffery White	Conspiracy to sell, possession of drug paraphernalia
5.	Daniel Rose	Conspiracy to sell
6.	Harmony Sampson	Conspiracy to sell, possession of drug paraphernalia
7.	Elroy Johnson	Conspiracy to sell
8.	Marcus Horton	Conspiracy to sell
9.	Francis Jay	Conspiracy to sell, possession of a concealed weapon
10.	Bruce Brown	Conspiracy to sell, resisting arrest
11.	Sheila Elbert	Conspiracy to sell
12.	Ernie Jones	Conspiracy to sell
13.	Aaron Bell	Conspiracy to sell, attempted escape
14.	James Hollis	Conspiracy to sell, possession of drug paraphernalia
15.	Douglas Frist	Conspiracy to sell
16.	June Scruggs	Conspiracy to sell
17.	Geoff Ray	Conspiracy to sell, possession of a concealed weapon
18.	Michael Brownlee	Conspiracy to sell
19.	Derek Mason	Conspiracy to sell
20.	Andre Upshaw	Conspiracy to sell, possession of graffiti paraphernalia

November 11: Detectives Wasilewski and Taggert; Assistant District Attorneys Melanie Gonzales, Michael Burton, and Steven Colbert; and I met with each prisoner to advise of their rights and to interview. Several prisoners declined to speak without the presence of counsel. Others waived their rights and spoke.

November 11: Charges dismissed against Derrick Colby, Daniel Rose, Marcus Horton, Sheila Elbert, Ernie Jones, Douglas Frist, June Scruggs, Michael Brownlee, and Derek Mason. Plea agreements reached with Jeffery White, Harmony Sampson, Bruce Brown, Elroy Johnson, Aaron Bell, James Hollis, Geoff Ray, and Andre Upshaw.

Submitted by:



Lt. James Wherder

Exhibit 2A

Statement of Elroy Johnson

Taken by Lt. James Wherder

Wherder: It's November 11, YR-1. I'm Lt. James Wherder of the Nita City Police Department's Gang Task Force. It's 2:30 p.m. The suspect, Elroy Johnson, has chosen to give a statement. We are recording this statement in an interview room at the 12th Precinct Station House by use of a tape recorder. The proceedings will be transcribed for Mr. Johnson's signature. Also present are Assistant District Attorney Melanie Gonzales and Public Defender Seth Gibson. All right then, let's begin.

Wherder: What is your name and address?

Johnson: Elroy Johnson. I live at Nita Gardens, 874 Jackson Avenue, Apartment 715-E, Nita City.

Q: You understand that you are under arrest for conspiracy to sell a controlled substance, do you not?

A: Yes.

Q: I have explained your right to a lawyer and the right against self incrimination. Your lawyer, Mr. Gibson, is present. You are voluntarily choosing to speak with us. Is that correct?

A: Yes.

Q: Just to be clear, I am showing you a document that's titled "Plea Agreement," and it has your signature on it. Correct?

A: Yes.

Q: You have agreed that if Nita City drops all pending charges you are willing to make a statement incriminating Jerry Collins and Albert Decalbe. Correct?

A: Yes.

Q: You may begin your statement.

A: I want to be sure you understand that I am not a member of the street gang the Vice Lords and that I do not do drugs. I do hang out with people who are members of the Vice Lords. I know that some of them are on drugs. I also know that some of the members of the Vice Lords sell drugs to others.

Jerry Collins and Albert Decalbe are the two members of the Vice Lords who I know sell the drugs. They are very tough guys—serious gangsters. If anyone wants to score some coke or crack, they are the ones to see in this neighborhood.

At first I just thought Jerry and Albert were cool dudes. They always had spending cash, and lots of folks wanted to hang with them. The finest looking ladies were always to be found with those two. It made you feel like you were special if they would let you hang with them. I started playing basketball with that crew around the school. Then we naturally moved to the gym at Nita Gardens. I didn't know they were dealing drugs at first. When I found out they had used me as a way to use Nita Gardens as a place to deal, it was too late for me to do anything about it. Those two are seriously bad dudes. Folks get hurt bad or just plain disappear when Jerry takes a dislike to them. I knew that if I said anything about their selling drugs my days would be numbered.

I've seen both Jerry and Albert sell drugs in the parking lot outside Nita Gardens more than once. I've heard they occasionally sell inside the building as well. I don't know who they are selling to inside the building, and I've never seen that happen.

On the evening of November 10, YR-1, I was playing basketball with those guys from about 6:00 to 7:00. We finished our game and everyone went outside to hang in the parking lot. Mostly people were just talking and messing around. I was getting ready to go back inside to do my homework but Frankie—that's Francis Jay—told me to stay put because Jerry needed to get some business done before the group broke up. At about 7:20 this guy comes over to the group and starts talking to Jerry. I see him pass some money to Jerry and get a bag of crack in return. That's when the police all showed up and arrested everyone.

I want to make sure that if I have to go to court you will protect me and my family. I'm really scared of those dudes and others in the Vice Lords. I won't talk if they threaten my Gram or sister.

Wherder: Don't worry, kid, you have our word that if this goes to trial you will have special protection. This ends the statement of Elroy Johnson on November 11, YR-1. Off the record.

I have read the above two-page transcript, and it is a true and accurate transcription of my statement to Lieutenant James Wherder given on November 11, YR-1.

Elroy Johnson

Witness: 

Date: November 11, YR-1

EXHIBIT 3

STATE OF NITA
UNIFORM ARREST AND DISPOSITION RECORD

NAME: Elroy Johnson DOB: 8/20/YR-16

SS #: 164-39-2807 POB: Nita City, Nita

Date:	Address	Offense	Disposition
11/10/YR-1	874 Jackson Ave Nita City, NI	Conspiracy to sell	Dismissed (agreed to testify in Case # YR-1, 1025)

John Schnek

Notary Public
Superintendent of Documents

Exhibit 4

Notice to Grievance Committee

To: Nita Gardens Grievance Panel

From: Ladonna Johnson

Subject: Eviction

Date: 7/6/YR-0

Under the terms of my lease, I am entitled to participate in any Tenant Action Committee without fear of actions by the building management. I was given notice of eviction claiming my grandson was involved in criminal and drug activities. This is false!

The real reason for my eviction was my formation of a Tenant Action Committee for the purpose of forcing management to install a fire sprinkler system. The building manager is using the arrest of my grandson, Elroy, as an excuse. Elroy had charges dismissed and has not been involved in criminal activity. The building claims he is part of an illegal street gang. He is not a member of any gang.

I insist that my lease be reinstated at the same monthly rent.

Exhibit 5

Nita Gardens

April 1, YR-1

Ms. Ladonna Johnson
Nita Gardens - Apartment 715-E
Nita City, Nita

Dear Ms. Johnson:

Under the terms of your lease, Nita Gardens must provide to you a copy of the Nita City Housing Authority Zero Tolerance Policy each year. You are to review the policy and then must agree with the terms of the policy. In addition, it is your responsibility to cause other members of your household and your guests who are on or about the premises to comply with the policy.

Attached is a copy of the Zero Tolerance Policy. Kindly read the policy, share it with others in your household, and then sign the bottom of this letter and return it to me no later than ten days from now. If you fail to sign, date, and return this form within ten days you are in breach of your lease and your lease may be terminated.

Thank you.

Sincerely,

Rachel Longly

Ms. Rachel Longly
Building Manager

— —

_X_ I have read the Nita City Housing Authority Zero Tolerance Policy, I agree with the policy, and will follow that policy.

____ I do not agree with the Zero Tolerance Policy and understand my lease will be terminated.

Signed: Ladonna Johnson Print your name: _____

Date: April 10, YR-1

Nita City Housing Authority
Zero Tolerance Policy

(As of 1 January 1989)

The NCHA has established a zero tolerance for 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.

Under this Policy, a resident's entire household will be subject to eviction if the resident, any member of the resident's household, any guest, or any other person under the resident's control, is involved in any criminal activity that violates the health, safety, or right to peaceful enjoyment of the premises or is involved in any drug-related criminal activity on or off such premises.

Any such activities shall be cause for the immediate termination of tenancy on Authority property.

This Policy applies to all residents, who are required to sign a certification that they agree to comply with the Zero Tolerance Policy.

EXHIBIT 6

Nita Gardens

July 10, YR-0

Ms. Ladonna Johnson
Nita Gardens - Apartment 715-E
Nita City, Nita
RE: Your eviction

Dear Ms. Johnson:

The Grievance Panel met yesterday evening. Your petition was considered by the members of the panel. After a review of all of the facts, the panel has determined your eviction is in keeping with the terms of the lease and state and federal law.

You are hereby notified that your petition has been dismissed, and you are to vacate the premises as set forth in the notice of eviction.

Phyllis Crabtree

Phyllis Crabtree
Chairwoman, Nita Gardens Grievance Panel

Exhibit 7

Nita Gardens Public Housing Development

(As of October YR-1)

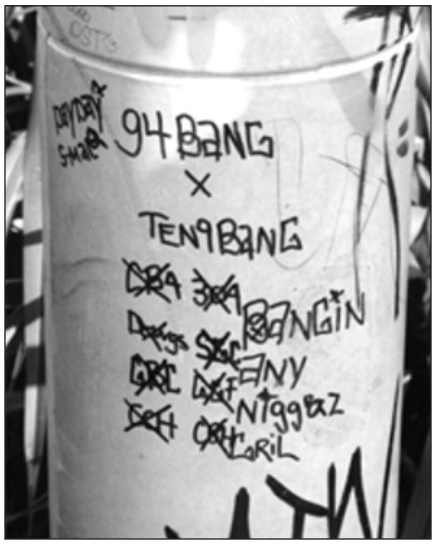
Exhibit 8

Nita Gardens Public Housing

Exhibit 9

Gang-Related Graffiti near Nita Gardens

Example 1: Found on the wall of Frederick's Garage at 1528 Main St., Nita City on 8/20/YR-1. Tied to the Vice Lords.



Example 2: Found on the streetlight one block south of Nita Gardens, Nita City on 10/5/YR-1. Found to be Vice Lords graffiti.

Exhibit 10

Examples of Modern Neighborhood Art Tagger Graffiti

Example 1: Wall mural found on the wall of private apartment building, 1639 Jefferson Street (located six blocks from Nita Gardens), 7/16/YR-1.

Example 2: Good/Evil tag photographed on wall of Nita Gardens, 7/21/YR-2.

Example 3: Wall art found on the parking lot wall of Quick-Mart, 1734 Centennial Ave. (six blocks from Nita Gardens) on 6/6/YR-1.

Exhibit 11

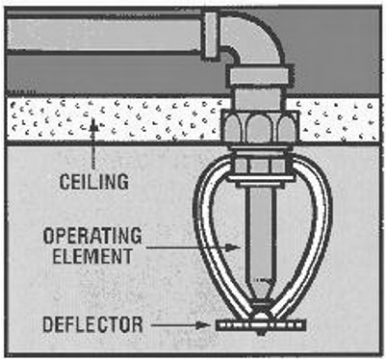
Material presented by Ladonna Johnson to the management of Nita Gardens.

Nita Fire Department

Residential Automatic Fire Sprinklers

How Automatic Sprinklers Work

Automatic sprinkler systems supply water to a network of individual sprinklers, each protecting an area below them. These sprinklers open automatically in response to high heat and spray water on a fire to put it out or keep it from spreading. Contrary to popular belief, only those sprinklers above or near the fire operate and spray water.



Sprinklers Save Lives

National Fire Protection Association (NFPA) records covering most of this century show no instances of fires killing three or more people in a house, apartment, hotel, or motel where a complete sprinkler system was installed and operating properly.

The NFPA estimates that the risk of dying in a fire is cut by up to two-thirds in public buildings, stores, offices, auditoriums, and factories where sprinklers have been installed. This also holds true in the growing number of private homes equipped with sprinkler systems.

Because sprinkler systems act so early in the course of a fire, they reduce not only the heat and flames, but also the amount of smoke produced in a fire. Everything a fire produces that threatens life is reduced by sprinklers.

Sprinklers Save Property

NFPA studies show that, in a fire, automatic sprinkler systems also save thousands of dollars in property loss. The cost of fire damage in a sprinkled home is statistically much lower—up to 75 percent less. In addition, a sprinkler system installed in many properties can pay for itself over time through reduced insurance premiums.

Sprinklers in the Home

Four-fifths of all fire deaths occur in homes, and, according to a study by the National Institute of Standards Technology, 60 to 70 percent of those deaths could be prevented by adding sprinkler systems to houses and apartments.

Automatic sprinkler systems have been common in factories, warehouses, hotels, and public buildings throughout the twentieth century. Since the early 1980s, sprinklers have also become more popular in private homes, thanks to increased education and revised standards for installation that have made home sprinkler systems practical and affordable.

Thanks also to the use of modern materials and designs, the cost of residential sprinkler systems has come down. Estimates suggest that installing such a system would only add 1 to 1½ percent to the cost of new housing. These systems can be supplied with water through small diameter piping from a household water supply in one or two-family dwellings. Automatic sprinklers can also be installed in existing buildings; however, the cost in general would be greater.

Homes with automatic sprinkler systems should also be equipped with smoke detectors, as this will provide an even greater level of protection and thereby reduce damages and injuries from fire. All residents should be familiar with these devices and should have a plan for escape in the event of fire.

Dispelling Myths about Automatic Sprinklers

Despite the proven effectiveness of automatic sprinkler systems in slowing the spread of fire and reducing loss of life and property damage, many people resist the idea of home sprinkler systems because of widespread misconceptions about their operation.

Myth: The water damage from sprinklers is worse than a fire.

The truth is a sprinkler will control a fire with a tiny fraction of the water used by fire department hoses, primarily because it acts so much earlier. Automatic systems spray water only in the immediate area of the fire and can keep the fire from spreading, thus avoiding widespread water damage.

Myth: Sprinklers go off accidentally, causing unnecessary water damage.

Accidental water damage caused by automatic sprinkler systems is relatively rare. One study concluded that sprinkler accidents are generally less likely and less severe than mishaps involving standard home plumbing systems.

Myth: Sprinklers are ugly.

Sprinklers don't have to be unattractive. Pipes can be hidden behind ceilings or walls, and modern sprinklers can be inconspicuous—mounted almost flush with walls or ceilings. Some sprinklers can even be concealed.

Installation

Residential and commercial automatic sprinkler systems must be installed by a qualified contractor. For a list of local qualified contractors, see our list of Sprinkler Contractors.

For any additional questions about fire sprinkler systems, please contact the Nita Fire Prevention Bureau at (000) 257-9590.

Selected Statutes

NITA Revised Statutes Title 13 Article 40—Forcible Entry and Detainer

13-40-103. Forcible Detention Prohibited

No person, having peaceably entered into or upon any real property without right to the possession thereof, shall forcibly hold or detain the same as against the person who has a lawful right to such possession.

13-40-106.5. Termination of Tenancy for Substantial Violation Definition—Legislative Declaration

(1) The general assembly finds and declares that:

(a) Violent and antisocial criminal acts are increasingly committed by persons who base their operations in rented homes, apartments, and commercial properties;

(b) Such persons often lease such property from owners who are unaware of the dangerous nature of such persons until after the persons have taken possession of the property;

(c) Under traditional landlord and tenant law, such persons may have established the technical, legal right to occupy the premises for a fixed term, which continues long after they have demonstrated themselves unfit to coexist with their neighbors and cotenants; furthermore, such persons often resist eviction as long as possible;

(d) In certain cases it is necessary to curtail the technical, legal right of occupancy of such persons in order to protect the equal or greater rights of neighbors and cotenants, the interests of property owners, the values of trust and community within neighborhoods, and the health, safety, and welfare of all the people of this state.

(2) It is declared to be an implied term of every lease of real property in this state that the tenant shall not commit a substantial violation while in possession of the premises.

(3) As used in this section, "substantial violation" means any act or series of acts by the tenant or any guest or invitee of the tenant that, when considered together:

(a) Occurs on or near the premises and willfully and substantially endangers the property of the landlord, any cotenant, or any person living on or near the premises; or

(b) Occurs on or near the premises and constitutes a violent or drug-related felony prohibited under Article 3, 4, 6, 7, 9, 10, 12, or 18 of Title 18, N.R.S.; or

(c) Occurs on the tenant's leased premises or the common areas, hallway, grounds, parking lot, or other area located in the same building or complex in which the tenant's leased premises are located and constitutes a criminal act in violation of federal or state law or local ordinance that:

(i) Carries a potential sentence of incarceration of 180 days or more; and

(ii) Has been declared to be a public nuisance under state law or local ordinance based on a state statute.

(4) (a) A tenancy may be terminated at any time on the basis of a substantial violation. The termination shall be effective three days after service of written notice to quit.

(b) The notice to quit shall describe the property, the particular time when the tenancy will terminate, and the grounds for termination. The notice shall be signed by the landlord or by the landlord's agent or attorney.

(5) (a) In any action for possession under this section, the landlord has the burden of proving the occurrence of a substantial violation by a preponderance of the evidence.

(b) In any action for possession under this section, it shall be a defense that:

(i) (Deleted by amendment, L. 2005, p. 402, § 2, effective July 1, 2005.)

(ii) The tenant did not know of, and could not reasonably have known of or prevented, the commission of a substantial violation by a guest or invitee but immediately notified a law enforcement officer of his or her knowledge of the substantial violation.

(c) (i) The landlord shall not have a basis for possession under this section if the tenant or lessee is the victim of domestic violence, as that term is defined in section 18-6-800.3, N.R.S., or of domestic abuse, as that term is defined in section 13-14-101 (2), N.R.S., which domestic violence or domestic abuse was the cause of or resulted in the alleged substantial violation and which domestic violence or domestic abuse has been documented pursuant to the provisions set forth in section 13-40-104 (4), N.R.S.

(ii) Nothing in this paragraph (c) shall prevent the landlord from seeking possession against a tenant or lessee of the premises who perpetuated the violence or abuse that was the cause of or resulted in the alleged substantial violation.

13-40-107. Service of Notice to Quit

A notice to quit or demand for possession of real property may be served by delivering a copy thereof to the tenant or other person occupying such premises, or by leaving such copy with some person, a member of the tenant's family above the age of fifteen years, residing on or in charge of the premises, or, in case no one is on the premises at the time service is attempted, by posting such copy in some conspicuous place on the premises.

13-40-115. Appeals

(1) If either party feels aggrieved by the judgment rendered in such action before the county court, he may appeal to the district court, as in other cases tried before the county court, with the additional requirements provided in this article.

(2) Upon the court's taking such appeal, all further proceedings in the case shall be stayed, and the appellate court shall thereafter issue all needful writs and process to carry out any judgment that may be rendered thereon in the appellate court.

(3) If the appellee believes that he may suffer serious economic harm during the pendency of the appeal, he may petition the court taking the appeal to order that an additional undertaking be required of the appellant to cover the anticipated harm. The court shall order such undertaking only after a hearing and upon a finding that the appellee has shown a substantial likelihood of suffering such economic harm during the pendency of the appeal and that he will not adequately be protected under the appeals bond and the other requirements for appeal pursuant to sections 13-40-118, 13-40-120, and 13-40-123.

13-40-122. Reprisal for reporting violations of law or for tenant's union activity; defense; presumption

It shall be a defense to an action for summary process that such action or the preceding action of terminating the tenant's tenancy, was taken against the tenant for the tenant's act of commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action was to obtain damages, under or otherwise enforce, any federal, state, or local law, regulation, by-law, or ordinance, which has as its objective the regulation of residential premises, or exercising rights, or reporting a violation or suspected violation of law, or organizing or joining a tenants' union or similar organization, or making or expressing an intention to make a payment of rent to an organization of unit owners. The commencement of such action against a tenant, or the sending of a notice to quit upon which the summary process action is based, or the sending of a notice or performing any act the purpose of which is to materially alter the terms of the tenancy, within six months after the tenant has commenced, proceeded with or obtained relief in such action, exercised such rights, made such report, organized or joined such tenants' union, or made or expressed an intention to make a payment of rent to an organization of unit owners, or within six months after any other person has taken such action or actions on behalf of the tenant or relating to the building in which such tenant resides, shall create a rebuttable presumption that such summary process action is a reprisal against the tenant for engaging in such activities or was taken in the belief that the tenant had engaged in such activities. Such presumption may be rebutted only by clear and convincing evidence that such action was not a reprisal against the tenant and that the plaintiff had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not commenced any legal action, made such report, or engaged in such activity.

History

Source: L. 1901: Entire article added, p. 271.

Nita Revised Statutes Title 18 Criminal Code: Article 23— Gang Recruitment Act: 18-23-101—Definitions

18-23-101. Definitions.

As used in this article, unless the context otherwise requires

(1) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal:

(a) That has as one of its primary objectives or activities the commission of one or more predicate criminal acts; and

(b) Whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(2) "Pattern of criminal gang activity" means the commission, attempt, conspiracy, or solicitation of two or more predicate criminal acts that are committed on separate occasions or by two or more persons.

(3) "Predicate criminal acts" means the commission of or attempt, conspiracy, or solicitation to commit any of the following:

(a) Any conduct defined as racketeering activity in section 18-17-103 (5);

(b) Any violation of section 18-8-706 or any criminal act committed in any jurisdiction of the United States that, if committed in this state, would violate section 18-8-706.

History

Source: L. 2001: Entire article added, p. 986, § 1, effective March 1, 2002.

NITA Revised Statutes Title 18 Criminal Code Chapter 18-12-1-06
Criminal Attempt, Facilitation, Solicitation, Conspiracy

18-12-1-06-01. Criminal attempt.

(1) A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct that, in fact, constitutes a substantial step toward commission of the crime. A "substantial step" is any conduct that is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

(2) A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 12-1-03-01 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.

(3) Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a class AA felony is a class A felony, and an attempt to commit a class A felony is a class B felony; and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a class B felony shall be a class C felony, and an attempt to commit a class C felony shall be a class A misdemeanor.

History

Source: L. 1985: Entire article added, p. 2075, § 1, effective March 1, 1985.

18-12-1-06-04. Criminal conspiracy.

(1) A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct

that, in fact, constitutes an offense or offenses, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit but may be implicit in the fact of collaboration or existence of other circumstances.

(2) If a person knows or could expect that one with whom he agrees, has agreed, or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

(3) A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.

(4) It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

(5) Conspiracy is an offense of the same class as the crime that was the objective of the conspiracy.

History

Source: L. 1985: Entire article added, p. 2077, § 1, effective March 1, 1985.

NITA REVISED STATUTES TITLE 18 CRIMINAL CODE CHAPTER 18-12-893.13—DRUG ABUSE, PREVENTION, AND CONTROL

18-12-893.13 Prohibited acts; penalties.

(1) (a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to

(i) A controlled substance named or described under the U.S. Code of Federal Regulations Title 21, Volume 9, Parts 1300 to end including Opium and opiate, including any salt, compound, derivative, or preparation of opium; Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecogonine); Opiates; Stimulants; Depressants; and Hallucinogenic substances commits a felony of the second degree.

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in §1, or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided.

* * *

(f) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. For purposes of

this section, the term "real property comprising a public housing facility" means real property, as defined as a public corporation created as a housing authority pursuant to Part I of Chapter 421. Any person who violates this paragraph with respect to

(i) A controlled substance named or described in above, commits a felony of the first degree, punishable as provided.

* * *

(iii) Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

NITA CITY ORDINANCES CHAPTER 157—GRAFFITI

[HISTORY: Adopted by the City Council of Nita City 9-11-1995 as Ord. No. 11-1995. Amendments noted where applicable.]

§ 157-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DEFACE—To cover, mark, write on, paint, color, or otherwise mar, disfigure, or draw on any private or public property of any nature without the express consent of the owner.

GRAFFITI—Any form of inscription, word, figure, marking, or design that is marked, etched, scratched, drawn down, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including, by way of example only and without limitation, fencing surrounding construction sites, whether public or private, without the consent of the owner of the property, or the owner's authorized agent, that is visible from the private right-of-way.

PUBLIC PLACE—Any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, or any other parking area, public building, structure, or any municipal parking signs, etc., or area.

§ 157-3. Prohibited acts.

The following acts are prohibited.

(A) No person shall willfully or maliciously damage, deface, or vandalize any public or private property by painting, writing, drawing, or otherwise inscribing in any fashion graffiti thereon without the express permission or consent of the owner. However, this prohibition shall not apply to easily removable (which are water soluble) chalk markings on public sidewalks or streets, written or drawn in connection with traditional children's games, or in any lawful business or public purpose or activity.

§ 157-6. Violations and penalties.

(A) Adults who are not parents of offenders as defined in § 157-2 of this chapter. Any adult who violates any of the provisions of this chapter shall, upon conviction thereof, be punished by one

or more of the following penalties:

(1) A fine of not less than $500 and not exceeding $1,000.

(2) Imprisonment not to exceed 90 days.

(3) A period of community service not to exceed 90 days.

(B) Juveniles and/or parent violators as defined in § 157-4 of this chapter.

(1) After the receipt of a warning notice pursuant to § 157-5 (C) of a first violation by a juvenile, when a second graffiti violation is adjudged against the same minor, the parents of the minor shall be subject to prosecution under this section. Violators of this chapter shall be required to perform community service of a period not to exceed 90 days and may be subject to a fine of not less than $500 but no more than $1,000. Additionally, any parent having the care or custody of a minor found to be in violation of this section, if it is adjudged that both the juvenile and the juvenile's parents violated this Graffiti Chapter, they shall be required to perform community service together.

42 U.S.C. § 1437d (1994); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988)

§ 1437d(*l*) Leases; terms and conditions; maintenance; termination

Each public housing agency shall utilize leases which—

* * *

(6) provide that 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….

Proposed Jury Instructions

1. The Court will now instruct you on the law governing this case. You must arrive at your verdict by unanimous vote, applying the law as you are now instructed to the facts as you find them to be.

2. The Plaintiff, the Nita City Housing Authority, seeks to evict Ladonna Johnson and her family from Nita Gardens Public Housing based upon a claim that Ms. Johnson breached her lease, through the criminal acts of her grandson Elroy when he was charged with possession with the intent to sell narcotics, was involved a criminal street gang, and threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants.

   The Defendant, Ladonna Johnson, denies that her grandson was involved in any criminal activity and affirms that he is not a member of a criminal street gang. She claims her eviction is based upon her activities in forming a Tenant Action Committee, and that such eviction is prohibited by the terms of her lease and the U.S. Constitution. She further claims that the illegal action of Nita Gardens is prohibited and, therefore, she should not be evicted.

3. Nita Gardens receives funds from the U.S. government. It is subject to 42 U.S.C. § 1437d (1994), the Anti-Drug Abuse Act of 1988. Section 1437d(*l*) (6) of that law states

   > Each public housing agency shall utilize leases which . . . (6) provide that 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. . . .

4. The Nita Public Housing Authority lease for Nita Gardens provides in Paragraph 8 Resident Obligations section (C) of the lease

   > (C) Refrain from engaging in, and cause members of Resident's household, any guest, or any other person under Resident's control to refrain from engaging in, any criminal or illegal activity including
   >
   > > (1) Any criminal, illegal, or other activity that threatens the health, safety, or right to peaceful enjoyment of public housing premises by another resident or a NCHA employee, or that threatens the health or safety of any person residing in the immediate vicinity of the public housing premises;
   > >
   > > (2) Any violent or drug-related criminal activity on or off NCHA property, or any activity resulting in a felony conviction.

5. In order to evict a tenant the Plaintiff has the burden of proving the following propositions:

   (a) That the Defendant, Ladonna Johnson, is a tenant and resident of Nita Gardens;

   (b) Plaintiff, Nita Gardens, is a participant in the Federal Government Housing Program commonly know as the Section 8 New Construction Program and receives rental subsidies from the United States Department of Housing and Urban Development and must comply with 42 U.S.C. § 1437d (1994), The Anti-Drug Abuse Act of 1988.

(c) Plaintiff, Nita Gardens, provided appropriate notice of the breach and eviction to the Defendant, Ladonna Johnson.

(d) Defendant, Ladonna Johnson, a member of her family, a guest, or someone under her control engaged in either a criminal activity that threatened the health, safety, or right to peaceful enjoyment of a resident or staff member of Nita Gardens or participated in a violent or drug-related activity on or off the Nita Gardens property.

(e) That the Defendant, Ladonna Johnson, breached her lease with Nita Gardens, specifically Paragraph 8 Resident Obligations section (C) (1) and (2) by failing to control members of her family from engaging in criminal, illegal, or other activity that threatened the health, safety, or right to peaceful enjoyment of public housing premises or participating in any violent or drug related activity on or off NCHA property

If the above propositions are proven, the Defendant is in violation of the lease and eviction is appropriate.

6. **Factual issues for the jury.** The factual issues for you to determine are as follows:

(a) Ladonna Johnson is a resident of Nita Gardens;

(b) A lease exists between Nita Gardens and Ladonna Johnson;

(c) Ladonna Johnson breached the Nita Gardens lease by permitting her grandson Elroy to either (1) engage in criminal activity that threatened the health, safety, or right to peaceful enjoyment of the premises at Nita Gardens by a resident or staff member of Nita Gardens; or (2) participated in a violent or drug-related activity on or off the grounds of Nita Gardens.

7. **Defendant's affirmative defense.** The Defendant contends the Plaintiff has wrongly accused her and her grandson, Elroy Johnson, of breaching the lease and is wrongfully using these clauses to evict her. She further contends her eviction is a direct result of her activity in forming a Tenant Action Committee. Defendant asserts her rights to free speech under the United States Constitution and under Paragraph 7 (B) of the lease, which prohibits retaliation based upon forming or joining a Tenant Action Committee.

8. **Reprisal for tenant's union activity.** The Defendant contends that Plaintiff has taken this action against the tenant for the tenant's act of joining a tenant's union. The Defendant further asserts the Plaintiff has taken this action within six months of participation in a tenant's union activity and that the action is a reprisal for the tenant's union activity.

9. **Rebuttable presumption.** The Defendant's participation in a tenant's union within six months of the commencement of this action creates a rebuttable presumption that the action is a reprisal against the tenant. It is the responsibility of the Plaintiff to rebut this presumption by clear and convincing evidence that such action was not a reprisal against the tenant and that the Plaintiff had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not engaged in such activity.

10. If you find from all of the evidence that Plaintiff has proven each of the elements necessary to establish grounds for eviction and rebutted the presumption the action was in reprisal of tenant union activities and that the Defendant has failed to prove either there was no breach of Paragraph 8 of the lease or the Plaintiff has begun this proceeding in retaliation for joining a Tenant Action Committee, then your verdict shall be for the Plaintiff. If, on the other hand, you find that any element of the Plaintiff's claim

has not been established or that the Plaintiff retaliated against the Defendant's joining a Tenant Action Committee, then your verdict shall be for the Defendant.

LANDLORD/TENANT COURT, COUNTY OF DARROW, STATE OF NITA
CASE NO. LTC-1087
JURY VERDICT FORM

NITA CITY HOUSING AUTHORITY
Plaintiff,
vs.
LADONNA JOHNSON
Defendant.

We, the jury, return the following verdict and each of us concurs in this verdict:

(Choose the appropriate verdict)

I. We, the jury, find for the Plaintiff _____

II. We, the jury, find for the Defendant _____

_____
Foreperson

Supplemental Information

Department of Housing and Urban Development v. Rucker
535 U.S. 125 (2002)

Disposition: 237 F.3d 1113, reversed and remanded.

SUPREME COURT OF THE UNITED STATES
Nos. 00—1770 and 00—1781

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
[March 26, 2002]

Chief Justice Rehnquist delivered the opinion of the Court.

With drug dealers "increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants," Congress passed the Anti-Drug Abuse Act of 1988. §5122, 102 Stat. 4301, 42 U.S.C. § 11901(3) (1994 ed.). The Act, as later amended, provides that each "public housing agency shall utilize leases which … provide that 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." 42 U.S.C. § 1437d(*l*)(6) (1994 ed., Supp. V). Petitioners say that this statute requires lease terms that allow a local public housing authority to evict a tenant when a member of the tenant's household or a guest engages in drug-related criminal activity, regardless of whether the tenant knew, or had reason to know, of that activity. Respondents say it does not. We agree with petitioners.

Respondents are four public housing tenants of the Oakland Housing Authority (OHA). Paragraph 9(m) of respondents' leases, tracking the language of §1437d(*l*)(6), obligates the tenants to "assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in … [a]ny drug-related criminal activity on or near the premise[s]." App. 59. Respondents also signed an agreement stating that the tenant "understand[s] that if I or any member of my household or guests should violate this lease provision, my tenancy may be terminated and I may be evicted." *Id.*, at 69.

In late 1997 and early 1998, OHA instituted eviction proceedings in state court against respondents, alleging violations of this lease provision. The complaint alleged: (1) that the respective grandsons of respondents William Lee and Barbara Hill, both of whom were listed as residents on the leases, were caught in the apartment complex parking lot smoking marijuana; (2) that the daughter of respondent Pearlie Rucker, who resides with her and is listed on the lease as a resident, was found with cocaine and a crack cocaine pipe three blocks from Rucker's apartment;[1] and (3) that on three instances within a 2-month period, respondent Herman Walker's caregiver and two others were found with cocaine in Walker's apartment. OHA had issued Walker notices of a lease violation on the first two occasions, before initiating the eviction action after the third violation.

1. In February 1998, OHA dismissed the unlawful detainer action against Rucker, after her daughter was incarcerated, and thus no longer posed a threat to other tenants

United States Department of Housing and Urban Development (HUD) regulations administering §1437d(*l*)(6) require lease terms authorizing evictions in these circumstances. The HUD regulations closely track the statutory language,[2] and provide that "[i]n deciding to evict for criminal activity, the [public housing authority] shall have discretion to consider all of the circumstances of the case…." 24 CFR § 966.4(*l*)(5)(I) (2001). The agency made clear that local public housing authorities' discretion to evict for drug-related activity includes those situations in which "[the] tenant did not know, could not foresee, or could not control behavior by other occupants of the unit." 56 Fed. Reg. 51560, 51567 (1991).

After OHA initiated the eviction proceedings in state court, respondents commenced actions against HUD, OHA, and OHA's director in United States District Court. They challenged HUD's interpretation of the statute under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), arguing that 42 U.S.C. § 1437d(*l*)(6) does not require lease terms authorizing the eviction of so-called "innocent" tenants, and, in the alternative, that if it does, then the statute is unconstitutional.[3] The District Court issued a preliminary injunction, enjoining OHA from "terminating the leases of tenants pursuant to paragraph 9(m) of the 'Tenant Lease' for drug-related criminal activity that does not occur within the tenant's apartment unit when the tenant did not know of and had no reason to know of, the drug-related criminal activity." App. to Pet. for Cert. in No. 01–770, pp. 165a–166a.

A panel of the Court of Appeals reversed, holding that §1437d(*l*)(6) unambiguously permits the eviction of tenants who violate the lease provision, regardless of whether the tenant was personally aware of the drug activity, and that the statute is constitutional. See *Rucker v. Davis*, 203 F.3d 627 (CA9 2000). An en banc panel of the Court of Appeals reversed and affirmed the District Court's grant of the preliminary injunction. See *Rucker v. Davis*, 237 F.3d 1113 (2001). That court held that HUD's interpretation permitting the eviction of so-called "innocent" tenants "is inconsistent with Congressional intent and must be rejected" under the first step of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–843 (1984). 237 F.3d at 1119.

We granted certiorari, 533 U.S. 976 (2001), and now reverse, holding that 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.

That this is so seems evident from the plain language of the statute. It provides that "each public housing authority shall utilize leases which … provide that … 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." 42 U.S.C. § 1437d(*l*)(6) (1994 ed., Supp. V). The en banc Court of Appeals thought the statute did not address "the level of personal knowledge or fault that is required for eviction." 237 F.3d at 1120. Yet Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement. See *United States v. Monsanto*, 491 U.S. 600, 609 (1989). As we have explained, "the word 'any' has

2. The regulations require public housing authorities (PHAs) to impose a lease obligation on tenants:
"To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in:
"(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or
"(B) Any drug-related criminal activity on or near such premises.
Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit." 24 CFR § 966.4(f)(12)(i) (2001).

3. Respondents Rucker and Walker also raised Americans with Disabilities Act claims that are not before this Court. And all of the respondents raised state-law claims against OHA that are not before this Court.

an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997). Thus, *any* drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about.

The en banc Court of Appeals also thought it possible that "under the tenant's control" modifies not just "other person," but also "member of the tenant's household" and "guest." 237 F.3d at 1120. The court ultimately adopted this reading, concluding that the statute prohibits eviction where the tenant "for a lack of knowledge or other reason, could not realistically exercise control over the conduct of a household member or guest." *Id.*, at 1126. But this interpretation runs counter to basic rules of grammar. The disjunctive "or" means that the qualification applies only to "other person." Indeed, the view that "under the tenant's control" modifies everything coming before it in the sentence would result in the nonsensical reading that the statute applies to "a public housing tenant … under the tenant's control." HUD offers a convincing explanation for the grammatical imperative that "under the tenant's control" modifies only "other person": "by 'control,' the statute means control in the sense that the tenant has permitted access to the premises." 66 Fed. Reg. 28781 (2001). Implicit in the terms "household member" or "guest" is that access to the premises has been granted by the tenant. Thus, the plain language of §1437d(*l*)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant's knowledge of the drug-related criminal activity.

Comparing §1437d(*l*)(6) to a related statutory provision reinforces the unambiguous text. The civil forfeiture statute that makes all leasehold interests subject to forfeiture when used to commit drug-related criminal activities expressly exempts tenants who had no knowledge of the activity: "[N]o property shall be forfeited under this paragraph … by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner." 21 U.S.C. § 881(a)(7) (1994 ed.). Because this forfeiture provision was amended in the same Anti-Drug Abuse Act of 1988 that created 42 U.S.C. § 1437d(*l*)(6), the en banc Court of Appeals thought Congress "meant them to be read consistently" so that the knowledge requirement should be read into the eviction provision. 237 F.3d at 1121–1122. But the two sections deal with distinctly different matters. The "innocent owner" defense for drug forfeiture cases was already in existence prior to 1988 as part of 21 U.S.C. § 881(a)(7). All that Congress did in the 1988 Act was to add leasehold interests to the property interests that might be forfeited under the drug statute. And if such a forfeiture action were to be brought against a leasehold interest, it would be subject to the pre-existing "innocent owner" defense. But 42 U.S.C. § 1437(d)(*l*)(6), with which we deal here, is a quite different measure. It is entirely reasonable to think that the Government, when seeking to transfer private property to itself in a forfeiture proceeding, should be subject to an "innocent owner defense," while it should not be when acting as a landlord in a public housing project. The forfeiture provision shows that Congress knew exactly how to provide an "innocent owner" defense. It did not provide one in §1437d(*l*)(6).

* * *

Nor was the en banc Court of Appeals correct in concluding that this plain reading of the statute leads to absurd results.[4] 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,"

4. For the reasons discussed above, no-fault eviction, which is specifically authorized under §1437d(*l*)(6), does not violate §1437d(*l*)(2), which prohibits public housing authorities from including "unreasonable terms and conditions [in their leases]." In addition, the general statutory provision in the latter section cannot trump the clear language of the more specific §1437d(*l*)(6). See *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 524–526 (1989).

42 U.S.C. § 11901(2) (1994 ed. and Supp. V), "the seriousness of the offending action," 66 Fed. Reg., at 28803, and "the extent to which the leaseholder has … taken all reasonable steps to prevent or mitigate the offending action," *ibid.* 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." 56 Fed. Reg., at 51567. Strict liability maximizes deterrence and eases enforcement difficulties. See *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 14 (1991).

* * *

We hold that "Congress has directly spoken to the precise question at issue." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. at 842. Section 1437d(*l*)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity.

Accordingly, the judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice Breyer took no part in the consideration or decision of these cases.

Library

Rule 26(b)(1). *Discovery Scope in General*

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any document or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. . . .

Rule 26(b)(3). *Trial Preparation: Materials.*

(A) *Documents and Tangible Things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure.* If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

Advisory Committee Notes

On 1970 Amendments

Subdivision (b)(3)—Trial Preparation: Materials

Some of the most controversial and vexing problems to emerge from the discovery rules have arisen out of requests for the production of documents or things prepared in anticipation of litigation or for trial. The existing rules make no explicit provision for such materials. Yet, two verbally distinct doctrines have developed, each conferring a qualified immunity on these materials—the "good cause" requirement in Rule 34 (now generally held applicable to discovery of documents via deposition under Rule 45 and interrogatories under Rule 33) and the work-product doctrine of *Hickman v. Taylor,* 329 U.S. 495 (1947). Both demand a showing of justification before production can be had, the one of "good cause" and the other variously described in the *Hickman* case: "necessity or justification," "denial . . . would unduly prejudice the preparation of petitioner's case," or "cause hardship or injustice" 329 U.S. at 509–510.

In deciding the *Hickman* case, the Supreme Court appears to have expressed a preference in 1947 for an approach to the problem of trial preparation materials by judicial decision rather than by rule. Sufficient experience has accumulated, however, with lower court applications of the *Hickman* decision to warrant a reappraisal.

The major difficulties visible in the existing case law are (1) confusion and disagreement as to whether "good cause" is made out by a showing of relevance and lack of privilege, or requires an additional showing of necessity, (2) confusion and disagreement as to the scope of the *Hickman* work-product doctrine, particularly whether it extends beyond work actually performed by lawyers, and (3) the resulting difficulty of relating the "good cause" required by Rule 34 and the "necessity or justification" of the work-product doctrine, so that their respective roles and the distinctions between them are understood.

Basic Standard

Since Rule 34 in terms requires a showing of "good cause" for the production of all documents and things, whether or not trial preparation is involved, courts have felt that a single formula is called for and have differed over whether a showing of relevance and lack of privilege is enough or whether more must be shown. When the facts of the cases are studied, however, a distinction emerges based upon the type of materials. With respect to documents not obtained or prepared with an eye to litigation, the decisions, while not uniform, reflect a strong and increasing tendency to relate "good cause" to a showing that the documents are relevant to the subject matter of the action. *E.g., Connecticut Mutual Life Ins. Co. v. Shields,* 17 F.R.D. 273 (S.D.N.Y. 1959), with cases cited; *Houdry Process Corp. v. Commonwealth Oil Refining Co.,* 24 F.R.D. 58 (S.D.N.Y. 1955); see *Bell v. Commercial Ins. Co.,* 280 F.2d 514, 517 (3d Cir. 1960). When the party whose documents are sought shows that the request for production is unduly burdensome or oppressive, courts have denied discovery for lack of "good cause", although they might just as easily have based their decision on the protective provisions of existing Rule 30(b) (new Rule 26(c)). *E.g., Lauer v. Tankrederi,* 39 F.R.D. 334 (E.D. Pa. 1966).

As to trial-preparation materials, however, the courts are increasingly interpreting "good cause" as requiring more than relevance. When lawyers have prepared or obtained the materials for trial, all courts require more than relevance; so much is clearly commanded by *Hickman*. But even as to the preparatory work of nonlawyers, while some courts ignore work-product and equate "good cause" with relevance, *e.g., Brown v. New York, N.H. & H.R.R.,* 17 F.R.D. 324 (S.D.N.Y. 1955), the more recent trend is to read "good cause" as requiring inquiry into the importance of and need for the materials as well as into alternative sources for securing the same information. In *Guilford Nat'l Bank v. Southern Ry.,* 297 F.2d 921 (4th Cir. 1962), statements of witnesses obtained by claim agents were held not discoverable because both parties had had equal access to the witnesses at about the same time, shortly after the collision in question. The decision was based solely on Rule 34 and "good cause"; the court declined to rule on whether the statements were work-product. The court's treatment of "good cause" is quoted at length and with approval in *Schlagenhauf v. Holder,* 379 U.S. 104, 117–118 (1964). See also *Mitchell v. Bass,* 252 F.2d 513 (8th Cir. 1958); *Hauger v. Chicago, R.I. & Pac. R.R.,* 216 F.2d 501 (7th Cir. 1954); *Burke v. United States,* 32 F.R.D. 213 (E.D.N.Y. 1963). While the opinions dealing with "good cause" do not often draw an explicit distinction between trial preparation materials and other materials, in fact an overwhelming proportion of the cases in which a special showing is required are cases involving trial preparation materials.

The rules are amended by eliminating the general requirement of "good cause" from Rule 34 but retaining a requirement of a special showing for trial preparation materials in this subdivision. The required showing is expressed, not in terms of "good cause" whose generality has tended to encourage confusion and controversy, but in terms of the elements of the special showing to be made: substantial need of the materials in the preparation of the case and inability without undue hardship to obtain the substantial equivalent of the materials by other means.

These changes conform to the holdings of the cases, when viewed in light of their facts. Apart from trial preparation, the fact that the materials sought are documentary does not in and of itself require a special

showing beyond relevance and absence of privilege. The protective provisions are of course available, and if the party from whom production is sought raises a special issue of privacy (as with respect to income tax returns or grand jury minutes) or points to evidence primarily impeaching, or can show serious burden or expense, the court will exercise its traditional power to decide whether to issue a protective order. On the other hand, the requirement of a special showing for discovery of trial preparation materials reflects the view that each side's informal evaluation of its case should be protected, that each side should be encouraged to prepare independently, and that one side should not automatically have the benefit of the detailed preparatory work of the other side. See Field and McKusick, *Maine Civil Practice* 264 (1959).

Elimination of a "good cause" requirement from Rule 34 and the establishment of a requirement of a special showing in this subdivision will eliminate the confusion caused by having two verbally distinct requirements of justification that the courts have been unable to distinguish clearly. Moreover, the language of the subdivision suggests the factors which the courts should consider in determining whether the requisite showing has been made. The importance of the materials sought to the party seeking them in preparation of his case and the difficulty he will have obtaining them by other means are factors noted in the *Hickman* case. The courts should also consider the likelihood that the party, even if he obtains the information by independent means, will not have the substantial equivalent of the documents the production of which he seeks.

Consideration of these factors may well lead the court to distinguish between witness statements taken by an investigator, on the one hand, and other parts of the investigative file, on the other. The court in *Southern Ry. v. Lanham,* 403 F.2d 119 (5th Cir. 1968), while it naturally addressed itself to the "good cause" requirements of Rule 34, set forth as controlling considerations the factors contained in the language of this subdivision. The analysis of the court suggests circumstances under which witness statements will be discoverable. The witness may have given a fresh and contemporaneous account in a written statement while he is available to the party seeking discovery only a substantial time thereafter. *Lanham, supra* at 127–128; *Guilford, supra* at 926. Or he may be reluctant or hostile. *Lanham, supra* at 128–129; *Brookshire v. Pennsylvania RR,* 14 F.R.D. 154 (N.D. Ohio 1953); *Diamond v. Mohawk Rubber Co.,* 33 F.R.D. 264 (D. Colo. 1963). Or he may have a lapse of memory. *Tannenbaum v. Walker,* 16 F.R.D. 570 (E.D. Pa. 1954). Or he may probably be deviating from his prior statement. *Cf. Hauger v. Chicago, R.I. & Pac. RR,* 216 F.2d 501 (7th Cir. 1954). On the other hand, a much stronger showing is needed to obtain evaluative materials in an investigator's reports. *Lanham, supra* at 131–133; *Pickett v. L. R. Ryan, Inc.,* 237 F.Supp. 198 (E.D.S.C. 1965).

Materials assembled in the ordinary course of business, or pursuant to public requirements unrelated to litigation, or for other nonlitigation purposes are not under the qualified immunity provided by this subdivision. *Goosman v. A. Duie Pyle, Inc.,* 320 F.2d 45 (4th Cir. 1963); *cf. United States v. New York Foreign Trade Zone Operators, Inc.,* 304 F.2d 792 (2d Cir. 1962). No change is made in the existing doctrine, noted in the *Hickman* case, that one party may discover relevant facts known or available to the other party, even though such facts are contained in a document which is not itself discoverable.

Treatment of Lawyers; Special Protection of Mental Impressions, Conclusions, Opinions, and Legal Theories Concerning the Litigation

The courts are divided as to whether the work-product doctrine extends to the preparatory work only of lawyers. The *Hickman* case left this issue open since the statements in that case were taken by a lawyer. As to courts of appeals, compare *Alltmont v. United States,* 177 F.2d 971, 976 (3d Cir. 1949), cert. denied, 339 U.S. 967 (1950) (*Hickman* applied to statements obtained by FBI agents on theory it should apply to "all statements of prospective witnesses which a party has obtained for his trial counsel's use"), with *Southern Ry. v. Campbell,* 309 F.2d 569 (5th Cir. 1962) (Statements taken by claim agents not work-product), and *Guilford*

Nat'l Bank v. Southern Ry., 297 F.2d 921 (4th Cir. 1962) (avoiding issue of work-product as to claim agents, deciding case instead under Rule 34 "good cause"). Similarly, the district courts are divided on statements obtained by claim agents, compare, e.g., *Brown v. New York, N.H. & H.R.R.,* 17 F.R.D. 324 (S.D.N.Y. 1955) with *Hanke v. Milwaukee Electric Ry. & Transp. Co.,* 7 F.R.D. 540 (E.D. Wis.1947); investigators, compare *Burke v. United States,* 32 F.R.D. 213 (E.D.N.Y. 1963) with *Snyder v. United States,* 20 F.R.D. 7 (E.D.N.Y. 1956); and insurers, compare *Gottlieb v. Bresler,* 24 F.R.D. 371 (D.D.C. 1959) with *Burns v. Mulder,* 20 F.R.D. 605 (E.D. Pa. 1957). See 4 Moore's *Federal Practice* ¶26.23[8.1] (2d ed. 1966); 2A Barron & Holtzoff, *Federal Practice and Procedure* § 652.2 (Wright ed. 1961).

A complication is introduced by the use made by courts of the "good cause" requirement of Rule 34, as described above. A court may conclude that trial preparation materials are not work-product because not the result of lawyer's work and yet hold that they are not producible because "good cause" has not been shown. *Cf. Guilford Nat'l Bank v. Southern Ry.,* 297 F.2d 921 (4th Cir. 1962), cited and described above. When the decisions on "good cause" are taken into account, the weight of authority affords protection of the preparatory work of both lawyers and nonlawyers (though not necessarily to the same extent) by requiring more than a showing of relevance to secure production.

Subdivision (b)(3) reflects the trend of the cases by requiring a special showing, not merely as to materials prepared by an attorney, but also as to materials prepared in anticipation of litigation or preparation for trial by or for a party or any representative acting on his behalf. The subdivision then goes on to protect against disclosure the mental impressions, conclusions, opinions, or legal theories concerning the litigation of an attorney or other representative of a party. The *Hickman* opinion drew special attention to the need for protecting an attorney against discovery of memoranda prepared from recollection of oral interviews. The courts have steadfastly safeguarded against disclosure of lawyers' mental impressions and legal theories, as well as mental impressions and subjective evaluations of investigators and claim-agents. In enforcing this provision of the subdivision, the courts will sometimes find it necessary to order disclosure of a document but with portions deleted.

On 2007 Amendments

Amended Rule 26(b)(3) states that a party may obtain a copy of the party's own previous statement "on request." Former Rule 26(b)(3) expressly made the request procedure available to a nonparty witness, but did not describe the procedure to be used by a party. This apparent gap is closed by adopting the request procedure, which ensures that a party need not invoke Rule 34 to obtain a copy of the party's own statement.

Rule 26(c). *Protective Orders*

(1) ***In General.*** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(**A**) forbidding the disclosure or discovery;

(**B**) specifying terms, including time and place, for the disclosure or discovery;

(**C**) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) ***Ordering Discovery.*** If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) ***Awarding Expenses.*** Rule 37(a)(5) applies to the award of expenses.

Simon v. G.D. Searle & Co.

816 F.2d 397, 401 (8th Cir. 1987)

* * *

The work product doctrine will not protect these documents from discovery unless they were prepared in anticipation of litigation. Fed. R. Civ. P. 26(b)(3); *see In re Grand Jury Subpoena,* 784 F.2d 857, 862 (8th Cir. 1986), *cert. dismissed sub nom. See v. United States,* 479 U.S. 1048, 107 S.Ct. 918, 93 L.Ed.2d 865 (1987). Our determination of whether the documents were prepared in anticipation of litigation is clearly a factual determination:

> [T]he test should be whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. But the converse of this is that even though litigation is already in prospect, there is no work product immunity for documents prepared in the regular course of business rather than for purposes of litigation.

8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2024, at 198–99 (1970) (footnotes omitted); *see Diversified Indus., Inc. v. Meredith,* 572 F.2d 596, 604 (8th Cir. 1977), *on rehearing,* 572 F.2d 606 (8th Cir.1978) (en banc); *The Work Product Doctrine,* 68 Cornell L.Rev. 760, 844–48 (1983). The advisory committee's notes to Rule 26(b)(3) affirm the validity of the Wright and Miller test: "Materials assembled in the ordinary course of business * * * or for other nonlitigation purposes are not under the qualified immunity provided by this subdivision." Fed. R. Civ. P. 26(b)(3) advisory committee notes.

* * *

Nat'l Union Fire Ins. Co. of Pittsburg, Penn. v. Murray Sheet Metal Co., Inc., et. al.

967 F.2d 980 (4th Cir. 1992)

* * *

[B]ecause litigation is an ever-present possibility in American life, it is more often the case than not that events are documented with the general possibility of litigation in mind. Yet, "[t]he mere fact that litigation does eventually ensue does not, by itself, cloak materials" with work product immunity. [citation omitted.] The document must be prepared *because* of the prospect of litigation when the preparer faces an actual claim or potential claim following an actual event or series of events that reasonably could result in litigation.

In re Grand Jury Subpoena (Mark Torf/Torf Environmental Management)

357 F.3d 900, 907–08 (9th Cir. 2003)

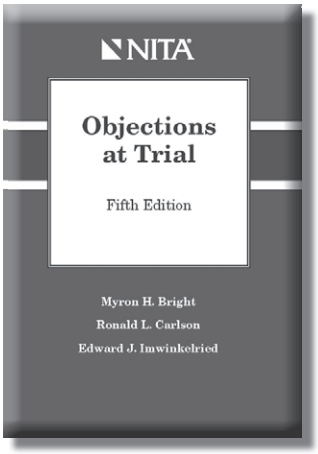
In addition to these single purpose documents, some of Torf's documents were also prepared in compliance with the Information Request and the Consent Order, or were otherwise related to the cleanup of the CERCLA sites. We have not heretofore addressed the question whether protection under the work product doctrine may be extended to such "dual purpose" documents. As we consider whether such protection may be so extended, we join a growing number of our sister circuits in employing the formulation of the "because of" standard articulated in the Wright & Miller Federal Practice treatise. This formulation states that a document should be deemed prepared "in anticipation of litigation" and thus eligible for work product protection under Rule 26(b)(3) if "in light of the nature of the document and the factual situation in the particular case, the document can be fairly said to have been prepared or obtained because of the prospect of litigation." Charles Alan Wright, Arthur R. Miller, and Richard L. Marcus, 8 *Federal Practice & Procedure* § 2024 (2d ed. 1994) ("Wright & Miller"). [footnote omitted.]

The Second Circuit presented a comprehensive discussion of the "because of" standard in *United States v. Adlman,* 134 F.3d 1194 (2nd Cir.1998). At issue in *Adlman* was a memorandum prepared by an accountant and lawyer at Arthur Andersen & Co. to evaluate the tax implications of a proposed merger. The memorandum was drafted to assist the client in making a business decision, but also was prepared "because of" the almost certain prospect that the proposed merger would result in litigation with the Internal Revenue Service. The Second Circuit remanded the case to the district court to apply the Wright & Miller "because of" standard in resolving the issue of work product protection.

The "because of" standard does not consider whether litigation was a primary or secondary motive behind the creation of a document. Rather, it considers the totality of the circumstances and affords protection when it can fairly be said that the "document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of that litigation[.]" *Adlman,* 134 F.3d at 1195. Here, there is no question that all of the documents were produced in anticipation of litigation. McCreedy hired Torf because of Ponderosa's impending litigation and Torf conducted his investigations because of that threat. The threat animated every document Torf prepared, including the documents prepared to comply with the Information Request and Consent Order, and to consult regarding the cleanup.

Objections at Trial

Myron H. Bright, Ronald L. Carlson, & Edward J. Imwinkelried



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