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**THE EVICTION GEOGRAPHY OF NEW ORLEANS:
AN EMPIRICAL STUDY
TO FURTHER HOUSING JUSTICE**

Davida Finger*

ABSTRACT

Low-income tenants in the U.S. have weak bargaining power, as well as limited housing and mobility options in the housing market. With no enforceable “right to housing,”¹ tenants are stuck—quite literally in the case of uninhabitable rental property—in unsafe and unhealthy living conditions. Poverty and economic instability make it challenging for tenants either to leave or to force repairs to substandard rental units.

The author completed an empirical study of eviction cases in New Orleans in order to quantify the problem of evictions, learn more about where evictions occur throughout the municipality, and better understand who is evicted. The author’s study was anchored by her experience representing tenants through her law clinic teaching practice. The author embarked on the empirical study as a participatory research endeavor in collaboration with a local community group whose organizational mission centers on affordable housing.

Using the court’s responses to the author’s public records requests and in collaboration with two social scientists, the author mapped the *eviction geography* of New Orleans through quantitative analysis of eviction cases in the Parish of Orleans (“Orleans”).² The court data did not itself contain demographic information linked to evictions. Rather, geography, understood from U.S. Census Bureau block group information on race, gender, and poverty, serve as a proxy for that data. The data set of cases that resulted in Judgments of Eviction covers the bulk of Orleans from March 2015 through January 2017.

* Clinic Professor at Loyola University New Orleans College of Law. I would like to thank research assistant Patrick Murphree for his work on multiple phases of this project. Thanks also to Darin Acosta for his pro bono contributions on mapping. Tulane Professor Patrick Rafail and his students provided invaluable collaboration on statistical analysis. I thank Hannah Adams, Amanda Golob, and the housing unit at Southeast Louisiana Legal Services for their expertise. I am grateful also to the Bellow Scholars community and to Bill Quigley for feedback and encouragement. My deep appreciation goes to Breonne DeDecker, Shana Griffin, and Jane Place Neighborhood Sustainability Initiative for our ongoing partnership.

¹ *Lindsey v. Normet*, 405 U.S. 56, 74 (1972). For a summary discussion of a human right to housing, see Nat’l Law Ctr. on Homelessness & Poverty, *Housing Is a Human Right*, A.B.A., https://www.americanbar.org/content/dam/aba/events/homelessness_poverty/2013_Midyear_Meeting_Right_To_Housing/housing_as_a_right_fact_sheet.authcheckdam.pdf (last visited Aug. 11, 2018); see also US HUMAN RIGHTS NETWORK, Right to Housing, <https://www.ushnetwork.org/our-work/issues/right-housing> (last visited Aug. 24, 2018).

² Orleans Parish is geographically coextensive with the City of New Orleans.

In New Orleans, the strongest demographic predictor of evictions is the percentage of the population that is African American. This finding is a stark reminder that certain individuals and neighborhoods bear the ongoing costs of segregation.

While the contours of state laws differ, an important common feature among all states is that evictions are ubiquitous and traumatic for tenants. The arcane legal regimes that govern landlord-tenant matters, such as the example of Louisiana tenant law discussed here, are foundational structural arrangements that perpetuate economic, social, and political inequality.

The article concludes with a discussion about participatory research as a method that supports organizing, mobilization, and advocacy, and ideally builds lasting housing justice solutions. Regarding the study of poverty and housing justice in particular, collaboration with community groups is essential for the meaningful application of empirical research. A closing section on methodology reviews the data collection methods used in this study in order to enable replicability in other jurisdictions.

INTRODUCTION

Louisiana tenants experience significant obstacles in securing safe and affordable housing; particular hurdles relate to habitability, eviction, and retrieving wrongfully withheld security deposits. The Community Justice section I teach in the Law Clinic at Loyola University New Orleans College of Law represents low-income individuals on housing and other civil rights matters through litigation and advocacy.³

Our clients' experiences—living in substandard housing, defending against eviction proceedings, and foregoing or being forced to litigate to recover security deposits—provided me with the foundation to develop the research questions that anchor this paper. Described below, their stories demonstrate the practical challenges of the gaps between current Louisiana laws and socio-economic reality.

S.H. rented a house in substandard condition in the Central City neighborhood of New Orleans. When she turned on her bathtub faucet, water drained out underneath the house. Her daughter fell through a hole in the rotted floor resulting in an emergency room visit. Because the owner only accepted cash rental payments and refused to issue receipts, S.H. could not prove her payment history. When S.H. complained about the habitability issues, called the City's code enforcement office, and spoke to the media, the owner filed for eviction claiming unpaid rent. With no proof of payment S.H. was evicted.

T.M. was part of the Housing Choice Voucher program. Neither the air conditioner nor the refrigerator in her unit worked properly. After complaints to the owner did

³ The clinic partners with and receives referrals from the local legal services provider, Southeast Louisiana Legal Services.

not result in improvements, the unit failed several inspections by the Housing Authority of New Orleans (HANO). The inspection record confirmed that every failed item in the unit was the owner's responsibility. The unit was abated; HANO informed both owner and tenant that the unit would no longer receive housing assistance payments from the agency due to the uncorrected habitability problems. HANO issued T.M. a voucher for a new unit, and she timely moved out. T.M. requested that the owner return her security deposit, but he refused. T.M. eventually accessed lawyers and won a lawsuit against the owner. She was awarded a judgment, which was nearly equal to the amount of the deposit that she had paid almost two years earlier.

The problems low-income tenants face in the U.S. housing market have recently received increased attention.⁴ This focus underscores the importance of current and geographically specific data to document communities' urgent need for access to safe and affordable housing.⁵ The national focus on evictions from a "big data production" perspective also underscores the importance of collaborative work and ongoing engagement with community groups that focus on tenant advocacy and housing justice at the local level.⁶

Part I of this paper reviews the Louisiana law of lease from a tenants' perspective. Though the laws governing habitability, eviction, and security deposits are distinct, they work in concert to create insurmountable barriers that perpetuate tenants' rental hardships. Woven into the discussion

⁴ MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016). This Pulitzer-Prize-winning author has received considerable attention in the scholarly discourse on housing and poverty that is too vast to properly reference here. For instance, the Yale Law Journal Forum published three separate reviews of Desmond's work. See Lisa Alexander, *Evicted: The Socio-Legal Case for the Right to Housing*, 126 YALE L.J.F. 431 (2017), <https://www.yalelawjournal.org/forum/the-socio-legal-case-for-the-right-to-housing>; Laurie Bell Cooper, *Legal Responses to the Crisis of Forced Moves Illustrated in Evicted*, 126 YALE L.J.F. 448 (2017), <https://www.yalelawjournal.org/forum/legal-responses-to-the-crisis-of-forced-moves-illustrated-in-evicted>; Ezra Rosser, *Exploiting the Poor: Housing, Markets, and Vulnerability*, 126 YALE L.J.F. 458 (2017), <https://www.yalelawjournal.org/forum/exploiting-the-poor-housing-markets-and-vulnerability>. Desmond's associated Eviction Lab website analyzed eighty-three million eviction court records. EVICTION LAB, <https://evictionlab.org/> (last visited Aug. 4, 2018); see Emily Bader & Quoc Trung Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, N.Y. TIMES (Apr. 7, 2018), <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html> (describing the Eviction Lab's work); see also Kim Barker et al., *The Eviction Machine Churning Through New York City*, N.Y. TIMES (May 5, 2018), <https://www.nytimes.com/interactive/2018/05/20/nyregion/nyc-affordable-housing.html> (discussing the role of the housing court in New York City's eviction crisis).

⁵ The Eviction Lab itself suggests that the data for Louisiana is more reliable for urban areas than rural areas and reports 1,545 evictions for New Orleans in 2016. See EVICTION LAB, *METHODOLOGY REPORT* (2018), <https://evictionlab.org/docs/Eviction%20Lab%20Methodology%20Report.pdf>. The court records that are the subject of this empirical study indicate a much higher number: 4803 evictions filed and 3173 evictions ordered. See *infra* 59.

⁶ Daniela Aiello, et. al., *Eviction Lab Misses the Mark*, ShelterForce (Aug. 22, 2018) (describing various ways that "smaller groups [sic] understand the lay of local displacement lands much better than Desmond's national project").

on these laws are findings from the author's review of a 300-case subset ("the subset") selected from the overall set of eviction cases filed in Orleans.⁷

Part II focuses on what I have termed *eviction geography*. In collaboration with two New Orleans social scientists, this article correlates the set of court cases that ended in Judgments of Eviction with select variables from the most recent American Community Survey and visually represents that correlation through maps. The findings indicate that race plays a prominent role in evictions, and Orleans neighborhoods that are primarily African American are more likely to have higher numbers of evictions ordered. Locating evictions as a neighborhood-based problem contributes to the growing body of literature demonstrating the costs of residential segregation. In other words, another price paid for racial isolation is an increased risk of eviction.

Part III discusses participatory research as an approach to advance tenant justice and highlights the participatory research methods and collaborations that have driven this project. I consider the many dimensions of the judicial and legislative systems that function as barriers to housing safety and equity for low-income tenants.

The realities tenants face frame the need for policy change at the state and local levels. Personal stories of tenant displacement should guide decisions about policy and law reform to building increased housing security for low-income renters. In this way, participatory research provides an opportunity for academics to collaborate with community organizations in order to use the research in ways that are most useful and supportive of organizing goals.

The paper concludes by discussing research questions remaining for future study as well as the specific methodology by which the data sets for this study were assembled.

Housing precarity for low-income renters is by no means unique to Louisiana. The slum-property-to-eviction pipeline described here is ubiquitous. And the dynamics of the courtroom expose an institutionalized approach to silencing tenants during judicial processes that should, but too often fail to, redress the most urgent housing claims of vulnerable people.⁸

I. LEGAL CONSTRUCT: THE SLUM-PROPERTY-TO-EVICTION PIPELINE

⁷ I selected these cases for hard file review because the court's records indicated that an attorney represented a party in the case. I was interested in learning more about case outcomes with attorney representation and, in reviewing the hard files, coded other information as well. While the selection of these particular 300 cases was not randomized, analysis from review of the subset is informative.

⁸ See Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 535, 539, 541 (1992), <https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1742&context=hlr>.

Louisiana's residential lease law was enacted in 1825.⁹ Aside from a few piecemeal amendments, the laws that govern landlord-tenant matters have remained largely unchanged. Analysis of this legal regime highlights the disconnect between law and contemporary reality.¹⁰

When rental housing is uninhabitable,¹¹ a Louisiana tenant may not withhold rental payments.¹² Doing so leaves the tenant vulnerable to eviction, both judicial¹³ and extrajudicial.¹⁴ Tenants who do withhold rental payments for habitability problems become vulnerable not only to eviction but also to loss of the security deposit due to theft by an unscrupulous property owner.¹⁵

⁹ Vernon V. Palmer, *The Residential Lease in the Civil Law*, 4 TUL. CIV. L.F. 3, 7 (1988). One significant piece of legislation expanded protections for tenants victimized by domestic violence. See Emily Lane, *Bill Protecting Domestic Violence Victims From Getting Evicted Signed by Jindal*, NOLA.COM, http://www.nola.com/politics/index.ssf/2015/07/jindal_domestic_violence_evict.html (July 2, 2015, 6:02 PM) (discussing this legislation). In addition to allowing victims to break a lease to escape an abuser, the legislation restricts landlords' ability to evict domestic abuse survivors who have documented their status through the courts or a state welfare agency. LA. STAT. ANN. § 9:3261.1(D),(F) (Supp. 2018). The law also prohibited clauses, common in residential leases, that make domestic violence or frequent police visits a cause for eviction. *Id.* at § 9:3261.1(C). For a critique of the limitations of this legislation, see Patrick D. Murphree, *Sacrificial Victims: Louisiana's Flawed Attempt at Protecting Survivors of Domestic Violence from Eviction*, LOY. L. REV. (Nov. 11, 2016), <http://loyno-lawreview.com/2016/11/02/sacrificial-victims-louisianas-flawed-attempt-at-protecting-survivors-of-domestic-violence-from-eviction/>.

¹⁰ More than thirty years ago, Professor Vernon Palmer noted that the Louisiana Civil Code, in relation to residential leases, "is in too many important respects sadly out of touch with present reality and the demands of simple justice." Palmer, *supra* note 9, at 7.

¹¹ The 2001 American Housing Survey estimated that 78% of rental units in New Orleans needed significant repairs at some point during the year. GREATER NEW ORLEANS FAIR HOUS. ACTION CTR., FOR RENT: UNSAFE, OVERPRICED HOME FOR THE HOLIDAYS (2014), <http://www.gnofairhousing.org/wp-content/uploads/2014/12/Unsafe-Overpriced-Home-for-the-Holidays-FINAL.pdf>.

¹² LA. CIV. CODE ANN. art. 2704 (2005) ("If the lessee fails to pay the rent when due, the lessor may . . . dissolve the lease and may regain possession in the manner provided by law."). Even in states where withholding rent is an available remedy, legislatures or courts often impose additional stringent requirements to ensure that rent is being withheld solely due to habitability issues. See David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CAL. L. REV. 389, 425-26 (2011) (discussing various states' requirements for lawfully withholding rent).

¹³ See LA. CODE CIV. PROC. ANN. art. 4701 (1998) (authorizing a landlord to commence eviction proceedings when a tenant's right to possession has ceased because of expiration of the lease term, non-payment of rent, or failure to perform other lease obligations).

¹⁴ Although "eviction through self-help may constitute the tort of trespass or conversion," George Armstrong & John LaMaster, *Retaliatory Eviction as Abuse of Rights: A Civilian Approach to Landlord-Tenant Disputes*, 47 LA. L. REV. 1, 6 (1986), <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=5006&context=lalrev>, many tenants vacate after receiving demands for rent from their landlords even if landlords are also in breach of their obligations under the lease; see AIMEE INGLIS & DEAN PRESTON, TENANTS TOGETHER, CALIFORNIA EVICTIONS ARE FAST AND FREQUENT (2018), https://static1.squarespace.com/static/52b7d7a6e4b0b3e376ac8ea2/t/5b1273ca0e2e72ec53ab0655/1527935949227/CA_Evictions_are_Fast_and_Frequent.pdf (discussing the fact that many California tenants who receive notices to vacate move out rather than proceed through the judicial eviction process).

¹⁵ Alex Woodward, *Lawmakers Support Bill to Help Louisiana Renters Recover More of Their Security Deposits*, GAMBIT (May 16, 2018, 6:30 PM), https://www.theadvocate.com/gambit/new-orleans/news/the-latest/article_15c88051-4d9a-5efb-98a6-659a3df02ea0.html ("Losing out on security deposits is a familiar, frustrating rite of passage for many renters in Louisiana . . ."); see also TENANTS TOGETHER, NO DETERRENT: IMPROPER SECURITY DEPOSIT WITHHOLDING IN

With no deposit in hand, tenants may cycle from one substandard unit to the next caught in a slum-property-to-eviction pipeline.

Rather than authorizing tenants trapped in substandard living conditions to withhold rent, Louisiana law employs a “repair and deduct” regime that permits tenants to deduct from rent any payments made for essential repairs.¹⁶ This remedy is no panacea for low-income tenants who can ill-afford to cover the cost of rental unit upkeep. First, tenants must have sufficient cash in hand to be able to even consider taking advantage of repairing property on their own and then seeking reimbursement. Those who are able to do so may still face challenges understanding the scope of the “repair and deduct” law, which is limited to “necessary repairs” made at a “reasonable” price.¹⁷

Further compounding the difficulty of availing themselves of the “repair and deduct” law, tenants must comply with onerous procedures beginning with written notice of the unit’s defects.¹⁸ Because a lessor must first be given a “reasonable time”—an undefined term in the law—to make repairs after a lessee’s demand, the notice requirement may tempt unscrupulous landlords to delay compliance with their duties to ensure the habitability of their properties. Finally, any tenant-initiated repairs made under the “repair and deduct” law must both be completed and properly documented before the deduction of rent in order to protect the tenant from eviction due to non-payment of rent.¹⁹ These procedures have weakened the repair and deduct remedy “to the point of ineffectiveness.”²⁰

CALIFORNIA (2013),
<http://www.tenantsaltogether.org/sites/tenantsaltogether.org/files/Security%20Deposit%20Theft%20in%20California.pdf> (noting that 60% of Tenants Together members reported theft of all or part of a security deposit).

¹⁶ “Louisiana was the first modern code to provide this remedy.” Palmer, *supra* note 9, at 32. The “repair and deduct” law has not been substantively changed in almost 200 years and currently provides:

If the lessor fails to perform his obligation to make necessary repairs within a reasonable time and after demand by the lessee, the lessee may cause them to be made. The lessee may demand immediate reimbursement of the amount expended for the repair or apply that amount to the payment of rent, but only to the extent that the repair was necessary and the expended amount was reasonable.

LA. CIV. CODE ANN. art. 2694 (2005). Although the article’s language was modified in 2004 as part of the ongoing revision of the Civil Code, the revision comments emphasize the minor modifications: “This Article restates the principles of Article 2694 of the Civil Code of 1870 with minor modifications and clarifications, such as the references to ‘reasonable time,’ the possibility of ‘immediate reimbursement,’ and the substitution of ‘necessary’ for ‘indispensable’ repairs.” *Id.* art. 2694 cmt.

¹⁷ LA. CIV. CODE ANN. art. 2694 (2005); see Basile J. Uddo & Joan Ridley, *Protecting the Tenant’s Rights in Louisiana – A Second Look at the Civil Code with Emphasis on Article 2694*, 23 LOY. L. REV. 921, 932, 947 (1977).

¹⁸ The requirements that a tenant call upon the owner to make the repairs, prove that the repairs were necessary, and prove that the price was just and reasonable function as procedural hurdles for vulnerable tenants. See Uddo & Ridley, *supra* note 17, at 946-55.

¹⁹ See LA. CIV. CODE ANN. art. 2694 (2005).

²⁰ See Vernon V. Palmer, *supra* note 9, at 32 (noting that “the sequence is strictly one of repair and then deduct and not one of deducting the rent until such time as enough capital has been withheld to pay for the repairs.”).

If the tenant becomes frustrated enough with substandard living conditions and withholds a rental payment outside of the bounds of the “repair and deduct” law, the owner may file a suit to obtain a Judgment of Eviction.²¹

The owner is not entitled to unilaterally evict a tenant without court proceedings. Even so, tenant advocates consider this so called “self-help” or extrajudicial eviction method commonplace. The owner changes the locks and disposes of the tenant’s property without ever having filed for an eviction, let alone or having been awarded a Judgment of Eviction.²² No reporting system quantifies the magnitude of extrajudicial eviction. Thus, the eviction-ordered data set is a decidedly conservative estimate of the true magnitude of the eviction crisis. It is quite possible that most evictions are not actually tracked through the court system at all.²³

Written notice describing the owner’s intent to terminate the lease is a prerequisite for the eviction unless the lease waives or modifies the notice requirement.²⁴ The author’s review of the subset shows that almost 20% of eviction cases filed involved leases where tenants, knowingly or not, waived their right to the five-day notice.²⁵ Even if the tenant offers rental payment after the written notice, the owner is not obligated to accept that payment after written notice of intent to terminate the lease has been given. There is no filing requirement for the owner’s notice, and thus it is impossible to quantify how many such notices are actually made or how far-reaching tenant displacement is following such notice.

To initiate a lawsuit against a tenant, a landlord must file a Rule to Show Cause, which should document the reason for the eviction.²⁶ When the Rule is filed, the court assigns a hearing date, typically about a week from the date of filing.²⁷ No personal service is required; the Rule to Show Cause may be served on any occupant in the rental home at issue or tacked to the door of the premises at least seventy-two hours before the hearing date.²⁸ As a result, Louisiana law allows eviction of tenants who may never have personally received notice of the suit.

²¹ See LA. CODE CIV. PROC. ANN. arts. 4701-4735 (1998 & Supp. 2018) (providing the procedures for obtaining a Judgment of Eviction).

²² While it is possible that a claim for damages for an illegal extrajudicial eviction may be brought to court, the reality is that few tenants have access to lawyers. See, e.g., *Brown v. First Evangelist Hous. CDC Magnolia Villa*, 2016-08707 (New Orleans 1st City Ct., Dec. 8, 2016).

²³ INGLIS & PRESTON, *supra* note 14, at 5 (indicating that many renters vacate their units upon receiving a notice of eviction before formal proceedings are filed); Chris Salviati, *Rental Insecurity: The Threat of Evictions to Renters*, APARTMENT LIST (Oct. 20, 2017), <https://www.apartmentlist.com/rentonomics/rental-insecurity-the-threat-of-evictions-to-americas-renters/> (suggesting that for every household that goes through eviction court, more than twice that number move because of threat of eviction).

²⁴ LA. CODE CIV. PROC. ANN. art. 4701 (1998).

²⁵ See LA. CODE CIV. PROC. ANN. art. 4701 (1998) (authorizing lease provisions that waive the notice period). Although the hard files that are the subject of this paper were not pulled at random, the set of cases presents enough information from which to draw conclusions regarding the percentages of cases with particular characteristics.

²⁶ *Id.* art. 4731.

²⁷ *Id.* art. 4732; see also INGLIS & PRESTON, *supra* note 14 (describing the need for a fairer timeline for eviction).

²⁸ LA. CODE CIV. PROC. ANN. art. 1234 (1998, 2005). For additional background on eviction procedures, see LA. CODE CIV. PROC. ANN. Arts. 4701, 4703, 4732, 4902 (1998, 2005).

The author's review of a subset of court docket files shows that tenants are absent from their eviction hearings in significant numbers. My analysis of the subset showed that 73% of tenants (in cases where it was possible to determine a tenant's presence or absence), failed to appear at their eviction hearing.²⁹ Moreover, a tenant's failure to attend the eviction hearing is a strong indication that eviction will result.³⁰ Based on the author's analysis of the subset of court docket files, in New Orleans, of the 73% of tenants who did not appear at their eviction hearing, the vast majority, 84%, had cases that resulted in eviction judgments.³¹

A lack of actual notice of the proceedings is not considered a legitimate excuse or defense to eviction. For example, a tenant who is hospitalized around the time rent is due and is unable to communicate with the owner, might be released from the hospital a week later only to find the locks changed and their possessions gone.

Once the eviction rule has been served, a tenant has a right to file an answer and must do so in order to preserve their right to appeal.³² The answer, along with the filing fee and service payment, must be filed before the court hearing.³³ The tenant is not granted additional time to file the answer even if the tenant could not timely afford the filing and service fees or complete the fee waiver request.

One compelling reason for a tenant to file an answer is that a judge might take the case for the tenant more seriously.³⁴ For example, an answer filed with receipts in a "repair and deduct" case

²⁹ See *supra* note 7 (subset data is on file with author) and *infra* note 135.

³⁰ See MINNEAPOLIS INNOVATION TEAM, EVICTIONS IN MINNEAPOLIS (2016), <http://innovateminneapolis.com/documents/Evictions%20in%20Minneapolis%20Report.pdf> (noting that when both parties appeared at an eviction hearing, 83% of the cases resulted in settlement). Cf. Rachel M. Cohen, *Welcome to the Courtroom That is Every Renter's Nightmare*, NEXT CITY (Sept. 14, 2015), <https://nextcity.org/features/view/rent-court-baltimore-tenant-rights-cities> (reporting that the "overwhelming majority of summoned tenants" do not appear for hearings in Baltimore's rent court).

³¹ See *supra* note 7.

³² LA. CODE CIV. PROC. ANN. art. 4735 (1998).

³³ The cost to file an Answer is \$67, *First City Court Filing Fees—Non Refundable* 3, ORLEANS PAR. CIV. DIST. CT., <http://www.orleanscdc.com/images/FCC%20Price%20List%20Effective%20July-1-18%20UPDATED%2011%20May%202018.pdf> (last updated May 11, 2018); the tenant may avail themselves of *in forma pauperis* (IFP) procedures to file the Answer, LA. CODE CIV. PROC. ANN. art. 5181(A) (1998). Although a tenant may defend against the eviction without an Answer on file, the tenant may not file a suspensive appeal without having filed a verified Answer into the written record. *Id.* art. 4735. If a tenant has filed a written Answer (under oath) to the eviction with an affirmative defense, the tenant can delay the effect of the judgment by filing a suspensive appeal. *Id.* The appeal must be filed within twenty-four hours and be accompanied by a bond set by the judge. *Id.* For a tenant who did not file an Answer or cannot pay the bond to appeal, a devolutive appeal that does not suspend the eviction judgment may also be filed. For either type of appeal, the tenant must pay a filing fee to the court of appeal. In Orleans Parish, this fee is \$335.50. *Filing Fees*, CT. OF APPEAL, FOURTH CIR., <http://www.la4th.org/FilingFees.aspx> (last visited Aug. 8, 2018).

³⁴ Interview with Hannah Adams, Staff Attorney, Southeast Louisiana Legal Services (June 20, 2018).

might prompt the judge to spend additional time reviewing the tenant's case.³⁵ This could create more opportunities for the tenant to raise a defense in the short time frame of the show cause hearing than would occur if the tenant appeared without the benefit of the filed answer.

The delivery of legal services to low-income tenants at this juncture is especially important.³⁶ Not only can legal guidance help educate the tenant on potential defenses, representation at this stage can change individual case outcomes and work toward leveling the structural inequalities of lease law.³⁷

While tenants might perceive that simply appearing in a case to explain their side of the story is key for a successful defense, the reality of eviction cases in court demonstrate otherwise. Proof is both required and elusive, and courts are disinclined to extend credibility to tenants in contested situations where neither party necessarily has proof.³⁸ Perhaps even more critical is that tenants are deterred from speaking in court, a setting that functions to reinforce structural conditions—an extension of “social situations and relations unmitigated by ‘rights.’”³⁹

The following are common legal strategies that can prevent or delay evictions, but that are often more successfully deployed by trained advocates than *pro se* litigants:

- Demonstrating a lack of procedural compliance. Any Rule for Possession must state the reasons for the eviction in order to give proper notice to the tenant.⁴⁰ In practice,

³⁵ For example, the average eviction hearing in Chicago lasted just one minute and forty-three seconds. KAREN DORAN ET AL., LAWYERS' COMM. FOR BETTER HOUS., NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT (2003), <http://lcbh.org/sites/default/files/resources/2003-lcbh-chicago-eviction-court-study.pdf>.

³⁶ *Id.* at 13 (“[A]n appearance for the tenant has a marked impact on the period of time orders of possession are stayed.”).

³⁷ John Pollock, *Right to Legal Representation in Eviction Cases*, PROTECT TENANTS, PREVENT HOMELESSNESS 24, 24 (Nat'l Law Ctr. on Homelessness & Poverty 2018), <https://www.nlchp.org/ProtectTenants2018> (arguing that “[n]umerous studies have shown that the presence of counsel has a substantial impact on outcomes for eviction cases.”); D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and the Prospects for the Future*, 126 HARV. L. REV. 901, 928 (2013), https://harvardlawreview.org/wp-content/uploads/pdfs/vol126_%20greiner_wolos_pattanayak_hennessy.pdf

(concluding that full representation did improve outcomes in one study of landlord-tenant disputes). *But see* D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2149, 2153 (2012), <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5524&context=yjl> (finding through a randomized study that offers of legal representation had no effect on the likelihood that an unemployment compensation claimant would prevail on an appeal of a denial of benefits, but that representation did produce secondary effects such as delaying adjudication).

³⁸ Bezdek, *supra* note 8, at 584-85 (discussing jurors attributing less credibility to subordinate speakers based on non-dominant speech conventions).

³⁹ *Id.* at 575.

⁴⁰ LA. CODE CIV. PROC. ANN. art. 4731 (1998); *Application for Rule for Possession of Premises*, FIRST CITY CT. OF ORLEANS, <http://www.orleanscdc.com/forms/fcc/ApplicationForRuleForPossessionFCC.pdf> (last visited Aug. 9, 2018).

any alleged lease violation must be documented, and any alleged non-payment of rent must specify the time period and the dollar amount at issue.⁴¹

- Obtaining habitability documentation from the Housing Authority if the unit is part of a public housing program. If the Housing Authority has deemed the unit substandard enough that it has been abated, the tenant is entitled to an allotted time period to move, and eviction should not cut that period short.⁴²

- Advocating the use of the pre-eviction, administrative grievance process for public housing residents. Public housing tenants have a right to a grievance process with clear instructions on how to receive a formal hearing. Without this, an eviction case in court against the public housing resident might be premature.⁴³

Judges typically render a decision at the time of the eviction hearing. When a tenant loses the eviction case or fails to appear at the eviction hearing, the judgment will likely order the tenant to vacate the property within twenty-four hours. If the owner agrees to give the tenant additional time to move out and the judge accepts the proposed timeline, an additional grace period is possible.⁴⁴

In Louisiana, evictions are summary proceedings and move swiftly through the court.⁴⁵ An eviction case might be completed as soon as one week from the date the owner first initiates legal proceedings. In 1966, the summary proceedings used in eviction cases were critiqued by Justice William O. Douglas and the same assessment squarely applies today, more than fifty years later:

Summary eviction proceedings are the order of the day. Default judgments in eviction proceedings are obtained in machine-gun rapidity, since the indigent cannot afford counsel to defend. Housing laws often have a built-in bias against the poor. Slumlords have a tight hold on the Nation.⁴⁶

A tenant who is stuck in an uninhabitable unit thus faces unenviable choices. Withhold rent in violation of the law or continue paying rent for uninhabitable property? Live in the substandard rental unit or break the lease to move out before lease termination? The tenant might be able to

⁴¹ LA. CODE CIV. PROC. ANN. arts. 4731-32 (1998 & Supp. 2018).

⁴² HOUS. AUTH. OF NEW ORLEANS, ADMINISTRATIVE PLAN (2011), https://www.hano.org/home/agency_plans/HCVF_Admin_Plan.pdf (allowing up to sixty days in most circumstances for a family to move out of an abated unit).

⁴³ See 24 C.F.R. §§ 966.50-.57 (2017).

⁴⁴ The tenant is allowed to file a Motion for New Trial or a Petition for Nullity, both of which would suspend the eviction temporarily. The motion costs \$25, while the fee for the petition for nullity in small claims court is \$112.50. *First City Court Filing Fees*, *supra* note 33, at 3.

⁴⁵ *Supra* note 41.

⁴⁶ *Williams v. Shaffer*, 385 U.S. 1037, 1040 (1967) (Douglas, J., dissenting).

bring a breach of habitability lawsuit after the move-out, but doing so hinges on access to an attorney and availability of sufficient documentation to prove the case.⁴⁷

With an eviction on record, a tenant's housing options become even more limited, amplifying obstacles to safe and affordable housing. If the owner believes that rent was still owed at the time of the eviction, the amount in controversy can be sent to a collection agency as a delinquent debt even when habitability was in dispute. If the eviction lawsuit results in a civil judgment for unpaid rent, the judgment may appear on the tenant's credit report in the "public records" section. Screening companies can locate information such as eviction records, and property owners routinely discriminate against tenants with an eviction on their record.⁴⁸ Tenants with eviction records are thus forced into less desirable housing options.⁴⁹

When a tenant is evicted due to non-payment of rent or violates the lease's notice requirements for move-out (even if done to escape unlivable conditions), the security deposit is also at risk.⁵⁰ Security deposit theft then perpetuates housing instability. Tenants without other savings to rely on do not have the financial means to pay a deposit on a new rental. Thus, security deposit theft can drive tenants into homelessness.

Wrongful withholding of a security deposit can also place a housing voucher at risk. Without the ability to pay a security deposit on a new unit, a tenant may permanently lose the voucher for failure to use it within the designated time period. Lack of funds for a new deposit is not an acceptable justification for an extension of time for voucher use.⁵¹

The legal process for recovering a security deposit—a civil suit—is a long process, and even a complete victory in a deposit theft lawsuit may be hollow.⁵² Such a lawsuit costs nearly \$200 in

⁴⁷ Greiner et al., *supra* note 37, at 911 (collecting studies suggesting that the "unmet need for legal assistance in this area [of tenant representation] is substantial).

⁴⁸ See Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PENN. L. REV. 363, 425-26 (2013), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1010&context=penn_law_review.

⁴⁹ Matthew Desmond & Tracey Shollenberger, *Forced Displacement From Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751 (2015) (finding that families who are involuntarily displaced often relocate to neighborhoods with even higher levels of poverty and violent crime); see also Sandra Park, *Unfair Screening Procedures Are Disproportionately Blacklisting Black Women*, AM. C.L. UNION (May 30, 2017 at 1:15 PM), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately> ("When the mere filing of an eviction case means that a family's future housing applications will be rejected, many tenants will avoid a case at all costs. They will move out, tolerate unsafe living conditions, or decline to exercise their rights, allowing landlords to act with impunity.").

⁵⁰ Under Louisiana law, a landlord may "retain all or any portion of a deposit or advance which is reasonably necessary to remedy a default of a tenant or to remedy unreasonable wear to the premises." LA. STAT. ANN. § 9:3251(A) (2009). To take advantage of this provision, a landlord has one month to forward to the tenant an itemized statement accounting for any withholding; otherwise, the landlord must return the full deposit. *Id.* Although the revised statutes also provide a damages remedy for a landlord's willful failure to return a security deposit, the amount of the damages is capped at the greater of the value of the security deposit or \$200. *Id.* § 9:3252(A).

⁵¹ HOUS. AUTH. OF NEW ORLEANS, *supra* note 42, at 53.

⁵² See generally Bezdek, *supra* note 8 (discussing the ways in which the legal process alienates and disenfranchises vulnerable populations).

Orleans Parish unless the tenant can avail themselves of *in forma pauperis* procedures.⁵³ A successful lawsuit can span many months in Orleans and is likely to yield exactly what the tenant initially paid out—the amount of the original deposit. While a damage award is theoretically available, the law authorizes a mere \$200 or “actual damages” and only if the judge finds a “willful failure” by the owner.⁵⁴ This is hardly the kind of penalty that disincentivizes wrongful deposit withholdings.⁵⁵

One client’s case illustrates the connection between wrongful eviction, security deposit theft, and the loss of a housing voucher:

L.W. lived in a rental unit that was part of the Housing Choice Voucher Program through HANO. She lived in the unit for a decade without incident. In August 2017, when heavy rains together with inadequate pump and drainage capacity caused widespread flooding throughout New Orleans, L.W.’s unit was flooded with water, infested with spiders and quickly grew mold. Within a matter of days, HANO abated the unit determining that it was uninhabitable and issued L.W. a new housing voucher. The owner gave L.W. a thirty-day move-out notice. When the owner then learned that she would not receive the next month’s rental payment from HANO because her unit was abated as uninhabitable, she unsuccessfully tried to evict L.W. before the thirty days had run. She then refused to refund the security deposit. L.W. had to access a lawyer to help defend her in the eviction proceeding. Without her deposit in hand, L.W. struggled to find a new unit within the timing constraints for voucher use. L.W. also had to access a lawyer to appeal for a voucher extension; HANO initially denied the appeal before L.W. successfully urged reconsideration. L.W. then accessed yet another set of lawyers to file a lawsuit against the owner for deposit theft. L.W. won her civil suit and the judgment awarded her the amount of the security deposit plus the \$200 statutory penalty.

As of January 1, 2019, a new Louisiana law will allow renters who win their security deposit case in court to recover increased damages for security deposit theft.⁵⁶ Under this new regime, if a landlord wrongfully withholds all or part of a security deposit, a tenant can recover the amount

⁵³ The filing fee for a petition for damages in small claims court is \$114.

See *First City Court Filing Fees*, *supra* note 32, at 4. Additional fees apply for service of the petition. See *Constable's Fees: First City Court & Second City Court*, ORLEANS PARISH CIV. DISTRICT CT., <http://www.oreanscdc.com/scon-fees.html> (last visited Aug. 10, 2018).

⁵⁴ LA. STAT. ANN. § 9:3252(A) (2009). No available data indicates how often judges impose this damage award. Moreover, proof of actual damages is a high burden for a tenant to meet. See Ronald L. Hersbergen, *Consumer Law*, 35 LA. L. REV. 384, 394-95 (1974) (discussing the limitations of the “willful failure” provision).

⁵⁵ Danny Schaffzin, *Landlord Weapon on Tenant Shield? A Proposal to Reform North Dakota's Residential Security Deposit Statute*, 85 N.D. L. REV. 251, 253 (2009), https://law.und.edu/_files/docs/ndlr/pdf/issues/85/2/85ndlr251.pdf (noting treble damages for wrongfully withholding security deposits “incentivize landlord compliance”).

⁵⁶ Act of May 23, 2018, No. 416, § 1, <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=1101379> (amending LA. STAT. ANN. § 9:3252).

withheld plus the greater of twice the wrongfully withheld amount or \$300.⁵⁷ This increase in the available damages aligns Louisiana with national standards expressed in the Revised Uniform Residential Landlord Tenant Association.⁵⁸

Only time will tell how the new law is implemented and whether judges will award the additional penalty amount available to tenants who are victims of security deposit theft. The success of this new provision for tenants is likely to be unmeasurable, however, because unscrupulous owners who are deterred from engaging in security deposit theft will not leave court records for researchers to discover.

The cost of living with arcane laws divorced from contemporary social and economic realities is significant. Both the design and implementation of Louisiana's landlord-tenant legal regime contribute to the outcomes described below. Updating landlord-tenant laws is critical to improving outcomes for vulnerable tenants and promoting broader equitable outcomes. The prevalence of evictions has implications for the well-being of neighborhoods, particularly when viewed through the lenses of race, gender, poverty, and the intersectionality of those demographic characteristics.

II. EVICTION GEOGRAPHY IN NEW ORLEANS

Evictions impact a significant number of New Orleanians. Between 2015 and 2017, the First City Court reported 14,422 eviction cases filed and 8,824 evictions ordered.⁵⁹ Notably, the total number of evictions cases filed and evictions ordered has steadily increased each year.

Eviction Cases Filed

- 4,598 eviction cases filed in 2015;
- 4,803 eviction cases filed in 2016;
- 5,021 eviction cases filed in 2017;

⁵⁷ *Id.*

⁵⁸ REV. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1204(e) (Unif. Law Comm'n 2015), http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/RURLTA%202015_Final%20Act_2017mar30.pdf. According to the Uniform Law Commission,

[t]he Revised Uniform Residential Landlord and Tenant Act (RURLTA) is a comprehensive statute governing most aspects of the landlord-tenant relationship. It builds on the original 1972 act by adding new provisions on domestic violence and security deposits, as well as updating many older provisions.

Residential Landlord and Tenant Act 2015, UNIFORM L. COMMISSION (last visited Aug. 4, 2018), <http://www.uniformlaws.org/Act.aspx?title=Residential%20Landlord%20and%20Tenant%20Act%202015>.

⁵⁹ For a discussion of the methodology used to collect this data, see *infra* Section IV. Note that the analysis and mapping discussed below are based on 6,966 eviction judgments granted by the Court, representing those cases in the eviction-ordered data set with linked municipal addresses.

Evictions Ordered

- 2,427 evictions ordered in 2015;
- 3,173 evictions ordered in 2016;
- 3,224 evictions ordered in 2017;

The data, when further analyzed, sheds light on the broader displacement issue evictions bring. In Orleans, approximately 83,000 households—54% of all households in the parish—rent their homes.⁶⁰ The total number of renters displaced due to eviction orders in the time frame studied here is approximately 16,465 people.⁶¹

The data also suggests that evictions occur more frequently in lower-quality housing. The average monthly rent for units in the eviction-ordered data set is \$749.00, but the Fair Market Rent (FMR) for a two-bedroom unit in Orleans is \$964.00.⁶² That the average rent in the data set is nearly \$200.00 lower than FMR suggests units in the eviction-ordered data set are less desirable, possible due to issues with material habitability. Although the limited data available does not warrant any firm conclusions in this regard, the average rent in the eviction-ordered data set was far below the FMR suggests one direction for further research.

Finally, the average total amount in controversy in the eviction-ordered cases is \$1,230.00. Although the eviction-ordered data set does not specify whether the tenant has been brought into court for rental arrears only, the fact that the average total amount in controversy is not even double the amount of the average total rent points to the well-known lack of affordability of rental housing. National data indicates that one-in-five renters were unable to pay their rent in full within the last three months.⁶³ This is a stark reminder of the high number of rent-burdened tenants.⁶⁴ On average,

⁶⁰ NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: THE HIGH COST OF HOUSING 109 (2018), http://nlihc.org/sites/default/files/or/OOR_2018.pdf (drawing data from the American Community Survey 2012-2016).

⁶¹ Megan Faust, *Kicking out Vulnerable: Segregation, Gender, and Evictions* (Dec. 16, 2017) (on file with the author) (supplemental notes, July 21, 2018). This statistical analysis was performed as part of Professor Rafail's course. See *supra* text accompanying note *.

⁶² NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: THE HIGH COST OF HOUSING 107 (2017), http://nlihc.org/sites/default/files/or/OOR_2017_0.pdf. The FMR was \$963 in 2016 and \$950.00 in 2015. NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: NO REFUGE FOR LOW INCOME RENTERS 100 (2016), http://nlihc.org/sites/default/files/or/OOR_2016.pdf; NAT'L LOW INCOME HOUS. COAL., OUT OF REACH: LOW WAGES AND HIGH RENTS LOCK RENTERS OUT 99 (2015), http://nlihc.org/sites/default/files/OOR_2015.pdf. The current FMR is \$996. NAT'L LOW INCOME HOUS. COAL., OUT OF REACH (2018), *supra* note 60, at 109.

⁶³ Salviati, *supra* note 23 ("[eighteen] percent of respondents had difficulty paying all or part of their rent within the past three months.").

⁶⁴ A majority of New Orleans renters, like renters across the United States, are rent burdened; 51.7% of Orleans Parish renters spend at least 35% of their income on rent. *Selected Housing Characteristics: 2012-2016 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU,

there was less than a month and half’s worth of rent at stake in the cases where evictions were ordered; this points to the need for heightened financial and structural interventions,⁶⁵ including law reform to protect economically vulnerable tenants.

A. In New Orleans, race is a strong predictor of eviction

Analysis of the eviction-ordered data set with American Community Survey (ACS) block-level group (smallest available geography) paints a demographic picture of race and displacement by eviction. The strongest evictions predictor is the percentage of the block-group population that is Black.⁶⁶

To analyze the data set by race, Orleans neighborhoods were operationalized by percentage Black: 25-50% Black, 50-90% Black, or 90-100% Black, with 0-25% Black serving as the reference category. Block groups that were highly segregated (90-100% Black) have approximately fifteen more evictions per block relative to non-majority Black neighborhoods (0-25%), holding other variables constant.⁶⁷ Thus, evictions are most strongly correlated with the block groups that have the highest degree of residential segregation. Table 1 demonstrates this finding.

Table 1: Linear regression estimates of the factors influencing the eviction (n=490)

	Model 1
Intercept	-3.60 (3.98)
25-50% African American Population	1.09 (5.13)

<https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/> (select “Louisiana,” “County,” and “Orleans Parish,” then select “Get Data Profile;” then follow “Housing Characteristics” hyperlink) (last visited Aug. 10, 2018). On average, New Orleans renters spend 41% of their income on rent.

Alex Woodward, *New Orleans One of the Worst U.S. Cities for Renters*, GAMBIT (Mar. 30, 2015,4:30 PM), https://www.theadvocate.com/gambit/new_orleans/news/article_ea6cfdac-fc09-5dae-8480-4768a93ab6b5.html (reporting the estimate of the U.S. Department of Housing and Urban Development).

⁶⁵ See, e.g. Jessica Steinberg, *Informal, Inquisitorial, and Accurate: An Empirical Look at a Problem-Solving Housing Court*, 42 LAW & SOC. INQUIRY 1058 (2017), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2427&context=faculty_publications (discussing an experimental Housing Conditions Court in the District of Columbia that employs an inquisitorial rather than an adversarial approach); SEEDCO, HOUSING HELP PROGRAM: HOMELESSNESS PREVENTION PILOT FINAL REPORT 2, 7, 36-37 (2010), <http://seedco.org/wp-content/uploads/2011/11/Housing-Help-Program.pdf> (discussing a South Bronx program that over three years provided 1,300 families with legal assistance and prevented eviction in 86% of cases at an annual cost of approximately \$450,000 and which is estimated to have saved New York City more than \$700,000 in shelter costs).

⁶⁶ In this section, I adopt the U.S. Census Bureau’s terminology of “Black” instead of “African American.”

⁶⁷ Sara Kington, *Eviction Rates and African American Neighborhoods in New Orleans* (Dec. 16, 2017) (on file with the author). The statistical analysis was performed as part of Professor Rafail’s course. See *supra* text accompanying note *.

50-90% African American Population	2.58 (3.93)
90-100% African American Population	15.30** *

Block groups labeled highly-segregated areas (90-100% Black) are no rare occurrence in New Orleans.⁶⁸ Those highly segregated areas make up 31% of the total 497 block groups studied.⁶⁹ The block groups that are 90-100% Black host 56.9% of all evictions in Orleans.⁷⁰

In New Orleans, an important additional note is that the vast majority of subsidized housing residents of color are concentrated in segregated neighborhoods. This stark residential segregation is the only “real choice” the community of color has in terms of housing.⁷¹ High rates of housing segregation lead to increased social isolation and disadvantage residents in areas such as education, employment, and wages.⁷²

The finding that close to a third of the Orleans block groups are highly segregated compounds the significance of the findings about race and evictions—the higher rate of eviction in neighborhoods with high concentrations of Black residents—in terms of perpetuating housing injustice.⁷³ Higher rates of evictions in hyper-segregated areas inevitably exacerbate already

⁶⁸ The social effects of such segregation are “predictably terrible: poverty, crime, and bad schools among them.” Tanvi Misra, *America Has Half as Many Hypersegregated Metros as It Did in 1970*, CITYLAB (May 21, 2015), <https://www.citylab.com/equity/2015/05/america-has-half-as-many-hypersegregated-metros-as-it-did-in-1970/393743/>. The term “hypersegregation” describes a disproportionately black population in certain neighborhoods. Douglas Massey, *Geography of Inequality in Urban America*, in RACE, POVERTY, AND DOMESTIC POLICY 173, 178 (Michael Henry ed., 2004). Although New Orleans is no longer classified as hypersegregated by Massey, residential segregation remains a persistent feature of the social geography of the city, see STACY SEICSHNAYDRE ET AL., THE DATA CTR., RIGGING THE REAL ESTATE MARKET: SEGREGATION, INEQUALITY, AND DISASTER RISK 1-8 (2018), <https://s3.amazonaws.com/gnocdc/reports/TDC-prosperity-brief-stacy-seicshnaydre-et-al-FINAL.pdf>.

⁶⁹ See Faust, *supra* note 61.

⁷⁰ *Id.*

⁷¹ See Stacy E. Seicshnaydre, *The Fair Housing Choice Myth*, 33 CARDOZA L. REV. 967, 973 (2012); Stacy E. Seicshnaydre, *How Government Housing Perpetuates Racial Segregation: Lessons from Post-Katrina New Orleans*, 60 CATH. U. L. REV. 661, 669-70 (2011), <https://scholarship.law.edu/cgi/viewcontent.cgi?article=3246&context=lawreview>; see also Eva Rosen, *Rigging the Rules of the Game: How Landlords Geographically Sort Low-Income Renters*, 13 CITY & COMMUNITY 310, 318-19 (2014) (explaining ways that owners might exploit the federal Housing Choice Voucher program for low-income tenants).

⁷² See Massey, *supra* note 68, at 178; see also John Elgion & Robert Gebeloff, *Affluent and Black, and Still Trapped by Segregation*, N.Y. TIMES (Aug. 20, 2016), <https://www.nytimes.com/2016/08/21/us/milwaukee-segregation-wealthy-black-families.html> (reporting that while 37% of black families earning at least \$100,000 a year live in poor neighborhoods, only 9% of white families with the same income do so).

⁷³ During the Jim Crow era, New Orleans began to segregate itself residentially in a pattern known as hyper-segregation. See Misra, *supra* note 68 (reporting Douglas Massey’s findings that New Orleans was hypersegregated in 1970). By 2000, the Black population in Orleans Parish was 67%, and patterns of residential segregation were still prevalent. See METRO. POLICY PROGRAM, BROOKINGS INST., NEW ORLEANS AFTER THE STORM: LESSONS FROM THE PAST, A PLAN FOR THE FUTURE 4, 9 (2005), <https://www.brookings.edu/wp->

existing barriers. Neighborhoods, which are heavily populated by African American residents, are disproportionately impacted by evictions.⁷⁴ In turn, elevated eviction rates disproportionately impact all of the residents of neighborhoods where individuals “exert less political influence, receive far fewer educational resources and job opportunities, and [residents are exposed] to high levels of violence, stress, and economic hazards.”⁷⁵

The map below demonstrates these findings on race and eviction in Orleans by overlaying a map of Orleans block groups with the percentage of Black residents and the total number of evictions ordered:⁷⁶

New Orleans is not an outlier. The strong connection between race and eviction patterns in New Orleans is consistent with recent findings from other American cities that race is a strong predictive factor in eviction displacement throughout the United States.⁷⁷

content/uploads/2016/06/20051012_NewOrleans.pdf. Black neighborhoods were less desirable under FHA guidelines and therefore subject to higher interest rates and higher rates of mortgage denials. See SEICSHNAYDRE ET AL., *supra* note 71, at 3. When Hurricane Katrina hit New Orleans in August 2005, discriminatory government policies were exacerbated. See METRO. POLICY PROGRAM, *supra* note 73, at 13-20.

⁷⁴ Nancy A. Denton, *The Role of Residential Segregation in Promoting and Maintaining Inequality in Wealth and Property*, 34 IND. L. REV. 1199, 1207 (2001).

⁷⁵ See generally DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 6-7 (1993).

⁷⁶ This map was created by Darin Acosta, MURP. Acosta is a Certified Geographic Information Systems Professional with years of GIS and full-stack development experience and serves on the Board of Directors for Jane Place Neighborhood Sustainability Initiative.

⁷⁷ Salvati, *supra* note 23 (“Black households [are] more than twice as likely to face eviction compare to white households.”).

In San Francisco, the Anti-Eviction Mapping Project has shown that “racial, ethnic, and socio-economic minorities are being disproportionately hit by the ongoing displacement crisis.”⁷⁸ A study of eviction cases in Denver also revealed that evictions disproportionately affect neighborhoods with more people of color.⁷⁹ A study of eviction cases in Kansas City, Missouri reached a similar conclusion: “race is the most important factor that predicts whether or not someone will be evicted in Kansas City, even when we hold income constant.”⁸⁰ A Hamilton County, Ohio study on evictions found that “neighborhood racial composition is the strongest predictor of eviction filing rates” even after taking into account poverty rates and rent burdens.⁸¹ In Minneapolis, evictions, both initial eviction filings and eviction judgments, were concentrated in those areas with a majority non-White population.⁸² In a Baltimore study, 94% of tenants present for eviction court identified as African American/Black.⁸³ In Atlanta, census tracts with particularly high rates of eviction were found to coincide with predominantly Black neighborhoods.⁸⁴ The authors of that study concluded: “[w]hile many factors drive eviction rates, this pattern alone demonstrates that the households bearing the brunt of the extremely high housing instability in Atlanta live in predominantly black neighborhoods.”⁸⁵

Finally, Matthew Desmond’s work on Milwaukee evictions documented that “[a]lmost half of the city’s evictions took place in predominantly black inner-city neighborhoods, where one renter-occupied household in 14 was evicted annually.”⁸⁶

New Orleans, like municipalities around the United States, has maintained historic segregation in ways that continue to fuel a racially disparate housing market and discrimination in housing practices.⁸⁷ “[L]ow-income households of color historically have had minimal neighborhood

⁷⁸ EVICTION DEF. COLLABORATIVE, CITY OF CHANGE: FIGHTING FOR SAN FRANCISCO’S VANISHING COMMUNITIES 3 (2016), https://static1.squarespace.com/static/52b7d7a6e4b0b3e376ac8ea2/t/5b1277256d2a73499b3e30f3/1527936847840/EDC_2016.pdf.

⁷⁹ AUBREY HASVOLD & JACK REGENBOGEN, FACING EVICTION ALONE: A STUDY OF EVICTIONS IN DENVER, COLORADO, 2014-2016, at 2 (2017), http://celponline.org/wp-content/uploads/2018/04/Facing-Eviction-Alone-2017-Report_Final-1.pdf.

⁸⁰ Project, KAN. CITY EVICTION PROJECT, <https://www.evictionkc.org/project> (last visited Aug. 5, 2018).

⁸¹ ELAINA JOHNS-WOLFE, “YOU ARE BEING ASKED TO LEAVE THE PREMISES”: A STUDY OF EVICTION IN CINCINNATI AND HAMILTON COUNTY, OHIO, 2014-2017 at 7 (2018), <https://www.scribd.com/document/382282189/FINAL-Eviction-Report-Final3>.

⁸² MINNEAPOLIS INNOVATION TEAM, *supra* note 30, at 6, 21.

⁸³ PUB. JUSTICE CTR., JUSTICE DIVERTED: HOW RENTS ARE PROCESSED IN THE BALTIMORE CITY RENT COURT (2015), http://www.publicjustice.org/uploads/file/pdf/JUSTICE_DIVERTED_PJC_DEC15.pdf.

⁸⁴ Elora Raymond et al., *Housing Instability: Single-Family Evictions in One Atlanta Metro County*, FED. RES. BANK OF ATLANTA, <https://www.frbatlanta.org/community-development/publications/partners-update/2017/01/170216-housing-instability-single-family-evictions-in-one-atlanta-metro-county.aspx> (last visited Aug. 5, 2018); see also Elora Raymond, *Evicted in Atlanta*, ATLANTA STUD., <https://www.atlantastudies.org/2018/02/06/elora-raymond-evicted-in-atlanta/> (last visited Aug. 5, 2018).

⁸⁵ Raymond et al., *supra* note 84.

⁸⁶ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 91 (2012), <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>.

⁸⁷ SEICSHNAYDRE ET AL., *supra* note 71, at 1-8.

choice and mobility in the marketplace.”⁸⁸ The City’s recent history reflects the continuity of this tradition. In the aftermath of the 2005 Gulf Coast hurricanes, federal rebuilding dollars were spent in a racially discriminatory manner that thwarted African American rebuilding and recovery.⁸⁹

In reflecting on the City’s recent tricentennial, New Orleans housing advocates commented on persistent segregation and inequality in housing:

And yet, as recently as early 2018, our City government has failed to require developers to include any affordable housing units in an up-and-coming neighborhood on high ground. . . . At worst, these practices appear bent on repeating or building on segregationist policies that facilitate wealth creation for whites and deny health, wealth, and opportunity to blacks. At best, they postpone action that is urgently needed to address re-segregation and isolation of low-income renters and stark racial wealth inequality.⁹⁰

Evictions should not be viewed as the accumulation of individual problems or the result of tenants’ financial inability to pay monthly rent or cover the cost of necessary repairs. Evictions should be understood as a community concern, the product of structural conditions, and yet another reason that perpetuating neighborhood segregation stymies the goal of building healthy communities.

B. Gender and Poverty

National data on gender and evictions suggests that low-income women—especially poor women of color—have a high risk of eviction.⁹¹ In 1992, when Professor Barbara Bezdek studied Baltimore eviction court, she found more than 70% of the tenants appearing were women and 87% of tenants appearing were African American.⁹² This demographic pattern regarding gender in

⁸⁸ Stacy Seicshnaydre, *Missed Opportunity: Furthering Fair Housing in the Housing Choice Voucher Program*, 79 LAW & CONTEMP. PROBS. 173, 174 (2016), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4797&context=lcpr>; see also Palmer *supra* note 9, 13-14 (discussing inequalities in Louisiana housing from the 1970s documenting that “the lowest economic classes spend a greater share of their income on housing which is physically less desirable”).

⁸⁹ *Road Home Settlement: Fact Sheet*, GREATER NEW ORLEANS FAIR HOUSING ACTION CTR., http://www.gnofairhousing.org/wp-content/uploads/2011/10/7-15-11_RoadHomeSettlementFacts.pdf (last visited Aug. 5, 2018).

⁹⁰ SEICSHNAYDRE ET AL., *supra* note 71, at 8.

⁹¹ See, e.g., MATTHEW DESMOND, UNAFFORDABLE HOUSING: POVERTY, HOUSING, AND EVICTION 3-4 (Inst. for Research on Poverty, Fast Focus Ser. No. 22-2015, 2015), <http://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf> (“Women living in black neighborhoods in Milwaukee represent 9.6 percent of the population, but 30 percent of evictions.”). Transgender women are particularly impacted. 11% of transgender and gender-nonconforming individuals reported being evicted based on their transgender or gender non-conforming identity; for the African-American subgroup of these individuals, the percentage was much higher—37%. JAIME M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 112 (2011).

⁹² Bezdek, *supra* note 8, at 540 n.21-22; see generally Michelle Cotton, *A Case Study on Access to Justice and How to Improve It*, 16 J.L. SOC’Y 61 (2014),

eviction court has only become more prominent over time. In a 2015 Baltimore study on eviction court, 79% of renters who came to eviction court were black women.⁹³

Even controlling for income, African-American women were more likely to experience eviction.⁹⁴ For example, in Desmond's Milwaukee study, women from African-American neighborhoods were overrepresented in eviction court compared to the general population, and were disproportionately represented in the population of those who were evicted. They were more than twice as likely to be evicted as men.⁹⁵ Similarly, a Hamilton County, Ohio study on evictions found that "there are moderate correlations between the neighborhood prevalence of single mothers and eviction filings [sic] and specifically of Black single mothers and eviction filings in Hamilton County."⁹⁶ In a Baltimore study, most Rent Court defendants (79%) were "Black women, living on \$2,000 or less."⁹⁷

The presence of children is also an important factor in evictions. According to one study, "households with children are twice as likely to face an eviction threat, regardless of marital status."⁹⁸ Desmond's research shows that domestic violence victims and families with children are also at particularly high risk for eviction.⁹⁹ These findings reflect patterns in which residential segregation disproportionately impacts African-American women and children.¹⁰⁰

<https://mdsoar.org/bitstream/handle/11603/7362/MicheleCottonACaseStudyon.pdf> (affirming the findings of Bezdek's research more than two decades later).

⁹³ PUB. JUSTICE CTR., *supra* note 83, at 13; EVICTION LAB *supra* note 4 ("Low-income women, especially poor women of color have a high risk of eviction.").

⁹⁴ Desmond, *Reproduction*, *supra* note 86, at 91.

⁹⁵ *Id.*; see also Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 1 (2015), https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf (discussing eviction's secondary effects on women).

⁹⁶ ELAINA JOHNS-WOLFE, "YOU ARE BEING ASKED TO LEAVE THE PREMISES": A STUDY OF EVICTION IN CINCINNATI AND HAMILTON COUNTY, OHIO, 2014-2017 at 7 (2018), <https://www.scribd.com/document/382282189/FINAL-Eviction-Report-Final3>.

⁹⁷ PUB. JUSTICE CTR., JUSTICE DIVERTED: HOW RENTS ARE PROCESSED IN THE BALTIMORE CITY RENT COURT, v (2015), http://www.publicjustice.org/uploads/file/pdf/JUSTICE_DIVERTED_PJC_DEC15.pdf.

⁹⁸ Salvati, *supra* note 23; see also Desmond & Kimbro, *supra* note 95, at 4 ("[A]mong tenants who appear in eviction court, the likelihood of receiving an eviction judgment is highest for mothers with children, even after accounting for arrears."); see ANA POBLACION ET AL., CHILDREN'S HEALTH WATCH, STABLE HOMES MAKE HEALTHY FAMILIES (2017), <http://childrenshealthwatch.org/wp-content/uploads/CHW-Stable-Homes-2-pager-web.pdf> (finding that housing instability for families with children will result in \$111 billion in increased health and education costs).

⁹⁹ See *Why Eviction Matters*, EVICTION LAB, <https://evictionlab.org/why-eviction-matters/#who-is-at-risk> (last visited Aug. 10, 2018).

¹⁰⁰ Jeffrey R. Kling et al., *Experimental Analysis of Neighborhood Effects*, 75 ECONOMETRICA 83 (2007), <https://www.csus.edu/indiv/c/chalmersk/econ180fa08/kling%20%20liebman%20katz%202007.pdf> (finding that relocating to less segregated or wealthier neighborhoods had more significant benefits of black girls than for black boys); Renee Mehra et al., *Racial Residential Segregation and Adverse Birth Outcomes*, 191 SOC. SCI. & MED. 237 (2017) (concluding after a meta-study that residential segregation increases undesirable results such as premature birth and low birth weight).

The data studied here shows that in New Orleans, gender along with the intersection of gender and race are predictors of increased eviction rates. As female-headed family households increase in a block group, evictions increase very slightly.¹⁰¹ Moreover, single mothers in block groups that are hyper-segregated, 90-100% Black, are also evicted more.¹⁰²

Finally, in terms of economic class and evictions, as the number of people who earn less than \$25,000 increases per block group in Orleans, evictions increase slightly. This is to be expected considering that a tenant's inability to pay rent due to economic insecurity creates an eviction risk. While the author expected a stronger correlation between poverty and eviction, it is possible that additional analyses of the data will better inform in this regard. The map below reflects the correlation between poverty and evictions across the City of New Orleans.¹⁰³

Achieving housing justice for those who are vulnerable takes, at its core, a collective commitment to healthy housing for all neighborhoods and people.¹⁰⁴ One way to push this

¹⁰¹ Megan Faust, *Kicking out Vulnerable: Segregation, Gender, and Evictions* (Dec. 16, 2017) (on file with the author).

¹⁰² *Id.* (supplemental notes, July 21, 2018).

¹⁰³ This map was created by Darin Acosta. *See supra* note *.

¹⁰⁴ See Allyson Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. POVERTY L. & POL'Y 59, 60 (2016) (discussing the link between evictions and health and explaining that “[a]ny tenant who has been named in an eviction proceeding is effectively barred from obtaining safe, decent, and healthy housing”); *see also* Rachel Swan, *Public Health Problems in Oakland Linked to Housing Crisis*, SFGATE (Sept. 1, 2016, 2:39 PM), <https://www.sfgate.com/bayarea/article/Housing-crisis-linked-to-public-health-problems-9193855.php> (reporting on an Alameda County Public Health Department study that found that 94% of departmental staff and contractors said that “the stress of inadequate or unstable housing was affecting their clients’ health, in many cases nullifying the services that county health programs provide for needy communities”).

advocacy agenda and strengthen the legal framework for tenants is through participatory research at the local level.

III. RESEARCH STRATEGY

Proposed policy solutions to housing justice issues, including ways to curb evictions, are well represented in the academic literature, non-profit housing justice organizations publications, government studies, and private sector reports.¹⁰⁵ However, local justice organizations that advocate on behalf of tenants should set the housing priorities in their own communities.¹⁰⁶

In New Orleans, for example, Jane Place Neighborhood Sustainability Initiative, a member-based organization, seeks to advance tenants' rights, address inequitable development and discriminatory practices, and organizes tenants for collective actions.¹⁰⁷ The broader challenge is, I believe, to develop persuasive tactics to compel policymakers to take local recommendations seriously enough to advocate for modernizing the legal regime including the judiciary. To that end, I will discuss collaborative empirical research as one such potential tool of persuasion.

A. Participatory Research

The research methods for this empirical project were heavily influenced and inspired by the theory of participatory action research, which centers the concerns of community stakeholders.¹⁰⁸ This research model is less a “methodology” than an “orientation to inquiry”¹⁰⁹ and asks community partners to:

identify the problems that need solving and analyzing within a specific context . . .
and, ultimately, to generate community-based and practically viable solutions. The
role of the academic researcher, then, is not to “run the show,” but rather to

¹⁰⁵ Summarizing policy recommendations and potential solutions is beyond the scope of this paper.

¹⁰⁶ See e.g. COMMUNITY ALLIANCE OF TENANTS, <http://oregoncat.org/> (last visited Aug. 24, 2018); THE ANTI-EVICTION MAPPING PROJECT, <https://www.antievictionmap.com/> (last visited Aug. 24, 2018); JUST FIX NEW YORK, <https://www.justfix.nyc/> (last visited Aug. 24, 2018); TENANTS TOGETHER, <http://www.tenantstogether.org/>; and CITY LIFE/VIDA URBANA, <http://www.clvu.org/> (last visited Aug. 24, 2018).

¹⁰⁷ JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, <http://jpnai.org/> (last visited Aug. 24, 2018); see also *See About Us*, HOUSING NOLA, http://housingnola.org/main/about_us (last visited Aug. 5, 2018) (describing this “community-led housing process”).

¹⁰⁸ See, e.g., Fran Ansley & John Gaventa, *Researching for Democracy and Democratizing Research*, Jan.-Feb. CHANGE 46 (1997) (describing participatory action research generally); see also *Participatory Action Research, INCITE!*, <http://www.incite-national.org/page/participatory-action-research> (last visited Aug. 6, 2018) (discussing participatory action research from an activist perspective); Emily M. Houh & Kristin Kalsen, *It's Critical: Legal Participatory Action Research*, 19 MICH. J. RACE & L. 287 (2014), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1032&context=mjrl> (theorizing the role of participatory action research in legal scholarship and activism); Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice In Rural America*, 59 S.D. L. REV. 466, 498 (2014).

¹⁰⁹ Houh & Kalsen, *supra* note 108, at 312 (quoting Peter Reason & Hilary Bradbury, *Introduction to THE SAGE HANDBOOK OF ACTION RESEARCH PARTICIPATIVE INQUIRY AND PRACTICE*, (Peter Reason & Hilary Bradbury eds., 2d ed. 2013)).

contribute the expertise and specialized knowledge that can most effectively facilitate community-based problem solving.¹¹⁰

My goal was to build a research product that was useful for an activist praxis, namely local tenant organizing efforts toward policy changes.¹¹¹ I aimed to design and implement a collaborative and transparent research model to frame both the empirical study and conclusions. Throughout the process of acquiring the eviction records and developing the mapping tools, I solicited the views of local tenants' rights community groups. This project included a consultation process with attorneys from Southeast Louisiana Legal Services, and with tenant advocates from the Greater New Orleans Fair Housing Action Center and Jane Place Neighborhood Sustainability Initiative (JPNSI), all of whom my clinic works with on client representation and tenant advocacy.¹¹² The project developed in particularly close collaboration with JPNSI. Through email, calls, and in-person meetings, we discussed the research approach, the questions the research could and would not address, and the needs for further study. We envisioned eventual monthly tenants' rights meetings with legal toolkits for tenants.

Once this empirical study was well underway, I sent additional public records requests to update the court data sets for further mapping and analysis. Through a grant to JPNSI from Azavea 2018 Summer of Maps project,¹¹³ a graduate fellow trained in geospatial data analytics service further developed the mapping portion of this empirical study for use in local, tenant organizing. This joint project will culminate in a written report, tenant-focused advocacy materials, and trainings. The participatory process is intended to be instrumental in shaping future research that flows from this project.

B. *Questions for Further Research on Evictions*

Not all data points captured are represented in the findings of this empirical study due to limited occurrence or lack of clarity in the court's records. The limitations of the study indicate issues that would benefit from further research.

¹¹⁰ *Id.* at 294.

¹¹¹ Empirical data has the potential to convince policymakers, administrators, and the public. See Mieko Yoshihama, "One Unit of the Past": Action Research Project on Domestic Violence in Japan, in *ACTIVIST SCHOLARSHIP: ANTIRACISM, FEMINISM, AND SOCIAL CHANGE* 75, 91 (Julia Sudbury & Margo Okazawa-Rey eds., Routledge 2016) (2009); see also Julia Sudbury, *Challenging Penal Dependency: Activist Scholars and the Antiprison Movement*, in *ACTIVIST SCHOLARSHIP*, *supra* note 111 at 17, 31 (discussing community mobilization and grassroots acts of resistance).

¹¹² For additional information about these partners, see GREATER NEW ORLEANS FAIR HOUSING ACTION CTR., <http://www.gnofairhousing.org/> (last visited Aug. 6, 2018); JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, *supra* note 108; SOUTHEAST LA. LEGAL SERVS., <https://slls.org/> (last visited Aug. 6, 2018).

¹¹³ AZAVEA, <https://www.azavea.com/blog/2018/04/24/azavea-summer-of-maps-fellows-to-work-on-six-nonprofit-projects-this-summer/> (last visited Aug. 24, 2018).

1. Eviction Economy

This data collection was useful toward understanding the court's *eviction economy*—the financial contribution of evictions to the local court and the judicial cost of evictions.¹¹⁴ While the economics of court debt in criminal court are well discussed in the literature and have been litigated, fee collection in the civil court context is not nearly as well understood.¹¹⁵ Here, the financial implications of the court's eviction economy suggest an additional economic driver involved in existing landlord-tenant laws.

The data shows that fees collected from evictions filings are a sizable source of income for the court. For 2015, 2016, and 2017, eviction cases in the First City Court represented just over 50% of the total court filings in each of those years.¹¹⁶ The significance of the revenue thus generated should not be overlooked: \$574,750, \$600,375, and \$627,625 in filing fees collected from eviction cases filed in 2015, 2016, and 2017 respectively.¹¹⁷

If the Louisiana laws discussed above were revised to allow tenants more time for pre-eviction notice, an increased number of tenants might be able to make rental payments and ultimately avoid being brought into court for an eviction case. Similarly, with improvements to the “repair and deduct” law, tenants might be able to avoid eviction court because revised procedures for withholding rent would not allow owners of substandard properties to readily evict tenants forced to endure the hardship of uninhabitable rental units.

¹¹⁴ Cf. DIANA ELLIOT & EMMA KALISH, URBAN INST., THE COST OF EVICTION AND UNPAID BILLS OF FINANCIAL INSECURE FAMILIES FOR CITY BUDGETS app. at 5 (2017) (describing a model for estimating the cost of evictions of households having less than \$2000 in savings), http://www.urban.org/sites/default/files/cost_of_eviction_and_unpaid_bills_technical_appendix.pdf.

¹¹⁵ See, e.g., ABBY SHAFROTH ET AL., NAT'L CONSUMER LAW CTR., CONFRONTING CRIMINAL JUSTICE DEBT: A GUIDE FOR LITIGATION (2016), <http://cjjp.law.harvard.edu/assets/CJD-LitigationGuide.pdf> (describing strategies for litigating criminal justice debt cases). See generally ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR (2016) (analyzing the harmful effect of monetary criminal sanctions on low-income defendants); DANIEL HATCHER, THE POVERTY INDUSTRY: THE EXPLOITATION OF AMERICA'S MOST VULNERABLE CITIZENS (2016) (discussing the manner in which state governments and private groups profit from social welfare programs at the expense of those the programs are designed to assist).

¹¹⁶ See *supra* Section II, discussing number of evictions filings. There were 9022 cases filed in First City court in 2015, 9,223 filings in 2016, and 9,792 filings in 2017. JUDICIAL COUNCIL OF THE SUPREME COURT OF LA., 2015 ANNUAL REPORT 29 (2016), https://www.lasc.org/press_room/annual_reports/reports/2015_Annual_Report.pdf; JUDICIAL COUNCIL OF THE SUPREME COURT OF LA., 2016 ANNUAL REPORT 29 (2017), https://www.lasc.org/press_room/annual_reports/reports/2016_Annual_Report.pdf; JUDICIAL COUNCIL OF THE SUPREME COURT OF LA., 2017 ANNUAL REPORT 29 (2018), https://www.lasc.org/press_room/annual_reports/reports/2017_Annual_Report.pdf.

¹¹⁷ On July 1, 2018, the fee to file a rule for possession increased \$1.00 to \$126.00. *First City Court Filing Fees*, *supra* note 33, at 3. These totals also do not include the Constable's costs to serve papers for each eviction case, which start at \$20.00 per address served. *Fees and Commissions*, ORLEANS PARISH SHERIFF'S OFFICE, http://www.opcs.org/index.php?option=com_content&view=section&layout=blog&id=20&Itemid=652 (last visited Aug. 6, 2018).

These reforms seek to minimize eviction filings and resolve cases through alternative dispute resolution. If adopted, they would lead to fewer eviction cases and so significantly reduce the First City Court's income. The economic importance of eviction filings raises the question of whether existing judicial funding structures are necessarily oppositional to goals for housing justice.

2. *Tenant Representation in Eviction Proceedings*

The vast majority of low-income tenants do not have access to lawyers or the courts.¹¹⁸ The bulk of empirical studies on civil representation focus on how much of a difference, if any, legal representation makes.¹¹⁹ In the housing context, scholarly work has honed in on assessing different types of legal representation: how-to sessions, unbundled vs. bundled, lawyer-for-a-day, and even consultation with non-lawyers.¹²⁰ I was interested in pursuing this question to better understand how representation affects eviction case outcomes in Orleans. However, no statistically significant conclusion about tenant representation can be reached from this empirical study.

Where the data received showed that an attorney entered an appearance, I reviewed the court's physical case files to identify whether the attorneys represented the tenants and what defenses, if any, those tenants raised. I hoped to be able to analyze the delivery of legal services and the impact of attorney representation with special attention to defenses raised in court.

File review of the small number of cases where the data showed that attorneys represented tenants were coded as follows: NE (no eviction), twelve cases, EJ (eviction judgment), four cases, and CJ (consent judgment), eight cases. However, because the court's records revealed that very

¹¹⁸ See Bezdek, *supra* note 8, at 538-40.

¹¹⁹ For a critique of empirical studies of representation including in the housing context, see Greiner & Pattanayak, *supra* note 37, at 2184-98 <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5524&context=ylj>; see also *Eviction Triage*, ACCESS TO JUST. LAB, <http://a2jlab.org/current-projects/signature-studies/eviction-triage/> (last visited Aug. 7, 2018) (discussing a planned double-randomized study to develop a more accurate understanding of the potential value of direct representation for tenants facing eviction proceedings).

¹²⁰ OFFICE OF THE ADMIN. JUDGE OF THE CIVIL COURT OF N.Y.C. ET AL., VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT (2008), http://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf (evaluating a Volunteer "Lawyer for a Day" program in a housing court); Jeanne Charn, *Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services*, 122 YALE L.J. 2206 (2013), https://www.yalelawjournal.org/pdf/1180_gojype4a.pdf (discussing studies from England where non-attorney help centers are widely available to conclude that in many cases individuals prefer taking problems to non-lawyers, at least in the first instance); Greiner et al., *supra* note 37 (evaluating a randomized experiment comparing full representation offers to a "lawyer for a day" program in housing court); see also *2015 LSC By the Numbers*, LEGAL SERVS. CORP., <https://www.lsc.gov/media-center/publications/lsc-numbers-2015> (last visited Aug. 7, 2018) (revealing that of the 60.6 million Americans eligible for LSC-funded legal assistance only 1.9 million individuals received services). But see Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 777 (2015), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2383&context=faculty_publications ("Very little formal evaluation of unbundling has been conducted despite the ubiquity of the services and the substantial proportion of access to justice funds allocated to support the model.").

few tenants, twenty-four in total, were represented by attorneys, this statistical analysis is not necessarily meaningful.

The court's records may also understate the extent of representation. From my own practice and through consultation with legal services attorneys, I understand that attorney representation of tenants does not necessarily make it into the court record because the fast pace of summary eviction proceedings does not always allow an attorney time to file a notice of appearance.¹²¹

Because court data does not lend itself to assessing this variable, an in-person observational account of a sampling of eviction court days is called for.¹²² Many such studies have documented that tenant representation in housing court does significantly impact the likelihood of a tenant remaining in possession of the unit.¹²³

Finally, the new promise of the right to counsel for tenants in housing court in New York City will propel scholarly study on the civil right to counsel in yet new directions.¹²⁴ Recent scholarship demands more inquiry into strategies to improve civil access to justice and delivery of legal services, including for housing justice issues.¹²⁵ As Legal Services Corporation funding is increasingly threatened at the federal level, generating data that guides spending for the delivery of legal services is all the more critical.

¹²¹ For example, the records of Southeast Louisiana Legal Services show work on many hundreds of housing cases in 2015 and 2016. Email from Laura Tuggle, Exec. Dir., Se. La. Legal Servs. to author (June 23, 2017) (on file with author).

¹²² For a self-criticism of observational studies by a scholar employing this technique, see Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 *GEORGETOWN J. POVERTY L. & POL'Y* 453, 457-58, 496-96 (2011), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2112&context=faculty_publications ("Because the study was observational in nature, it is impossible to determine definitively whether the case outcomes achieved by litigants were a product of the type of lawyering assistance provided or, instead, a product of case or client characteristics that may have been present in one group of tenants but not another.").

¹²³ *Id.* at 483 (finding after a non-randomized observational study that 55% of tenants receiving full representation remained in their units, compared to 18% receiving unbundled legal aid and 14% receiving no legal assistance at all); see also Greiner et al., *supra* note 37, at 928 (concluding, after a randomized study, that an "offer of representation from a [Greater Boston Legal Services] staff attorney caused substantively large and statistically significant alterations in possession outcomes that favor occupants.").

¹²⁴ See *NYC Is First Place in Country to Provide Right to Counsel to Tenants in Housing Court*, NAT'L COALITION FOR A C.R. TO COUNS., http://civilrighttocounsel.org/major_developments/894 (last updated Aug. 11, 2017).

¹²⁵ See, e.g., Russell Engler, *Turner v. Rodger and the Essential Role of the Courts in Delivering Access to Justice*, 7 *HARV. L. & POL'Y REV.* 31, 52-53 (2013), <http://harvardlpr.com/wp-content/uploads/2013/06/Turner-v-Rodgers-and-the-Essential-Role-of-the-Courts-in-Delivering-Access-to-Justice.pdf> ("The crucial access-to-justice and civil-right-to-counsel questions require both better data and sound policy decisions."); Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 *FORDHAM URB. L.J.* 1227, 1253 (2014), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2544&context=ulj> ("And we lack adequate data about various self-help strategies such as hotlines and *pro se* clinics.").

3. Habitability, Subsidized Housing, and Tenant Defenses

When a tenant does not pay rent due to habitability problems in the unit, the only legal issue is nonpayment of rent, and the case is usually decided on that issue alone.¹²⁶ The result is that the tenant's records demonstrating habitability failures typically do not become part of the record in the lawsuit. Thus, even a review of the hard file docket will not necessarily reveal whether the unit at issue in an eviction case had habitability problems.

The eviction-ordered data set also did not provide detail on whether the property is part of the HANO subsidized housing program. This information is needed to develop a more robust understanding of the reasons tenants in subsidized property are brought into eviction court. Tenants must routinely defend against allegations of problems that might be due to deficiencies by HANO itself such as inadequate property inspections. This is an area where additional study is especially important because it could shed light on the habitability of government subsidized rental properties. The first step would be to compare an eviction-ordered data set to HANO's Housing Choice Voucher properties of record and then review associated court files.

Finally, a review of the court's physical case files does not necessarily yield a clear understanding of the details of any single eviction case. For example, the court records have a paucity of information related to tenant defenses.¹²⁷ Understand individual cases in relation to court outcomes and displacement calls for a more individualized ethnographic approach.

IV. METHODOLOGY FOR EMPIRICAL STUDY

To build the eviction-ordered data set, I requested court data on eviction proceedings from the two city courts in New Orleans, which together have jurisdiction over evictions in all Orleans zip codes.¹²⁸ The First City Court covers the bulk of Orleans Parish while the Second City Court covers just two zip codes on the West Bank of New Orleans. The courts recently instituted improved electronic record maintenance systems with the First City Court's system being the more advanced.

My requests with the First City court's information technology manager went back and forth over the course of several months. Through dozens of email messages, phone calls, and review and combination of numerous excel spreadsheets, I retrieved the data that is the subject of this

¹²⁶ See, e.g., PUB. JUSTICE CTR., *supra* note 83, at 33-38 (discussing the variety of processes by which issues other than rent owed are excluded from consideration in a housing court).

¹²⁷ An empirical study on housing case defenses that has been particularly instructive in terms of methodology is Paula A. Franzese et al., *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord/Tenant Reform*, 69 RUTGERS L. REV. 1 (2016), <http://www.rutgerslawreview.com/wp-content/uploads/2017/07/Franzese-Gorin-Guzik-The-Implied-Warranty-of-Habitability-Lives-69-Rutgers-UL-Rev-1-2016.pdf> (finding that tenants in fewer than 1% of cases in Essex County, New Jersey raised the affirmative defense of the implied warranty of habitability).

¹²⁸ The initial requests in November 2016 and the follow-up requests over the ensuing ten months are on file with the author.

paper. The data review process was certainly iterative with the data becoming clarified as the review process evolved.

I was initially unable to retrieve the data to cover the two Orleans zip codes that fall under the jurisdiction of the Second City Court.¹²⁹ My records requests were initially stalled with the Clerk of Court and after multiple rounds of email messages and phone calls, the Orleans Parish Public Information office responded with some data. It remained unclear to me if the Second City Court's system was sophisticated enough to provide an eviction-ordered data set with municipal addresses. Thus, this empirical study proceeded using only the First City Court data. Eventually, in 2018, after this empirical study had been completed, that data was made available and future analyses can be inclusive of the two Second City court zip codes.

The data set from the First City Court includes the following details on each eviction case: zip code; whether tenant waived notice of eviction; lawsuit amount in controversy; monthly rental amount; and whether an attorney appeared, though not whether representation was for the tenant or the owner. Through additional public records requests, I obtained municipal addresses linked to the address of each Orleans eviction-ordered case and that information was merged with the other case details. Because municipal addresses were not included for the full set of eviction-ordered cases, the analysis and mapping is based on a less than the total number of evictions ordered. While not complete, the analysis and mapping present a snapshot based on the available data.

With the First City Court data set in hand, I turned to a social scientist, Professor Patrick Rafail.¹³⁰ The Introductory Data Analysis course he teaches at Tulane University used the eviction-ordered data set to analyze which socio-economic and demographic factors influenced eviction rates.

Professor Rafail geocoded the eviction-ordered data set to provide the latitude and longitude for each municipal address in the eviction-ordered data set.¹³¹ He provided his students with ACS data at the block group level along with the count of evictions per block group for the 497 block groups in New Orleans.¹³² Block groups are the smallest geographic area for which relevant Census Bureau data is reported.¹³³ The eviction-ordered data set was grouped to total evictions per block group in New Orleans so that evictions could be analyzed in conjunction with the ACS data. A complete list of 1,588 variables that detail block-group characteristics such as race, sex, children, and income level, was taken from ACS 2011-2015 and attributed to each of the 497 block groups. The analysis controlled for total population and renter-occupied units. With the dependent variable

¹²⁹ The author notes that the missing data is a limitation of this empirical study.

¹³⁰ Patrick Rafail, TULANE U., <https://liberalarts.tulane.edu/departments/sociology/people/patrick-rafail> (last visited Aug. 7, 2018).

¹³¹ Credit to Professor Rafail for the description of the statistical analysis described in this section.

¹³² Without individualized data on the households occupying units that are subject to eviction proceedings, block group data analysis offers the next most precise way to reflect demographic data.

¹³³ See *Geographic Terms and Concepts – Block Groups*, U.S. CENSUS BUREAU, https://www.census.gov/geo/reference/gtc/gtc_bg.html (last visited Aug. 7, 2018).

being the total count of evictions per block group, students in Professor Rafail's course selected various independent variables to study. To demonstrate the findings visually, a local urban planner, Darin Acosta, built maps of the eviction-ordered data set with overlays for race and poverty.¹³⁴

Finally, I reviewed a 300-case subset¹³⁵ of court files from the eviction-ordered data set to learn more about particular issues including: whether the case involved a Section 8 unit, whether the tenant was present at the hearing, whether the tenant waived their right to the notice of intent to terminate, whether the tenant filed *in forma pauperis*, what evidence and defenses were presented, and what reason was given for any eviction ordered.

CONCLUSION

This empirical study demonstrates that the eviction geography of New Orleans is notable for the accumulation of negative effects concentrated in specific neighborhoods occupied predominately by African American residents. Acceptance of the existing landlord-tenant regime and the deep disruption that comes with evictions as legitimate features of our social order has normalized the inequitable status quo that vulnerable tenants face. Without some new collective concern for providing the most basic social and economic right, the right to housing,¹³⁶ even the most compelling data will be shelved as yet just another page of academic discourse. Law and policy reform driven by tenants and their advocates should lead the way.

Much of the work to address the eviction crisis documented here must be accomplished as state level law reform given that state landlord-tenant laws so heavily dominate the framework that burdens tenants. However, the importance of efforts to improve the local approach should not be overlooked. Policy-makers should be equipped to approach the subject of evictions with increased urgency and a mandate to drive funding for affordable housing opportunities to neighborhoods with the deepest eviction impact.

My hope is that the participatory research model utilized here will support more eviction research that is inclusive and relevant.¹³⁷ The lasting strength and sustainability of the collaborative effort that propelled this empirical study is an important evaluative marker for success. My goal is that this collaboration will continue to produce data for use by tenants to anchor their advocacy

¹³⁴ See *supra* text accompanying note *.

¹³⁵ For a discussion of how the subset was formed, see *supra* note 7.

¹³⁶ See *supra* note 1.

¹³⁷ See Susan D. Bennett, *Little Engines that Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469, 500-01 (2002), http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1271&context=facsch_lawrev (discussing importance of awareness of a community's concerns to ongoing work on a particular issue); Jeanne Charn & Jeffrey Selbin, *The Clinic Lab Office*, 2013 WIS. L. REV. 145, 169 (2013) (discussing research models designed to "make research more inclusive and relevant by bringing together academics and communities to address community priorities."), <http://wisconsinlawreview.org/wp-content/uploads/2013/04/6-Charn-Selbin.pdf>.

platforms and organizing campaigns for housing justice.¹³⁸ This will advance the longer-term goal of building healthy communities for all New Orleanians.

¹³⁸ For examples of community-led legal initiatives in the context of housing and planning, see *Search Results for "Participatory"*, PROGRESSIVE PLANNER'S NETWORK, <http://www.plannersnetwork.org/?s=participato>