Justice Unrealized

Examining Inequities & Finding Solutions

within the Seattle Eviction Process

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Table of Contents

Acknowledgements

This report, and the work that has gone into it over the past year, was only made possible through the support of many. In many ways, the creation, development and synthesis of this project was an education in itself, and there are several people who played a role in its development. I'd like to first thank my project advisers, Tyler Farmer (Community, Environment & Planning alum) and Anna Reosti (PhD Candidate, Department of Sociology). Tyler's knowledge of the law was integral to the report's success, and Anna's extensive research on housing rights served as a necessary starting point. I'd also like to thank Kelly Hostetler and Chris Campbell, who both patiently sat with me when I grappled with the work, and how to synthesize it. Your helpful feedback, even while reading my many (*many*) rough drafts never failed to point me gently in a more comprehensive direction.

Finally, I'd like to thank my mother, Susan, who taught me everything I know about doing good in the world, and the incredible power of writing. I hope I did you justice.

Abstract

Seattle's eviction process features progressive policies and programs, including just-cause ordinances, limited dissemination legislation, "clean hands" regulations, and a limited-service legal clinic for low-income tenants. In spite of this, nearly 60% of cases result in default judgements against the tenant, and the majority that do not default are ruled in favor of the landlord. Moreover, the people most affected by eviction are low-income and non-white. This dissonance—"progressive" legislation and high tenant default rates— prompts us to explore the inequities within the eviction process in the hopes of remediation. Through analyzing the eviction timeline, tracing the legislative history and examining legal roots of landlord-tenant law, I argue that the inequity is based in the systemic power differences of class, which structurally subordinate the tenant and protect the landlord. The indigent tenant, typically poor and disproportionately non-white, does not succeed in the eviction process because it was not designed for her. Instead, the law functions as a means to protect private property stakes for (usually) affluent, white landlords, who have the financial capital, class-power and linguistic dominance necessary to navigate legal adjudication smoothly. In breaking down this process, I explore policy recommendations that create a semblance of equity. Until then, judgements will be made but no justice will be found, and poverty will reproduce itself for those most marginalized.

Preface

"The greatest triumph of the judicial system [is] to secure equal justice to all persons, the rich and the poor, the strong and the weak, the accuser and the accused"

Mayer Goldman

I came across the above quote while conducting research for my first law class three years ago. The statement, spoken by the Former Chair of the New York Bar Association, profoundly struck me. It frankly shouldn't have—it was merely the preface to a wrinkled, nearly forgotten 1960s primer on criminal defense best practices—and yet, the faded words intensely resonated with me. The notions of power (the judicial system could *be* triumphant!) paired simultaneously with immense responsibility (the law posits no party above the other) became my legal credo. I held onto it with ferocity: *The judicial system is free from bias. Everyone is guaranteed their day in court. Jurisprudence is the key to social equity.*

I maintained this chimerical view throughout the rest of my undergraduate career, regarding the law as the supreme toolkit for the amelioration of social problems. Indeed, this report's conception one year ago began with this tenet in mind. My original hypothesis went something like this: "The Seattle housing crisis is an effect of private market failings, and (fortunately) the formal eviction process protects tenants and landlords alike from the appropriation of their rights in the wake of this housing shortage. This problem can be addressed by adding 'X' more affordable units," and so on. Yet, I had also grown aware of several legal failings through my coursework, such as Barbara Bezdek's concept of inherent bias within the legal profession, among others. Albeit slightly discouraged, I held onto a conviction that the 'day in court' was still sacrosanct for both parties. Less naive, more realistic, I told myself. I revised my view of legality. ~~*The judicial system is free from bias*~~*. Everyone is guaranteed their day in court. Jurisprudence is the key to social equity.*

Quickly after beginning my research, the facade of the judicial system as an imperfect and impenetrable defender of equity slowly began to crack like well-worn porcelain. Legal scholars and sociologists alike, from Matthew Desmond to Chester Robinson, defined the problem not only in terms of implicit bias, but rather in the court's'

structural and widespread inability to provide justice to swaths of low-income tenants facing eviction. Their findings exposed overloaded judges, high default rates, and limited-to-no representation for tenants who could not afford representation nor navigate the legal process effectively on their own. I was comforted slightly in knowing that their research was not local: Desmond's research looked at Milwaukee's eviction court, and Robinson's work defined eviction issues more broadly in the national context (he did not cite Seattle as a case study). I assumed that my "Emerald City," known widely for both its liberal citizens and liberal policies alike, would have a judicial system that provided the most egalitarian eviction process in the nation. A leader in innovation and technology, frequently cited as the most educated metropolis in the nation, and a sanctuary city—Surely, it must be at the forefront of law, too. While eviction court may not be a perfect system on the national front, there must be pockets of justice that can become the baseline, and eventually, the new norm. How lucky I was to live at the intersection of equity and reality! Only one of my guiding tenets remained, and I clung to it: ~~*The judicial system is free from bias*~~. ~~*Everyone is guaranteed their day in court*~~. *Jurisprudence is the key to social equity.*

Fast-forward six months. I had been volunteering as a legal assistant for Seattle's only free eviction clinic every Thursday morning. My duties included drafting court documents, filing responses, and most notably, intaking clients in hopes of quickly gathering their story so it could be disseminated to their attorney-for-the-day. Information had to be condensed the *right* way, of course—Are there servicing issues? ("I never got my notice") Is there a ledger error? ("I don't owe that amount") Does the tenant need a reasonable accommodation? ("I have a mental disability"). It took me weeks to learn the *proper* language, so I didn't usually bother explaining it to the clients who merely had hours.

Around the time I conducted my 50th intake with an indigent tenant facing an eviction (who would surely lose), my former naïveté became vividly apparent. I had previously had such lofty expectations for the law, for my city, and for the elected officials that developed legislation to make both "equitable." Instead, the ugly truth slapped me in the face: Seattle has an obscenely aggressive eviction timeline (one of the swiftest of any municipality in the nation), a utter lack of resources for low-income tenants (specifically

for those with little education—an issue that compounds with race, gender, income and ability), and a seldom discussed (but deeply felt) imbalance of power between landlords and tenants that finds its roots in social worth and the ability to be *heard*. And shockingly, we were considered to be leagues above other municipalities, even in the same county: One block outside of Seattle limits, and all the "groundbreaking" ordinances were useless. *Was <u>this</u> a progressive city?*

The irony of my identity became more palpable as I realized the system that disenfranchised my clients was made to benefit me. "Not me, of course. I don't own property!" And yet, the warm looks from clerks, lawyers and judges as I entered courtrooms let me know I was always welcome. Well-dressed, articulate, college educated (almost), white, man, ~~straight~~ (The only strike against me, but not detrimental to my status: "don't worry—it's fine as long as you aren't trans*"), able-bodied. The court officials and I consumed and understood each other without evening knowing so. I managed to be "we" and tenants were relegated to "they." I initially began volunteering to empathize and understand the plight of tenants, to put faces to the statistics I had read about in my research. Yet, I was simultaneously their subordinate and their oppressor, an iteration of the same hegemonic power that evicted them and issued judgements against them. The only difference was my intention, or was it? Didn't all judges strive to be equitable? Didn't lawyers enter the profession to make a difference? Surely, a landlord wouldn't knowingly evict someone without grounds, right? Instead, maybe system was the reason we were all so blind to the inequity. So what was left of my credo? ~~*The judicial system is free from bias*~~. ~~*Everyone is allowed their day in court.*~~ ~~*Jurisprudence is the key to social equity*~~. Ugly.

And yet, at the same time, there was the semblance of hope, found in large and small moments between *equals*. Two regional nonprofits partnered together to organize bi-weekly "boot camps" to educate citizens on their rights as renters throughout various neighborhoods in the city. Activists and attorneys volunteered their time to explain, nuance and empower renters on what they could do to best self-advocate. I went to five of their presentations, quietly observing renters join together with advocates to air their grievances in local coffee shops—status and rank seemed to disappear. Most importantly, though not as much as we all hoped, tenants were kept in their homes through the work of dedicated attorneys who volunteered their time in the legal clinic. Their work was so

elementary at times, and yet so impactful: sorting through crumpled ledger documents in benches in the courthouse, pouring over case law (many of the attorneys don't specialize in housing, and therefore need to learn the code), and catching small sound bites that ultimately form a meritorious defense. Not always, but frequently the "we" and "they" seemed to disappear to form an "us"— how lovely. These moments gave and continue to give me hope not only in the ethics of dedicated citizens and professionals, but also in the enduring nature of the justice system. Amid statistics and facts and theories that describe a system so horrific and unfair it overwhelms you, there are these little moments of fairness that comforted me and reminded me to continue doing the work.

This report transformed from merely an intended law review article to a platform calling for equity and remediation of a process that negatively affects our community members. If *we* ourselves do not demand change, and if *we* ourselves are not willing to put ourselves in the often-times uncomfortable place of questioning our privilege and power, justice will not be realized. But if *we* can step into the dangerous territory of challenging our so-ingrained status quo, a new opportunity awaits. I no longer hold onto the same mantra from years ago; I have a new one:

> The judicial system is *not* free from bias.
>
> Everyone is *not* allowed their day in court.
>
> Jurisprudence *can* be the key to social equity.

With this in mind, we begin.

“As you enter into positions of trust and power, dream a little before you think”

-Toni Morrison

Introduction

I met Coffee in a narrow hallway of the King County Superior Courthouse. It was an early Thursday morning, and I had been assigned to complete her intake for the legal clinic for low-income tenants[1] where I was volunteering. The intake process with Coffee was standard—I asked for her personal information while checking her in with the courts so she avoided default[2]. I did have to ask her to repeat her name, to which she replied "Coffee. Like the drink." Following the personal information, I asked for details on her eviction and how far along she was in the process. I learned she was being evicted from her federally subsidized unit that charged $137 (roughly one-third of her monthly income) for non-payment of rent. She had not payed because of an alleged dispute with her landlord over her recertification[3], so her rent ballooned to over $400 and she began falling behind in payments. As I always did, I ended the intake by asking Coffee what her goals were for the day, so I could prep the volunteer attorney who would work with her. "I just need an extra two weeks before the sheriff comes so I can save up for a tent to live in." Coffee was a 63 year-old black, wheelchair-bound woman with extreme cognitive disabilities (She was unaware of the month and year). I gathered the rest of her documents (there was no documentation on her mental issues—she had not been told to bring any), and prepped her attorney. They spent roughly 10 minutes together before going into the courtroom. She was not given extra time, and was evicted four days later[4]. The entirety of her process was 23 days from the first of the month when she missed her payment.

In the wake of our experience, I asked myself several questions: How could I articulate this experience, and the many like it I saw in my work, to shed light on the issue of evictions in Seattle? And, more importantly, how did we get here? The goal of this report is just that: to explicate the causes of inequity in the Seattle eviction process through

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[1] Discussed in-depth in later sections of this report.

[2] Tenants who are not present at the beginning of the court proceedings are entered into a "default" judgement, meaning the judge rules automatically in favor of the landlord.

[3] For renter's in subsidized units, tenants must "recertify" yearly in order to prove their income, as their rental amount is calculated to be 30% of their monthly earnings. This is pursuant to federal recommendations that housing costs should not exceed one-third of household's income.

[4] A breakdown of the Seattle eviction process is discussed in later sections of this report. *See generally,* Appendix 2.

understanding how the system was designed and is currently perpetuated, in the hopes of finding solutions.

Coffee's experience is telling of two large problems that have seemingly reproduced and built upon one another: a housing shortage and power-dynamics. The issue of a housing shortage is not new, specifically in Seattle[5]. But when growth happens at such an aggressive rate as it has in Seattle, it creates an environment where low-income renters are unable to secure affordable housing in the event of being evicted (especially from federally owned housing)[6]. It also creates a "landlord-friendly" market, which has been seen to increase the likelihood for landlord's to pursue eviction in the first place. "A greater demand for housing [enables] landlords to evict more tenants, being more certain of finding suitable alternatives fairly quickly. There should thus be an increase in eviction actions."[7] These two forces are the basis for the problem at the basic level: There is simply a greater demand than the current supply.

Yet, it was not the entirety of the problem. Coffee had very reasonable grounds that could have been used for her defense, such as reasonable accommodation for more time[8], or servicing issues regarding the notices she didn't receive, among others. However, she struggled in-large part because she was unaware of them. She did not have the ability to communicate her experience.

In this report, I argue that Coffee's inability to navigate the Seattle eviction process functions as a result of policies and statues which effectively silence her, and indigent tenants like her facing eviction. The historic and continued dominance of the hegemonic class (in this case, landowners) has influenced the creation of a system that disenfranchises tenants. In getting to this conclusion, I first analyze the Seattle eviction process and the policies that influenced it. Then, I examine the tenant experience of eviction, specifically

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[5] See "Context" section of this report for further detail.

[6] Mason Bryan, "At King County eviction court, uneven battles are waged," Crosscut, April 12, 2016, , accessed February 04, 2017, http://crosscut.com/2016/04/at-eviction-court-tenants-and-landlords-wage-an-uneven-battle/.

[7] Francois L. Fischer, *Statistical Analysis of R.C.W. 59.18, the Residential Landlord-Tenant Act: Preliminary Report*. Seattle: Washington Public Interest Research Group, 1980, 7.

[8] *See generally,* Edward H. Rabin, "Revolution in Residential Landlord-Tenant Law: Causes and Consequences." 69.3 Cornell L. Rev. 517, 584 (1983-84).

how the power dynamics of language limit tenant participation. Finally, I compare and contrast the dominating legal rights theory ("access to justice") with my hypothesis of power and social class. Finally, I discuss and synthesize these concepts and provide policy recommendations focused on remediating the process. These components provide both an overview of housing policy rights over the last 50 years, and a synthesis of perspectives on how to address the issue of eviction moving forward. The understanding of both are necessary in understanding the problem as it stands.

Scope

Eviction is a broad topic, with many intricacies: There are two types of eviction, several reasons for them, and each state has jurisdiction over the process (in addition, cities can enact local ordinances which further change the process)[9]. Because of this, it becomes necessary to clarify what elements of the overly general 'eviction process' this report will examine.

Types of Eviction

Matthew Desmond, in his research into Milwaukee's high relocation rate, articulated two types of eviction: informal and formal. Informal evictions describe actions conducted by landlord's outside of the legal process. These actions, also referred to as "self-help" evictions, are now considered illegal[10]. Formal evictions, on the other hand, describe the legal process initiated by landlord's to reclaim their property in the event of the tenant's breach of contract. In light of the lack of data on the prevalence of informal evictions in Seattle[11], this report focuses solely on formal evictions.

Reasons for Eviction

There are a multitude of reasons for eviction, all of which stem from a tenant breaching the lease agreement. While these can range from noise and nuisance violations to property damage, most are for non-payment of rent. While some of these may be due to poor living conditions[12], the legal dispute is still regarding the renter's nonpayment of rent. Therefore, as the most common type, it is the focus of this report.

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[9] Chester Hartman, "The Case for a Right to Housing." *Housing Policy Debate* 9, no. 2 (1998): 421-56. doi:10.1080/10511482.1998.9521292. Hartman advocates for data collection that is more holistic, due to the definitional issues regarding eviction. Specifically, he cites informal evictions as a major problem, which exists outside of the formal court process.

[10] Rabin, "Revolution in Residential Landlord-Tenant Law." This report delves into the history of landlord-tenant law in subsequent sections.

[11] More information on data (or lack thereof) gathered by the King County Superior Courthouse regarding evictions will be discussed in the "Process, Institutions, and Legal Rights: Law in Theory" section of this report.

[12] Often called "rental abatement," many tenants will withhold rent due to household issues that go unrepaired.

Location

Certain types of law are created, managed and maintained at the federal level: statutes and regulations are handed down from federal bodies, with little input and control from states, such as the Consumer Financial Protection Bureau. Other facets of law are controlled by state and local jurisdictions. This is the case with landlord-tenant law, as there are no federal statutes for the process[13]. Therefore, while there may be similarities between jurisdictions, each state has their own eviction process, regulations and rules. In addition, counties and cities can impose additional ordinances, contribute funding to legal aid clinics, and even create "housing courts" responsible solely for dealing with the eviction process. Because of this wide variance, this report explores the City of Seattle eviction process, which is under the jurisdiction of the State of Washington's Residential Landlord Tenant Act[14]. Due to a lack of both data and research for Seattle's process, other researchers' analyses on the prevalence and causes of forced relocations at a macro-level will be utilized, then applied to Seattle's process to garner results. However, the project's main goal is dismantling and understanding it within a local context to create policy recommendations for the city and state.

[13] Lindsey v. Normet, 405 U.S. 56 (1972) was the Supreme Court case that established landlord-tenant disputes to be controlled at the state level.

[14] Revised Code of Washington, § 59.18: Residential Landlord-Tenant Act.

Methodology

The foundations of this project are built on two main components: research and experience. These two methods allowed me to analyze the Seattle eviction process qualitatively, as well as link it to critical legal theory in order to form policy recommendations tailored to the process itself.

The research component of this report was broken into two main segments: Legal analysis and critical theory analysis. The legal analysis was prompted due to a lack of data on evictions in King County generally, as there were no primers which articulated the issue nor the problem itself in the local context. Therefore, my research focused instead on understanding the intricacies of the court process, so that it could be linked to data and research already gathered nationally. Although there were limited analytics and quantitative data regarding the actual number of forced relocations occurring in the city itself (i.e., no ethnographic data on the tenants, how many evictions occurred, how many tenants were displaced, etc.), understanding the basic elements (e.g., how many days pass before the Summons & Complaint is issued to a tenant in Seattle) allowed me to draw parallels or contrasts with other ordinances.

The critical legal theory component was an iterative process, as I did not intend to apply a critical lens to this report until after its advent. Perspective theoretical legal pieces were analyzed using three main criteria: 1) Is the critique written after mass landlord-tenant law reforms in the mid-1970s? 2) Does the theoretical piece look at evictions at the national level (multiple states), or locally (one jurisdiction/municipality)? 3) Is the data utilized collected by the author(s) or from outside agencies? These three criteria were necessary for me to ensure that the concepts presented in the theoretical pieces were relevant to the Seattle context. The reasoning for the criteria is as follows: 1) Because widespread legal reforms in the 70s drastically changed the process for evictions in most municipalities throughout the country, theoretical pieces on landlord-tenant rights written before then would be skewed and unrelated. 2) If the theories were related to national issues on eviction/housing rights, there were typically entry points to connect to this report, as most authors writing national overviews examined housing courts broadly. If locally focused, it was necessary for me to ensure that the basic functions of the municipalities being critiqued were similar to Seattle (e.g., similar legal clinics, court

processes and timelines, etc.). 3) Finally, I refrained from using theoretical pieces in which the author(s) had no involvement in the qualitative or quantitative construction of the data used in their reports. The creation of a legal theory should require more in-depth experience of the processes in-question. Together, these elements allowed me to determine viable lenses through which to view the problem of eviction in Seattle.

The second main component of my methodology, experience, was used in place of a formal qualitative study. Due to the time constraints for this report, it was unfeasible to conduct a study gathering data on every tenant evicted in Seattle. Instead, my goal was to become involved with the major stakeholders of the process: tenants, volunteer attorneys, and landlords. This was done through two means: 1) Observational analysis at landlord-tenant law "boot camps" (referred to without emphasis for the remainder of this report) sponsored by a local non-profit and 2) qualitative analysis as a legal assistant for the Housing Justice Project, a program funded by the King County Bar Association's Pro Bono Services, that provides limited-assistance to low-income tenants facing eviction[15]. The "boot camps," run through a partnership of two non-profits (Be:Seattle and the Legal Action Center), were bi-weekly workshops on renter's rights held in local establishments in various Seattle neighborhoods. I attended five of the three-hour sessions, and detailed my observations, which centered specifically on turnout, audience question type, and the interpersonal dynamics between volunteers and tenants. The second experiential method was volunteering as a legal assistant for HJP. I volunteered once weekly (always the same day—Tuesday—because it is the "busiest" day for evictions, and for consistency) for six months, averaging roughly 5 hours per shift. The total number of hours I worked at HJP is roughly 120, but I was also assigned additional projects by staff members that increased the amount of time spent in total. The main impetus for my involvement was to engage directly with tenants facing eviction and lawyers who volunteered at HJP. Because my responsibilities went beyond solely working with clients (e.g. drafting documents, filing motions with the court, gathering case files, etc.), it was unfeasible to follow cases for their entirety (i.e., from check-in until the resolution of their claims). The reasoning behind

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[15] The Housing Justice Project (also referred to henceforth as 'HJP') will be discussed in more detail in "The Tenant Experience: Law in Action" section of this report. For more information generally, *see* http://www.washingtonlawhelp.org/organization/the-housing-justice-project/housing/eviction?ref=dbedW

volunteering (and attending the boot camps) was to engage with the process in-question, much like my third criterion for establishing the utility of legal theory. Without an engagement, the project would be too-withdrawn to provide recommendations of substance. As Andrew Scherer articulated in his research about eviction proceedings: "mastery of, or at least familiarity with, the relevant legislation is a prerequisite to effective defense of an eviction proceeding."[16] Therefore, I also held myself to the same standard in critiquing the system.

These main components, research and experience, guided the report. The layout of and structure of the arguments (and much of the content) relies heavily on a few researchers' scholarly work: Barbara Bezdek's "Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process,"[17] Matthew Desmond's "Eviction and the Reproduction of Urban Poverty"[18] and Erica L. Fox's "Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation."[19] While all had elements of structure that appeared in this report[20], Bezdek's piece was the main source of structure, as her groundbreaking work provided a helpful example of theoretical critiques of housing courts.

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[16] Andrew Scherer, "Gideon's Shelter: The Need to Reorganize a Right to Counsel for Indigent Defendants in Eviction Proceedings." 23.2 Harv. C.R.-C.L. L. Rev. 557, 592 (1988), 570.

[17] Barbara Bezdek, "Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process." 20.3 Hofstra L. Rev. 533, 608 (1992).

[18] Matthew Desmond, "Eviction and the Reproduction of Urban Poverty." *American Journal of Sociology* 118, no. 1 (2012): 88-133.

[19] Erica L. Fox, "Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation." 1 Harv. Negot. L. Rev. 85, 112 (1996).

[20] *See generally,* Fox's description of tenant courthouse experience and Desmond's description of qualitative methodology regarding eviction processes.

Context

There are two simultaneous problems that contribute to the issue of evictions that must be contextualized before moving forward: decreasing affordability of rental units within cities, and the national problem of evictions.

Unaffordability & Seattle

The issue of displacement within cities is not new, and is not restricted to merely one municipality. Indeed, the issue has been widely discussed in legal and non-legal contexts for decades at the national level. In a 1967 Supreme Court ruling regarding tenancy issues, the dissenting justice wrote, "the problem of housing for the poor is one of the most acute facing the Nation. The poor are relegated to ghettos and are beset by substandard housing at exorbitant rents."[21]

In particular, Seattle, Washington, however, has undergone immense growth within the past ten years, compounding the issue and usurping the displacement in other cities. This has been caused by a surge of population growth, with Seattle's rental market increasing at over four times the national average. The housing stock, therefore, has become limited, increasing rents. Traditionally middle and upper-income renters, have subsequently begun to rent units originally intended for low-income residents, creating a lack of low-income housing. Many have referred to the issue as an "affordability crisis."[22]

The issue of a lack of low-income housing is also intrinsically related to race and gender, as those demographics are correlated with higher rates of poverty. In his article examining income distribution trends among American families over the past several decades, Chris Tilly explores this. He writes, "historically, people of color and women of all racial groups have earned lower wages (when they have received wages at all). Single-mother households as well as those headed by people of color also have received lower

[21] Williams v. Shaffer, 385 U.S. 1037 (1967).

[22] Cary Moon & Charles Mudede, "Hot Money and Seattle's Growing Housing Crisis: Part One." The Stranger. Accessed May 7, 2017. http://www.thestranger.com/slog/2016/08/08/24442014/hot-money-and-seattles-growing-housing-crisis-part-one.

incomes. As such, these groups have most often been poorly housed."[23] In addition to increasing housing costs, families headed by women of color have actually *decreased* even after accounting for inflation. In addition, the issue of poor housing quality for low-income renters is also intrinsically related to decreased education and workforce participation, as poor renters are dislocated. They may have to move further from their respective workplaces, and uproot their children out of their school systems.[24]

The decrease in federal subsidization of affordable housing also aided in the production of the affordability crisis over the past several decades. "Federal housing policy is central to rising rent burden among low-income families. Most basically, housing assistance covers but a fraction of the need: For every family in possession of a voucher or subsidized housing unit, there are three who qualify but receive nothing"[25]. The same is true for Seattle, as the Seattle Housing Authority (the governmental body that maintains subsidized units and Section 8 vouchers) has a several-thousand family waiting list.

These three factors (fast-paced growth which deteriorates private market housing stock, stagnant and decreasing wages for racial minorities, and a lack of federally-subsidized vouchers and units) has aggravated a national problem, creating a perfect storm of affordability issues that has increased the number of tenants at-risk of eviction.

Evictions: What Is Known at the National Level

Before continuing with the issue of evictions in the Seattle context, it is necessary to first contextualize the issue at the national level. In the 1980s, and again in the past decade, legal scholars prompted a surge of eviction research to understand the issue of forced displacement. The wave of scholarly work in the later part of the previous century was prompted by the creation of housing courts in cities across America, after many jurisdictions passed landlord-tenant regulations. However, the majority of their work was qualitative and lacked tangible records at the national-level.[26] In the past decade, Matthew

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[23] Chris Tilly, "The Economic Environment of Housing: Income Inequality and Insecurity." In *A Right to Housing: Foundation for a New Social Agenda*. Temple University Press, 2006. 31.

[24] Ibid, 35.

[25] Matthew Desmond & Monica Bell, "Housing, Poverty, and the Law." *Annual Review of Law and Social Science* 11, no. 1 (2015): 15-35. 18.

[26] Rabin, "Revolution in Residential Landlord-Tenant Law."

Desmond's work on the trends of eviction (specifically within the Milwaukee rental market) shed light on the largely-unreported problem, and the root causes of the inequity. His work, used in tandem with others, provides a framework for the this report.

Current trends that are known about eviction highlight that they disproportionately affect people of color (specifically, single black mothers), and that eviction plays an integral part of the production and reproduction of urban poverty.[27] By this, they mean that eviction creates a downward spiral: single mothers are evicted from their homes, and therefore cannot rent subsequent dwellings, so they must accept increasingly substandard housing options in poorer neighborhoods (which are therefore typically under-funded school districts, making it more difficult for children born into poverty to receive quality educations).

In addition, the research concluded that eviction is extremely traumatic for tenants, specifically due to the nation-wide lack of affordable housing for low-income tenants. Scherer articulates this, writing, "the trauma and disruption associated with eviction are no longer merely transitory. There is [currently] a significant possibility that, because of the unavailability of affordable housing for low-income households, eviction will result in homelessness."[28] In other words, the trauma of eviction is no longer a problem of temporary dislocation, but rather a deeply traumatic experience which frequently leads to homelessness due to the affordability factors discussed in the previous subsection.

These two crucial concepts in mind (the notion that eviction is intrinsically based in social power/race dynamics which reproduces urban poverty, and that eviction is a traumatic experience that increasingly leads to homelessness) formed the baseline and purpose for this report.

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[27]Desmond & Bell, "Housing, Poverty, and the Law."

[28] Andrew Scherer, "Gideon's Shelter," 564-65.

Process, Institutions, and Legal Rights: Law in Theory

"The law is a system that protects everyone who can afford a good lawyer"

-Mark Twain

This section serves two main objectives: Establishing institutional literacy of the intricate processes that collectively form the 'Seattle eviction process', and theorizing the jurisprudence behind the formation of Seattle's landlord-tenant laws. This section is split into three subsections: a process overview, a legislative history review, and a legal roots analysis.[29]

Process Overview: Part One—Summary of Terms and National Differences in Eviction Courts

As referenced earlier, the Supreme Court ruled in *Lindsey v. Normet* that states have control over the landlord-tenant laws, rather than the federal government. As such, the formal eviction process is defined by state code.[30] Seattle is within King County, and therefore under the jurisdiction of the State of Washington. Therefore, the process is outlined in the Revised Code of Washington, more specifically, section 59.18 the Residential Landlord-Tenant Act.[31]

The legal process of eviction (also referred to interchangeably as "unlawful detainer" suits) is a division of civil litigation through the King County Superior Court[32]. In other words, there are no criminal repercussions for eviction as the emphasis is not to

[29] The analyses included in this section is intended to provide solely an objective overview of the aspects described above. The critique of the legal institution will occur in the "Discussion" section of this report.

[30] Lindsey v. Normet, 405 U.S. 56 (1972).

[31] Revised Code of Washington, § 59.18: Residential Landlord-Tenant Act. Hereafter referred to interchangeably as the RLTA or RCW 59.18.

[32] While the King County Superior Court handles all eviction cases filed in King County and not exclusively Seattle, for the purposes of this report it will be referred to as the "Seattle Eviction Process." This is due to local ordinances that impose additional restrictions for Seattle residences.

establish whether or not illegal activity took place.[33] Instead, the main purpose of an unlawful detainer suit is for the repossession of property by the landlord from the tenant, who is in breach of the lease agreement.

Eviction cases are considered "summary proceedings." Summary proceedings are expedited legal cases that operate in a much faster fashion than traditional civil cases, which can take significantly longer (several months) to complete. Chester Hartman articulates the fast-paced nature of unlawful detainer cases, writing, "landlord-tenant proceedings generally move much more quickly than other legal proceedings. There is an interest to balance the landlord's interest in rapid recovery with some sensitivity on the part of the courts to provide due process for the tenants."[34] Hartman's point relates to the transactional nature of the landlord's relationship to the tenant. Because the tenant's rent is a source of income, non-paying renter's must be swiftly ejected so the landlord can rent their property to someone who can pay.

Since states are tasked with the creation of their own landlord-tenant codes, the timeline is unique to each state. In Washington, RCW 59.18 stipulates the process as taking 23 days for non-payment of rent[35] (which will be broken down in the following subsection). It is important to note that not all states have such a timely process. Indeed, Washington has one of the most aggressive timelines in the the country. Hartman described this wide variance in timelines with reference to two specific cities: Boston and Chicago. "From the date a landlord files a complaint with the [Boston] court to the date the tenant is evicted can be as little as 30 days; by comparison, in Chicago the entire eviction process can last up to several months."[36] It is important to note that Hartman's piece describes Boston's eviction process as arguably the swiftest in the nation. As will be

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[33] It is important to note that while not a criminal case, there may be separate criminal charges for trespassing after a Writ of Restitution is issued.

[34] Hartman, "The Case for a Right to Housing." 475.

[35] There are multiple timelines for unlawful detainer suits filed in King County for reasons other than non-payment, such as a 10-Day Notice for Waste and Nuisance. However, as discussed in the "Scope" section of this report, evictions for non-payment of rent are the most common, and therefore were examined exclusively. For more information on other basis for eviction in Washington, *See Generally,* Revised Code of Washington, § 59.18: Residential Landlord-Tenant Act.

[36] Hartman, "The Case for a Right to Housing." 475.

explicated in the following section, the Seattle process is a full week faster than the Boston Housing Court. Still, the wide variance between municipalities further complicates the discussion and requires some intentionality when reviewing housing policy research conducted in other states.

While the unlawful detainer suit process is succinctly codified in RCW 59.18, it can be difficult to conceptualize without breaking the proceeding down into steps. Therefore, the individual processes of an unlawful detainer suit will be described.[37] In a seminar taught at the University of Washington School of Law as part of the Continuing Legal Education (CLE) Program, Steve Fredrickson of Columbia Legal Services created a visual chart of the process (Appendix two). This chart, developed in nearly two decades ago, remains an accurate representation of the timeline for a Seattle eviction, as there have been no substantial procedural changes to the process since then. However, it is important to note, that the timeline assumes no procedural delays which would require additional time (i.e., this timeline assumes there are no extraneous factors). Given the complexity of cases, it could take longer than 23 days.[38]

Process Overview: Part Two—Steps of the Timeline

Rent is due on the 1st of the month (day 1). While some leases may have additional "grace periods"[39] included, this report assumes no such flexibility.

The following day (day 2), the landlord may legally serve a "3-day Notice to Pay or Vacate[40]." This notice stipulates that the tenant has three days (not including the date of

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[37] For the purposes of this analysis, it is assumed that the tenant has not paid, and does not have meritorious defenses (i.e., legally viable defenses that would excuse non-payment).

[38] *See* Appendix 2: Steve Fredrickson et al., Continuing Legal Education. R*esidential Landlord-tenant Law : From Move-in to Move-out*. Seattle, Wash.]: Washington Law School Foundation, Continuing Legal Education, 2000.

[39] These "grace periods" may effectually extend the due date of rent each month. For example, a lease may stipulate that rent is "due on the 1st of the month, and to be paid no later than the 5th of the month." This can be for a variety of reasons, but usually because there is the possibility that the 1st of the month may fall on a weekend or holiday. Regardless, if there is a grace period provision, the last day rent is not considered delinquent becomes the effectual 1st day, according to the timeline in Appendix 2.

[40] Referred to hereafter as a "3-day notice."

service) to pay the rental amount in full, or fully vacate the premises, before the formal eviction process is started with the courts.

Three days after the notice has been given to the tenant (day 6), the landlord can legally serve the tenant with the eviction "summons," "complaint," and the optional "order to show cause."[41] These two documents (or three, depending if the show cause order is filed) are the formal beginning of the eviction process. The summons notifies the tenants of the landlord's filing of the suit. The complaint is a formalized list of grievances which the landlord alleges to be true, which includes the amount due and other lease violations the renter has violated. Tenants must respond to the summons and complaint (called an "answer") no later than seven days after it has been served to them. The optional order to show cause is a motion landlords may file which requires the tenant to pay the full amount alleged into the King County court registry,[42] or submit a sworn testimony under perjury of law that the rental amount is not owed. It is not required, but has become increasingly popular in recent years. All of the documents are written in legal language.

Seven days later (day 13) is the deadline for the tenant's notice of appearance/"answer." If the landlord opted to file a show cause order, the tenant's payment into the court registry for the full amount due, or alternatively a sworn testimony that it is not owed, is also due.

The proceeding day (day 14) is the show cause hearing. The eviction case appears on the court docket, and they are slated to go before a judge unless they settle beforehand. If the tenant has failed to complete either of the two requirements necessitated by day 13 (above), or fails to appear, the tenant loses by default. If the tenant has completed the requirements, but the judge does not consider them valid, the tenant also loses. In either case, a "writ of restitution" is issued. The writ of restitution is the official court ruling stating that the tenant is unlawfully withholding the landlord's property. The writ establishes the legality of a physical eviction to take place. In addition to the writ, the tenant is entered into a judgement against them for the past rental amount, rent for the

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[41] *See* Appendix 3 for examples of the eviction summons, complaint and order to show cause. Steve Fredrickson et al., Continuing Legal Education.

[42] An escrow account maintained by the city for funds disputed in legal matters.

current month (calculated on a per-diem basis), any court/filing costs, and the landlord's legal representation fees[43].

The physical writ is served to the rental property the following day (day 15) by a King County sheriff. It can be enforced (meaning, the sheriff physically removes the tenant from the property) as early as four days after it is served (day 19). It must be enforced no later than 9 days after its issuance (day 24).

Whichever day the sheriff arrives to enforce the eviction,[44] if the tenant is present in the unit, they are forcible removed. Their belongings are also removed from the property (if by movers, the tenant is liable for any costs) and placed either to a storage unit (paid for by the tenant) or on the street. If the tenant does not collect their belongings within a stipulated amount of time, their items are considered abandoned, at which point the landlord can sell them.

At this point, the official legal process has been completed. However, there is an important note: After an eviction is filed with the court, the record of it is reported to tenant screen agencies and included in the tenant's file.[45] This occurs regardless of the outcome of the case, and tenant reports do not differentiate results on the record (i.e., if the case was dismissed, etc.). However, Washington State passed legislation in 2016 which created an "order for limited dissemination." If the tenant believes that they should not have the eviction on their record (if the case is settled, for example), they can file a motion with the court explaining the circumstances. If it deemed acceptable by the judge, the eviction will not be reported to tenant screening companies. Still, it will remain on the tenant's public record. Therefore, it is searchable to prospective landlords, even if the limited dissemination order is granted.

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[43] Court fees can range anywhere from $85 at minimum for a default judgement, to over $200 if a show cause order was filed. Attorney's fees vary widely, but are roughly $500 on average. *See generally,* King County Superior Court fee schedule: http://www.kingcounty.gov/~/media/courts/Clerk/docs/misc/Fee-Schedule.ashx?la=en

[44] There is no schedule given to the tenant as to the date of the physical eviction, though they can call and ask the sheriff's office when if it has been scheduled. However, there is no legal requirement for the sheriff to schedule it in advance nor tell the tenant.

[45] More information on tenant screening, and the repercussions for this on the ability for tenant's to rent in the future will be addressed in the "Discussion & Synthesis" section of this report. *See Generally,* Rudy Kleysteuber, "Tenant Screening 30 Years Later: A Statutory Proposal to Protect Public Records." *The Yale Law Journal* 116 (2007): 1344-1388.

Legislative History Review: Part One—Development of RCW 59.18

The development of the Seattle eviction process is synonymous with the development of RCW 59.18: The Residential Landlord-Tenant Act. It's inception was part of a national movement regarding the development of housing laws more generally, which will be explored in the subsequent section on legal roots. It is necessary, however, to briefly mention how the law was created. As discussed at the beginning of this section, states maintain jurisdiction regarding issues relating to the leasing of real property. While the federal government has no formal power regarding housing rights, the National Conference of Commissioners on Uniform State Laws (NCCUSL) was established as a non-governmental body tasked with drafting sample legislation that could be passed in each state. The Uniform Residential Landlord and Tenant Act (URLTA) of 1972,[46] was NCCUSL's policy proposal regarding landlord-tenant law, and it served as the basis for Washington's RCW 59.18 which passed in the mid-1970s.

However, Washington's finalized RLTA featured considerable changes from the URLTA by the time it was introduced into law. Indeed, a report by the Washington Public Interest Research Group (WashPIRG)articulated RCW 59.18 as being "A mutilated version of a thrice compromised proposal."[47] The negotiations regarding the act had been so extreme that in certain respects, WashPIRG deemed the RLTA unrecognizable.

This is significant, because the extreme alteration of the intended universal code directly translates into altered rights/responsibilities for landlords and tenants. "Amended versions fail to give tenants the full array of rights provided by the uniform legislation as it was promulgated. Furthermore, among those states that have not adopted even a watered-down version of the URLTA, the rights of tenants are often extremely limited"[48]. In other words, changes to the URLTA typically led to a decrease in rights for the tenant and an increase of rights for the landlord. This connection piece can begin to explain the

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[46] *The Universal Landlord and Tenant Act of 1972*. Report. National Conference of Commissioners on Uniform State Laws. Houston, Texas: American Bar Association, 1972. 1-40.

[47] Fischer, *Statistical Analysis of R.C.W. 59.18*, 8.

[48] James H. Backman, "The Tenant As a Consumer--A Comparison of Developments in Consumer Law and in Landlord/Tenant Law." 33.1 Okla. L. Rev. 1, 44 (1980), 39.

immense variance in eviction timelines between municipalities (such as Seattle and Chicago, for example).

Still, in his law review article about the evolution of housing rights, Roger Cunningham qualifies this, writing: "It should be noted that none of the statutes based on the URLTA follows the URLTA in all respects. [However], the most extensive modifications of the URLTA's provisions with respect to the tenant's right to a habitable dwelling and remedies for breach are found in the Virginia and Washington formulations."[49] Cunningham argues that none of states that adopted versions of the URLTA kept it completely. Yet, in the same breath, he goes on to highlight that Washington was among states with the most comprehensive revisions to the act. Regardless, the URTLA served as a functional baseline for the Seattle process today.

Legislative History Review: Part Two—Amendments to RCW 59.18

Since the Residential Landlord Tenant Act was passed into law, amendments were made to specific statues within the code. However, the majority of these changes were not drastic. Rather, changes typically included revisions to language and basic procedures, which did not effectively change the tenant experience. However, some of the effectual changes did increase the responsibilities for landlord's to maintain habitable living conditions[50] in their dwellings, but the eviction process itself remained the same. In addition, housing code violations on the part of the landlord are not handled by the superior court. Instead, the Department of Construction and Inspections (DCI) has jurisdiction to impose punishments. However, these are restricted solely to fines imposed on the landlord, which have no lasting repercussions in contrast with the tenant experience.

Legislative History Review: Part Three—City of Seattle Ordinances & Recent Changes

While state code forms the basis of eviction processes, municipalities are able to adopt additional ordinances (city codes) that either increase existing restrictions on parties, or provide additional rights beyond the scale which the state provides. Seattle enacted one

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[49] Roger A. Cunningham, "New Implied and Statutory Warranties of Habitability in Residential Leases: From Contract to Status, The ." 16 Urb. L. Ann. 3, 154 (1979), 70.

[50] Ibid., 128

main body of legislation that increased tenant rights in this way: the Just Cause Eviction Ordinance.[51]

Under RCW 59.18, property owners reserve the right to terminate tenancy for month-to-month tenants without reason (without 'cause') by giving them 20-days written notice. This presented a problem, as most lease agreements generally roll-over to month-to-month contracts at the end of the first year, many tenants lacked security of tenure.[52] The Seattle City Council recognized this issue, and opted to pass the Just Cause Eviction Ordinance, which articulated 18 viable reasons for a landlord to terminate tenancy for month-to-month leases. The Tenants Union of Washington State, an organization which historically partnered with the council regarding housing issues, described the ordinance as "modest," but strongly supported its adoption.[53]

An important note, however, is that local ordinances such as the one described above only are enforceable within city limits. Therefore, renters outside of Seattle limits are not granted protection from causeless termination. Interestingly, tenants who live within King County but outside of Seattle limits face eviction proceedings in the same court, but have fewer protections than their counterparts living in the city.

Legal Roots Analysis: Part One—Feudalism and Common Law

Critiquing the jurisprudence behind any body of law requires a comprehensive understanding of its background. Landlord-tenant law, interestingly, finds its roots in feudalism and common law. Prior to the 1970s, any laws regarding housing were not codified, and instead operated under common law jurisdiction.[54] In addition, landlord-tenant contrasts were defined by a traditionally agrarian relationship: Most tenants rented properties for decades, and lived off of the land. Therefore, there were few requirements regarding landlord maintenance, as the important aspect of the transaction concerned the

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[51] Seattle, Washington, Municipal Code § 22.206.160(C): Just-Cause Eviction Ordinance.

[52] Security of tenure refers to the right of tenants to continue renting their home, provided they do not breach their lease stipulations. *See Generally,* Hartman.

[53] "Just Cause Eviction Protection." Tenants Union of Washington State. Accessed April 05, 2017. http://www.tenantsunion.org/en/rights/just-cause-eviction-protection.

[54] Common law (compared to civil law) describes the legal tradition in which laws are passed down from the English system of governance. Laws were not recorded in any official texts. For more info, *see* Rabin, "Revolution in Residential Landlord-Tenant Law."

land itself, and most tenants fixed the issues. Fox highlights this in her article the landlord-tenant relationship. “Before the 1970s, courts applied the doctrine of caveat emptor and treated landlord-tenant transactions under a contract model. Courts construed the contractual obligations of landlord and tenant independently, meaning that tenants owed rent regardless of whether the landlord violated express promises. The tenancy included no warranties or duties of repair, and landlords faced few limits on their right to terminate the tenancy. Under the ‘self-help’ termination doctrine, the common law permitted landlords to remove tenants' belongings from the property, to terminate water or electricity, and to change the locks to regain possession of the property.”[55] Fox’s analysis points to the ‘take-it-or-leave-it’ approach to housing that encompassed much of the history of this country, in addition to widely unchecked landlord behavior.

Self-help evictions, defined briefly in the “Scope” section of this report, would include behaviors from restricting utilities to property theft. This was conducted legally, as there were no codified laws restricting it. The rise of the modern dwelling, in addition to poor living conditions throughout the first half of the last century, gave the impetus for landlord-tenant law to be defined and regulated.

Legal Roots Analysis: Part Two—Development of Tenant Rights; The Tenant as a Consumer

As discussed in the previous section, major developments in housing rights occurred in the 70s. However, the housing policy movement gained the majority of its momentum (i.e., most cities adopted housing codes) due to the Federal Housing Act of 1954.[56] The act withheld federal funds from local jurisdictions that did not enact housing codes. The result was widespread creation of codified landlord-tenant rights, albeit to much lower degrees than what is the case today.[57]

Many legal scholars have described the formation of landlord-tenant law after this boom in the 1950s as a manifestation of consumer rights, and there is ample evidence to support the claim. The parallel was perhaps best drawn by James Backman, who researched the development of tenant and consumer law, respectively. Backman argued

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[55] Fox, "Alone in the Hallway,” 90.

[56] Rabin, "Revolution in Residential Landlord-Tenant Law,” 551

[57] For example, the original URLTA was 40 pages. The most recent edition, written in 2015, was three times that at over 120 pages.

that the experience of both tenants and consumers are fundamentally bound in four ways, and centered around contracts: personal investment in the transaction, the fulfillment of personal needs through the transaction, general lack of bargaining power compared to the other party (landlord/creditor) in the contract, and finally, a general lack of expertise and disadvantage in the contract process compared to the other party. The residential lease, he argues, is an example of this, as the tenant is not involved in the drafting of the contract. "The tenant, like the consumer, is seldom in a position to bargain for better terms."[58] Backman explored this further, to describe the similarities between landlord and creditors: "The experts, who deal regularly with leases, sales, or services, have developed a familiarity with the transaction that puts them in a superior position to anticipate, recognize, and rectify problems that may develop… The landlord becomes a creditor and is treated the same as a creditor."[59]

This establishment of the tenant as a consumer is significant for several reasons for this report. First, if tenants have limited bargaining power compared to landlords, the structural dynamic of the two parties is skewed. Second, consumer rights are predicated on the notion of payment. If the consumer fails to pay, the contract is breached, and the rights afford to the consumer are also breached. This creates a legal scenario where tenants rights are also revoked in the event of non-payment, which calls into question the ability for the law to provide justice to both parties. Finally, since landlords draft the lease agreements (almost always without the input of the tenant), they are naturally more knowledgeable about lease provisions, and therefore, housing code in general.

These three factors are important aspects of the landlord-tenant relationship. Because landlord-power manifests itself even on a theoretical level before tenancy is even established, the tenant is at a disadvantage even before eviction occurs.

This will be explored more fully in the "Discussion" session of this report.

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[58] James H. Backman, "The Tenant As a Consumer," 19.

[59] Ibid., 30.

The Tenant Experience: Law in Practice

"While you're looking, you might as well also listen, linger and think about what you see."[60]

-Jane Jacobs

Richard Engler, a legal scholar who advocated for the Civil Gideon movement, succinctly described the law in theory versus law in practice. He wrote, "the law matters, but by no means fully explains what happens in court."[61] This section, therefore, aims to explore the process of the eviction process, at the experiential level. In doing so, the true effect of the law can be understood in more detail.

Court Experience Overview

Tenants scheduled for a hearing are advised to arrive the King County Superior Courthouse before 9AM. The buildings itself is large, taking up a full city block of the dense Pioneer Square neighborhood of Seattle's downtown. As tenants enter the courthouse, they are immediately greeted by security personnel and a guard checkpoint. All personal belongings are sent through a scanner, and two lines form before they walk through a metal detector. If they have any metal on their person, they are pulled aside after grabbing their belongings and checked with a hand-wand. After completing this, the foyer opens to an opulent, circular corridor with marble floors and historic portraits surrounded by elevators. Near the entrance to the corridor, a poster board attached to a stanchion advertises the Housing Justice Project, and advises them to proceed to third floor for eviction cases. The hours listed are from 8AM-10:30AM. It is printed in both English and Spanish. Upon arrival to the third floor, tenants walk down a wide hallway lined with wooden benches. At the end of the hallway, double doors lead to the courtrooms. Before they enter, however, to the left of the doors, another Housing Justice Project (HJP) sign points them to the end a perpendicular hallway. The hallway is extremely narrow, no more

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[60] Jane Jacobs, *The Death and Life of Great American Cities*. New York: Random House, 1961.

[61] Russell Engler, "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel Is Most Needed." 37.1 Fordham Urb. L.J. 37, 92 (2010).
Civil Gideon refers to the movement calling for publicly-provided defense attorneys for indigent tenants in civil proceedings. Clarence Gideon was famously the plaintiff in the Supreme Court Case *Gideon v. Wainwright*, which established a right to counsel in criminal cases.

than fifteen feet wide, and is lined on both sides with more wooden benches, which are roughly five feet deep. (If the tenant does proceed to the courtroom, they are usually stopped by the court clerk. The clerks ask if they are low-income, and prompts them to continue down the hallway). At the end of the hallway, a clip board hanging on a door with a neon sheet prompts tenants to write their name, whether they have been an client before, and if they are scheduled for an eviction today. The door opens to the HJP office, which includes a cubicle, and two sets of large desks with four laptops each. The tenant is advised to wait in the hallway, as the room is so small that any discussion of tenant matters would be a violation of privacy.

After finding a seat on the benches just outside the door, the tenant (usually seated by several other clients) waits for the intake to begin. Depending on the number of cases on the daily docket, and how many tenants were queued before her, it can take anywhere from five minutes to an hour before a legal assistant conducts an intake.

The intake process begins with a collection of personal data to create an account and ensure eligibility for HJP's services. Contact information is gathered, then source of income, then income amount. HJP only serves low-income tenants who are earn 200% or less than the federal poverty level (roughly $24,000/year for singles). If they are ineligible, they are declined and given a packet on their rights before being sent into the courtroom.

This is procedure is followed by questions regarding vulnerable populations. For example, tenants are asked if they experience domestic violence in their home, or suffer from a disability. In addition, the tenant signs a representation agreement stipulating "counsel and advice" for the current day only.

Following the creation of their account, the tenant is then asked substantive questions about the eviction process. The questions are fiscally-focused: "How much was paid? When was the date of the late payment? Do you have receipts for the last payment? Are there other issues, or just money?"

This process is completed on the benches, which are usually full. Other tenants are frequently conducting intakes, so conversations are not usually conducted amid silence (but it does happen).

Afterwards, the tenant waits while the legal assistant waits for an available volunteer attorney. This can take anywhere from 15 minutes to two hours.

The tenant is asked to sign documents so they can be registered as present with the court clerks, otherwise they will be entered into a default judgement against them. Afterwards, they have a brief 5-10 meeting with their volunteer attorney, who asks questions about the case to see if there are legally-admissible defenses for the nonpayment. The largest landlord law firms that handle the eviction process schedule all of their cases on Tuesdays, so counsel only has to go to the courthouse one day per week. Two firms represent the majority of all landlords, and nearly all landlords are represented in general. Therefore, the lawyers who represent them are familiar with the majority of courthouse staff and major stakeholders. Judges, clerks, and even major landlords know one another, and are on a first-name basis. They may exchange friendly jargon and engage in small-talk, as well. The tenant is never involved in this type of engagement.

Before the hearings start, the lawyers typically walk into HJP and attempt to settle all cases with the volunteer attorneys. If the tenant has not been paired with a volunteer attorney, the landlord's lawyer attempts to negotiate with the tenant directly. These negotiations are also conducted in the hallway, to maintain privacy of client data in the office. The majority of cases do eventually settle. The ones that do not typically take less than five minutes from the time the name is called to the time a judgement is ordered. All volunteer attorneys are finished by noon, and the tenants usually are finished by 11:30am.

Seattle Eviction Data

This is the typical experience of the low-income tenant, and illustrates the ways in which the eviction process actually manifests itself. It is important to note, in addition, the demographics of the tenants and any relevant data as well. Neither Seattle nor King County collect any data on the number of evictions in the city, nor anything on the ethnographic makeup of tenants facing unlawful detainer suits. The King County Department of Judicial Administration, however, was able to collate the number of unlawful detainer cases filed in the district, and how many of those cases resulted in default. The results were staggering. In 2016, nearly 3,800 cases were filed. However, 2,197 of those cases resulted in default judgements where the tenant lost automatically.

This means that in more than 60% of unlawful detainer cases filed in 2016, the tenant did not get a chance to take part in the process.

Relationship to Other Housing Courts

The experience described above is one that is typified by expedition of negotiation and process, a lack of privacy, and very little hand-holding. However, while described with much detail to the individual aspects of the experience, it is not unique to Seattle's court system. Indeed, multiple legal scholars who conducted eviction court analyses noted similar dynamics.

In a discussion of Boston's Housing Court, Erica Fox articulates a similar trend of rushed negotiations without adequate privacy. "Hallways provide the primary setting for case disposition. Over several hours, most cases are negotiated in corners, corridors, and on the crowded benches themselves. Many landlords are management companies who hire one lawyer to handle all of their cases. Occasionally, the landlord is also present personally. Actual negotiations generally take fewer than ten minutes."[62]

Barbara Bezdek also discusses similar characteristics in her analyses of various housing courts throughout the country. She specifically writes of the trend of landlord and their attorneys dictating which days cases will be scheduled. She writes, "Tenants, on the other hand, are extended no similar control over their schedule or expectation. They are given no idea when their case will be called, and throughout the long session they are at their peril should they leave the room to find the lavatory or to quiet the baby."[63] She describes the large-scale ability for lawyers to navigate the process, but also the

These components explicate not only the lack of procedural understanding on the part of tenants, but also their relative dependence on the volunteer staff to explain it to them. Indeed, the majority of tenants do not bring substantial documents to the show cause hearing as evidence, because they weren't aware it was the hearing itself. Instead, many tenants were under the impression they would have another opportunity to be heard. These two types of analysis—procedural and experiential—hint at the inequity of

[62] Fox, "Alone in the Hallway," 92.

[63] Bezdek, "Silence in the Court," 552.

the eviction system. Therefore, I next provide an overview of the different theories explaining the problem.

Legal Theory: Power in the Courtroom

"Silence means something, but what? How is it construed? How should it be interpreted?"

-Barbara Bezdek

The disconnect between the goal of justice and its realization has been widely examined within the civil litigation context, specifically in the eviction realm as well. The legal theory behind the failed realization of equity is usually predicated on a the belief that access to legal representation determines plaintiff success in the legal realm. While there is much research to support this hypothesis, sometimes referred to as the access to justice theory, I argue that the issue actually lies in power dynamics that manifest at various stages of the process. These two conceptions will first be explored, before applying them to the Seattle eviction process.

Access to Justice Theory

Much of the scholarly research done regarding eviction (and more generally, civil litigation), has included policy recommendations in hopes of ameliorating the problem. I argue that these recommendations have been dominated almost exclusively by an access theory of justice. This approach argues that justice is not achieved because poor plaintiffs are unfamiliar with the process, and thus, are unsuccessful. Therefore, advocates suggest increasing legal aid as the main means of addressing the problem of evictions, including high default rates, expedient judgements and the lack of process knowledge tenants report. Providing attorneys, frequently hailed as the Civil Gideon (or Housing Gideon, if regarding eviction proceedings specifically) at public expense, is seen as the end-all.[64]

There are many valid aspects to this, specifically with regard to the much-researched confusion tenants face in the eviction process, especially one as swiftly adjudicated as it is in Boston or Seattle. This is the access to justice concept's strong suit: it argues that without a lawyer, the unrepresented tenant does not have the tools necessary

[64] *See generally* for more policy recommendations for issues within the civil litigation realm, Seron et al., "The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment." 35.2 Law & Soc'y Rev. 419, 434 (2001). ; Scherer, "Gideon's Shelter." ; Paul Garrity, "The Boston Housing Court: An Encouraging Response to Complex Issues." 17 Urb. L. Ann. 15, 26 (1979).

to be heard.[65] With the tools, goes the argument, civil litigants would be equal and the adversarial system of justice would be realized.

This, precisely, is where I argue the argument is not the proper framework to utilize, but a necessary starting point. Instead, I posit that power, and the dynamics of social class, are the stems for eviction.

The Fundamentals of Power: Dominance & Subordination of Tenants

In *Goldberg v. Kelly*, the Supreme Court ruling that established due process protections for welfare recipients, stated that the opportunity to be heard in the court system was unimportant if it "failed to tailor itself to the capacity and circumstances of those are to be heard."[66] This is the crucial failing of the access to justice theory: it acknowledges that poor tenants are not capable of defending themselves in the legal eviction process, but it falls short of understanding *why* this is the case and *how* it came to be this way. It accepts law as confusing, without asking why it is so. It accepts that landlords have unfair benefits in the eviction process, without questioning the legal thought which establishes it. Another ruling, White v. Shaffer, articulated the problem slightly more fully, but still fell slightly short of the true answer. The dissenting justice wrote, "it is part of the larger problem regarding the inability of indigent and deprived persons to voice their complaints through the existing institutional framework, and vividly demonstrates the disparity between the access of the affluent to the judicial machinery and that of the poor."[67]

This notion, that tenants lose their agentic voice in the legal process due to structural constraints which limit their ability to do so in the first place, is vastly different than the access to justice theory because it even fundamentally recognizes our institutional system as one that disenfranchises one group while protecting the other. The inherent domination and subordination of disenfranchisement brings us to the basis of my

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[65] Earl Johnson Jr. & Elizabeth Schwartz,"Beyond Payne: The Case for a Legally Enforceable Right to Representation in Civil Cases for Indigent California Litigants Part One: The Legal Arguments." 11.2 Loy. L. A. L. Rev. 249, 296 (1978). This is highlighted in Johnson and Schwartz's analysis of California civil proceedings with sharp clarity. They explicate the correlation between poverty and a lack of education in attempting to understand the need for representation.

[66] Goldberg v. Kelly, 397 U.S. 254 (1970).

[67] Williams v. Shaffer, 385 U.S. 1037 (1967).

argument, the key that unlocks each piece of this report: power. Next, I will set forth some basic assumptions about the way power manifests itself, before we apply it to Seattle's process.

First, power is the domination of one group and the subsequent subordination of another, which manifests itself in institutions through policies, social dynamics through a hierarchy of worth, and even our interpersonally through the power of language. I argue that the eviction process benefits dominant groups in many ways. By dominant group, I do not necessarily mean only landlords (although it substantially does so), but nearly every other stakeholder in the process, except for the tenant. The tenant is subsequently subordinated, and does not succeed in the process not because of a lack of education, but rather because the court system is designed not for her needs, but for those of her "adversary."

Second, landlord's are members of the dominant class, not only in the eviction context, but generally as well. Barbara Bezdek explicates this in her work, as she traces the iterations of power in the eviction process in Boston. Property owners have been protected through innumerable policies, and those deep-seated notions of property as determining social worth date back to the framing of the Constitution.[68] Because landlord's are protected and valued as property owners in society generally, this theoretical framework goes beyond the fact that landlord's almost always have attorneys and tenant's rarely do. Instead, the court system becomes just another iteration of class dynamics merely in a specific context.

Three, failing to analyze the historical roots of law and the policies that perpetuate domination and subordination, fails to acknowledge the difference between law in theory and law in practice. In her piece regarding the effects of subordination on women of color and other subordinated groups, lawyer and sociologist Patricia Williams articulates this. She writes, "this literalism has, as one of its primary underlying values, order-whose ultimate goal may be justice, but whose immediate end is the ordering of behavior. Living solely by the letter of the law means living without spirit; one can do anything as long as it

[68] Bezdeck, 593-5

comports with the law in a technical sense."[69] In other words, failing to understand the power differential as being systemic and ingrained in the legal spirit is a privileged means of ignoring the problem. It ignores the effects of power on the subordinated, and instead allows the dominant group to chalk it up to just being "the way things are," or caused by individual character defects of the dominated.[70]

Four, language is in itself a central display of power, and it also functions as a cultural artifact. James Boyd White that law is a cultural process of interpretation. The ability to perform socially as well as "correctly" in the legal context requires the knowledge of and permission to enter into the dialogue. "Law is in this sense always culture-specific. It always starts with an external, empirically discoverable set of cultural resources into which it is an intervention."[71] Bezdek also reaches this conclusion, but argues that it is more subtle and iterative: "Language, as well as justice, is a cultural artifact that channels meaning, which the speakers of language may not fully realize even as they speak to, or past, each other."[72] Language, and therefore justice (since justice is necessitated on the ability to perform linguistically) occur subconsciously. The structures of institutions ingrain social worth in us so intensely, that we become inexplicably situated in assertions of power every day.

Finally, power is necessary to the ability to be heard in negotiations, and therefore, legal contexts such as eviction. Erica Fox's work into the power dynamics of hallway negotiations in Boston's housing court articulated this necessity. "Power conceived as the ability to alter outcomes according to one's preferences builds from a baseline in which negotiators presumably feel entitled to develop and use such preferences. The definition presumes the pre-existence of a more rudimentary kind of power - the possession of self-agency, or self-authorization to pursue self-interest… Without self-agency, negotiation power is very limited."[73] In order to have any lasting impact, policy recommendations

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[69]Williams, Patricia. *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. Miami L. Rev. 127 (1987), 133.

[70] Bezdek, 584

[71] White, "Law as Rhetoric," 689.

[72] Bezdek, 593-4.

[73] Fox, 97.

must focus first and foremost on creating a court environment of empowerment for the tenant.

These assumptions will now be used to critique Seattle's problem.

Discussion & Synthesis

"I cannot muster the 'we' except by finding the way I am tied to 'you'… by trying to translate but finding that my own language must break up and yield if I am to know you"[74]

-Judith Butler

Using the theory of legal power, we can evaluate the law in theory (technical) forces that perpetuate inequity in the eviction process, and the experiential elements that silence and subordinate tenants. Understanding these two elements of power will then be shown to reproduce and dominate one another.

Power in Policy: The Dominance of Indigent Tenants thought Jurisprudence

Evictions, as established in the last section, are manifestations of power dynamics. "A unifying theme of the reports and analyses regarding representation and limited assistance programs is the importance of power. The variables that provide advantages to some parties and disadvantages to others can be understood as sources of power, or the lack of power."[75] This power manifests itself through the entirety of the structure of residential landlord-tenant law.

1.1 Data Collection

Before the eviction process even begins, there are policies that subordinate the poor tenant and benefit the dominant class—specifically homeowners. This is seen through the systemic and total lack of data collection on evictions nationally, but also in Seattle. In order to find out the prevalence of the Seattle eviction problem, a request for data dissemination and review needed to be performed at my expense by the Department of Judicial Administration. In addition, the data they were able to garner was hardly comprehensive. The only substantive figure they presented were regarding the number of evictions filed in King County in 2016. The actual displacements, the number of residents, or their ethnographic information, was missing. This is contrasted with the breadth of

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[74] Judith Pamela Butler, *Precarious Life: The Powers of Mourning and Violence.* London: Verso, 2006.

[75] Russel Engler, "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel Is Most Needed." 37.1 Fordham Urb. L.J. 37, 92. (2010). 78

research and data collected on foreclosure rates. Hartman articulates this in his piece, writing, "by contrast, reliable data on the number of mortgage foreclosures, which presage the eviction of homeowners—although little beyond sheer numbers—are systematically collected and published by the Mortgage Bankers Association of America. The problem's lack of visibility, as well as the lack of attention given to solutions, especially compared with the attention paid to homeowners' problems, can be partially understood by the lesser favor shown towards renters as opposed to homeowners in American culture and policy."[76] Not only is the data collected more strategically, but it is also publicly disseminated, allowing researches to propose solutions to problems facing the homeowner, but not the tenant. This is an iteration of power.

1.2 Eviction and Foreclosure Timelines

As has been established throughout this report, there is wide variance on the timeline for an eviction proceeding, depending on the municipality it occurs in. Seattle's process takes roughly three weeks, while the longest municipal process, Chicago's, takes roughly 12. In addition, in Seattle, the eviction process if formally started on the 5th day of the month. Contrastingly for homeowners facing foreclosure, notices of default occur after the fourth missed monthly payment, with several opportunities to mitigate the process through the support of federal programs tasked with preventing home loss.[77] Contrastingly, there are For landlords, as Hartman alluded to while describing summary proceedings, the processes are expedited to collect lost income. Yet, the same standard is not maintained for the lending institutions that are not able to capitalize on anticipated payments. This double standard, that homeowners should have federally subsidized programs and more time, while renters face eviction within three weeks, is a manifestation of landowner power. "The result of this 30-year body of litigation has been that more than 140,000 families have kept their homes despite mortgage defaults."[78] No such federal agency exists to protect renting families at risk of eviction from losing their housing, and if local or state

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[76] Hartman, 461.

[77] Revised Code of Washington, § 61.24: Mortgages, Deeds of Trust, and Real Estate Contracts.

[78]Bryson, David. "The Role of the Courts and a Right to Housing." *A Right to Housing: Foundation for a New Social Agenda*. Philadelphia, PA: Temple University Press, 2006.

agencies did so, while most certainly at a fraction of the scale, the data is not collated and released, further showing the silence of the problem.

1.3—Consumer Protections vs. Landlord-Tenant Protections

As established in previous sections, James Backman drew parallels between the development of consumer law and landlord-tenant law. In his comparison, he related the experience of tenants with consumers and landlords with creditors. However, it is important to acknowledge that landlords have notably fewer regulations on their contractual practices than creditors do, even though they have immense transactional similarities. "The discrepancy between the relative lack of controls and regulations placed on the landlord and the large amount of statutory controls applying to consumer creditors is appalling."[79] This serves as an example of a lack of regulations on the property owner/landlord's part. While most of the other comparisons in this section focus on the broad benefits of owning property, the limited regulation of landlord behavior shows that in addition, they are not held the the same standard as other members of society.

1.4—Federal vs. State Agencies

There is no current federal program tasked with the protection of tenant rights, or the widespread subsidization of renting families. Backman articulates this, writing: "There has never been an equivalent federal agency charged with responsibility for policing deceptive practices in the landlord/tenant area. Very recently the Department of Housing and Urban Development has been given enforcement powers under housing discrimination laws and under new real estate disclosure laws, but these responsibilities do not reach the majority of tenant concerns."[80] Yet, there are numerous agencies related to mortgage fraud and regulation which protect homeowners and landlords alike from the dangers of predatory and fraudulent lending.

1.5—Increased Homeowner Tax Subsidies and Decreased Subsidized Housing

A frequent defense against the increased government subsidization of affordable housing and indigent legal aid is the societal cost imposed. However, the cost of homeowner tax subsidies greatly usurped spending in either category (see Appendix One).

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[79] Backman, 28.

[80] Ibid., 6.

"The various homeowners' income tax deductions provide the federal government's only true (civilian) housing entitlement 'programme': All homeowners are entitled to deduct from their taxable income base virtually all mortgage interest and all property tax payments and can, under recently passed legislation, in most cases avoid capital gains taxes altogether."[81] This incentivizes homeownership even at significant public cost. However, due to the power inherent in property ownership (and the belief that tax breaks are less onerous than government funding), has perpetuated the power of the property owner every tax season. Futhermore, it is also impossible to discuss the issue of power and homeownership without acknowledging the historical policies that restricted property ownership to the dominant class: white homeowners. "Many governmental actions have contributed to racial segregation in housing and the unequal neighborhood conditions that people of color have suffered and are still suffering. One example is stimulation of the development of virtually all-white suburban neighborhoods of single-family homes with racially restricted FHA and VA mortgage insurance and guarantees, the funding of high-ways and other commuter transportation systems and the maintenance of the federal and state mortgage interest deductions and other tax deductions that made homeownership affordable to the white middle class."[82] This historical use of federal funds to benefit one subgroup of the population is clearly evident of the imposition of power structures and control through policy. Shockingly, this is even further compounded by the government subsidization of legal costs for the wealthy, which is ironically unwilling to do the same for low-income tenants. "Moreover, as the government has long been deeply involved in the subsidization of legal costs for corporations and affluent individuals, the inequality of 'rationing' justice for the poor is even more disturbing."[83]

1.6—Screening Reports & Tenant Subordination

Another way policy subordinates the experience of the tenant is through the collection of tenant eviction records by screening agencies, specifically because the landlord is the sole party responsible for the filing of an eviction case. "Tenant-screening

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[81] Scott Leckie, *National Perspectives on Housing Rights*. International Studies in Human Right; v. 78. The Hague ; New York: Martinus Nijhoff Publishers, 2003. 152.

[82] Bryson, 207-8.

[83] Scherer, 578.

reports are similar to blacklists in that the landlord has unilateral control over whether a tenant will appear in a tenant-screening report, and this determination provides no due process. Even if a tenant has done nothing wrong, once a landlord files for an eviction, that mark may appear on the report."[84] This creates an environment where tenants are at the mercy to the dominant landlord for their future ability to seek housing, even in the case of erroneous eviction. Furthermore, landlord screening agencies do not exist, limiting the checks on landlord power and furthering the likelihood that property owners could impose their dominance in retaliatory ways.

Effects of Power-Biased Policies

The examples listed above encompass the manifestations of social power that have been largely ignored in the formation of social policy throughout the history of United States property law, and policy more generally. By having policies that unequally benefit dominance, those who have little social power are excluded from participation and rights guaranteed to other groups. Bezdek articulates this perfectly, as "an expression of centuries of culture regarding landowning and its centrality to 'worth,' as well as an expression of judges' class-related assignments of parties' credibility and their conceptions of the social world. In order for tenants to articulate the claims available to them, they must challenge these powerful underlying premises held by the power-wielding figures in the room-the judge and the landlord."[85] These policies send the message that the entire system is not designed for swathes of the population, making their entrance into the legal realm even more difficult.

Next, we will evaluate how power manifests itself within the legal setting itself, showing the connection between experience and silence.

The Tenant Experience and Power: Silence

There are three main aspects of the physical eviction process that lead to the silencing of poor tenant voices. First, the complexity (and arguably more importantly, the swiftness) of the proceedings, the exclusionary nature of legal language/processes, and the power differences between major stakeholders. Each of these will be shown to affect the

[84] Kleysteuber, 1362.

[85] Bezdek, 540.

tenant's ability to be heard (as they would like to be heard), which then limits their overall participation, leading to increased rates of default.

Complexity & Swiftness: Designed for Silence

The deleterious effects of the aggressive eviction timeline has been explicated in several sections of this report, by many authors. Yet, while all highlight the difficulty, few highlight the role power plays in the process of silencing poor tenants. However, Paris Baldacci among others alludes to the silencing nature of eviction courts and how they build upon one another. "This silencing occurs at each step of a *pro se* litigant's contact with the judicial process and each step reinforces the previous message."[86] Much of this silencing comes from the use of legal documents throughout the process, and the formalized nature of all components. This is based, fundamentally, in the spirit of the law which is built to exclude tenants. "Where the law favors landlords, creditors, employers, or the government, that source of power will be stacked against tenants, debtors, and claimants. Where the procedural rules are complex, those familiar with the forum or with representation will better navigate the system, while those unfamiliar and unrepresented will be tripped up."[87] The complexity of the system is not only confusing, but is rather designed to be easier for certain stakeholders to perform within. Landlords, their lawyers, and property owners are more understanding of the complexities for a multitude of reasons, but specifically because they are typically involved in the drafting of the lease and provisions that are breached in housing court in the first place. "Litigants were both ignorant and uninformed of their procedural and substantive rights and responsibilities. Also, they did not comprehend the litigation process. Cases were summarily disposed of rather than adjudicated."[88] The effect of this "ignorance" is typically silence, which manifests itself disproportionally among groups with multiple intersections of subordination (i.e., people with less societal power are more likely to be silenced by assumed ignorance).

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[86] Baldacci, 665.

[87] Engler

[88] Garrity, 24.

Narrative Speech and the Power of Dominant Language

In the courts, there is a specific manner of asserting claims that avoids what scholars refer to as 'narrative speech.' Narrative speech is the traditional means of speaking, and for those without law degrees, is the only way to make rhetorical arguments. Bezdek reviewed the literal silencing of tenants who used narrative speech in their testimonies, because it was deemed inadmissible by judges: "Yet, tenants are silenced by dynamics occurring in and around the courtroom. This is due both to differences in speech and to dissonant interpretations between speakers and listeners, since they do not share a culture of claiming."[89] The assumption that tenants must engage with the culturally-specific language of law limits them from the meaningful opportunity to explain their defenses. Their exclusion from using basic language requires them to either uses tools they do not understand, or stay silent. "Litigants remain uncertain of both their claims and defenses, and how to articulate them in a way that the court will recognize or, indeed, permit. They fail to understand what is going on under the language and rubrics employed by legal professionals."[90] This simultaneous assertion that tenants have the right to adjudicate their cases and the silencing of their ability to speak, further confuses the tenant and make her question her role in the courtroom.

Stakeholders & Power: Familiar Faces and the Odd Tenant Out

As established in previous sections, all but one of the stakeholders in the eviction process is familiar with the process. However, beyond just being literate in eviction timelines, landlords, their attorneys, clerks & judges have interpersonal relationships with one another. This is influenced by their habitual proximity to one another, but cemented by the dynamics of social power."In a process … when the landlords' attorneys are so at home in the court that they appear to tenants to be court personnel; ...and when the person writing up the agreement they are expected to sign is the adversary; can justice be found?"[91] The tenant walks into the court already disadvantaged, as the party who is allegedly her "equal," knows the names of all the staff, and is recognized instantly. Indeed,

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[89] Bezdeck, 536.

[90] Baldacci, 665.

[91] New York (N.Y.). City Wide Task Force on Housing Court. *5 Minute Justice, or "ain't Nothing Going on but the Rent"* : A Report. New York: Committee, 1986. 59.

it is no surprise, then, that the tenant is silenced: "The sanction, subversion and silencing effects suggest that tenants have good reason to experience minimal self-agency in this forum. The reality that tenants possess limited control in negotiation stands in direct opposition to the presumed presence of agentic legitimacy so central to much negotiation theory."[92] In other words, the tenant is again affirmed that the court provides an equal opportunity, yet every interaction and process subliminally tells them they do not belong; their five-minute negotiation is merely another facade of due process.

In addition, another issue is the assumed "free-loader" reputation of the indigent tenant being evicted. This ideology is harmful both to the agency of the renter (who is also stripped of their dignity), and their perceived *intention* to evade their landlord for rent. This was painfully clear as I came across sample motions while conducting research for this project (See Appendix 3). The documents were included as part of the CLE course at the University of Washington School of Law discussed in previous sections. The drafting attorney, the owner of the largest law firm for landlords pursuing eviction in Washington, referred to hypothetical tenants as "I. M. BROKE" and later "I. M. BROKE AND CHEAP" in court documents. While surely this was intended with humor and comedic relief for the lawyers in the course, the stereotype of the renter as "cheap" or unable to pay their rent instills an automatic assumption that this type of tenant is the norm, and not the rule. It furthered showed the power dynamics of wealthy stakeholders who lacked empathy and understanding for their adversaries.

These two effects, the exclusion of poor tenants from having a voice due to policy, and the silencing what voice is left through the experience of going to court, goes beyond merely the ability to have counsel. While crucial, it centers around imbalances of power that make any participation by the indigent tenant a noteworthy accomplishment in its own right. From this place of humility, policy recommendations can be formed that affect change systemically.

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[92] Fox, 105

Moving Forward: Policy Recommendations

"I believe that each era finds an improvement in law, each year brings something new for the benefit of mankind. Maybe this will be one of those small steps forward…"[93]

-Clarence Earl Gideon

There are two main issues to tackle with regard to Seattle's eviction problem: housing affordability and the court process itself. Before proceeding, we should establish that this will indeed require public funds at the federal level. Indeed, "there is no way a right to housing will be achieved without extensive government subsidies and programs… pretending that 'the market' alone can provide these benefits ignores the real history of the housing market in the U.S. and how it has disadvantaged and oppressed."[94] Ignoring the realities that the private market has not functioned to enrich the lives of all individuals negates the reality low-income people face and have faced for decades. This sentiment is shared by many researchers as well, including Tilly:"the experience of sharpening income and housing inequality, abetted by ubiquitous pro-market ideology, divides low-and moderate-income people as they scramble to get closer to the haves and to distance themselves from the have-nots." [95] With that being said, I argue that the affordability crisis could be mitigated by the establishment of a universal voucher program, and increased funding to subsidized housing. With regard to the court process, there are several recommendations which can benefit equity, including increased data collection, relaxed tenant screening policies, and an increased role of judges in the eviction process.

Affordability

The issue of eviction is intrinsically related to the increased expense of housing relative to income growth in past decades. Matthew Desmond, one of the premier researchers of eviction in the past ten years, advocates for a universal voucher program that subsidizes the rent for low-income tenants. In contrast to Section 8, he necessitates that the vouchers be universally available according to income, which will negate the

[93] Anthony Lewis, *Gideon's Trumpet*. Vintage Book. New York: Random House, 1964.

[94] Leckie, 158

[95] Tilly, 35.

economic fear of inflation.[96] This should also be done in tandem with the development of additional federally-owned units, as the rising cost of real property in Seattle and among coastal cities in general makes the future of private-market affordable housing very tenuous. Many have articulated a fear of relying on the private market to subsidize housing, as it creates the possibility for "dependence." However, as Leckie demonstrates with brilliant aptitude, this is hardly the case—and, irrational at best. He writes that such arguments fundamentally ignore "dependency virtually everyone has, and should have, on government services and protections, not only in the housing area but throughout our system. With respect to housing in particular, few seem to call the tax system's enormous and enormously regressive homeowner deduction 'dependence.'"[97] Leckie's final line—the double standard of tax deductions being considered something other than dependence, was an important call to action for the amelioration of the Seattle eviction process at the court level as well.

Court Recommendations

There are several main changes I strongly advocate in the Seattle eviction process that will increase equity for tenants facing eviction.

First, I argue that the timeline for the process as it standards is obscenely aggressive, and needs to be lengthened. I hypothesize that the high default rate in King County is largely related to the swift nature of the eviction process.

Second, I advocate for the removal of the "Order to Show Cause" provision, which requires tenants to submit a sworn statement that they do not owe the rental amount. There is a class-action lawsuit of Seattle residents currently filed with the court arguing that this statue is a violation of their due process rights.

Third, I echo the work of other legal scholars who have articulated the desire for increased participation of judges in summary proceedings. The inability for tenants to understand the intricacies of legal jargon requires to ignore the tenet of total impartiality in order to even the skewed playing field. By not allowing narrative speech, we further silence tenants. "We must be ruled by our complete selves, by the intellectual and

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[96] Desmond, 120.

[97] Leckie, 158.

emotional content of our words. Governmental representatives must hear the full range of legitimate concerns, no matter how indelicately expressed or painful they may be to hear."[98] Judges have the ability to hear the claims of tenants, if they are able to be consciously acknowledge their bias and be a true mediator in a system with very little justice.

In addition, I support additional funding for legal aid clinics for several reasons. While the presence of a lawyer does not address the problem of mass inequity, it makes the legal landscape a manageable one for tenants. Several studies have shown the increased efficiency of civil proceedings when tenants are represented "by reducing the number of motions, particularly post-judgement options."[99] In addition, the United States is behind nearly all other western countries, almost all of which provide defense attorneys to clients facing eviction.[100] Establishing this as a priority is necessary in order to promote justice for tenants. While the court should be pursuing more sweeping structural changes to RCW 59.18 to be less biased, Rachel Kleinman artfully describes the reality that poor litigants face. Though it is crucial for advocates to look at possibilities for long term systemic change if they are truly committed to providing equal access to justice, in reality poor tenants do not have the luxury of relying on idealistic procedural solutions to the problem of eviction."[101]

Finally, decreasing the severity of tenant screening policies will mitigate the reproduction of poverty in poor neighborhoods. The biased nature of data collection, and its risk of misuse, targets the poor and those facing landlord retaliation.

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[98] Williams, 134.

[99] Seron et al., 430

[100] Johnson & Schwartz, 295.

[101] Kleinman, 1529.

Conclusion

"Those who argue for the power of rights to liberate subordinated people must first reckon with the power of culture to maintain their bondage."

-Barbara Bezdek

This report's main premise centered around analyzing the steps of the Seattle eviction process in order to understand structural inequity through a critical lens. Through reviewing the history of the law (the law in theory), as well as the law in practice, the subordinated position of the tenants became increasingly obvious as a function of power. The power in the courtroom for landlords, and the silence and exclusion from legal institutions for tenants, points us to a rude awakening: the most marginalized are failed by a system that was not designed for them. It has excluded the non-wealthy, non-white, non-male, non-able person for centuries. However, as harrowing as this realization can be for those privileged enough to ignore these realities until now, it also serves as a call to action. Each of us must challenge the role we play in the perpetuation of subordination, and actively choose to respect the voices of others. As Patricia Williams movingly said, "functionally, rights are not rights where they cannot be spoken or heard." Through listening, justice can be realized.

"Look. How lovely it is, this thing we have done - together."

-Toni Morrison

Reflection

This project began as a challenge for myself: To become familiar with a facet of law and critique it as if an expert would. I wanted to experiment with a discipline that interested me as a perspective career (law). At the same time, I wanted the impact of the work to be significant and relatable to people outside of the legal realm. Therefore, I sought opportunities to examine social issues through the legal lens. Housing had always fascinated me, so it was the perfect fit.

A learning curve

This report was the most intense writing and academic experience of my educational career. It challenged me on several fronts, specifically because of the agency and freedom given to me. The ability to make the project whatever I wanted was overwhelming at first, and something I truly struggled with for the first several months of research—Not that I can honestly say I was doing "research" for the first few months. I would describe it more accurately as aimless article skimming.

The lack of direction at the beginning of the project was also compounded by studying abroad during Fall of 2016. The degrees of separation from my learning cohort made it difficult for me to engage with the material as critically as I would've hoped. It was also a very individual experience, because I was the only person with my topic area in the major. I struggled to understand the macro-concepts behind the law I was reading, and how each of the different pieces in the process fit together. It was also compounded with the need for me to learn the intricacies of the legal system, which was an education in and of itself. I wish I had a better description for my process coming together that was more intentional. Instead, I just tried to attack the material from as many angles as possible in the hopes of becoming decently literate in the subject matter. Fortunately, this happened halfway through spring quarter.

Theory is fun!

Parts of the process were extremely fascinating which that I didn't anticipate to enjoy as much as I did. Specifically, once I had established a basic level of legal literacy, I loved reading well-written theory pieces on jurisprudence. I loved going to the library and immersing myself in a new perspective of the law. Barbara Bezdek's piece on institutional

silence was arguably one of my favorite. Every line spoke to me, reminding me simultaneously of the importance of my project, but also it's relativity—how any incredible scholars had pondered the same question that I had. It was an experience in connectivity that I really enjoyed.

That being said, I am excited to taking a little break from theory. I'm hoping to read some light fiction, and say away from the Revised Code of Washington for the rest of the summer (at least).

I'll end by saying that my experience writing this project gave me more agency in myself than I've had in any academic setting. Regardless of the product, I am proud of the skills I have developed working on this report. It rekindled my love of learning, reminded me of my values, and gave me confidence to take more chances.

And most importantly, how to cite in Chicago.[102]

[102] Amazing.

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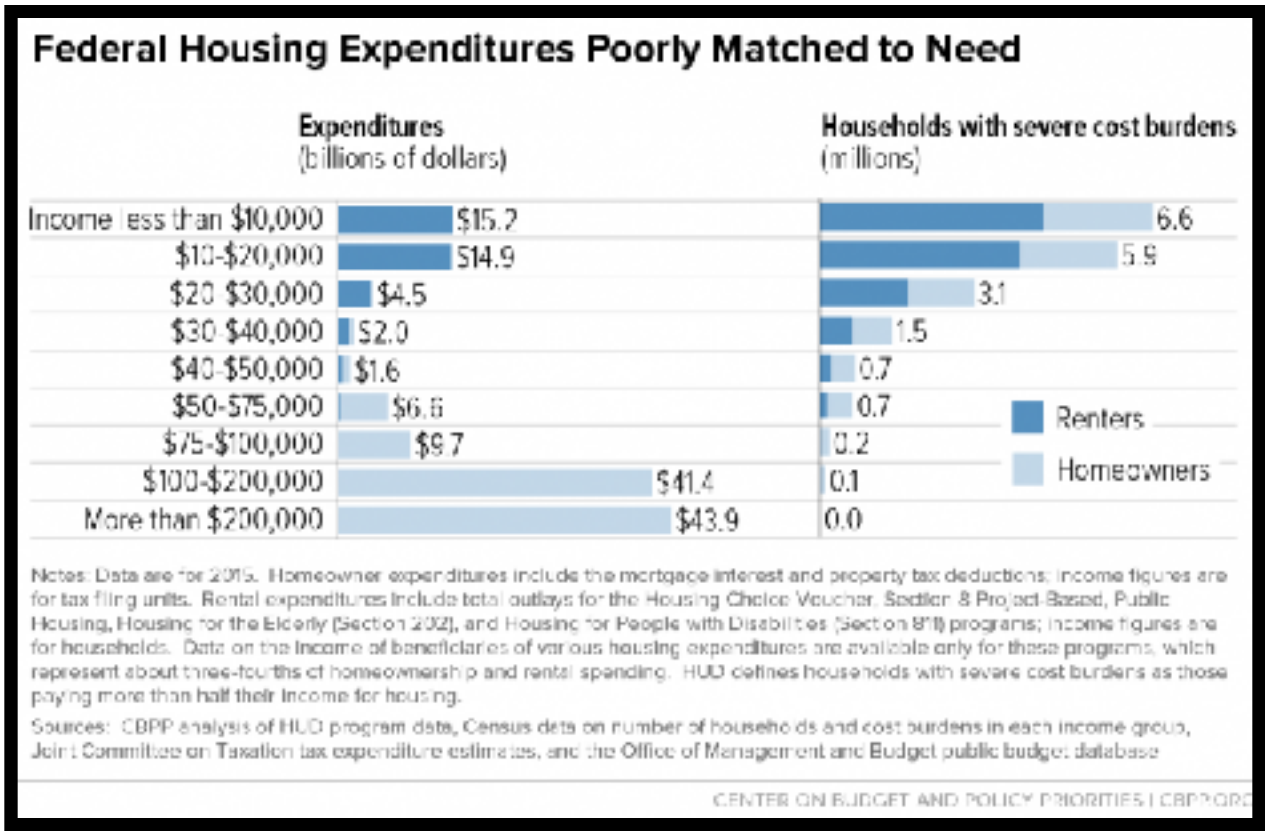
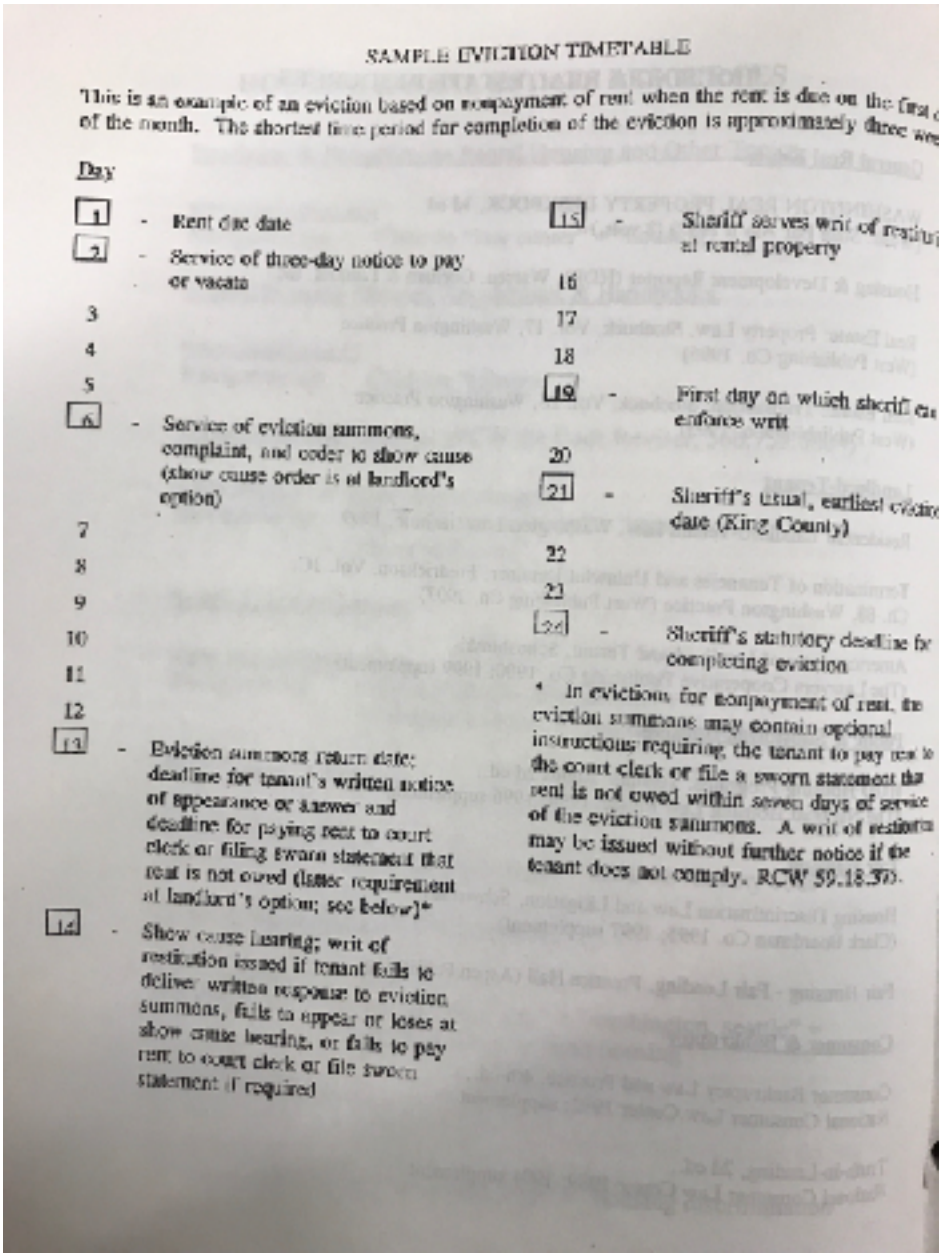
Appendices

Appendix 1:



Appendix 2:



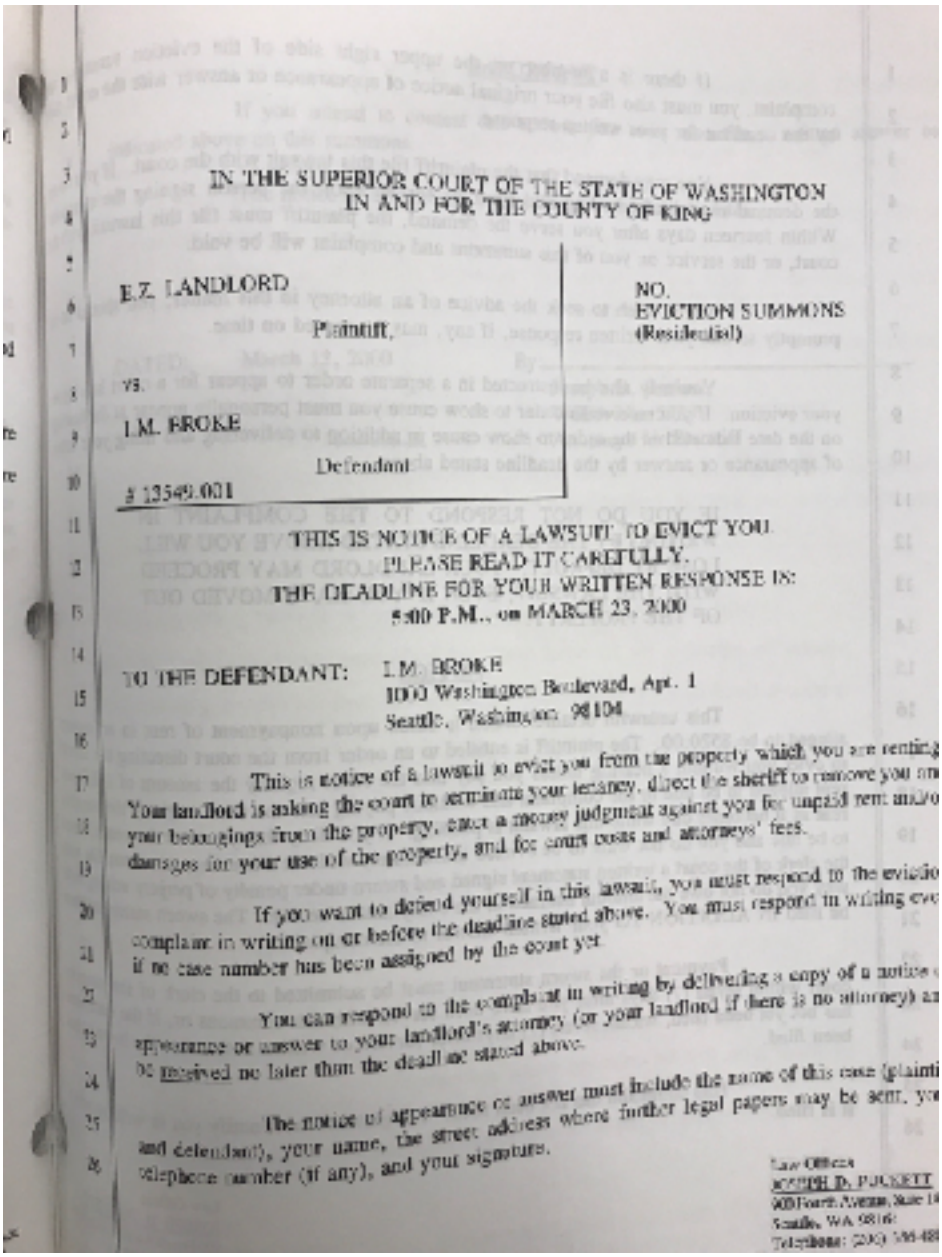
SAMPLE EVICTION TIMETABLE

This is an example of an eviction based on nonpayment of rent when the rent is due on the first of the month. The shortest time period for completion of the eviction is approximately three weeks.

Day		
1	-	Rent due date
2	-	Service of three-day notice to pay or vacate
3		
4		
5		
6	-	Service of eviction summons, complaint, and order to show cause (show cause order is at landlord's option)
7		
8		
9		
10		
11		
12		
13	-	Eviction summons return date; deadline for tenant's written notice of appearance or answer and deadline for paying rent to court clerk or filing sworn statement that rent is not owed (latter requirement at landlord's option; see below)*
14	-	Show cause hearing; writ of restitution issued if tenant fails to deliver written response to eviction summons, fails to appear or loses at show cause hearing, or fails to pay rent to court clerk or file sworn statement if required
15	-	Sheriff serves writ of restitution at rental property
16		
17		
18		
19	-	First day on which sheriff can enforce writ
20		
21	-	Sheriff's usual, earliest eviction date (King County)
22		
23		
24	-	Sheriff's statutory deadline for completing eviction

* In evictions for nonpayment of rent, the eviction summons may contain optional instructions requiring the tenant to pay rent to the court clerk or file a sworn statement that rent is not owed within seven days of service of the eviction summons. A writ of restitution may be issued without further notice if the tenant does not comply. RCW 59.18.370.

Appendix 3:



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

E.Z. LANDLORD
Plaintiff,
vs.
I.M. BROKE
Defendant
13549.001

NO.
EVICTION SUMMONS
(Residential)

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.
PLEASE READ IT CAREFULLY.
THE DEADLINE FOR YOUR WRITTEN RESPONSE IS:
5:00 P.M., on MARCH 23, 2000

TO THE DEFENDANT: I.M. BROKE
1000 Washington Boulevard, Apt. 1
Seattle, Washington 98104

This is notice of a lawsuit to evict you from the property which you are renting.
Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and
your belongings from the property, enter a money judgment against you for unpaid rent and/or
damages for your use of the property, and for court costs and attorneys' fees.

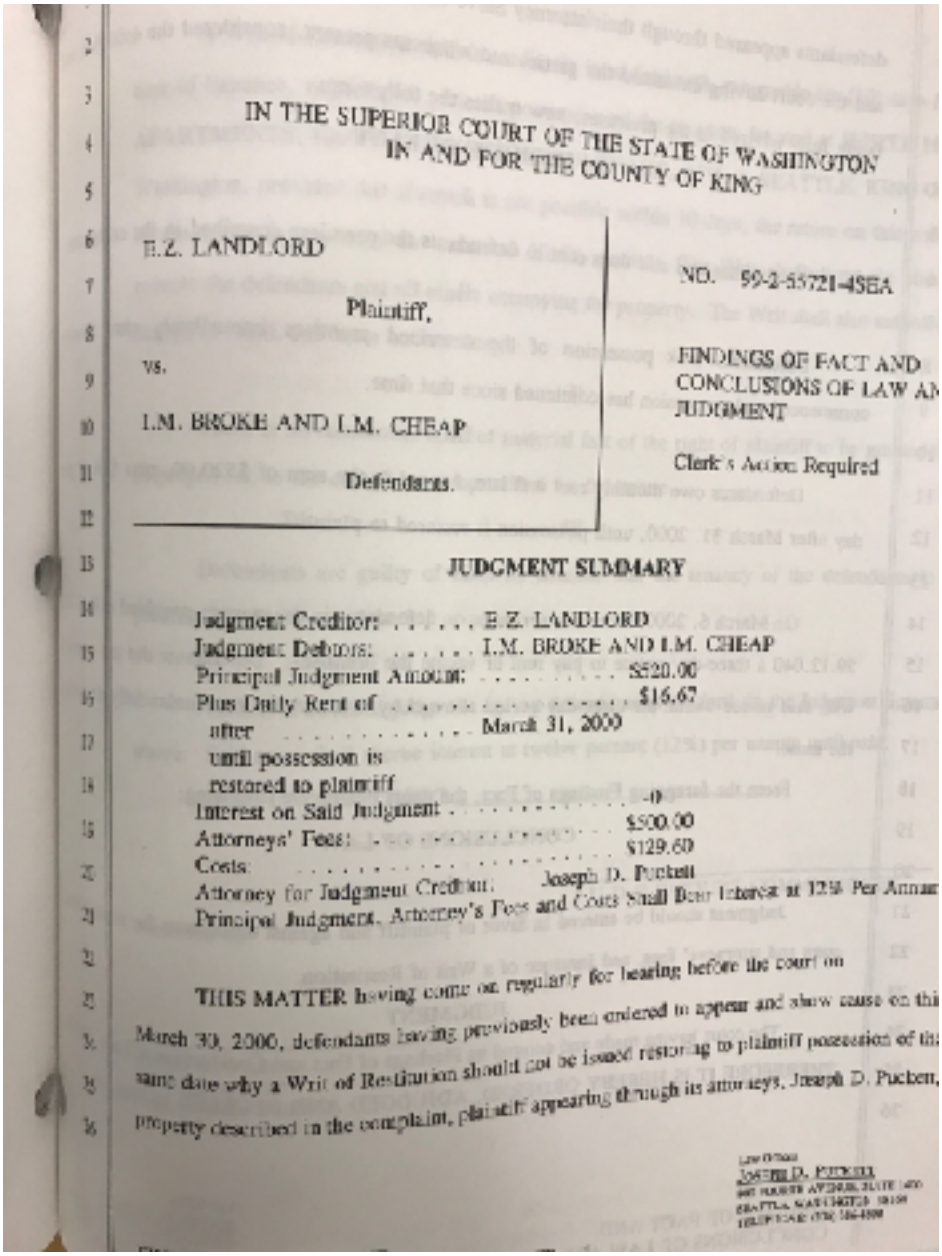
If you want to defend yourself in this lawsuit, you must respond to the eviction
complaint in writing on or before the deadline stated above. You must respond in writing even
if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of
appearance or answer to your landlord's attorney (or your landlord if there is no attorney) and
by mailing or delivering it to the court before the deadline stated above.

The notice of appearance or answer must include the name of this case (plaintiff
and defendant), your name, the street address where further legal papers may be sent, your
telephone number (if any), and your signature.

Law Offices
SCOTT D. PUCKETT
900 Fourth Avenue, Suite 1
Seattle, WA 98164
Telephone: (206) 386-48

Appendix 4:



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

E.Z. LANDLORD

Plaintiff,

vs.

I.M. BROKE AND I.M. CHEAP

Defendants.

NO. 99-2-55721-4SEA

FINDINGS OF FACT AND CONCLUSIONS OF LAW AN JUDGMENT

Clerk's Action Required

JUDGMENT SUMMARY

Judgment Creditor: . . . . . E.Z. LANDLORD
Judgment Debtors: . . . . . I.M. BROKE AND I.M. CHEAP
Principal Judgment Amount: $520.00
Plus Daily Rent of $16.67
after . . . . . March 31, 2000
until possession is
restored to plaintiff
Interest on Said Judgment . . . . . -0-
Attorneys' Fees: $500.00
Costs: $129.60
Attorney for Judgment Creditor: Joseph D. Pucken
Principal Judgment, Attorney's Fees and Costs Shall Bear Interest at 12% Per Annum

THIS MATTER having come on regularly for hearing before the court on March 30, 2000, defendants having previously been ordered to appear and show cause on this same date why a Writ of Restitution should not be issued restoring to plaintiff possession of the property described in the complaint, plaintiff appearing through its attorneys, Joseph D. Pucken,

Law Offices
Joseph D. Pucken
[illegible]