Praxis and Paradox: Inside the Black Box of Eviction Court

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In the American legal system, we typically conceive of legal disputes as governed by specific rules and procedures, resolved in a formalized court setting, with lawyers shepherding both parties through an adversarial process involving the introduction of evidence and burdens of proof. The often-highlighted exception to this understanding is the mass, assembly-line processing of cases, whether civil or criminal, in large, urban, lower-level courts. The gap left unfilled by either of these two narratives is how "court" functions for the average unrepresented litigant in smaller and nonurban jurisdictions across the United States.

For many tenants facing eviction, elements of the "typical" formal legal process are absent, resulting in an experience that only loosely resembles what is taught in law school. This Article is based on a first-of-its-kind interdisciplinary, multi-year, mixed-methods study of suburban and rural dispossessory (eviction) courts in Georgia that aims to contribute to the knowledge gap described above. Through detailed quantitative analysis of case files and qualitative data gleaned from court observation and stakeholder

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interviews, and its unique focus on courts outside of a major city, it provides a clearer picture of how eviction court in such jurisdictions operates in practice and what resulting variations in process mean for case outcomes.

Ultimately, this Article demonstrates that while one set of laws may govern throughout the state, the process for applying and enforcing those laws is highly localized, dependent on the nature of place and the attitudes of the stakeholders involved. While smaller, lower-volume courts have fewer caseload pressures and appear to prioritize procedural justice, the process they conduct functions less like a traditional legal proceeding and more as a vehicle for rent collection. Paradoxically, elements typically associated with fair process—like the opportunity to respond to legal claims through filing an answer or the scheduling of a hearing on the merits—do not always manifest in substantively improved outcomes for tenants, given the structure of the underlying law. The Article concludes by reflecting on what these observations suggest about the limitations and effectiveness of different forms of legal assistance and how court processes, regardless of their locale and the people who operate within them, can maximize access to justice.

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INTRODUCTION

On television, in movies, and even in law school, we typically think of law and courts operating according to a formalized process. The actors and the setting are familiar—a judge wearing a black robe presides over a richly wooden courtroom, each party sitting with their suited lawyer at a table flanking the judge's bench, all following a strict set of procedures before an eagerly awaiting audience seated in the benches. In theory, eviction proceedings are characterized by a similar model.[1]

In many of America's lower-level courts, however, "court" often looks very different from the above description. That is certainly true of eviction court, and even more so when one ventures outside of major urban areas to attend court in more rural jurisdictions. Courts in rural and smaller-town America are understudied and often left out of the narrative surrounding the court process, leaving us with an incomplete picture of how people experience the legal system. In many of those places, lawyers are notably absent (including that, in some cases, the judge may not be a lawyer)[2], the governing rules may be less stringent, and the courtroom may lack much of the physical and procedural formality often considered defining of the space.

This Article is based on a multi-year, mixed-methods study of three such dispossessory (eviction) courts in Georgia,[3] positioned across

1. In her 1992 article, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, Barbara Bezdek observed:

> The formal paradigm for rent court is the conceptual model of the ordinary civil lawsuit, in which one believing himself aggrieved can bring a claim in the court having the power to adjudicate the matter. The offending party is given notice and an opportunity to be heard by an impartial court, which acts only on a parties' initiative, and which will render a decision based on formal decisional rules and evidence presented. If they choose, parties may have the assistance of a lawyer, chiefly by paying for it. Most lawsuits settle, and—the paradigm presumes—settlements out of court reflect the parties' assessment of the relative strengths of their positions without the headaches and costs of litigation.

Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 567 (1992).

2. *See infra* Part II.B.

3. *See infra* note 31 and accompanying text.

the suburban-rural spectrum. In undertaking the project, we set out to better understand what court looks like for parties going through the dispossessory process outside of Atlanta, how the process in those courts might differ from the traditionally contemplated legal process, and how court structure and stakeholder approaches in such counties affect administration of the law, case outcomes, and the litigant experience.

Given the efficiency with which eviction cases are often handled, some have described eviction court not as a "court" at all, but instead merely a "process" or assembly line.[4] That discussion of eviction court usually contemplates a larger system, processing a high volume of cases with a high number of defaults. While the numbers of evictions in these smaller counties pale in comparison to those in Atlanta, that initial impression can be misleading. Even when the process is more highly individualized and takes place in a much smaller court—without the pressures of high caseloads—a similar element remains. For example, the highest percentage of writs issued was in the smallest, most rural of the counties we studied, suggesting that the narrative of eviction court is driven less by volume than by the nature of the process itself.

What emerged from this unique study—both in its focus and scope—was a complex picture of the court process. In many ways, the process we observed felt more personal and less formal, often leading tenants to feel they were treated in a fair and reasonable manner by individual actors. Yet they still felt the process was unfair, based on determinations of what information was deemed relevant or irrelevant, elements and language in the process they did not fully understand, and a sense that the structures undergirding the process were fundamentally unjust. The data we collected and analyzed largely support their instincts. The provision of procedural justice in more superficial aspects of the process did not fundamentally change the court's primary functional role as a vehicle for rent collection. We suggest that the results of the process are driven by the structure of the underlying law, stakeholders' perceptions of the law, and local process elements (such as answer forms and hearing format) that control how information is introduced and whether it is deemed relevant for resolution of the case.

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4. *See* Legal Servs. Corp., *LSCBriefing: Evictions and the COVID-19 Pandemic*, YOUTUBE (June 22, 2020), https://www.youtube.com/watch?v=ILwW-XEA8KQ [https://perma.cc/U35D-T7LF]; *see also* MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 304 (2016) (describing housing court as an "eviction assembly line: *stamp*, *stamp*, *stamp*"); Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 66 (referring to eviction courts as "eviction machines or eviction mills" churning out orders evicting tenants).

Part I offers a legal and theoretical grounding for the rest of the Article by demonstrating the need for this research, providing an overview of the relevant legal framework (Georgia landlord-tenant law), and introducing factors that contribute to differential application of the law at the local level. Last, it offers different lenses through which we might view, or assess, justice resulting from local court process—substantive and procedural, subjective and objective. In Part II, the Article provides a description of the three counties studied and an outline of how the dispossessory court process for each court is structured. In doing so, we contrast how the counties' court processes differ from each other and highlight those elements that differ from the more traditionally understood court process.

Part III describes the mixed-methods study and its results based on court observation, interviews with judges, clerks, landlords, and tenants, and detailed coding of 2,257 dispossessory case files over a span of five years (2013–2017). Using qualitative data to provide context for the quantitative data, the Article explores how each court's process and approach toward dispossessory cases has impacted outcomes in each county. In Part IV, we discuss what these findings suggest about which elements of the process are most influential on outcomes, how parties and those providing legal assistance might best approach the existing process, and what reforms to the process might be most effective.

The outcomes we observed stem not only from the governing state law structure, but also from local legal culture, practices, and policies that have developed over time and affect how the state law structure is implemented in practice. Ultimately, the data from our study demonstrate that many elements of the court process—including level of formality, judicial engagement, forms utilized, responses to caseload volumes (including calendaring of hearings), and the presence of legal representation—have the potential to influence its results. Elements of the process we tend to assume would be beneficial to litigants or associate with fair judicial process—such as filing an answer in response to an eviction notice, scheduling an individual hearing on the merits, and providing tenants with the opportunity to tell their story in court—do not always manifest as expected or lead to better substantive tenant outcomes. In some cases, they may exacerbate structural inadequacies of the broader legal framework. These findings emphasize the importance of understanding the court process from an empirical, and not purely instinctual or theoretical, perspective and provide a critical contribution to conversations about how to best advise self-represented litigants and advocate for systemic reform.

I. ALL EVICTION (COURT) IS LOCAL

This Part explains why this study is rare and yet critical to understanding how court operates for everyday people, particularly outside of large, urban areas. Access to justice literature has acknowledged the reality that courts operate differently, but little research has been conducted with respect to that variation or how it impacts access to justice. As described in this Part, variation among court systems—and among dispossessory courts in particular—may occur due to gaps left in state law or because of how local legal culture affects implementation of the law in practice. It is important to assess how those variations affect substantive case outcomes, but also how they translate into differing levels of procedural and substantive justice.

A. Smaller Courts, Scant Research

As a general matter, research with respect to how the legal system operates for those with few resources, or for everyday people, is scarce. As Gillian Hadfield and Jaime Heine have observed, "systematic efforts to collect data about the health of legal systems for ordinary individuals are few and far between."[5] Existing empirical research on access to justice focuses primarily on legal needs and services[6]—with a focus on the accessibility and impact of lawyers[7]—and on case

5. Gillian K. Hadfield & Jaime Heine, *Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans*, *in* BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 21, 22 (Samuel Estreicher & Joy Radice eds., 2016).

6. Anna E. Carpenter, Jessica K. Steinberg, Colleen F. Shanahan & Alyx Mark, *Studying the "New" Civil Judges*, 2018 WIS. L. REV. 249, 256; Elizabeth Chambliss, Renee N. Knake & Robert L. Nelson, *Introduction: What We Know and Need to Know About the State of 'Access to Justice' Research*, 67 S.C. L. REV. 193, 193 (2016); Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 102–03; Anthony V. Alfieri, Jeffrey Selbin, Jeanna Charn & Stephen Wizner, *Service Delivery, Resource Allocation and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 YALE L.J. ONLINE 45, 61–64 (2012); Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. PA. J.L. & SOC. CHANGE 295, 298–99 (2009).

7. *See, e.g.*, W. Vaughan Stapleton & Lee E. Teitelbaum, *In Defense of Youth: A Study of the Role of Counsel*, *in* AMERICAN JUVENILE COURTS (1972); Russell Engler, *Connecting Self-Representation to Civil* Gideon*: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L.J. 37 (2010); D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012); D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901 (2013); Carroll Seron, Gregg Van Ryzin, Martin Frankel & Jean Kovath, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419 (2001).

outcomes.[8] Much of legal research on eviction has focused on the impact of legal representation on dispossessory cases.[9] Little to none of it has focused on the court process, and even less has adopted a sociolegal perspective. For example, Catherine Albiston and Rebecca Sandefur note that randomized controlled trials exploring the impact of lawyering on case outcomes typically fail to explore the mechanisms actually facilitating that impact. They argue that penetrating the "black box" of such mechanisms and knowing *why* the outcomes differ is essential to making access to justice policy choices and allocating related resources.[10]

Within the realm of court-based research, state and local courts have received relatively little attention, even though they are responsible for ninety-nine percent of the cases in our civil justice system.[11] In contrast to federal courts, which receive much more scholarly attention, state and local courts are often characterized by higher levels of informality and greater variation in the processes they employ and the ways in which judges choose to run their courtrooms.[12] The procedures used by state courts have been described as "informal and opaque," developed in an "ad hoc" manner by local court personnel.[13] State courts are also different from federal courts in that individual personnel, such as clerks and courtroom deputies, often play

8. *See* Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145 (2020) (empirical study on the effectiveness of warranty of habitability on case outcomes); Albiston & Sandefur, *supra* note 6, at 106.

9. *See, e.g.*, BOS. BAR ASS'N TASK FORCE ON THE CIV. RIGHT TO COUNS., THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION (2012).

10. Albiston & Sandefur, *supra* note 6, at 107. Albiston and Sandefur have acknowledged the need for a "better theoretical and empirical understanding of both the problem and the potential solutions," and warned that scholars "not presume a one-size-fits-all solution is appropriate or even available." *Id.* at 120.

11. Carpenter et al., *supra* note 6, at 252; Stephen C. Yeazell, *Courting Ignorance: Why We Know So Little About Our Most Important Courts*, 143 DAEDALUS 129, 129 (2014).

The few examples of scholarship contemplating the culture of local courts have been somewhat insular, focusing on the attitudes of judges and attorneys with respect to issues bearing on case delays. *See, e.g.*, David R. Sherwood & Mark A. Clarke, *Toward an Understanding of "Local Legal Culture*," 6 JUST. SYS. J. 200 (1981) (reporting survey results from local court personnel in Wayne County, Michigan, on a range of legal subjects).

Carpenter and Steinberg have engaged in ongoing interdisciplinary study of how judges differ in their practice of judging, including differences in how (and whether) they apply substantive and procedural law and how they respond to pro se litigants. Anna E. Carpenter, *Active Judging and Access to Justice*, 93 NOTRE DAME L. REV. 647 (2018); Jessica K. Steinberg, *Adversary Breakdown and Judicial Role Confusion in "Small Case" Civil Justice*, 2016 BYU L. REV. 899 (2016). While extremely helpful, their research to date focuses primarily on judicial behavior in the courtroom; yet in the dispossessory context—as is true in many legal settings—many cases are often won, lost, or settled prior to any court hearing.

12. Carpenter et al., *supra* note 6.

13. Colleen F. Shanahan, Alyx Mark, Jessica K. Steinberg & Anna E. Carpenter, *COVID, Crisis, and Courts*, 99 TEX. L. REV. ONLINE 10 (2020).

an informal yet influential role in determining how litigants' problems are addressed.[14]

In addition to the state-federal gap, very little research on eviction or access to justice has been conducted outside of highly urban settings;[15] nor has much of it focused on the South, a region that is distinct in terms of its geography, demographics, and politics. For rural areas, most research has focused on access to justice issues caused by a dearth of rural lawyers.[16] While legal practitioners and scholars have increasingly acknowledged the need to focus on areas outside of cities—and areas that are more resource poor—that discussion has not progressed much further than the acknowledgment that differences exist. One of the reasons for this dearth of research is the logistical challenges that accompany the study of state court. As Anna Carpenter and her colleagues note, it "often requires original data collection and coding efforts, including hand-collection of data from case files, in-person field research, and live interviews."[17] We are very familiar with those efforts, and the time and resources involved, as they were all a part of conducting this study.

B. Local Legal Culture

One of the reasons for variation among local courts is the mix of local rules, practices, and culture that affects how they hear and process disputes. Social science literature recognized the phenomenon of local legal culture as early as 1969, with Herbert Jacob's *Debtors in Court*.[18] Jacob surveyed debt collection practices and bankruptcy filing rates in four Wisconsin cities.[19] Although all four cities applied the same formal law—a mix of both state debt collection law and federal bankruptcy law—he observed "substantial variation in the frequency of legal action . . . [and] clear patterns in the variation demonstrating a significant correlation between parties' use of remedies and the city in

14. *Id.* at 13 ("They explain law and procedure, advise on factual and evidentiary issues, raise issues to judges, and mediate and negotiate among parties.").

15. *See, e.g.*, Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Daniele M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL'Y REV. 15 (2018).

16. Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, 40 HUM. RTS. MAG. (2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america/ [https://perma.cc/H6HM-7947]; *see also* Pruitt et al., *supra* note 15, at 15.

17. Carpenter et al., *supra* note 6, at 267.

18. HERBERT JACOB, DEBTORS IN COURT 87–96 (1969).

19. *Id.* at 88.

which the action took place."[20] Nearly a decade later, Thomas Church and his colleagues defined "local legal culture" as a cluster of related factors involving "established expectations, practices, and informal rules of behavior of judges and attorneys."[21] More recently, some have emphasized—in the criminal context—that "cultural differences underlie the ways that local jurisdictions translate penal law into local contexts."[22] Thus, it is not a novel concept that local court practices and policies affect litigant behavior as well as the outcomes of a legal process.

The existence of local legal culture suggests researchers attempting to study phenomena across a range of local jurisdictions may have to take cultural differences into account in addition to documented demographic, economic, or even legal variations. Mona Lynch has argued that the literature should look beyond variable-centered explanations—focused, for example, on how sociodemographic factors explain varied incarceration levels under the same criminal legal regime—and pay more systematic attention to how local norms and culture affect the operation of law on the ground:

> [H]ow criminal and penal law *as practiced* is significantly shaped by the local (and locale) such that, although law on the books might lead us to expect some homogenization of outcomes within state and federal jurisdictions, law in action indicates much more microlevel variation shaped by local norms and culture related to how the business of criminal justice happens in any given place.[23]

Formal procedures provided for by statute or policy on a statewide level may operate differently from jurisdiction to jurisdiction. This may be due, in part, to gap filling as described below, but also to variations in procedure that do not impact underlying substantive law but may lead to different outcomes. In some cases, as Andrea Seielstad explains, local procedure generates practices that are contrary to or appear to undermine governing law:

> There may be no opening or closing statements. Witness testimony may be cut short. And the rules of evidence will be applied with laxity. None of these rules may be derived from any written source; indeed, many are contrary to written rules that purportedly govern the proceedings. Such rules are applied, nonetheless, with sufficient regularity by particular courts and/or magistrates and enforced by local practitioners such that they acquire the force of law and may be ascertained and predicted by the thoughtful

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20. Bernard Trujillo, *Self-Organizing Legal Systems: Precedent and Variation in Bankruptcy*, 2004 UTAH L. REV. 483, 513 (2004).

21. THOMAS CHURCH, JR., ALAN CARLSON, JO-LYNNE LEE & TERESA TAN, JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 54 (1978).

22. Anjuli Verma, *The Law-Before: Legacies and Gaps in Penal Reform*, 49 LAW & SOC'Y REV. 847, 856 (2015).

23. Mona Lynch, *Mass Incarceration, Legal Change and Locale: Understanding and Remediating American Penal Overindulgence*, 10 CRIMINOLOGY & PUB. POL'Y 673, 674 (2011).

> and informed practitioner. These rules vary, moreover, from jurisdiction to jurisdiction.[24]

A recent study on the effectiveness of meritorious warranty of habitability claims—claims where the landlord's failure to make repairs entitles the tenant to a rent abatement—suggests that court culture may be just as important as the structure of underlying law or the assistance of counsel.[25] In analyzing nonpayment of rent claims in New York City, Nicole Summers found an "operationalization gap" between the number of tenants with meritorious claims and those who actually benefit from the claim—for example, by securing needed repairs, receiving longer periods of time to pay arrears, or avoiding eviction.[26] Interestingly, Summers found that this gap could not be explained by the structure of the law—New York's warranty of habitability laws lack many of the substantive restrictions or obstacles to assertion of the claim found elsewhere.[27] Nor could it be explained by a lack of access to counsel; while her data showed that legal representation mattered, it did not account for the gap in its entirety.[28] In hypothesizing as to what else may contribute to the gap, she suggested—based on preliminary qualitative research undertaken alongside her quantitative research—that "debt collection culture" in housing court may play a significant role: "According to tenants' accounts, their efforts failed not because their claims were invalid or because they were unfamiliar with the proper legal procedures, but because judges did not want to entertain them."[29] In contrast, Jessica Steinberg found in a study of local housing court in the District of Columbia that when courts named solving a social problem as their purpose, they approached tenant complaints much more affirmatively.[30] Eviction in New York City and Washington, D.C., looks very different from eviction in Georgia, based in large part on differences in the legal protections and assistance afforded to tenants; yet, it is worth emphasizing the possibility that changes in the law and the provision of additional assistance may matter little where those who control the process render tenants' claims irrelevant.

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24. Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6 CLINICAL L. REV. 127, 130 (1999).

25. Summers, *supra* note 8.

26. *Id.* at 151, 210–11.

27. *Id.* at 211.

28. *Id.*

29. *Id.* at 217.

30. *See* Jessica K. Steinberg, *A Theory of Problem-Solving Courts*, 93 N.Y.U. L. REV. 1579, 1609–12 (2018); *id.* at 1611 ("Rather than steering tenants toward quick and unmonitored agreements, an active judge works to ensure that legitimate grievances are investigated and addressed—not swept aside by tainted methods of early case resolution.").

The above studies and observations support Albiston and Sandefur's suggestion that a better understanding of process—and the factors impacting that process—is critical. If research is focused solely on inputs and outputs, we will not only have a blind spot as to the experience of people in the system but also lack a full understanding of how to replicate successes and avoid failures.

C. Eviction in Georgia

To provide context for the study, this Part includes a brief overview of state law governing eviction in Georgia. In doing so, this Part also demonstrates how the state law framework leaves room for adaptation and for missing pieces to be completed by local courts.

1. Overview of Georgia Eviction Law

An eviction in Georgia—referred to in the Georgia Code as a "dispossessory" action[31]—involves several distinct steps. First, the landlord must make a demand for possession.[32] Should the tenant fail to deliver possession, the landlord may file a dispossessory affidavit against the tenant, in which he or she seeks possession of the contested property and any past-due monetary amounts.[33] Upon receiving said affidavit, the court issues a summons, which is served on the tenant by sheriff or constable (either personally, on someone else residing on the residence, or by tack and mail).[34] The summons and accompanying

31. GA. CODE ANN. § 44-7-51 (2021).

32. *Id.* § 44-7-50(a):

> In all cases when a tenant holds possession of lands or tenements over and beyond the term for which they were rented or leased to such tenant or fails to pay the rent when it becomes due and in all cases when lands or tenements are held and occupied by any tenant at will or sufferance, whether under contract of rent or not, when the owner of such lands or tenements desires possession of such lands or tenements, such owner may, individually or by an agent, attorney in fact, or attorney at law, demand the possession of the property so rented, leased, held, or occupied.

33. *See id.*:

> If the tenant refuses or fails to deliver possession when so demanded, the owner or the agent, attorney at law, or attorney in fact of such owner may immediately go before the judge of the superior court, the judge of the state court, or the clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk of any other court with jurisdiction over the subject matter, or a magistrate in the district where the land lies and make an affidavit under oath to the facts.

34. The landlord may serve the tenant with the summons personally or notoriously (which means a person at the residence other than the person named is served). *Id.* § 44-7-51(a). The landlord may also serve the tenant by "tack and mail," a process whereby the sheriff or constable posts a copy of the summons and affidavit on the tenant's door and also mails the documents to the tenant's last known address. *Id.*; GA. DEP'T OF CMTY. AFFS., GEORGIA LANDLORD-TENANT

affidavit filed by the landlord vary in form from county to county. The dispossessory action is sometimes called a "Proceeding Against Tenant Holding Over" and, although likely confusing to litigants, the same terminology is often used on court forms.[35]

If the tenant chooses to contest the dispossessory action and avoid a default judgment for the landlord, they must file an answer within seven days of service.[36] Georgia law specifies that a tenant may file an answer orally[37]—this often means in practice that a court clerk will assist the litigant in translating those oral responses to responses on the written answer form. The form used to file an answer varies from county to county, but it typically offers various pre-populated defenses and the opportunity to raise potential counterclaims against the landlord.[38] Because the Georgia statute offers little in the way of instruction on defenses and counterclaims, the options provided to the tenant as defenses vary.[39] Some counties limit the options to those that, if proven, would be legally sufficient, and others include (and/or always provide the opportunity to write in) responses that may not constitute a legal defense—for example, the inability to pay rent.[40] Some counties

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HANDBOOK 16, https://www.dca.ga.gov/sites/default/files/2-15-21_handbook_final_draft.pdf (rev. Feb. 2021) [https://perma.cc/W4LL-FRP6].

35. *See Dispossessory Affidavit Form*, MAGISTRATE CT. OF FULTON CNTY., https://www.magistratefulton.org/DocumentCenter/View/89/Dispossessory-Affidavit-PDF?bidId= (rev. May 2018) [https://perma.cc/Q9B8-NHHS]. *But see Dispossessory Warrant Form*, MAGISTRATE CT. OF DEKALB CNTY., https://dekalbcountymagistratecourt.com/wp-content/uploads/2019/09/DispossessoryWarrant.pdf (last visited July 10, 2021) [https://perma.cc/2TMX-ZCZD].

36. GA. CODE ANN. § 44-7-51(b).

37. *Id.*

38. Landlords have nondelegable duties to maintain rental properties in their bargained-for condition and can be held liable "for damages arising from the failure to keep the premises in repair." *See id.* §§ 44-7-13 to -14. For instance, landlords have a duty to provide locks and windows suitable for safety needs, and a duty to repair furnished appliances. *See, e.g.*, Jackson v. Post Props., Inc., 236 Ga. App. 701, 703 (1999) (door locks); Sixth St. Corp. v. Daniel, 80 Ga. App. 680, 681 (1950) (electric refrigerator motor). Tort law claims are also available, as landlords must ensure the use of ordinary care to keep the premises safe, which includes maintaining any common spaces in a reasonably safe condition. *See* GA. CODE ANN. § 51-3-1; *see also, e.g.*, McCullough v. Briarcliff Summit, L.P., 237 Ga. App. 630, 631 (1999). However, the existence of a counterclaim does not mean that a tenant was justified in withholding rent—if the landlord fails to make repairs within a reasonable time after notification, the tenant may hire a professional to perform repairs and deduct the reasonable cost from her rent but *may not* stop making rental payments. *See* Lewis & Co. v. Chisolm, 68 Ga. 40, 40 (1881); Borochoff Props., Inc. v. Creative Printing Enters., Inc., 233 Ga. 279, 279 (1974).

39. *See* GA. CODE ANN. § 44-7-51(b) ("The answer may contain any legal or equitable defense or counterclaim."). Many counties have modeled their answer form, at least in part, on the generic answer form created by the Council of Magistrate Court Judges. *See Forms*, GA. MAGISTRATE COUNCIL, https://georgiamagistratecouncil.com/forms/ (last visited July 10, 2021) [https://perma.cc/L7HL-4G33] (under "Dispossessory Answer").

40. Although rare, we did see examples of this at one point in County S (see 2015 answer form, on file with author).

also include options that may be a legal defense only if the tenant tried to reach a remedy in the correct way—for example, if a landlord fails to repair the property after notification, the tenant cannot stop making rent payments but can pay for the repair and then deduct the reasonable cost of the repair from rent paid.[41] Contrary to some other jurisdictions, Georgia law forbids a tenant from withholding rent if the landlord fails in their duty to repair the property.[42]

If a tenant files an answer within the seven-day period, the next step in the process is for the court to set a court date.[43] In some larger counties, like Fulton County, where the state's capital is located, legally insufficient answers will result in a judgment on the pleadings for the landlord and no hearing will occur.[44] As described below, counties have varying procedures for deciding when a hearing will be set. Fulton County also has chosen to implement a structured mediation process that tenants who have filed a legally sufficient answer are encouraged to attend.[45] None of the counties in our study have a formal mediation program in place, although most courts encourage and set aside time for the parties to negotiate and reach a settlement while in court.[46] If the landlord and tenant cannot come to an agreement, the case will be heard before a judge that same day.[47] If the judge determines that the landlord provided notice, properly served the tenant with the dispossessory summons, and the tenant does not have a legally sufficient defense, the judge issues a writ of possession, which the landlord can use to reclaim the property.[48] The judge may also issue a

41. *See Lewis & Co.*, 68 Ga. at 40; *Borochoff Props., Inc.*, 233 Ga. at 279. If the tenant does not want to go through that process, they can continue to inhabit the unrepaired premises and sue the landlord for damages. *Borochoff Props., Inc.*, 233 Ga. at 279.

42. *See Lewis & Co.*, 68 Ga. at 40; *Borochoff Props., Inc.*, 233 Ga. at 279.

43. GA. CODE ANN. § 44-7-53(b).

44. *See* Stephannie Stokes, *At Fulton County's 3 P.M. Eviction Hearing, All of the Tenants Lose*, WABE (June 27, 2018), https://www.wabe.org/fulton-countys-3-p-m-eviction-hearing/ [https://perma.cc/PZT8-FHM3].

45. *Landlord-Tenant (Dispossessory Actions): Tenant Pamphlet*, FULTON CNTY. MAGISTRATE CT., https://www.magistratefulton.org/DocumentCenter/View/379/Tenant-Pamphlet (last visited July 10, 2021) [https://perma.cc/N7E2-2SMH].

46. Russell Engler has described how such "hallway negotiations" can be problematic, particularly when the landlord is represented by an attorney and the tenant is unrepresented. Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 CALIF. L. REV. 79 (1997).

47. *See, e.g.*, FULTON CNTY. MAGISTRATE CT., *supra* note 45 ("[Fulton County Magistrate Court] offers mediation services for free on the day of the hearing. If the parties cannot reach agreement, the case goes to trial.").

48. *See* GA. CODE ANN. §§ 44-7-50(a), -51(a), -55(a), -55(c).

monetary judgment, requiring the tenant to pay the landlord any past-due amounts and accompanying fees.[49]

It is worth noting that certain statutory provisions limit the judgments available depending on what the tenant does or fails to do. If a tenant does not answer, the court issues a default judgment and a writ that is effective immediately; no hearing will be held, and the landlord is entitled to a judgment for all rents due.[50] If the tenant answers, as noted above, the court schedules a trial, the timing of which is not specified by statute, other than a statement that "[e]very effort should be made by the trial court to expedite a trial of the issues."[51] If, however, service is perfected by tack and mail and the tenant does not file an answer or otherwise make an appearance, the court can enter a default judgment for possession but cannot issue a monetary judgment.[52] If the tenant loses at trial, the landlord is entitled to a monetary judgment and the court issues a writ that is effective seven days after judgment is entered.[53]

Once a writ is issued, the tenant has seven days to vacate the disputed property.[54] If the tenant fails to vacate within that window, the landlord can request that law enforcement officers remove any remaining possessions from the property.[55] In comparison to other legal proceedings, the dispossessory court process in Georgia is relatively fast—in some cases lasting not much longer than a week—and it is faster in Georgia than in most other states.[56]

2. Filling in the Gaps

Although the law governing dispossessory cases is state law and thus applies throughout the state, implementation can vary from

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49. *Id.* § 44-7-55(a). Note that no monetary judgment is available for the landlord if the tenant was served by tack and mail and doesn't file an answer. *Id.* § 44-7-51(c).

50. *Id.* § 44-7-53(a).

51. *Id.* § 44-7-53(b).

52. *Id.* § 44-7-51(c).

53. *Id.* § 44-7-55(a).

54. *Id.*

55. *Id.* § 44-7-55(c).

56. *See* Michael Scott Davidson, *Despite Changes, Nevada Eviction Law Still Favors Landlords*, L.V. REV.-J., https://www.reviewjournal.com/local/local-nevada/despite-changes-nevada-eviction-law-still-favors-landlords-1697301/ (last updated June 29, 2019, 3:50 PM) [https://perma.cc/KQA3-8EFH] (outlining how quickly a tenant can be evicted for falling behind on rent by state and identifying the length of any grace period, notice period, court period, post-judgment period and eviction). The range is five to fifty-three days. Georgia is tied with Iowa and Minnesota for the third shortest time period at nine days, eight days of which is "court period" in Georgia. Five states allow a grace period and a notice period (SD, TN, OR, CT, and RI) and thirty-five additional states allow a notice period. The states with *no* grace or notice period are GA, WV, MN, OK, IN, MO, NC, NJ, MD, and PA.

jurisdiction to jurisdiction. There are several causes of such variation. First, the law often leaves interstitial gaps that local jurisdictions must fill out of necessity. Second, local norms, demographics, and court culture may lead courts to adapt their own process in ways that shape outcomes and the experience of those using the system.

There are several places where statutory law does not address a necessary part of the dispossessory process and where local jurisdictions have been given autonomy to fill in the gaps. Answer forms, for example, vary widely from county to county: Fulton County provides a checklist of potential defenses that a tenant may wish to assert, whereas Athens-Clarke County leaves tenants space to write their defenses with little guidance.[57] The only part of the answer form governed by state statute is when the answer is due—seven days from the date of actual service.[58]

Additionally, although a hearing is contemplated by statute, courts have discretion to determine how and when they will be held. Statutory law governing dispossessory proceedings provides only that "a trial of the issues shall be had in accordance with . . . the procedures prescribed for [the magistrate] court."[59] As a result, there is wide variety in how courts schedule dispossessory hearings. For example, DeKalb County has evening calendars on Mondays and Tuesdays, allowing flexibility for those who work during the day.[60] In contrast, Cobb County only schedules hearings on Tuesdays at 9:00 a.m. and 1:30 p.m.[61] (None of the counties used in the above examples were included as part of the study.)

There are no provisions under state law to specify when (i.e., how many days after an answer is filed) or how hearings should be

57. *Compare Dispossessory Answer Form*, FULTON CNTY. MAGISTRATE CT., https://www.magistratefulton.org/DocumentCenter/View/90/Dispossessory-Answer-PDF?bidId= (last visited May 31, 2021) [https://perma.cc/FET9-UX5T], *with Answer to Dispossessory Warrant Affidavit*, ATHENS-CLARKE CNTY. MAGISTRATE CT., https://www.accgov.com/DocumentCenter/View/805 (last visited May 31, 2021) [https://perma.cc/AQW3-C3VC], *and Answer Form*, DOUGHERTY CNTY. MAGISTRATE CT., https://c97e0599-cms-prod.s3.amazonaws.com/7ke9rn84g-Dispo_Answer_Form.pdf (last visited May 31, 2021) [https://perma.cc/RX7J-XC9C].

58. GA. CODE ANN. § 44-7-51(b).

59. *Id.* § 44-7-53(b).

60. *Dispossessories Frequently Asked Questions (FAQ)*, DEKALB CNTY. MAGISTRATE CT., https://dekalbcountymagistratecourt.com/dispossessories/ (last visited May 31, 2021) [https://perma.cc/ES8S-PQDK].

61. *Magistrate Court*, COBB CNTY. GOV'T, https://www.cobbcounty.org/courts/magistrate-court (select "Dispossessory" under "FAQ Topics," then select "The tenant has filed his or her answer, when will the hearing be held?") (last visited May 31, 2021) [https://perma.cc/C2XF-W6WC].

scheduled or conducted.[62] Nor is there any statement of when alternative methods of resolving cases—for example, mediation or negotiation—may be made available, encouraged, or required.[63] And while general contract law may govern terms parties can agree to in a lease, there is no guidance in the code governing dispossessory cases as to the amount of late or other administrative fees that will be considered reasonable or excessive.[64]

D. Assessing Local Differences

In assessing the data resulting from this study, we found it important to consider multiple axes of justice against which case procedures and outcomes may be assessed. One obvious set of metrics relates to substantive outcomes: Who won and who lost? Was a monetary judgment awarded and, if so, how much? Was a writ of possession issued, and was the tenant ultimately evicted?

Another set of metrics we considered in assessing the combination of quantitative and qualitative data were those relating to procedural justice: Was the process by which the outcome was reached (perceived as) fair? Was one party unfairly disadvantaged? Although conducted in the distinct context of citizen encounters with police, Tom Tyler's work on procedural justice is instructive. He suggests, drawing on other scholars' theory and research, that procedural justice, or the fairness of a legal procedure, might be assessed by factors such as consistency, presence of bias, decision quality and accuracy, correctability, representation, control over the presentation of evidence, and control over the final decision.[65] The import of these measures is significant for those subjected to them: as Robert MacCoun has summarized in his review of procedural justice literature, "the processes by which outcomes are reached matter profoundly to citizens."[66]

Taking a step back, both substantive and procedural justice—as described above—might be seen as what Gary Blasi has labeled "objective" measures of access to justice, viewed either from the perspective of what the "reasonable person" might expect from the

62. *See* GA. CODE ANN. § 44-7-53(b) (providing only that "a trial of the issues shall be had . . . [and] [e]very effort should be made by the trial court to expedite a trial of the issues").

63. *See id.* § 44-7-53(b) (excluding any mention of alternatives to trial).

64. *See id.* § 44-7-55 (excluding any limitations on the amount of fees to be charged).

65. Tom R. Tyler, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 LAW & SOC'Y REV. 103, 104–05 (1988).

66. Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, 2005 ANN. REV. L. & SOC. SCI. 171, 182.

process or an outcome-based analysis.[67] In contrast, Blasi's description of "subjective justice" is "largely independent of outcomes or of actual . . . procedural fairness."[68] Blasi observes that, in measuring satisfaction with case resolution processes through a subjective lens, "perceptions may be more important than either the actual fairness of the process or the outcome."[69] Tyler's work echoes similar themes, suggesting that a key determinant of how people respond to encounters with the legal process or courts is their "assessment of the fairness of the procedures used in that contact."[70] In many cases, Tyler notes, "those affected by the decisions of third parties in both formal and informal settings react to the procedural justice of the decisionmaking process at least as much, and often more, than they react to the decision itself."[71] MacCoun also notes, citing the work of Tyler and his colleagues, that even those who ultimately receive negative outcomes—including lengthy prison sentences—may be "more satisfied and more positive in their views of authorities when they perceive the decision makers as honest and unbiased and the legal process as fair."[72]

Admittedly, our study focused primarily on substantive outcomes gleaned from quantitative analysis of the case file data. We did not aim specifically to undertake a formal analysis of procedural justice outcomes. The inclusion of qualitative data gleaned from our stakeholder interviews and court observations, however, allowed us to consider how parties' understandings of procedural justice informed their decisions and may have contributed to different substantive outcomes. We have touched on these themes to the extent possible within the confines of this study, but also note the importance of doing so more extensively in future research.

II. THREE COURTS: A TYPOLOGY

This Part provides basic demographic information on each county included in the study and a description of the court structure each county uses to handle dispossessory cases. We also offer a typology for all three courts, considering select relevant factors, to assist the reader in contextualizing county data discussed throughout. For

67. Gary Blasi, *How Much Access? How Much Justice?*, 73 FORDHAM L. REV. 865, 874–77 (2004).

68. *Id.* at 870.

69. *Id.*

70. Tyler, *supra* note 65, at 128.

71. *Id.* (citing E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988)).

72. MacCoun, *supra* note 66, at 176.

purposes of this Article,[73] we refer to the suburban county as County S, the larger rural county as County R, and the smaller rural county as County r.

A. County Demographics

County S is a large suburban county, still within the outer boundaries of the Atlanta metropolitan area. Its population has grown rapidly—by 93%—from 2000 to 2018.[74] The same is true of the county's Black population, which grew from 14.7% in 2000[75] to just over 42% in 2018.[76] The poverty rate in County S, 10.4%,[77] is below the state average of 16%.[78] Based on our data, eviction filings in County S average between 7,000 and 8,000 per year.[79]

County R, which is further south and further away from Atlanta, had a lower rate of expansion—increasing by 11.6% from 2000 to 2018. Its population density in 2010 was 326.1 per square mile, much less dense than County S (633 per square mile).[80] Thirty-four percent of County R's population was Black at the time the study was

73. To ensure as much anonymity of the interviewees as possible, we explained to all parties interviewed that the counties would not be referred to by name—nor would any interviewee be identified by name—in any published works resulting from the study.

74. *2000 Census Data*, U.S. CENSUS BUREAU; *2018 ACS Demographic and Housing Estimates*, U.S. CENSUS BUREAU.

75. *2000 Census Data*, *supra* note 74.

76. *2018 ACS Demographic and Housing Estimates*, *supra* note 74. We have highlighted the relative proportion of the Black population because it is this group that tends to provide the greatest source of racial diversity (beyond white individuals) in these three counties. Other racial groups (as demarcated by the 2010 census) constituted, at most, 4% to 7% of the population. The next largest group in all three cases were those designated as "Hispanic or Latino."

77. *2018 Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU.

78. *Georgia—2018 Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU.

79. As previously affirmed by several authors, discrepancies with Eviction Lab data have been noted throughout the country. *See* Daniela Aiello, Lisa Bates, Terra Graziani, Christopher Herring, Manissa Maharawal, Erin McElroy, Pamela Phan & Gretchen Purser, *Eviction Lab Misses the Mark*, SHELTERFORCE (Aug. 22, 2018), https://shelterforce.org/2018/08/22/eviction-lab-misses-the-mark/ [https://perma.cc/Y7DB-SQG8]; Taylor Shelton, *Mapping Dispossession: Eviction, Foreclosure and the Multiple Geographies of Housing Instability in Lexington, Kentucky*, 97 GEOFORUM 281 (2018). In comparison to our data, we found the Eviction Lab data generally undercounted the number of dispossessory filings by 20% to 25% per year and overestimated formal evictions by an average of 20% to 25%. We suspect this discrepancy is due to differences in how data were collected. Eviction Lab relied in large part on data sets purchased from LexisNexis. *See* MATTHEW DESMOND, ASHLEY GROMIS, LAVAR EDMONDS, JAMES HENDRICKSON, KATIE KRYWOKULSKI, LILLIAN LEUNG & ADAM PORTON, PRINCETON UNIV., EVICTION LAB METHODOLOGY REPORT: VERSION 1.1.0, at 5 (2018), https://evictionlab.org/docs/Eviction%20Lab%20Methodology%20Report.pdf [https://perma.cc/SZW7-79J6]. Given our understanding of how the courts in our study maintain dispossessory records, we are unclear on what information would be included in these data sets or how it would be used to calculate eviction filings or actual evictions.

80. *2010 Census Data*, U.S. CENSUS BUREAU.

conducted.[81] County R's poverty rate is higher than the state average, and double that of County S, at 21.6%.[82] Its yearly eviction filings are in the 3,500 to 4,000 range.

On the most rural end of the spectrum is County r, with a population density of 128.3 per square mile. County r's rate of growth from 2000 to 2018 has been faster than that of County R, at 21.7%.[83] As of the time of the study, 29% of County r's population was Black.[84] Its poverty rate of 23.8%[85] is slightly higher than County R, and it sees roughly 1,200 eviction filings each year.

Given limitations of the data collected, we were not able to analyze the race of individual litigants in the dataset. But we do want to acknowledge, based on case observation and limited interviews, that a disproportionate majority of the tenants we personally observed appeared to be Black, many of them Black women.[86] In contrast, only one of eight judges interviewed was Black (the other seven were white) and only one clerk interviewed was Black (the remaining four were white). Last, all of the law enforcement officials interviewed were white. While not a primary focus of this study, race is undeniably present as an undercurrent, and more research on its specific influence on the eviction process is needed.

B. Court Structure

Georgia's decentralized court system and its 159 distinct counties[87] offer a foundation for a wide variety of court mechanisms. Although certain basic elements are omnipresent, a mix of factors—including county size, caseload, demographics, resources, history, and culture—influence the design of its dispossessory process. For example, Fulton County (not included in the study) has several calendars on every day of the week except Friday, separating into distinct groups cases where at least one party is represented by an attorney and those

81. *2018 ACS Demographic and Housing Estimates*, *supra* note 74.

82. *2018 Poverty Status in the Past 12 Months*, *supra* note 77.

83. *2010 Census Data*, *supra* note 80.

84. *2018 ACS Demographic and Housing Estimates*, *supra* note 74.

85. *2018 Poverty Status in the Past 12 Months*, *supra* note 77.

86. This is reflected in much of the literature discussing the intersection of eviction and race. *See, e.g.*, DESMOND, *supra* note 4, at 299 (noting that, among Milwaukee renters, one in five Black women has been evicted as an adult, compared to one in twelve Hispanic women and one in fifteen white women).

87. Pruitt et al., *supra* note 15, at 67.

where both parties are pro se.[88] In addition, there is a separate calendar for those cases in which the pleadings have been judged by court staff to lack a legally sufficient defense; those cases are disposed of en masse without a hearing.[89] In Fulton County, only one-fifth of all cases in 2015 were actually heard by a judge or mediator.[90] Based on observation, in Fulton County, landlords are often represented by an attorney, while tenants are almost never represented by counsel.

Dispossessory court in County S is similar in structure to that in Fulton County, although its calendars are organized differently. As in Fulton County, court is held in a formal courtroom, and related procedures are involved—for example, there is a deputy, the judge wears a robe, those in the audience stand when the judge enters. At the time interviews were conducted, dispossessory court was held only one day a week with all cases scheduled for that day, regardless of whether the parties were represented by a lawyer. After an initial calendar call, the judge delivers a short speech explaining how court will proceed and directing the parties to attempt to reach a settlement before cases are called individually. Court recesses for roughly thirty minutes for the parties to discuss possible settlement, and then returns to call and resolve those cases that have not been able to reach a resolution. Cases with lawyers are typically called before those where both litigants are pro se—this is in part to cater to lawyers' schedules, but also so that pro se litigants can learn by observing the lawyers handle cases.[91] All of the judges presiding over dispossessory cases in County S have a law degree.[92]

In County R, dispossessory court operates on a much smaller scale. Each case is scheduled for an individual hearing lasting thirty minutes (or sometimes fifteen minutes each in the case of landlords with multiple properties/filings). Court clerks call the parties in advance to ensure the scheduled time will work for them, and parties need only appear for their set hearing time. Court is held in a small room within the clerk's office, behind the clerk's desk area. A simple

88. *Court Calendars*, FULTON CNTY. MAGISTRATE CT., https://www.magistratefulton.org/230/Court-Calendars (last visited June 1, 2021) [https://perma.cc/KM2A-L5EW].

89. *See* Stokes, *supra* note 44.

90. ELORA RAYMOND, RICHARD DUCKWORTH, BEN MILLER, MICHAEL LUCAS & SHIRAJ POKHAREL, FED. RSRV. BANK OF ATLANTA, CORPORATE LANDLORDS, INSTITUTIONAL INVESTORS, AND DISPLACEMENT: EVICTION RATES IN SINGLE-FAMILY RENTALS 16 (2016), https://www.frbatlanta.org/-/media/documents/community-development/publications/discussion-papers/2016/04-corporate-landlords-institutional-investors-and-displacement-2016-12-21.pdf [https://perma.cc/N4D3-254H].

91. Interview with Judge 5, Cnty. S (June 29, 2018).

92. In one case, a judge has a law degree but is not barred.

desk for the judge—raised slightly—sits up front, with two similar desks to either side for each party; several chairs line the back of the room. Of the four judges in County R at the time interviews were conducted, two were lawyers by training and two were not.[93] During our time in County R, we never observed representation by a lawyer in dispossessory court, on behalf of either the landlord or tenant.

In County r, dispossessory court is held in a courtroom in a government building built primarily to house the county jail. In a room lined with gray cinderblock, dispossessory parties fill the room waiting for their cases to be called. The judges—neither of whom are lawyers, but both of whom wear formal robes—take their place at a raised desk at the front of the room before two tables, one for each party. As in County S, the court hears dispossessory cases one day a week; if needed, depending on case volume, another day can be added to the calendar. In the event one of the parties has a conflict, a continuance request can be made within seventy-two hours of the hearing date and submitted for the judge's review.

C. Court Typology

Below is a table summarizing some of the procedural and structural differences among the three courts, as relevant to the questions at issue. This chart is not intended to serve as a basis for any causal claims included in our analysis but instead to provide a more succinct summary of relevant differences between the counties and help the reader to contextualize the findings detailed below.

"Scale/case volume" refers primarily to the number of dispossessory cases each court handles as a relative matter. "Formality of procedures" includes both visual or atmospheric factors, such as the attire of judges (robes) and courtroom setting, as well as the nature of hearings and other procedures for handling cases in court. "Individualized process" refers primarily to how hearings are scheduled—for example, whether hearings are scheduled individually or multiple cases are called for the same appearance time. Answer forms were also evaluated on their simplicity and use of legal language and terms.[94] The last category—"presence of lawyers"—refers to the

93. Georgia law does not require that a magistrate judge be a trained lawyer, only that the chief magistrate be elected in a partisan election. *See* GA. CODE ANN. §§ 15-10-20(c), -22 (2021).

94. For example, the answer forms for County S and R were similar, but the one in County S used simpler language to convey the same concepts—where County R's answer form states, "Defendant is not indebted to Plaintiff in any amount," County S's answer form states, "I do not owe any rent to my landlord."

overall presence of lawyers in a county's dispossessory process, including whether the judges presiding over dispossessory cases are attorneys and the frequency of party legal representation (almost always on the landlord side). Like the other categories, this last variable is noted as a relative matter—even then, County r is noted as "LL" because neither judge hearing dispossessory cases is a lawyer, and the presence of lawyers for any party was nearly nonexistent.

TABLE 1: COURT TYPOLOGY (FOR COUNTIES S, R, r)

	Scale/case volume	Formality of procedures	Individualized process	Answer form (formality + legality)	Presence of lawyers (judges & landlord reps)
County S	H	H	L	M	M
County R	M	L	H	H	L
County r	L	M	M	L	LL

*H = high; M = medium; L = low (all as a relative matter)

III. STUDY: COURT PROCESS AND OUTCOMES

In this Part, we provide an overview of the study design and methodology, followed by a summary of study findings, based on stakeholder interviews and analysis of the case data. Last, we provide some conclusions drawn from the study data relating to the dispossessory process in Georgia more generally and ways in which the data appear to play out differently along county lines, suggesting a separate set of conclusions about court typology.

A. Study Design and Methodology

This Article uses information coded from dispossessory filings in three magistrate courts in the greater Atlanta metropolitan area, complemented by on-site ethnographic court observation and interviews of judges, clerks, law enforcement, tenants, and landlords involved in the dispossessory process in each county. Cases were collected from various time periods within each calendar year for each year from 2013 to 2017; although the exact number of cases from each

As discussed in more detail below, County r's answer form offers only three options: "I admit the claims of Plaintiff," "I request a payment schedule," and "I deny the claim of Plaintiff(s) as follows (Attach additional sheet as needed)."

county ultimately included in the analysis varied, the sampling frame remained consistent across counties.[95] In total, 2,257 cases were selected and coded: 976 cases in County S, 1,002 cases in County R, and 279 cases in County r.

Paper records were used to ensure we had access to the complete case file with all notes and documentation, and because digital records were not available in two counties. A detailed coding procedure for all case files—using eighty-two unique coding points—was developed based on court observation, interviews with court personnel, and copies of dispossessory forms to address the unique differences in each court and allow comparability in our analysis. Cases were coded based on the information available in the scanned court records, and thus the total number of categories coded in each case varied.[96] Finally, all the individually coded case sets were consolidated into a single dataset, which was cleaned and compared for any remaining discrepancies in information.[97] Statistical analysis was performed to test relationships in the data. In the results produced throughout this paper, Chi-squared tests of independence, Z-tests of proportion, and ANOVA were used to compare outcomes. All statistically significant results are reported at $p < .05$, unless otherwise noted.[98]

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95. To construct the sampling frame for dispossessory filings, cases were collected at two time points, 100 cases from the first quarter of the calendar year and 100 cases from the fourth quarter of the calendar year, for a total of approximately 200 cases per year from each county. Due to some missing case data and one county numbering all of its civil cases sequentially (rather than labeling dispossessory cases distinctly), this process did not ultimately result in exactly 200 cases in each year for each county. For example, County r averaged only about 50 to 60 dispossessory cases per year from the 200 total cases pulled. Due to the overall small number of overall dispossessory cases litigated in County r compared to County S or R, the sampling frame for County r is approximately the same as that in County R: about 5% of overall dispossessory cases were randomly coded in both County r and R. Approximately 2.5% to 3% of overall dispossessory cases in County S were selected and coded due to the higher volume of cases. However, a yearly sample size of approximately 200 cases per year remains sufficient for our analysis.

96. Cases that were filed with no further action taken may only have information on the names and addresses listed on the initial filing, the amounts sought, and basis for eviction listed by the file. By contrast, cases that proceeded to an eviction by law enforcement may have almost every coding point in the dataset, including defenses raised, final judgments, and additional information recorded by the court throughout the process.

The vast majority of dispossessory filings did not result in an eviction recorded by the court. Thus, in our dataset, about 26% of cases had information through the issuance of a writ of possession, and 18.4% of cases contained information all the way through the eviction process with law enforcement.

97. For example, some case files included total amounts while others only contained breakdowns of different types of amounts, such as rent, late fees, etc. To make these amounts comparable, the researchers imputed the total amount sought or ordered from the subcomponents of rent, late fees, court costs, attorney fees, and other specified amounts when provided.

98. Every time something is reported as "significant" in the paper, this term represents a p-value of at least at .05, even though many times it was higher at .01 or .001.

Interviews with judges, clerks, and law enforcement—eighteen in total—were conducted at their offices and generally lasted between forty-five minutes to an hour. All judges who regularly oversaw dispossessory cases and the chief magistrate judge were interviewed about their role in the court, the dispossessory process in their county, and their general understanding of the roles and procedures of others involved in the dispossessory process. In all three counties, the clerks who were most responsible for dealing with the day-to-day process of dispossessory cases were interviewed (as well as the chief clerk, if applicable). Finally, law enforcement officers involved in the dispossessory process were interviewed in two counties: County S and County R.[99] Two attorneys from Georgia Legal Services Program ("GLSP") were interviewed to provide statewide context for dispossessory proceedings.

In Counties S and R, we conducted an additional fifteen interviews with tenants, landlords, or their agents.[100] After observing their case in court, we approached individuals for interviews. Interviews were conducted in the waiting areas outside the courtroom where the individual's case was held and generally lasted about twenty to thirty minutes.

In total, we conducted thirty-five interviews of court personnel, law enforcement, lawyers, and litigants. These interviews were recorded and transcribed verbatim, and an iterative coding procedure was used to develop themes and analytic categories. All respondents have been assigned pseudonyms and other identifying information has been changed.

B. Study Findings

1. Nature of the Proceedings and Judicial Role

One theme emerging from our interviews with judges and clerks was that dispossessory cases are perceived as fairly simplistic. In their view, the issues presented by each case do not require much expertise or training on the part of the decisionmaker—in part because the main issue to be resolved is just whether the tenant has paid rent. One judge

99. In County R, all constables associated with the court were interviewed, while in County S, interviews were conducted with a specific unit of officers within the Sheriff's Department who were responsible for the issuance of summons and the execution of writs.

100. In some cases, there were two tenants included in one interview (given status as joint defendants in a singular case). Interviews were only conducted in these two counties based on an initial grant from the American Bar Endowment to look at County S and County R. Interviewees were offered a ten-dollar gift card incentive for their time, though some judges refused to accept the gift card.

from County R commented, "[I]t's mostly payment or nonpayment."[101] Another judge from County R added, "I've had very few where you know, material facts were really in dispute."[102] One clerk from County R explained that, given their simplicity, dispossessories are often the easiest proceedings for new clerks to begin with as they acclimate to the position.[103] A clerk from County S echoed this sentiment: "[B]asically it all boils down to you either paid your rent or you didn't pay your rent. . . . [I]t's a pretty cut and dried process."[104] GLSP attorneys described another county (not included in our study) that is explicit in its focus on the question of nonpayment: "We have a far south county where the clients come in [and the judge] says look, all I want to hear is did you pay the rent or did you not pay the rent? We're not here to litigate your case."[105]

Landlords saw the process similarly—which related, in part (aside from issues like cost), to why they saw no need for legal representation:

> I haven't needed any help. Basically, when I go in, if it comes to me having to file a dispossessory warrant, it means the tenant hasn't paid their rent. And when I go see if a tenant ever challenges that, I don't have to have a reason why they're not paying their rent. . . . I've never had to . . . pay an attorney to go sit in there and argue my case for the judge. The facts pretty much speak for themselves.[106]

Another landlord from County R said:

> Don't pay the rent, get out. That's simple law. There is nothing they can do. It's the state law in the state of Georgia. That you don't pay the rent, you have to go. . . . You go to the store and you don't pay the money, you can't get the merchandise. Same simple.[107]

While these conclusions may accurately reflect the observation by Russell Engler and others that "there is little landlords can do to undermine their position of strength" and tend to win regardless of

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101. Interview with Judge 1, Cnty. R (June 25, 2018).

102. Interview with Judge 4, Cnty. R (June 29, 2018).

103. "The dispossessories really are probably the best thing to start on. Because a lot of people, like I didn't know who a defendant was, who a plaintiff was, what a dispossessory was. . . . But yeah, usually low man on the totem pole." Interview with Clerk 1, Cnty. R (July 23, 2018).

104. Interview with Clerks, Cnty. S (July 16, 2018).

105. Interview with GLSP Att'ys (June 11, 2019). The attorneys added:

> [W]hen you have a judge who sees their role as I'm not here to litigate, to decide that, your legal issues. I'm just here to determine, did you pay your rent or not. That that's going to have consequences for tenants. Because their claims aren't being heard. If all the judge wants to hear is a yes or no answer to did you pay your rent or not, that has devastating consequences for tenants, because nothing else is being heard.

Id.

106. Interview with Landlord 4, Mgmt. Co., Cnty. R (Aug. 27, 2018).

107. Interview with Landlord 3, Cnty. R (Aug. 27, 2018).

representation,[108] our data, as described below, do show that legal representation did improve landlord outcomes.

While landlord-tenant law in Georgia is relatively simple in comparison with other legal proceedings—and the range of defenses available to the tenant is narrow—it is still notable that many of those administering the proceeding view it as turning solely on one factual question. Such a characterization might operate as a self-fulfilling prophecy,[109] even though other issues can be dispositive. One clerk from County r acknowledged the simplicity of the case type but also the importance of seemingly minor procedural aspects: "I've learned dispossessories are not necessarily complicated. But I've learned that one little thing [e.g., provision of proper notice] can change the whole outcome of the ruling."[110]

While judges, clerks, and landlords described the dispossessory cases as simplistic, tenants rarely seemed to fully understand the process in which they were participating. One tenant from County S summarized:

> I think they should be able to break it down a little bit more. You know, with the eviction process, they don't speak normal language. You know, the judge talk, the lawyer talk, so I think they should tell people what's going on. Like if you all don't understand, just say you don't understand. It's kind of a little intimidating . . . . It's hard to tell a judge, I shouldn't say I don't understand what you're saying. I don't know if he would have broke it down for me to understand.[111]

Another County S tenant explained how her expectations of court failed to align with the reality she experienced, and that she did not have an opportunity to present the information she saw as relevant:

> I thought that the judge would take into consideration everything that I had been through. And I thought that my documentation would be enough, and, because, that I could support you know, my claim, which I could. But no documentation was ever requested. I didn't get an opportunity to hand that over or show that in court.[112]

A tenant from the same county engaging with dispossessory court for the first time said, "I actually expected people to ask questions or, you know, work out more of an easier transition."[113] Many tenants—

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108. Engler, *supra* note 7, at 48–51.

109. *Cf.* Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 302 (2018) (explaining that some cases—such as civil contempt proceedings—may be seen as simple when in reality they are just under-litigated); *see id.*:

> If we find cases simple because lawyers have not handled them frequently enough to develop a complex body of case law, and then we deem those cases unworthy of appointment of counsel because of the lack of complexity, the underdevelopment of law on behalf of the poor recreates itself in an unfortunate feedback loop.

110. Interview with Clerk, Cnty. r (Nov. 15, 2018).

111. Interview with Tenant 8, Cnty. S (Sept. 4, 2018).

112. Interview with Tenant 6, Cnty. S (Aug. 28, 2018).

113. Interview with Tenant 5, Cnty. S (Aug. 28, 2018).

especially those coming to court for the first time—expect their case to be litigated, and they find a very different process. The same tenant speculated that while repeat appearances might allow someone to familiarize oneself with the process over time, her experience as a first-time litigant was confusing: "If someone is used to doing this, they know the process. They know what's going on. Somebody who's never been evicted ever, don't even, I mean—first time I've ever had to go to court for it, I really didn't understand what was going on."[114]

The dominant view of dispossessory proceedings among judges and clerks presupposed not only that the issues would be simple to resolve, but also a likely range of outcomes and tenants' inability to do much in response. One judge in County R observed, "[A]bout ninety-nine to ninety-five percent of the cases brought in this court, are because the people didn't pay. And there's hardly any defense to that."[115] A judge in County S stated, "[T]here's not very many defenses to dispossessories that are effective. You know? But I'll listen to them. I'll give them their day in court. But I won't listen very long, when there's nothing to it."[116] One judge in County S took this to suggest also that the scope of the proceeding was very narrow—not expanding to include possible counterclaims the tenant may raise:[117] "I look at it as basically deciding who gets possession. And you know, I don't, I don't entertain as much of the claims for you know, counterclaims and things like that."[118] GLSP attorneys interviewed suggested that, in their experience, many judges are unlikely to entertain counterclaims raised by unrepresented tenants.[119] These findings reflect observations throughout the literature of housing courts focusing primarily on the function of rent collection, often to the exclusion of tenant claims (even those of a significant and meritorious nature).[120]

Notwithstanding the above, it was clear both from court observation and the interviews that, even under the current structure, there are meaningful ways that judges can intervene. For example, a

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114. *Id.*

115. Interview with Judge 1, Cnty. R (June 26, 2018).

116. Interview with Judge 5, Cnty. S (June 29, 2018).

117. Echoed in the work of Garboden and Rosen, who found that when repair issues were present in a case where rent was owed, the tenant's repair claims were often overlooked—"late rent trumps all other issues." Philip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & CMTY. 638, 654 (2019) ("[J]udges will often simply overlook repair issues if the landlord argues that the tenant was late on her rent.").

118. Interview with Judge 5, Cnty. S (June 29, 2018).

119. *See infra* note 150 and accompanying text.

120. *See* Michele Cotton, *A Case Study on Access to Justice and How to Improve It*, 16 J.L. SOC'Y 61, 72–74 (2014); *see also* Steinberg, *supra* note 30, at 1606 ("In rental housing and consumer courts . . . judges tend to adopt rent and debt collection as their assigned purpose, and then conform their conduct to meet the perceived or actual expectations of their role.").

judge from County S explained that they often ask landlords at the outset whether they have made a demand for the property; if the landlord has not, the case will be dismissed.[121]

Another court proceeding observed in County R in August 2018 confirms the same potential for judicial involvement. The case before the court involved the failure to pay August rent, in the amount of $400, and pitted an agent representing the landlord against a pro se tenant, a Black woman with two children present in court. The judge began the proceeding with some introductory explanations, including that the burden of proof rests with the party seeking eviction and that a trial can be avoided in the event the parties negotiate and reach a settlement. Ultimately, the parties were unable to reach an agreement. Toward the beginning of the trial, the judge asked whether a demand for rent had been paid prior to filing, to which the agent replied he "didn't think so." The judge pointed out that, under the statute, a demand is a necessary predicate to filing.[122] Ultimately, the judge dismissed the case due to a lack of demand for possession prior to filing and informed the parties that the landlord could file again for nonpayment of rent. During an interview with the tenant after court, she stated that she did not know failure to make a demand could constitute a defense.[123]

Another area demonstrating the importance of judicial involvement was the calculation and imposition of late fees. Landlords often asked for extremely high late fees and judges saw it as their role, either individually or as a matter of court policy, to scale back these amounts and impose a more reasonable fee. In County R, one judge (who was a lawyer) explained:

> Late fees have come up and I'm trying to school my landlords on that. . . . You gotta show me by a preponderance of the evidence that your late fee is commensurate with what you actually suffered. And of course, most couldn't show me that to begin with. The only reason I give them late fees to begin with is because it's usually contractual. But I cut it off when you get beyond that 10% range. . . . [T]hat's just what the court of appeals and

121. Interview with Judge 6, Cnty. S (June 29, 2018):

> This is the first question you ask. Have you made demand for the property? Because on statement of claim, it says, they made a demand for the property. Oh yeah, yeah. Well, I'll get the tenant's answer that says, we didn't know he was going to do an eviction. He never told us. And I'll say to the guy, did you ask them for possession of the property? Well, no. So that means your statement of claim that you swore to in front of the clerk is perjured. Case dismissed. Do it again.

122. There was some discussion of the property manager knocking on the tenant's door after August 15, but the filing was made on August 10. The judge asked the agent if he wanted to call the property manager as a witness, but ultimately that did not occur.

123. Interview with Tenant 3, Cnty. R (Aug. 27, 2018).

> supreme court generally rely on, you know, when they don't know what else to do. That's generally where they stop.[124]

Another judge from County R explained that, at one point, all the judges in the court had collectively agreed that "late fees would be set at $50 per month and no more."[125] This was an area that created some friction with landlords, who disagreed with judicial limitations on late fees and experienced variation from judge to judge:

> Our particular contract, rent, late fee, if it's not paid by the fifth they get a late fee. If it's not paid by the tenth then I start enforcing $10 a day. So late fees could be up to $270. Some of my people pay $300 rent. So he has a big problem with that, and he tries to tell me that is illegal. Yet they signed a legal contract. I have to keep my mouth shut. I don't like that judge. I've got another judge that's like, what does he owe? This is what he owes, this is what I've filed. Do you agree with that? Yes sir, I do. Okay, here's your paper. If you don't pay it by then, there will be other legal ramifications.[126]

One distinguishing characteristic of County R—likely due in part to its relatively low case volume—was its focus on letting everyone have their day in court. This was evident from the court's scheduling procedures as well as the manner in which individual proceedings were conducted. Admittedly, County R is able to go this route because of its relatively low caseload—compared to more urban counties, like County S—although it also seems to be a matter of legal culture (dictated in part by the chief judge). One judge from County R commented, "[W]e don't have to rush. And we give people their day in court. And most everybody, they want their day in court. They want to say what they want to say, they want to be heard. And they want to make sure somebody's listening."[127] The County R court also demonstrated significant flexibility in scheduling hearings and communicating with parties. The same judge noted:

> We accept anything as an answer, because they can come in any time prior to that hearing and even at that hearing and amend that answer. They can come in and file an answer that says, I know I owe the money but I don't have it. We're going to put it down for a hearing."[128]

A clerk from County R described similarly accommodating communication with landlords and tenants: "[W]e'll suggest a few times

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124. Interview with Judge 1, Cnty. R (June 25, 2018).

125. Interview with Judge 3, Cnty. R (June 25, 2018). It was difficult in practice to calculate the difference in late fees sought and imposed because of how data were recorded (and how/whether late fees were lumped together with rent owed or other administrative fees), but it does appear that County R had the smallest difference between average late fees sought and imposed, and was the only county of the three where the amount imposed was, on average, less than the amount sought.

126. Interview with Landlord 2, Mgmt. Co., Cnty. R (Aug. 23, 2018).

127. Interview with Judge 2, Cnty. R (June 25, 2018).

128. *Id.*

that are available to the tenant themselves, see what works best, and then we'll call the plaintiff and make sure it works for them as well."[129]

Unsurprisingly, landlords did not support such a permissive approach toward scheduling hearings. One management company representative in County R said:

> The only thing that of course I would love to see is that people have to have a reason to file an answer to have a hearing. Years ago, the tenant used to have a reason to call for a hearing. They would have to say . . . I don't owe this money. I don't owe this much. Or, he won't repair something. And to me, that would be a valid reason for having a hearing. If a landlord's not providing a service that he said he would when you lease the house, that's a valid reason to have a hearing. But now, the tenants all know that they can game the system by filing an answer.[130]

Perhaps signifying a theme among smaller, more rural counties, judges in County r expressed a similar desire to allow litigants a chance to be heard:

> I just feel like if a person takes the time to come in and file an answer, they have the right to be heard in court. I mean, that's just my general, personal opinion. And sometimes they don't even check I admit or I deny. They'll just handwrite something on there. I want a payment schedule. Or something like that. . . . [M]y number one thing is, if they file an answer, I'm going to set it down for a hearing.[131]

This willingness to set cases for a hearing stands in stark contrast to larger, more urban courts in Atlanta, where—in part due to much higher filing volumes—courts issue judgments (most often issuance of a writ) based solely on the pleadings and the tenant's failure to provide a legally sufficient defense. One judge from County r observed the contrast:

> It's interesting where we are. Because some of those bigger courts, because a lot of the big courts like Fulton County . . . teach our classes. And what's interesting to me is they do a lot of plea on the answer, or answer on the pleadings. . . . Where we're giving them a chance to talk. Give us their side if they want to. And sometimes they work it out. You know, the landlord will give them a little extra time to pay the money and they can stay in their property. I feel like a lot of our smaller counties, I know [county name deleted] pretty much does them about the same as us.[132]

When asked about their perception of whether the process was fair, tenants appeared to distinguish between their personal treatment by individuals in the process—which did not seem to be a significant source of their dissatisfaction—and shortcomings of the process itself or the inevitable results of that process:

> The judge, he was fair. Reasonable. I liked him. He was respectful.

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129. Interview with Clerk 2, Cnty. R (July 23, 2018).

130. Interview with Landlord 4, Mgmt. Co., Cnty. R (Aug. 27, 2018).

131. Interview with Judge 7, Cnty. r (Nov. 5, 2018).

132. Interview with Judge 8, Cnty. r (Nov. 5, 2018).

> It was fair. To me it was fair. It was better than what I expected.[133]

> *Interviewer*: Did you feel like the result of the proceeding was fair?
> *Tenant:* Yes.
> *Interviewer*: And how –
> *Tenant:* The way he said, I'll say yeah. Not just because they weren't in my favor, but if there's a process that needs to be, you know, followed.[134]

> What protections do tenants have? We have none. And we just end up getting, you know, we have to carry the eviction on our record, and now it makes it more impossible to find a place to live afterwards. . . . Well, I just, it doesn't seem fair.[135]

> Fair. It would be fair if they actually made the repairs and I paid my rent. In their eyes it was fair, because they get their money. . . . [I]t would be more fair if I had a place to stay that was actually fixed.[136]

> I feel like that some type of legal aid should be provided to everyone. I feel like that it's not fair. That everyone can't afford legal representation.[137]

One tenant who had previously experienced the eviction process in New York was bewildered by the differences in process, including the much shorter time frame (seven days) allowed in Georgia before a tenant can be put out.[138]

The distinction we observed in tenants' reactions to their experience might be explained in part by research suggesting that procedures matter to litigants "because fair procedures produce fair outcomes" and that "process control matters not so much as an end in itself but as a means to an end."[139] Because the tenants did not observe much of a connection between the procedural control they were given and the ultimate results of the proceeding, their estimation of the procedural justice they received was likely diminished.

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133. Interview with Tenant 1, Cnty. R (Aug. 23, 2018).
134. Interview with Tenant 3, Cnty. R (Aug. 27, 2018).
135. Interview with Tenant 9, Cnty. R (Sept. 5, 2018).
136. Interview with Tenant 8, Cnty. S (Sept. 4, 2018).
137. Interview with Tenant 6, Cnty. S (Aug. 28, 2018).
138. Interview with Tenant 4, Cnty. R (Aug. 27, 2018):

> I lived in New York for 30 years. And moved to the South, I found it really very difficult to come in, to keep up with. Because the system is all turned around, you know. Like if you live in New York, they give you thirty days . . . . I'm acting on behalf of the tenant and the landlord. So, I'm not going to leave you outside just to go out in the street to be a bum, to depend on someone else. . . . [W]e're going to give you thirty days to find somewhere, which I think is fair, you know. When you're going to say seven days– personally, you're going to put that person out on the street?

139. MacCoun, *supra* note 66, at 182 (citing JOHN THIBAUT & LAURENS WALKER, PROCEDURAL JUSTICE (1975)).

2. Answers

One of the areas that yielded surprising results was the filing of answers by tenants. While many self-help assistance efforts focus on answer filing,[140] our study data show that the value and effectiveness of filing an answer is not as clear as common understandings might suggest.[141]

On a macro level, the frequency of answer filing did not necessarily correlate with better substantive tenant outcomes. The filing of an answer seemed to make little difference in Counties S and R as to whether a writ was ultimately issued. In County r, however, cases were significantly more likely to end in a writ if the tenant filed an answer.[142] Overall, cases in which a tenant filed an answer were significantly more likely to end in the issuance of a writ than those cases in which a tenant did not answer.[143] Cases in which an answer was filed were also significantly more likely to end in a consent agreement (see Table 2).[144] The same held true when controlling for defaults, where there may not be an opportunity to reach a consent agreement. Of those cases that did *not* end in a default judgment, the correlation between answer and consent was more pronounced.[145]

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140. *See, e.g.*, J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 2011–12 (2017); JUSTFIX.NYC, ANNUAL IMPACT REPORT 2017, at 4 (2017), https://drive.google.com/file/d/10aDudtn6zwJJfeogCTuo799W9mtCiXvE/view [https://perma.cc/FCS8-EYCB].

141. *Cf., e.g.*, *How to Answer an Eviction Warrant*, GEORGIALEGALAID.ORG, https://www.georgialegalaid.org/resource/how-to-answer-an-eviction-warrant (last updated Sept. 30, 2010) [https://perma.cc/BR3C-ZES5]:

> When you get an eviction warrant and want to fight it, you must file an answer. The answer is your chance to say why you should not be evicted. You have seven days to file an answer in court. Always look at the answer date on the warrant. Be sure to file your answer by that date. If you miss the date, the Marshal's or Sheriff's office can put you out.

142. $P < .05$ with 275 cases.

143. $P < .01$ ($n = 2244$) (missing 13 cases that were NOTCON for Writ).

144. $P < .001$ ($n = 2237$).

145. When viewed in comparison to one another, County R's and County r's rates of consent agreements are not significantly different. However, a case in County S was significantly more likely to end in a consent agreement when an answer was filed than in either County R or r. Overall, cases in County S were significantly more likely to end in consent agreements, regardless of tenants filing an answer, than those in County R or r (16.5%/4.8%/4.1%).

TABLE 2: ANSWER FILING AND CASE OUTCOMES

	County S	County R	County r	All counties
Overall answer filing rate	37.1%	20.7%	41.3%	30.3%
Answer and writ	29.4%	28.0%	54.4%	33.2%
No answer and writ	28.6%	23.3%	41.0%	27.2%
Answer with consent	43.1%	21.3%	9.1%	31.0%
No answer with consent	1.0%	0.4%	0.7%	0.6%
Answer w/ consent (no default)	51.9%	23.0%	8.1%	35.5%
No answer w/ consent (no default)	1.1%	0.7%	0.9%	0.9%

When tenants did file an answer, they often failed to make an argument readily recognizable as a legally sufficient defense. The most common answer involved forgoing all provided form responses in favor of a write-in response; this occurred in 45.7% of answers filed. Another 21.7% of answers chose both a provided option and a write-in response, for a total of 67% of all tenant responses that included a write-in answer. Another 15% of tenants simply chose an option indicating that they admitted the claims made against them or that they did not have the rent owed. Only 9% of answers alleged landlord fault, 5% argued that they had paid or did not in fact owe rent, 4% raised technical defenses, and 3% claimed error as to the amount owed.

Where a defense was offered, tenants in both Counties S and R were significantly more likely to write in an answer[146]—63.4% in County S and 85.6% in County R, as opposed to 47.7% in County r. When looking at cases where tenants chose to only write in an answer and not select any provided response, variations across counties were even more differentiated. In County S, 43.1% of tenants only wrote in an answer, while 72.2% in County R and 14% in County r did the same.

Setting aside the write-ins, the most common responses in County S were that the landlord did not provide proper notice (15.4%) and that the tenant did not have the rent money (14.6%). In County R, the most common response was that the tenant owed a different amount (11.7%). All of the other answers in Counties S and R were given in less than 10% of cases and often in only a few cases. County S had the fewest defenses raised overall. Last, very few tenants in any county raised defenses targeted at the landlord's behavior—for example, that the

146. $P < .001$ ($n = 651$).

landlord had failed to make a repair or refused to accept money proffered.[147] Such defenses were almost nonexistent in County R (4 total) and r (none), with only a slight register in County S (8%).

The answer form in County r was unique in providing only three options: "I admit the claims of plaintiff"; "I request a payment schedule"; and "I deny the claim of plaintiff(s) as follows" (with write-in space below). Of the cases where a tenant submitted any "defense" to the court, 39% of tenants chose the option to request a payment schedule; it was the most common response provided to the court, with "I admit the claims" as second most common (27.8%) and the third most common being "I deny the claims" (15.1%). In contrast, only 4 of 455 cases in County S and 1 of 194 cases in County R requested a payment schedule. County r's overall write-in rate (for all cases filed) was low, at just over 19%.

Of the cases in County r where the tenant requested a payment schedule, 51.4% ended in a writ being issued and 17.6% ended in a consent agreement. This is higher than the overall percentage of cases ending in writs (46.8%) and the overall percentage of cases ending in a consent agreement (4.1%) in County r. The number of cases where the tenant requested a payment schedule and the case was ultimately dismissed because the tenant paid some or all of the rent due (as noted in the case file) was nearly identical to the overall number of cases where dismissal occurred for similar reasons (58.3% versus 57.6% overall). Due to the relatively small subset of tenants who specifically requested a payment plan, we could not draw any definitive conclusions, but the data seem to suggest that choosing this option was not significantly more likely to end in the tenant being able to pay and, therefore, secure a better outcome.

The answer forms themselves exacerbate possible tenant confusion by providing response options that provide no legally cognizable defense ("I was unable to pay because I did not have the money") alongside other options that, if proven, would provide a defense ("I do not owe any rent to my landlord" or "My landlord did not give me proper notice before filing this lawsuit").[148] Across the board, the answer forms provide no guidance as to what will be expected of the tenant to prove his or her defense or counterclaim at a hearing.

147. Some tenants were unaware that they could not legally withhold rent and saw it as a reasoned response, given the landlord's failure to make necessary repairs:

Interviewer: Why did you not pay it?

Tenant: We knew she wasn't going to fix anything.

Interview with Tenant 2, Cnty. R (Aug. 27, 2018).

148. Responses on County S answer form (2015, 2017) (on file with author).

Tenants clearly raised counterclaims in only 64 of 2,257 cases. The percentage did not vary greatly across counties: 4.6% of tenants in County S raised counterclaims, compared to 1.4% of tenants in County r and 1.5% of tenants in County R. In contrast, GLSP attorneys said that, when representing a tenant, they "rarely file an answer where we don't raise a counterclaim."[149] The same attorneys, however, questioned the effectiveness of tenants raising such claims when not represented by counsel: "The question is, is the court recognizing those counterclaims of unrepresented tenants. And the answer I think is no."[150]

The case data collected suggest that many tenants may not view the filing of an answer as critical, or are not able, or willing, to prioritize filing an answer. One tenant in County R (who had been evicted three times before, in County S) described the filing of an answer as a formality—more of an action to move things along than to provide a substantive counter: "You get the eviction, and then you have a week to answer. You answer, they set a court date. You go to court and then it gets decided, and then you get a date of when you have to be out."[151]

There was also some recognition among judges that the filing of the answer may be of debatable value. One judge in County R stated:

> I'm often enticed into telling the tenant, look, if you don't answer, and there's no personal service, there's no money judgment. If you're going to answer something like, need more time, you know, one of these where there's not a real good answer, should you answer? No, I'm going to give them possession of course, as a default, but there's no money judgment.[152]

Filing an answer is often thought to be valuable not only because it may affect the ultimate outcome, but because—at the very least—it may buy the tenant some time before he or she moves out or is forcibly evicted.[153] Under the law provided by statute, this makes sense: if a tenant does not file an answer, a writ can issue immediately, but if a tenant does file an answer and judgment is ultimately issued against them, the writ issued by the court is not effective for seven days from the date of judgment.[154] The data support this common understanding across all three counties. In cases where the tenant did file an answer, there were an average of 27.3 days between the date of service and issuance of the writ; where an answer was not filed, it took an average

149. Interview with GLSP Att'ys (June 11, 2019).

150. *Id.*

151. Interview with Tenant 9, Cnty. R (Sept. 5, 2018).

152. Interview with Judge 1, Cnty. R (June 25, 2018).

153. *See* Sabbeth, *supra* note 109, at 295 (explaining benefits of delay for defendants in civil and criminal proceedings).

154. GA. CODE ANN. §§ 44-7-53, -55 (2021).

of 16.2 days for the writ to issue (all cases, regardless of answer, took an average of 19.9 days from service to writ). On average, cases where an answer was filed took 11.2 days longer to end in a writ of possession than cases where there was no answer. This pattern was extremely consistent across counties—in County S, the difference of time to issuance of the writ for answer/no answer was 11.4 days; in County R, the difference was 11.3 days; and in County r, the difference was 11.4 days—with a standard deviation of approximately 12 days in each county.[155] We found this notable in demonstrating how, where the law is explicit, it may remain consistent across different court settings.[156]

3. Role of Lawyers and Agents

The presence of lawyers in dispossessory cases in the study counties was fairly rare—and almost nonexistent in the representation of tenants. Rates of representation for tenants were 1.2%, 0.5%, and 0.3% in counties S, R, and r, respectively. Several judges and clerks from Counties R and r noted the extreme rarity for tenants to appear with a lawyer—of the judges and clerks interviewed, one could not remember any such instances, and the others who commented on this issue could only remember fewer than five over the course of the years they had been in the position.

While low rates of tenant representation are a common feature in the larger story about eviction court,[157] the courts we studied differed from that common narrative in that landlords were also fairly unlikely to be represented by an attorney. Landlord representation rates were significantly higher than those of tenants, but still much lower than in many urban areas, at 12.2% in County S, 4.6% in County R, and 7.5% in County r. It is notable that landlord representation in County S—the most urban of the three counties—was significantly more likely to occur than in either Counties R or r.[158] There was no significant difference in

155. The standard deviations for the difference in answer/no answer in each county were also all consistent across counties: 12.33 (County S); 12.13 (County R); and 12.81 (County r).

156. Where the landlord was represented by a lawyer, the effect of filing an answer on delay was more pronounced. On average, these cases took 5.8 days longer between date of service to issuance of the writ. This result was highly significant with a standard deviation of 1.3.

157. Petersen, *supra* note 4, at 78 (noting that the vast majority of tenants in eviction cases are unrepresented); Kathryn A. Sabbeth, *Housing Defense as the New* Gideon, 41 HARV. J.L. & GENDER 55, 78 (2018) ("The vast majority of landlords in eviction proceedings are represented, while the vast majority of tenants are *un*represented."); Steinberg, *supra* note 30, at 1596–97 ("[L]opsided representation in housing and consumer matters is standard, meaning that the more powerful party to the litigation is highly likely to have an attorney, while the less powerful party almost never does. In many courts, landlord representation rates are around ninety percent."); *see also infra* note 236 and accompanying text.

158. $P < .001$ for County S versus County R; $P < .05$ for County r versus County S ($n = 2257$).

the likelihood of landlord legal representation between Counties R and r.

Although landlords were represented by counsel in relatively few instances, they were often represented by an agent—for example, a representative from a property management company or from an "eviction service" company that landlords can engage to file dispossessory cases and assist with the actual eviction.[159] Across all three study counties, 56.6% of cases documented landlord representation by an agent.[160] As discussed in this Part and noted below,[161] the role and impact of agents in the dispossessory process is nuanced and complex; while we touch on some of those differences here, they certainly provide fodder for analysis beyond this Article.

Most tenants were unfamiliar with Georgia Legal Services Program, the legal aid provider for all three study counties,[162] or with the more general notion that legal assistance might be available.[163]

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159. *See, e.g.*, *Dispossessory Services*, PDQ SERVS., INC., https://www.pdqservices.net/DispossessoryServices.aspx (last visited July 11, 2021) [https://perma.cc/5YEY-RP4Q]. Many of the cases involving agents were handled by self-described "eviction service" companies. In screening cases with agents by company name, we found that at least 42% of cases involved one of the two largest eviction service companies. This is likely an underestimate, as it does not include all the cases in which only the company representative was listed by name (without specific reference to the company).

160. The proportion of agent representation by county was as follows: County S (50.4%); County R (66.4%); and County r (43.4%).

161. *See infra* note 237.

162. Like many legal services organizations, GLSP does not have nearly enough lawyers to address the level of need present throughout its service area. GLSP is responsible for providing legal services in the 154 counties outside the Atlanta metropolitan area. *See Services*, GA. LEGAL SERVS. PROGRAM, https://www.glsp.org/services/ (last visited July 11, 2021) [https://perma.cc/33N4-76F9] (GLSP attorneys provide free civil legal services to "Georgians in 154 counties outside of Metro-Atlanta whose earnings do not exceed 200% above the federal poverty line or who are aged 60 years or older.").

As of 2017, the last year of data collection included in the study, Counties R and S were included in a GLSP service area composed of eighteen counties, with just nine attorneys assigned to provide legal services for all those counties. County r is served by a different GLSP office, responsible for sixteen counties and staffed by only four attorneys. Memorandum from Phyllis Holmen, Exec. Dir., Ga. Legal Servs. Program (Jan. 17, 2017) (on file with author).

163. *See* Interview with Tenant 5, Cnty. S (Aug. 28, 2018):

> *Interviewer:* But do you know that there are free legal services available in [County S] for these kinds of questions?
>
> *Tenant:* Well, for questions, yeah, you can call a lawyer hotline or something. But for actual representation, all that has to be paid.
>
> *Interviewer:* So you've never heard of Georgia Legal Services [Program]?
>
> *Tenant:* No.

One tenant in County S did have some expectation that legal assistance might be available but seemed to confuse criminal and civil legal assistance: "I know sometimes at court they appoint you a public defender. I didn't know if that was going to happen in my case, and that when I arrived I would have someone that would help me out. So I was kind of like, my expectations were not met." Interview with Tenant 6, Cnty. S (Aug. 28, 2018).

Some tenants clearly felt the effects of not having a lawyer to advocate on their behalf. One tenant from County S said, "I believe the lawyer would have been able to use their verbiage, you know, the things that they say, and the judge would have more so listened to what the lawyer said. Versus me."[164] Another tenant expressed frustration with uneven representation between landlord and tenant:

> I feel like that some type of legal aid should be provided to everyone. I feel like that it's not fair. That everyone can't afford legal representation. So at least to make the level, you know, the playing field a little bit leveled and fair, that someone, there should be a court-appointed representative there to help. . . . I don't even have anyone that I can go and ask legal questions to. . . . There was nobody that I could speak to other than his lawyer, which is no help to me. . . . I was never informed that I could, or you know, told this needs to be submitted prior to court or bringing these documents to court. Because when I asked that, they said nothing. They didn't, they couldn't advise me of anything, because they're not a lawyer.[165]

The same tenant explained how working with a lawyer on one aspect of her case had helped her to avoid long-term negative outcomes associated with an eviction record:

> I have a lawyer [from Georgia Legal Services Program] who's been working with me, with this, with getting them to, demanding them to make the repairs. . . . She told me what I needed to ask for. She said that you need to ask for a dismissal of the dispossessory. You don't want that on your record. And you offer to pay whatever is owed, so you don't owe anything. Because you don't want that on your record.[166]

In the absence of tenant-focused assistance, many tenants only had the landlord's lawyer or court personnel to consult (and, as noted above, court personnel are limited in what they can offer, given prohibitions on giving legal advice).[167] One tenant in County R said she relied primarily on word of mouth and information from a friend for her

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Given GLSP's limited staffing and resources, much of its housing and eviction work during the study period focused primarily on cases involving public and subsidized housing. In contrast, most cases in our dataset involved private landlords and housing subsidies were not at issue (one of our coding variables). *See GLSP'S Eviction Prevent Project*, GA. LEGAL SERVS. PROGRAM, https://www.glsp.org/glsps-eviction-prevent-project/ (last visited July 11, 2021) [https://perma.cc/G3D5-GM5N] ("GLSP represents clients who live in or seek to live in public or subsidized housing."). This explains (in part) why one tenant interviewed said she was told she was ineligible for assistance because she had a private landlord. New funding allowed GLSP to expand its private landlord-tenant work. *See* Press Release, Equal Just. Works, Equal Justice Works Launches Georgia Housing Corps (Mar. 7, 2018), https://www.equaljusticeworks.org/news/equal-justice-works-launches-georgia-housing-corps [https://perma.cc/CP8R-9CJ8]; *see also* Interview with GLSP Att'ys (June 11, 2019) (explaining how GLSP focused on subsidized housing tenancies, given limited resources, until new funding in 2017 allowed the organization to expand its private landlord-tenant work).

164. Interview with Tenant 8, Cnty. S (Sept. 4, 2018).

165. Interview with Tenant 6, Cnty. S (Aug. 28, 2018).

166. Interview with Tenant 6, Cnty. S (Aug. 28, 2018).

167. *See supra* note 46 for discussion of the problematic ethics of such hallway negotiations.

information about the court process.[168] When pressed who she would ask other questions of, she responded: "Probably the property manager. Because he kind of like would know the process more."[169] While tenants (and landlords) often turned to the internet for information about the eviction process—which can often be a source of misinformation[170]—the majority of tenants interviewed seemed to rely on a network of family and friends.[171]

Given the rarity of tenant representation, we were unable to measure its impact on case outcomes. For landlords, however, legal representation did correlate with better outcomes. Landlords with lawyers were significantly more likely to have a writ issued in their case[172] (52.7%) than landlords represented by agents (24.2%) or pro se landlords (32.2%). Lawyers were also significantly more likely to obtain a consent agreement than either pro se landlords or landlord agents (17.8% versus 9.7% or 8.7%, respectively).[173] The effect of lawyers was more pronounced in rural cases—in County R, 67.4% of cases with landlord legal representation ended in issuance of a writ (overall, only 24.4% of cases ended in issuance of a writ). In County r, landlord lawyers received writs in 57.1% of cases, while only 51% of pro se landlords and 34.7% of landlord agents received a writ in their cases.[174]

168. "Just word of mouth. My best friend told me. They'll probably give you seven days." Interview with Tenant 3, Cnty. R (Aug. 27, 2018).

169. *Id.*

170. *See* Interview with GLSP Att'ys (June 11, 2019) ("People who get frustrated, can't get a repair made, withhold their rent. Read on the Internet that they can do that. They end up in dispossessory.").

171. "[A]ll of my knowledge of this has just been learned from the Internet and asking questions of people that may have been through similar situations. . . . I asked my mom. She's never been through an eviction process, but I just kind of asked her. I mean, because she's my mom. And I mean, she knows everything that I went through, so she basically told me just to stand my ground and say my piece, and if it doesn't go in my favor then at least I know I told [sic] how I felt about the situation. I spoke to, you know, one of my neighbors who actually went through an eviction. And . . . theirs was dismissed. So I got different takes on the situation, different people that have been through it with different outcomes. . . . [A]t the end of the day, with all the information that they gave me, I still wasn't sure what was going to happen with my case. Because nobody's situation was like mine. Nobody had, you know, experienced what I went through with the maintenance and all that stuff. They were evicted for other reasons." Interview with Tenant 6, Cnty. S (Aug. 28, 2018).

172. $P < .001$ ($n = 2251$).

173. $P < .01$ ($n = 2243$).

174. A similar comparison of representation by consent agreements within counties could not be performed due to the small number of consent agreements in the data set as a whole.

TABLE 3: IMPACT OF LANDLORD LAWYERS ON WRITS OF POSSESSION

		County S	County R	County r[175]	All Counties
Writ of Possession Issued	Pro Se	30.1%	25.2%	51.0%**	32.2%**
	Lawyers	46.2%*	67.4%*	57.1%***	52.7%*
	Agents	25.1%	21.5%	34.7%	24.2%
	Total	28.9%	24.4%	46.8%	29.1%

*Lawyers significantly different from agents and pro se landlords.
**Pro se landlords significantly different from agents.
***Lawyers and pro se landlords significantly different from agents.

Judges took note of landlord lawyers' greater likelihood of settlement as well. A judge from County S said: "I think when . . . tenant and landlord both are represented by counsel, I think that they tend to settle. I can't even remember there ever being a contested case that I held, between lawyers on both sides in dispossessory court."[176] In contrast, with respect to pro se litigants, another judge from County S observed, "On Tuesday, or, on Fridays, pro se day, I could have ten on the calendar and have eight hearings. Nobody wants to settle. They don't understand."[177] Judges and clerks appreciated the efficiencies gained by representation—and even from pro se tenants observing lawyers handle cases:

Clerk in County S:

> "Oh, it's done more efficiently, obviously, because they know legally what the process is, as opposed to if the tenant just comes in. They don't necessarily, you know, they have no prior knowledge of the law. . . . The attorney's able to quickly you know, handle it. Because it's basically, it's fairly basic."[178]

Judge in County S:

> "[W]hen you have only the pro se people in there, it takes too long. They don't understand, and they get an example by watching and observing the lawyers . . . and the other, more experienced landlords present cases and settle cases. They settle a lot more often. And you know, it really, I just think it goes quicker."[179]

175. While the data seem to suggest the same differentiation occurred in County r, the small number of lawyers who represented cases in County r (n = 21) make drawing a definitive conclusion impossible.

176. Interview with Judge 5, Cnty. S (June 29, 2018).

177. Interview with Judge 6, Cnty. S (June 29, 2018).

178. Interview with Clerks, Cnty. S (July 16, 2018).

179. Interview with Judge 5, Cnty. S (June 29, 2018).

Judge in County R:

> "Now if I've got an attorney on both sides, I love it. Because it makes my job easier. And usually, generally speaking, if you have an attorney on both sides, most of the time it's going to get worked out before court."[180]

When asked, a judge from County r did not seem to think the involvement of a lawyer would make a significant difference: "I mean, it doesn't necessarily make a difference in the outcome of the case, necessarily. I mean, the facts are the facts. It does make the proceedings go a little bit smoother."[181] From the perspective of court stakeholders, lawyers seem to add value less because of their substantive legal expertise (in their view, the issues are fairly simple) and more because of their appreciation for the process and efficiencies of the court.

As noted above, cases handled by lawyers were more likely than those handled by pro se landlords to end in a consent agreement, thus appearing to produce certain efficiencies for the court (as reflected by the judges' comments). Upon further review, however (and while the "n" is small), cases with a lawyer in which a consent agreement was reached were actually more likely to eventually end up in a writ of possession than those with pro se landlords.[182] In looking at the subset of cases where a consent agreement seemed to truly resolve the case—in other words, the case did not return to court as part of the same action—the percentages were not significantly different across representation type (there was essentially no difference between pro se landlords and lawyers).[183] This suggests that while landlord lawyers may create initial efficiencies in the court process—i.e., getting cases resolved without a hearing—they do not create long-term efficiencies and do not preserve tenancy. We hypothesize this is, at least in part, because they can get tenants to agree to terms that they cannot meet.

Only one judge interviewed—notably, a nonlawyer (from County R)[184]—emphasized the power dynamics that may result from the landlord being represented while the tenant remains pro se:

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180. Interview with Judge 2, Cnty. R (June 25, 2018).

181. Interview with Judge 7, Cnty. r (Nov. 5, 2018).

182. Of cases with pro se landlords, 20% (9 of 45) cases that had a consent agreement still ended in a writ of possession. In contrast, 60.6% (20 of 33) of cases with lawyers that had a consent agreement still ended in a writ of possession.

183. For cases that ended in consent agreements and did not return to court for a different ultimate outcome, the data were as follows: 13 of 185 cases (lawyers) = 8.9%; 36 of 466 cases (pro se) = 7.7%; 72 of 1267 cases (agents) = 5.7%.

184. GLSP attorneys noted that, in their experience, lawyer judges were not always preferable to nonlawyer judges:

> Well, the issue with the more rural counties is they're not required to be lawyers. . . . [W]e're seeing [older, nonlawyer judges] being replaced with younger people who maybe they're not an attorney, but they want to do the right thing. And often times they take it very seriously, more than some of the attorney magistrates we have. Because they

> I think when a landlord appears with an attorney, the tenant is somewhat intimidated. Because the attorney is to ask all these questions and object, this sort of thing. And if you're trying to be fair to this layperson over here who really doesn't, who may or may not know how they are supposed to get the point across in court without getting that objection.[185]

A tenant from County S confirmed this dynamic:

> I don't feel like I was able to get out everything that I wanted to say. Like I said, because I felt intimidated. He had representation and he really didn't have to speak much. He had a lawyer that represented him and spoke for him. And you know, she was able to articulate the, you know, how he, his claim. But I felt like I wasn't able to, you know, give my point of view across well, as intended.[186]

The same tenant added, "I don't feel like I was allowed to ask questions, and I was afraid to speak up towards the end. So I just, I can't."[187]

There were significant differences based on representation in terms of the amounts sought[188] and ordered.[189] Landlord agents sought significantly smaller amounts—on average, $283 less than pro se landlords and $900 less than lawyers (on average, lawyers sought $617 more than pro se landlords).[190] Landlord lawyers were awarded significantly more by the court than either landlord agents or pro se landlords—on average, the amount ordered was $1,123 more than pro se landlords and $1,373 more than agents.[191] There was no significant difference between the amounts awarded to pro se landlords and agents.

On average, pro se landlords were awarded less than what they had sought in court filings.[192] We interpret this to indicate that many

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> really want to make sure they do it right. And because they know they're kind of at a disadvantage, they'll take an extra step to do it.

Interview with GLSP Att'ys (June 11, 2019).

185. Interview with Judge 3, Cnty. R (June 25, 2018).

186. Interview with Tenant 6, Cnty. S (Aug. 28, 2018).

187. *Id.*

188. One hundred and seventy-two cases did not input any amount sought in the court filings and thus were excluded from our analysis of amounts sought. Additionally, our analysis uses only residential cases (excluding 21 commercial cases) and amounts less than $10,000 (excluding 8 cases). Total N for this analysis was 2,085 cases with a mean of $1,386.49, a standard deviation of $1,054.89, and a mode of $906.

189. In the analysis of amounts ordered, we excluded commercial cases (6 cases) and amounts greater than $10,000 (3 cases). Total N for this analysis was 401 cases with a mean of $1,918.92, a standard deviation of $1,308.67, and a mode of $874.

190. $P <. 001$ ($n = 2055$). Upon examination by county, the difference clearly emerged in County S while, in contrast, County R showed no statistical difference in amounts sought between pro se and agents (the average difference between the two was only $15.89). While County r had a large average difference between pro se and agents ($435.28), however, large variation in amounts sought by pro se landlords prevented any statistical conclusion. No comparison was made with amounts sought by lawyers within each county due to limited sample sizes.

191. $P < .001$ ($n = 400$).

192. This statistic is based on an aggregate analysis, comparing the average amount sought ($n = 391$) to the average amount ordered ($n = 97$).

pro se landlords have inaccurate expectations of what might be awarded by the court. The subset of landlords who *were* successful in securing monetary judgments (94 of 391 cases, or 24%), however, generally sought and received similar amounts, with the average difference between the amounts sought and awarded only $36.74.[193]

Although lawyers' monetary amounts, both sought and ordered, were typically higher and agents' amounts were typically lower than those of pro se landlords, both lawyers and agents seemed well positioned to know what they should ask for and to receive a judgment close to, or higher than, that amount.[194] This finding—as well as the ability of successful pro se landlords to more realistically pose their monetary requests—may be due, in part, to their repeat-player status in dispossessory court.[195]

4. Judgments

Below is a summary of case outcomes in all three study counties. Less than a third of cases (29.1%) ended in issuance of a writ, while more than a third (35.6%) of cases ended in dismissal. Writs were significantly more likely to issue in County r (46.8%) than in County S (28.9%) or County R (24.4%).[196] There was a small number of cases with writs issued that were later dismissed (39 cases across all three

193. This analysis is based on a specific subset of cases—where we had information on the amount sought and the amount ordered for a case. Ninety-seven cases awarded monetary judgments for landlords; however, 3 of these cases did not record the original amounts sought, leaving us a subset of 94 cases where both an amount sought and an amount awarded was recorded by the court. Of those 94 cases, pro se landlords basically received the amounts that they had sought. The aggregate numbers differ essentially because there are many (~75%) ultimately unsuccessful landlords who sought smaller amounts in the initial filing and got nothing.

In the 291 cases where pro se landlords sought money but did not receive a monetary judgment, the average amount sought was $1,390.26. In the 94 cases where pro se landlords sought and were awarded a monetary judgment, the average amount sought was $1,930.58, indicating that most cases where a monetary judgment was awarded were also the cases where the highest amounts were sought.

194. Both agents and lawyers had, on average, higher amounts awarded than what had been sought in court filings (on average, lawyers received $408.56 more and agents received $173.52 more). Similar to the analysis above on pro se landlords, these values are based on the subset of cases where information for a specific subset of cases was available for both the amounts sought in the initial filing and the amount awarded in a monetary judgement. The comparison of lawyers is based on a subsample of 38 cases in our data ($p < .05$); the analysis for agents is based on a subsample of 199 cases ($p < .001$).

195. *See* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, *in* IN LITIGATION: DO THE "HAVES" STILL COME OUT AHEAD? 15–17, 22–26 (Herbert M. Kritzer & Susan Silbey eds., 2003). Galanter attributes the greater success of repeat players in court to greater familiarity with the court system and the laws, a relatively low risk of loss, superior resources, and "advance intelligence." In contrast, those he calls "one-shotters" typically have limited exposure to the court system and the law, a relatively high risk of loss, inferior resources, and no "advance intelligence."

196. $P < .001$ ($n = 2250$).

counties). Notably, there were only 5 recorded tenant wins in the data set as a whole, and none in County S.

TABLE 4: CASE OUTCOMES

County	S	S (% of County)	R	R (% of County)	r	r (% of County)	Overall
Writs	281	28.9%	244	24.4%	130	46.8%	29.1%
Consent	161	16.5%	48	4.8%	11	4.1%	9.8%
Judgment for Landlord	347	41.2%	459	53.3%	133	56.1%	48.4%
Judgment for Tenant	0	0.0%	4	0.5%	1	0.4%	0.3%
Dismissal	422	50.1%	209	24.3%	59	24.9%	35.6%
No resolution	74	8.8%	193	22.4%	45	19.0%	16.1%

*Totals add to more than 100% because the categories are not mutually exclusive.[197]

It is worth noting that cases with a judgment for the landlord do not necessarily end in a writ.[198] It was notable, for example, that in County R, many judgments for the landlord ultimately did not translate into issuance of a writ. This may be due to tenants ultimately paying monies owed or deciding to move out voluntarily. Landlords may choose to seek a judgment to use as leverage without pursuing a writ or formal eviction, which would put them in the difficult position of having to find a new tenant.

In contrast, cases involving a consent agreement did sometimes ultimately end in a writ being issued:[199] 37.3% of cases in County S involving a consent agreement also had a writ issued; the same was true in 33.3% of consent agreement cases in County R and 18.2% of those in County r. Thus, a fairly large number of consent agreements

197. For all categories, the denominator (or N) used in the percentage figure is the number of cases in the county where we had information on the relevant metric. For example, some cases never made it to the point of judgment (at least as reflected in the case file), so there was no information available for "Judgment for Landlord," which was one option available in the dropdown menu for judgments. In contrast, coders were instructed to answer "yes/no" questions whenever possible, and so more data is available for Writs (where a "no" would have been entered in any case where a writ was not included in the file).

198. Judgments may be entered against the tenant for all rents due (or any other claim relating to the action) distinct from issuance of the writ, which entitles the landlord to possession (and for which the landlord can later request execution by law enforcement). *See* GA. CODE ANN. § 44-7-55 (2021).

199. Some cases (141) were coded as both Consent Agreements and Judgment for Landlord—this is due either to the judgment being marked as so in the court file and/or to a separate judgment for the landlord being issued after the consent agreement was not adhered to.

did not lead to the preservation of tenancy. Overall, 35.5% of consent agreement cases still ended with the issuance of a writ.[200]

Consent agreements were significantly more likely to occur in County S than in Counties R or r.[201] Across all counties, in cases where there was a consent agreement, the total amount awarded was significantly higher than in cases where there was a judgment for the landlord without a consent agreement explicitly having been reached and entered.[202] On average, cases ending in a consent agreement had awards $440 larger than those that did not end in a consent agreement.

There was some evidence in the data—particularly in County R—that consent agreements were better for landlords than judgments directed specifically in the landlord's favor. The average landlord in County R in a case where there was a judgment for the landlord got $63 *less* than what they had sought; in the average consent case, the landlord got $325 more than the amount they had originally sought. The difference of $388 was significant. The same phenomenon was observed in County S: for cases in which there was a judgment issued for the landlord, the landlord received an average of $42 less than sought, and in consent cases, the landlord received an average of $338 more than sought.[203] This difference ($380) was also significant. We suspect this is due to lower levels of judicial involvement in consent agreements—in such cases, the judge typically accepts whatever the parties have agreed upon, whereas in judgment cases, the judge may limit the amount owed or fees awarded.

The most common reason for dismissal was either that the tenant paid what was owed or the landlord voluntarily dismissed the case (likely because the tenant had paid, even if not specified in the case file).[204] In County r, 58.6% of cases were dismissed for payment, compared to 31.9% in County R and 13.1% in County S. This was echoed in the observation made by a County r judge:

> [A] lot of our cases do work themselves out. Especially if it's a first time dispossessory filed . . . they're willing to work with them on a payment plan to catch their arrearage up.

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200. There was no significant difference in consent agreements becoming a writ by county in our data. However, the opposite—the likelihood of a non-consent agreement case ending in a writ—was significantly more likely in County r than Counties R or S.

Cases without a consent agreement in County r were significantly more likely to end in the issuance of a writ than those in Counties R or S. Nearly half (47.8%) of cases in County r that did not have a consent agreement ended in the issuance of a writ, while only 26.1% of County S and 24.1% of County R cases without a consent agreement ended in the issuance of a writ.

201. $P < .001$ ($n = 2{,}242$).

202. $P < .001$ ($n = 400$).

203. County S compared 218 cases while County R compared 93 cases. This trend was reversed in County r—however, the sample size was too small to draw meaningful comparisons.

204. Sometimes noted by hand (with a date) that the tenant had paid.

> We're a smaller county. There's not that many places they can go. Or can afford to go. And . . . we have to remain neutral. But at the same time, a lot of your landlords would rather have somebody in that property instead of it just sitting there vacant. If they're willing to make little payments, they're willing to let them stay.[205]

There were a number of other cases in which the reason for dismissal was recorded in the case file as voluntary dismissal by the landlord (75.4% in County S, 54.7% in County R, and 23.7% in County r); although the underlying reason was typically not specified in those cases, we suspect that the reason for dismissal was payment by the tenant as well. Thus, the overall takeaway regarding dismissal is that the overwhelming majority of dismissals in all three counties was either because the tenant paid some or all of the rent due or the landlord decided to dismiss the case voluntarily (likely for the same reason): 88.5% of dismissals in County S, 86.5% of dismissals in County R, and 81.4% of dismissals in County r. These numbers support the conclusion that the primary function of the dispossessory process is facilitating payment, rather than adjudicating two-sided disputes.

We were unable to measure actual evictions after issuance of the writ in County r,[206] but based on data obtained from the other two counties, overall evictions in Counties S and R were not significantly different (11.5% and 12.1% of all dispossessory cases respectively). When we differentiated cases that ended in self-eviction (cases where tenants were not forcibly evicted by law enforcement but left on their own volition after the dispossessory action was filed) as opposed to formal eviction (cases where tenants were forcibly removed by law enforcement), we began to see unique variations. Self-evictions in County R were significantly higher at 8.3% of all cases (in contrast to 5.7% in County S).[207] County S's rate of formal evictions was slightly higher (but nonsignificant) at 5.9% of all cases, in contrast to County R's rate of 4.5%. Overall, in Counties S and R, 11.8% of all cases resulted in a tenant moving from the property (at least as recorded by the court).

Of those cases in which a writ was issued, differences were more pronounced, with actual evictions in County R significantly higher, at 50.2%, than in County S, at 39.5%.[208] Examining the subsets of formal

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205. Interview with Judge 7, Cnty. r (Nov. 5, 2018).

206. Data on actual evictions in County r was available only from the Sheriff's office; we were not able to obtain and analyze it for inclusion in this article. Analysis of cases for evictions is based on a total of 1,978 cases (976 cases in County S and 1,002 cases in County R).

207. $P < .05$ ($n = 1{,}898$).

208. $P < .05$ ($n = 525$). This compares a subsample of 525 writs of possession (281 cases in County S and 244 cases in County R). Writs of possession were coded as an eviction if law enforcement annotated that the tenant had moved (self-eviction) or executed the writ (formal eviction). Cases where the writ was issued but had no further information from law enforcement were coded as not having an eviction.

evictions and self-evictions, we find no difference in the percentage of formal evictions (20.6% in County S and 18.4% in County R). County R, however, had significantly more self-evictions recorded (34.3%) than County S (19.2%)[209] in cases where a writ was issued. This indicates that the overall likelihood of eviction in a case was relatively equivalent in Counties S and R. Once a writ was issued, however, the likelihood of an eviction occurring was significantly greater in County R than County S, due to the large number of self-evictions by tenants in County R.[210]

TABLE 5: EVICTIONS IN COUNTIES S AND R

	Self-Eviction			Formal Eviction			All Evictions	
	S (%)	R (%)		S (%)	R (%)		S (%)	R (%)
All Cases	5.7	8.3		5.9	4.5		11.5	12.1
Writs of Possession	19.2	34.3		20.6	18.4		39.5	50.2

When asked whether they thought the eviction process worked well as is, one landlord in County S responded, "Effective? Yes. I mean, it gets people out. I would like to be able to find, I would like for there to be an easier way to hold people accountable for the money that they owe when they just up and leave."[211]

C. Study Conclusions

Below are some conclusions we have drawn from the quantitative and qualitative data gathered and analyzed as part of the study. They are broken down into those conclusions we have drawn about the dispossessory process more generally, considering data across all three counties, and conclusions we have made about how different court models and processes may relate to observed differences in outcomes.

209. $P < .001$ ($n = 500$).

210. This finding is interesting in part because interviews with law enforcement in County S indicated that they specifically sought to encourage self-evictions through various mechanisms—such as door notices—so as to limit in-person confrontations during formal evictions. In contrast, County R indicated no procedures or contact with tenants before the formal eviction.

211. The same landlord stated, "[P]eople are ignorant. I don't think they're trusting. I think they're ignorant. They don't sign, they don't read what they sign. And, because I would never sign my contract, never." Interview with Landlord 2, Mgmt. Co., Cnty. S (Aug. 23, 2018).

1. Process-Based Conclusions

Many of the judges interviewed perceived the issues raised in dispossessory court as fairly simple. And while they recognized and valued the importance of allowing tenants their day in court—particularly in the smaller, more rural courts—they seemed skeptical that time or additional assistance would result in better or different outcomes. Yet, allowing tenants their "day in court" means little without any guidance as to which arguments are relevant or how they should be made. This is in part why, even in holding that there was no categorical right to counsel in civil contempt cases, the Supreme Court in *Turner v. Rogers* emphasized the constitutional significance of "substitute procedural safeguards," including notice to the (unrepresented) defendant of key defenses available to them.[212]

The distinction between having one's day in court and having a meaningful opportunity to defend oneself against eviction was not lost on some tenants. One tenant from County S explained what she understood from the judge's opening speech: "[B]asically what I understood is that you can make your case. You can try to get the sympathy of the court. But in the end, he's going to do what's legally right more than what's right as far as [*unintelligible*]."[213] As described in Part III.B.1, tenants may have felt in some cases that they were treated kindly on their day in court, and that the judge was respectful, but nonetheless felt that the process was unfair because of what was deemed irrelevant to the outcome or because the system itself is structured in such a way that a fair outcome seems impossible.

The informal policy of smaller, more rural courts to set cases for a hearing when any answer is filed—even when the tenant says, for example, that she knows she owes the money but does not have it—seems tenant friendly. Yet the data demonstrate that is not clearly the case as to substantive outcomes. In Counties R and r, cases in which an answer was filed were actually more likely to end in a writ than those in which no answer was filed.[214] We take this to suggest that more process—in the form of a court hearing, for example—is not necessarily helpful to tenants without assistance. Flexibility around the acceptance of answers and the willingness to proceed with a hearing may in fact be harmful to tenants without an effective answer form or other guidance as to what arguments are relevant and when and how to present evidence.

212. 564 U.S. 431, 444, 446–448 (2011).

213. Interview with Tenant 5, Cnty. S (Aug. 28, 2018).

214. In County R, this difference was 4.7%, which is not large enough to claim significance. In County r, this difference was 13.3%, which is significantly higher ($P < .05$).

It is clear from the types of answers filed, and general confusion demonstrated around what is relevant to the dispossessory proceeding, that tenants do not understand the nature or purpose of the answer in the larger context of the legal proceeding.[215] In conjunction with the attitude some smaller courts demonstrated—which appears at first glance to be more welcoming toward tenants telling their story—the answer form, and by extension the hearing, encourage tenants to explain why they have not paid their rent. Yet, because of how the law is structured, and the defenses that are recognized by law, the only feasible defenses are based on *landlord* failures (to make a demand before filing, effect service properly, etc.)—rarely do viable defenses have anything to do with the tenant's actions. Many of the answer forms are designed for the tenant to tell his or her story when, in fact, that story is irrelevant in the view of the law and the judges applying it. In some cases, as GLSP attorneys describe, the rendering of a tenant's story as irrelevant may be brutally explicit:

> [W]hen people do go to file their answer, they don't know what to put down. And we have seen courts who will strike the tenants' answer. Like if the tenant says I owe the rent. I just have had a hospital bill. The court lets them write that down, but then when they leave, the clerk takes it to the judge. The judge looks at it and says that's not a denial, and then it's stricken, the person's evicted, they don't get their court date. That's a real problem in Georgia. And we've seen that one in several cases.[216]

Although filing an answer did lead to more time, our data point to the counterintuitive suggestion that, under the current system, pro se litigants are not always well served by filing an answer. Combined with the personal service requirement (in the absence of an answer) to secure a money judgment—and the fact that in our overall dataset, only 17.2% of cases involved personal judgment[217]—it is understandable that a judge from County R was tempted to recommend *not* filing in certain cases.[218] In addition, the answer form as currently constructed

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215. *See, e.g.*, Interview with Tenant 5, Cnty. S (Aug. 28, 2018):

> I actually didn't know what I was doing. I just received a letter and it said go to court on this day, so when I came down to the magistrate they said fill out this form, come back on the set day. So I filled out the form, turned it in and then came back today.

An analysis of write-in responses revealed a wide range of responses, the most common admitting an inability to pay rent, expressing a willingness and/or desire to pay (often seeking a modified payment schedule), or describing a dispute with the landlord. In County R, a good number of write-in responses also related to the landlord's failure to make repairs. Some included facts that may be relevant, such as claims that the defendant did not owe rent or owed a different amount than claimed; stated that the case had been resolved; asked to see the judge; requested more time; or relayed confusion.

216. Interview with GLSP Att'ys (June 11, 2019).

217. Out of 2,257 cases, 17.2% (389) of cases were served personally; 70.7% (1,596) were served by tack and mail.

218. *See supra* Part III.B.2 (examining the effect of filing an answer).

is not an effective vehicle to defend against eviction. Even where it does provide options that could constitute a defense, it fails to explain the relevance of the options given or to distinguish between the different types of responses or information a tenant might provide (i.e., providing a written narrative for why the tenant was unable to pay rent as opposed to checking a box to signify a lack of notice). In practice, its primary purpose seems to be serving as an outlet for litigants to express their desperation and describe what is at stake.[219]

Literature focused on pro se litigants—specifically in the context of housing court—has highlighted tenants' tendencies to speak in "narrative" form.[220] While some have recommended flexibility in evidentiary rules to allow such testimony, they have also acknowledged that merely relaxing such rules will not alone ensure that the pro se litigant's narrative is elicited or heard in any "legally meaningful sense."[221] As Paris Baldacci has explained:

> [I]f the court merely invites the *pro se* litigant to "tell your story," or "explain why you are here today," or "tell me why your landlord should not get a judgment of possession against you," the resulting narrative, free from evidentiary constraints but unassisted by judicial intervention, will generally be factually incomplete and legally insufficient.[222]

Instead, many access to justice scholars have emphasized the importance of an active judging approach in which judges structure and develop the tenant's "narrative so that its legal adequacy can be articulated and evaluated"[223] by helping the litigant to develop relevant facts, claims, and defenses; assisting the litigant on the procedures to be followed and modifying such procedures as needed; instructing the litigant on evidentiary practices and substantive questions of law; and correcting for misinformation as to other advice the tenant may have received.[224] Jessica Steinberg has shown that the application of inquisitorial procedures (more active engagement and management of

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219. Supported by demonstrated high use of the write-in option.

220. Paris R. Baldacci, *Assuring Access to Justice: The Role of the Judge in Assisting Pro Se Litigants in Litigating Their Cases in New York City's Housing Court*, 3 CARDOZO PUB. L. POL'Y & ETHICS J. 659, 663 (2006); *see also* Bezdek, *supra* note 1, at 586–89.

221. Baldacci, *supra* note 220, at 679–81; *see also* Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2044 (1999) (citing Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 149 (1974)) ("[R]ule changes alone are unlikely to eliminate problems facing the unrepresented poor . . . .").

222. Baldacci, *supra* note 220, at 683.

223. *Id.* at 684.

224. Engler, *supra* note 221, at 2028–29; *see also* Anna E. Carpenter, *Active Judging and Access to Justice*, 93 NOTRE DAME L. REV. 647, 655 (2017) (describing the "three dimensions of active judging" as "(1) adjusting procedures; (2) explaining law and process; and (3) eliciting information").

litigation by judges)[225] produces more accurate and fair outcomes for tenants.[226] The examples of active judging that we observed in our limited court observation[227] support a similar conclusion.

Because pleas for more time and the reasons for nonpayment are irrelevant from the court's perspective, litigants likely end up more frustrated by the fact that what they have written or brought to court to present has no bearing on the proceeding or outcome. Many tenants expect a different dynamic in court than the one they experience.[228] They likely see the court as an arbiter of the issues both sides wish to raise, which is often not how events unfold in practice. Thus, the tenant's role transforms from an active participant in a two-sided debate to a more passive participant, responding only to targeted questions (driven in large part by what the law deems relevant or irrelevant). As Barbara Bezdek observes: "The central normative function of the rent court is to ask of the tenant, 'Did you pay the money claimed or not?' It implies a statement of the individual tenant's unmitigable fault for the failure to make out her own case of legitimate complaint against the landlord."[229]

Similarly, the scheduling policy of smaller courts seems at first glance to be beneficial to tenants. The critique of larger courts that operate by calendar call is often that they fail to recognize the hardships tenants face in terms of inflexible work schedules and a lack of

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225. Jessica K. Steinberg, *Informal, Inquisitorial, and Accurate: An Empirical Look at a Problem-Solving Housing Court*, 42 LAW & SOC. INQUIRY 1058, 1060 (2017) (describing a "system in which the judge controls investigation and fact finding, and the parties' role in producing evidence and enforcing relief is minimized"); *see also* HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK 27 (1998) (describing the inquisitorial model as one "in which the adjudicator is responsible for obtaining the evidence needed to make his or her decision").

226. Steinberg, *supra* note 225, at 1060, 1078.

227. *See supra* note 122 and accompanying text (discussing observation of judge emphasizing that a landlord must make a demand for rent prior to filing).

228. *See* Interview with Tenant 5, Cnty. S (Aug. 28, 2018) ("I actually expected people to ask questions or, you know, work out more of an easier transition."); *see also* Interview with Tenant 6, Cnty. S (Aug. 28, 2018):

> I thought that the judge would take into consideration everything that I had been through. And I thought that my documentation would be enough, and, because, that I could support you know, my claim, which I could. But no documentation was ever requested. . . . I was kind of like, my expectations were not met. I was, it was not how I expected it to go;

Bezdek, *supra* note 1, at 579 (describing how tenants' expectations of court often do not materialize when they attend the hearing); *id.* at 588–89 (explaining that the gap between tenant expectation and court experience can be attributed, in part, to the disconnect between the rules-based procedure on which judges rely and the natural social narrative, usually regarding marginal economic circumstances, on which tenants rely).

229. Bezdek, *supra* note 1, at 568 (footnote omitted).

transportation or childcare.[230] While affording tenants more flexibility as to when they appear in court may be more likely to avoid tenant defaults,[231] setting a specific hearing time is also more helpful to landlords, who also appreciate not having to attend for an entire court calendar waiting for their case to be called.[232] This is particularly true in a legal scheme where tenants do not have many substantive defenses available to them and are more likely to have the case dismissed (and thereby at least secure a delay) on technical and procedural grounds like a landlord's failure to appear, make a demand before filing, or properly effect service.

Landlords in smaller, more rural counties were less likely to dismiss or fail to appear.[233] In addition to the fact that individual scheduling may make it easier for landlords juggling multiple properties and responsibilities to appear in court, it may also be that landlords in small counties have a different relationship with their tenants than those in more urban spaces. The closer proximity of landlords to their tenants and lower prevalence of third-party corporations[234] may mean that landlords are more invested in the

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230. DESMOND, *supra* note 4, at 304 (stating that tenants often fail to appear in court because of work or childcare issues, and arguing that urban courts have little interest in addressing those issues because of the sheer volume of cases).

231. Dismissals based on tenant failure to appear (defaults) were only incrementally less likely in County R (4.49%) than in County S (5.14%); the default rate was 11.86% in County r, but the sample size was very small (only 7 cases defaulted).

232. *See* Interview with Landlord 3, Cnty. R (Aug. 27, 2018) (discussing preference for scheduling in County R versus County S ("It is a waste.")); *see also* Interview with Landlord 4, Mgmt. Co., Cnty. R (Aug. 27, 2018):

> I've heard that [County S] asks everyone to come in the room en masse. And he tells everybody to work it out, or he makes a judgment. And it's just not as efficient an operation. They may do a greater volume, I'm not sure . . . that person will have to go sit over there for hours. Whereas I was in there five minutes.

233. This is significant across all three counties ($P < .001$). Of the 798 cases where we recorded a dismissal, 81.6% in County S were for landlord failure to appear or voluntary dismissals (in contrast to 63.5% in County R and 29.3% in County r).

234. Landlords in smaller, more rural counties were much more likely to report an address within the same county as the rental property, whereas in more suburban spaces, the prominence of Atlanta and the role of corporations (both through management companies and eviction services companies) became important distinctions in the court process.

Approximately 68% of filings in County r listed the landlord address as within the county, with significant clusters (totaling 14.3% of cases) coming from the nearby counties of S and R. Only 4 properties reported the landlord address as from Atlanta and 2 reported being out of state. Similarly, in County R, approximately 64% of filings listed the landlord address as within the county, with only 3 out-of-state filings. However, 10.5% of filings reported the landlord address as from Atlanta or a wealthier metropolitan suburban area and only 3.5% were from Counties S and r.

In contrast, County S had 35.6% of filings list the landlord address within the county while 42.9% of filings listed the landlord address within Atlanta or the same wealthier metropolitan suburban area as County S. Only 0.8% of filings listed the landlord address from the nearby

proceeding and/or dependent on the rent owed. The fact that consent agreements reached by pro se landlords were more likely to "stick" (i.e., not return to court and ultimately end in a writ) may also suggest that pro se landlords know their tenants better—and perhaps, based on experience, are more realistic about gauging their ability to pay.

In addition, the dismissive attitude toward counterclaims seems to support the notion that the dispossessory process is landlord driven—something acknowledged explicitly by some of the court personnel who were interviewed.[235] The structure of Georgia eviction law, as described in Part I.B, in conjunction with the attitudes of decisionmakers who play a pivotal role in the process, make the dispossessory process a one-way ratchet. In contrast, the data show that where there is a requirement in law that landlords take certain measures—for example, making a demand before filing an eviction notice—in conjunction with judicial action enforcing that requirement, a better outcome for tenants is possible.

Lawyer representation data challenge the dominant narrative—based primarily on large, urban courts—that nearly all landlords have counsel while tenants do not.[236] In more rural areas, it is most often the case that neither party has a lawyer. As discussed above, however, agents play a prominent role in the dispossessory process in all three study counties.[237] While this was not a primary focus of our study, our initial findings suggest the role of agents should be further explored since it may help to understand what is most valuable about representation by an attorney. One might think that the substantive legal knowledge could be fairly easily learned and might also expect benefits from the agent's familiarity with the relevant procedures. Yet lawyers were notably more successful than agents in securing writs and consent agreements. (It should also be reemphasized, however, that consent agreements reached by landlord lawyers were ultimately more likely to return to court and end in a writ than those obtained by pro se

counties of R and r. Additionally, 38.7% of filings in County S were from evictions services corporations while only 13.7% of County R and 2% of County r were from the same.

In addition to its impact on relationships with tenants, the varied location of landlords may also suggest limitations on the courts' or others' ability to engage in certain reforms—i.e., code enforcement—when landlords are based out of county or out of state.

235. *See* Interview with Clerks, Cnty. S (July 16, 2018) ("It's a plaintiff-driven process. We don't come behind and require disposition forms and close out like state superior court does. So if there's no response, then there's just no [sic] . . . .").

236. Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, INST. FOR RSCH. ON POVERTY 5 (Mar. 2015), https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf [https://perma.cc/8N9V-L5U6] ("[I]n many housing courts around the country 90 percent of landlords have attorneys, and 90 percent of tenants do not."); *see also supra* note 157 and accompanying text.

237. *See supra* note 160 and accompanying text.

landlords.) And, as GLSP's experience demonstrates, lawyers' strategic persistence in arguing issues repeatedly can shift the needle in judicial thinking and elevate the role of counterclaims in the dispossessory process.[238]

The data clearly show the importance of judicial engagement—whether in the context of introducing and enforcing legally sufficient tenant defenses or cabining the terms of judgment in terms of amounts or fees awarded. Some of the judges interviewed (particularly in County R) seemed to see this as a key area where they needed to push back on landlords and constrain how much was demanded or ultimately awarded to avoid unconscionability. Kathryn Sabbeth has argued that although judges in housing cases often apply rules in the landlord's favor, tenants are still better off in front of a judge than left to negotiate with the landlord on their own:

> Judges regularly misapply rules of procedure and do not require landlords to prove the basic elements of the prima facie case. Judges routinely elicit information necessary to issue a ruling in the landlord's favor but require no evidence in support of that information, and judges fail to seek full, potentially contradictory information. When tenants try to offer testimony, judges often silence and interrupt them. . . . Tenants whose cases are adjudicated by judges are, however, the lucky ones: the majority of cases end in unfavorable settlements, signed in the hallways of court buildings.[239]

Similarly, our data suggest that in many cases, consent agreements are financially advantageous for the landlord, resulting in a larger monetary judgment. In courts where case volume is higher and judges feel pressure to channel cases toward out-of-court resolution, or an inability to engage with issues aside from nonpayment of rent, tenants are left to negotiate with landlords without underlying knowledge as to their rights. As Philip Garboden and Eva Rosen have observed:

> Our court observations made clear the degree to which eviction strengthens an already unequal power dynamic. . . . While the tenant often expected the court to support some form of compromise or negotiation with the landlord, they instead found only the degree to which the threat of eviction puts them in a legal position with little bargaining authority.[240]

Our analysis of the data raises several questions about the role courts play in processing evictions throughout the state—particularly in light of the high numbers of dismissals and relatively low number of writs issued (given the number of filings overall). The most common reason for dismissal was either voluntary dismissal by the landlord

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238. *See supra* note 149 and accompanying text; *infra* notes 266–268 and accompanying text.

239. Sabbeth, *supra* note 157, at 79 (footnotes omitted) (citing Bezdek, *supra* note 1, at 570; then citing Engler, *supra* note 7, at 46–51; and then citing Baldacci, *supra* note 220, at 661–62, among others).

240. Garboden & Rosen, *supra* note 117, at 654 (citing Bezdek, *supra* note 1).

and/or that the tenant paid some or all of the rent owed.[241] When asked why, if there are a fair number of people coming to court with the ability to pay, the filings are made at all, one judge in County r responded: "Because they were late, and they were wanting their money then. And they know that if they file it, then they're more than likely to come up with the money or move out. . . . I can't say that's for certain, but that's just what I have found."[242] Particularly in County r, but to some extent in all three counties, one gets the sense that the court functions not as an arbiter of legal arguments—how can it do so when one side has no idea what constitutes legally relevant evidence?—but instead as a mechanism for facilitating rent collection. In County r, for example, we observed that one apartment complex in the area would regularly show up to court with a number of tenants; they would discuss payment plans with management and then the tenants would all be called up to the bench en masse to note the settlements reached (typically, this group would be called first). While perhaps efficient, this process suggests that the court is playing a role different from that for which it was designed. One tenant from County S aptly observed that the outcome under any scenario would likely be the same, with the court simply providing another vehicle to force payment: "[T]hey're going to do it regardless. [I]f you pay any amount over $100 they're going to file on you so they can get their money. So paying them would have been the easiest. Just pay it and get it over with."[243]

The goal in many of these proceedings is not actual eviction—evidenced, for example, by the fact that in County R more than half of cases end in a judgment for the landlord and yet writs are issued in less than a quarter of cases. Instead, the process revolves largely around the *threat* of eviction and how that threat can be leveraged to get what is ultimately desired—most likely money and not possession. Our findings mirror those of Garboden and Rosen in Baltimore, Dallas, and Cleveland. Through in-depth interviews of landlords and property managers, Garboden and Rosen recast renters as debtors and describe how the eviction process serves in many cases as a rent collection mechanism—or "training" tenants to pay rent on time—rather than as a tool for actually removing renters from the property.[244] In doing so,

241. Of cases that were dismissed (n = 800), the rates for landlord voluntary dismissal in Counties S, R, and r were 75.40%, 54.69%, and 23.73%, respectively; the rates for the tenant paying some or all of the rent owed were 13.10%, 31.84%, and 57.63%, respectively. Because the most common reason for landlord voluntary dismissal is likely tenant payment, we collapsed these categories—resulting in an overall percentage of 81% to 88% across all dismissals.

242. Interview with Judge 7, Cnty. r (Nov. 5, 2018).

243. Interview with Tenant 5, Cnty. S (Aug. 28, 2018).

244. Garboden & Rosen, *supra* note 117, at 639, 642.

landlords leverage the power of the state to assist in debt collection, which—in some landlords' views—can help their debt to be prioritized among a financially strapped tenant's other expenses.[245] Because of costs related to vacancy and turnover,[246] Garboden and Rosen found that landlords in all three cities worked to avoid execution of eviction, but continued to use the process as a way to solve the problem of nonpayment.[247] Thus, landlords file for eviction in large numbers of cases each month only to frequently negotiate payment plans in lieu of pursuing ejection from the property.[248] Filing for eviction can also have the benefit of resulting in late fees, which can constitute another source of landlord income.[249]

Despite what these studies have shown, the courts and the legal profession persist in framing the dispossessory process as a legal proceeding. This is the case even though, in many cases, there are few or no lawyers involved; at least one party does not understand the underlying rules; the process itself lacks many of the usual hallmarks, including a fleshing out of arguments on both sides; and the party driving the matter may not actually be aiming for the outcome for which the legal process is designed.

2. Typology-Based Conclusions

Some of the county-based variations we observed were unexpected. For example, even though County R appeared to have the most tenant-friendly scheduling procedures, tenants were more likely to file answers in Counties S and r than in County R. This may be due in part to more formal procedures in Counties S and r or to the answer form—the answer form used in County R is the least penetrable from a

245. *Id.* at 649.

246. *See, e.g.*, Interview with Landlord 1, Cnty. R (Aug. 23, 2018) ("I spend usually over $1,000, sometimes a good bit more than that, once a renter has moved out to put it back in shape."). Another landlord estimated that the cost of an eviction case (including direct filing costs and indirect rental and repair costs) was "a couple thousand dollars." Interview with Landlord 3, Cnty. R (Aug. 27, 2018).

247. Garboden & Rosen, *supra* note 117, at 642. The court process may be viewed by some landlords as a tool to secure payment, but for tenants, the consequences of the eviction process—or even the mere filing of an eviction notice—create major obstacles in the search for housing. Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 97, 143 (2019). Even if a tenant ultimately prevails, the eviction filing remains on the tenant's record, locking them out of future housing opportunities. *Id.*; *see also* Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches*, SARGENT SHRIVER NAT'L CTR. ON POVERTY L.: CLEARINGHOUSE CMTY. (2017), https://www.lcbh.org/resources/combating-tenant-blacklisting-based-housing-court-records [https://perma.cc/PZX2-9HJE] (describing landlords' use of "blacklists" to weed out tenants).

248. Garboden & Rosen, *supra* note 117, at 642.

249. *Id.* at 648–49.

lay perspective, utilizing the highest degree of legal verbiage and technical terms.[250]

Counties R and r had significantly more cases end in a judgment for the landlord than County S.[251] We expect some may find this counterintuitive, given assumptions about courts that deal in higher volume. Yet, our suspicion—especially given the higher number of dismissals in County S than in either Counties R or r—is that because underlying landlord-tenant law in Georgia provides tenants with so few defenses (and the process, as structured in most courts, gives them little to no knowledge of how to use them effectively), a hearing is actually more likely to benefit the landlord than the tenant. Smaller counties, with lower case volumes, likely feel less pressure to dismiss and engage in alternative means of resolution. Another contributor to the dynamics of landlord dismissal may be that landlords in County S are more likely to be based outside of County S and be dealing in higher volumes and/or be less invested in any individual case.

In terms of ultimate outcome, County r—the smallest, most rural county—had the highest percentage of writs issued (46.76%). We suspect this is due in part to lower volume, a higher likelihood of reaching resolution in any given case, and higher motivation for landlords to see the case through to an end result (this last factor may stem from the fact that, in the smaller, more rural counties, the landlord was more likely to be local and thus more invested in the proceeding[252]). This becomes even more pronounced when one remembers that although lawyers were more successful in obtaining writs, County r only had 21 cases with lawyers in our data set; thus, the

250. *See, e.g.*, *supra* note 94. County R's answer form uses multiple terms that would likely make little sense to a lay person, such as "jurisdiction," "venue," and "consideration."

For example, County R offers the following possible response on its answer form: "The instrument sued upon was executed and delivered without consideration." The Hemingway App, designed to highlight lengthy sentences and suggest edits to enhance readability, rates that language at a grade fourteen reading level. *Hemingway Editor*, HEMINGWAYAPP.COM, https://hemingwayapp.com (last visited May 24, 2021) [https://perma.cc/PCU7-JMFL]. County S's answer form provides: "My landlord failed to repair the property upon my request, which lowered the value or resulted in other damages more than the rent claimed" as a potential response, which clocks in at a grade thirteen reading level. *Id.* More than 40 million Americans have low literacy skills and cannot read above a fifth-grade level. *Illiteracy by the Numbers*, LITERACY PROJECT, https://literacyproj.org (last visited May 24, 2021) [https://perma.cc/ZPJ5-WQ28]; *see also* NAT'L CTR. FOR EDUC. STATS., U.S. DEP'T OF EDUC., DATA POINT: ADULT LITERACY IN THE UNITED STATES (July 2019), https://nces.ed.gov/datapoints/2019179.asp [https://perma.cc/Y7ML-2HEN].

251. $P < .001$ ($n = 1,946$).

252. *See supra* note 234 and accompanying text.

high writ issuance rate in County r is primarily a reflection of cases handled by agents and pro se landlords.[253]

In some of the smaller courts, there were certain efficiencies gained that are not reflected in the typology but were reflected in the interviews, especially with landlords. One landlord discussed the differences in process between County S, which uses the sheriff's office to serve dispossessories, and County R, which uses constables[254] to do the same:

> [County S]'s bigger, and [in County R], I can file a dispossessory today and the two constables, which there's, that's way, still not enough constables. The two constables within two to three days will go out there and will have served the dispossessories. In [County S] you file, it takes two or three days to leave the courthouse to go to the sheriff's office. And then, the lieutenant at the sheriff's office, it takes him a couple of days. Because they're not just serving dispossessories. These constables, that's the majority of what I think they do here in [County R]. In [County S] you know, they're going out and serving people not just civil matters but you know, criminal matters as well. And it's different here. It's just different here in [County R].[255]

Larger, suburban County S had, by far, the highest rate of documented consent agreements.[256] We suspect this is due in part to higher volume (leading to increased court desire and need to resolve some cases outside of hearings, particularly with only one dispossessory calendar a week), more formal court procedures, and higher rates of landlord representation. Perhaps related, County S pushed cases in bulk toward negotiated settlements without any supervision by the judge (other than ultimate approval of the judgment).[257] Based in part on higher volume and pressures created as a result, judges in County S also demonstrated a desire to narrow the focus of the hearing and put off other tenant claims as they might arise.[258] County S's data ultimately may be somewhat misleading: It may appear initially that

253. One hundred and eighteen of the 130 writs issued in County r were obtained by nonlawyers. Nonlawyers were not as successful as lawyers in obtaining writs (writ issuance rate of 47% versus 57% rate for lawyers), but they do represent the vast majority of writs in County r. Within our categories of representation, pro se landlords were the type with the single largest absolute number of successful writs in County r. Although their success rate in obtaining writs was only about 50%, they represented approximately one-third of all cases and more than one-third (38%) of obtained writs.

254. Georgia law allows counties to provide for the appointment of constables by the chief magistrate. GA. CODE ANN. § 15-10-100 (2021). A constable's duties include "execut[ing] and return[ing] all warrants . . . and other processes directed to them by the magistrate court." *Id.* § 15-10-102. If the county does not provide for constables, then the sheriff and his or her deputies perform the constables' duties. *Id.* § 15-10-100.

255. Interview with Landlord 2, Mgmt. Co., Cnty. R (Aug. 23, 2018).

256. The rate for consent agreements in County S was 16.9% (in contrast to 5.7% and 6.8% in Counties R and r, respectively). This difference was significant, with $P < .001$ ($n = 2{,}240$).

257. Note that in County R, even when parties were left to negotiate, the judge often ended up witnessing or overseeing the tail end of the negotiation upon return.

258. *See supra* note 117 and accompanying text.

there are better outcomes for tenants (higher dismissal rates) but also that many cases are being channeled to negotiation and ultimately resolved by consent agreements that are unfavorable to tenants (and more favorable to landlords than an outright judgment in favor of the landlord). In County S, 38.4% of cases with a consent agreement ultimately ended in issuance of a writ, and based on available data, 16.8% of those cases ultimately ended in eviction.[259] Thus, while consent agreements in County S solve the court's immediate caseload pressures, they may be reached under conditions that often do not lead to the preservation of tenancy.

One of our takeaways from looking at the county-comparison data and also at the data more broadly is that higher levels of procedural (or subjective) justice—including elements we perceive as important to the justice process—do not, alone, always equate with substantive justice. In other words, higher levels of process individualization and the higher likelihood of a hearing and being able to tell one's story in court do not necessarily correlate with better substantive outcomes for tenants; in fact, they may result in better outcomes for landlords. Therein lies the paradox. This is not because those elements are harmful, but because of how they interact with other elements of the legal system. In some cases, more procedural fairness may mean the court is more likely to reach a judgment on the merits; but given the underlying law, this will likely be better for the landlord. And although tenants may be afforded fairer process, they are not likely to have the assistance or expertise needed to use that process effectively, rendering it less meaningful.

IV. IMPLICATIONS FOR RECOMMENDATIONS AND REFORM

Courts operate differently as a matter of place, resources, and culture. As members of the legal profession or others invested in ensuring the eviction process operates fairly, we must be mindful of those differences in designing reforms and thinking about how they might apply in practice.[260] At the same time, there are general principles that hold true across the board and would likely increase

259. The percentage of cases that ended in an eviction is based on the 214 consent agreements in Counties S and R where data from the case files indicated eviction, either formal eviction by law enforcement or self-eviction.

260. One of the GLSP attorneys questioned whether uniformity should ever really be the goal:

> I have also learned, no matter how much you tell these judges to do something one way, they're going to find a way to do it their own way. So I believe in allowing, recognizing the reality that there will never be uniformity. And so just at least let them all get as close to correct as possible. They can find their own way there.

Interview with GLSP Att'ys (June 11, 2019).

access to justice wherever they are implemented; they just need to be adapted accordingly.

From the tenant's perspective, what is ultimately needed, at least in Georgia—and goes beyond the scope of this Article—is substantive law reform. But even under the current system, litigants would be better served by having existing legal protections incorporated into the process itself, rather than relying on the unlikely assumption that parties will have a lawyer to shepherd them through the process. For example, defenses and protections provided for by statute should be built into the answer form, or into questions routinely asked by the judge during a hearing that can elicit relevant information.[261] To the extent courts want to emphasize the importance of a tenant's day in court, they should help her make the most of that day by filtering her story into relevant defenses and counterclaims, providing guidance as to how to translate experience into evidence, and litigating those claims as fully as possible.[262]

A. Legal Assistance

The study data confirm what many have suspected, and what other studies have shown: legal representation makes a difference.[263] Even though landlords we interviewed questioned the need for representation, the data demonstrate that landlords with a lawyer were more likely to secure a writ and to receive larger monetary judgments.

While we had inadequate data to make any assessment of the effect of legal representation for tenants—given the incredibly low rates of this occurrence in the data—our findings support the argument that legal assistance, in certain forms, can be very valuable. The issues in landlord-tenant cases are viewed by many as fairly simple—and yet

261. *See* Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 801–02 (2015) (describing an "active judging" model in which judges frame legal issues and engage in active questioning of parties and witnesses to help develop legal claims).

262. Courts need clearer guidelines and better gap filling as to the role of counterclaims and how they will be addressed in conjunction with the dispossessory proceeding.

263. Seron et al., *supra* note 7, at 429 (concluding that tenants with legal counsel "experience significantly more beneficial procedural outcomes" than self-represented litigants); David L. Eldridge, *The Construction of a Courtroom: The Judicial System and Autopoiesis*, 38 J. APPLIED BEHAV. SCI. 298, 309 (2002) (concluding that the "greatest effect on hearing outcome is whether an attorney represents the tenant," with tenants nineteen times more likely to win with legal counsel); Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453, 482 (2011) (indicating that tenants who received legal aid evaded default judgment and asserted cognizable defenses significantly more often than unassisted tenants)*; see also Stout Completes Cost/Benefit Study on Right to Counsel for Low-Income Tenants Facing Eviction in Philadelphia*, STOUT (Nov. 15, 2018), https://www.stout.com/en/news/stout-conducts-cost-benefit-study-right-to-counsel-philadelphia [https://perma.cc/G85N-XPT9].

there is acknowledgement (and some support from the data) that technical and procedural issues can gain tenants valuable time. Full legal representation would be helpful, at least in some cases, in this respect[264]—both in providing knowledge of the relevant legal provisions and in knowing what to present at which moments. Lawyers often have the power to serve a translating function—taking the elements of a tenant's story and transforming them into relevant legal arguments. Without the guiding hand of counsel, it is the court and other stakeholders in the process that will, in some cases, do the same, but likely more often render a tenant's narrative irrelevant in the context of the legal case.[265]

In our discussions with GLSP lawyers, they explained their decision to focus on litigating counterclaims and the impact they have had in those cases.[266] Although their initial experience with magistrate judges confirmed the approach described above—that counterclaims are ignored when nonpayment of rent is at issue[267]—they also found that repeated exposure to the issue seemed to change judges' views:

> [T]he first time, I've had magistrate court judges tell me, when I hear repairs, I just think this is an excuse for nonpayment of the rent. And I think that's the view that most magistrate court judges have. What's been interesting with the project is, when we keep bringing it. You know, the first time they think that. The second time they think that. When we've brought them to, you know, the third or fourth case, they start listening to us. And we've seen courts become aware of the repair issue. . . . [T]he judges are starting to see that they have a role to play in keeping, in enforcing the landlords to do the repair, which remarkably they didn't seem to think they had a role in.[268]

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264. *About*, NAT'L COAL. FOR CIV. RIGHT TO COUNS., http://www.civilrighttocounsel.org/about (last visited May 24, 2021) [https://perma.cc/PKX3-A38P]; *see also* Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, 905 (2016) ("Among [ ] tenants who lost possession . . . none of the represented tenants were forced to move immediately compared to [ ] 20% of unrepresented tenants . . . .").

265. Shanahan et al., *supra* note 13, at 13:

> Unrepresented parties are not equipped to shape their lives into the form of the law and structure their problems as a counterargument to the opposing party. Rather, court staff and judges engage with parties and try to resolve their issues in context. These efforts can allow state civil courts to help litigants solve their problems. They also distort litigants' actual problems into new ones that fit the shape of the law.;

see also Bezdek, *supra* note 1, at 578 (observing that the question "Is there anything else you wish to tell me?" often prompts a tenant's "human story which is not given legal credence").

266. "We were thinking we would just be doing evictions. . . . What we discovered is that in every case we see, it's repairs. Repairs are the issue that have brought the person there. That's the underlying problem. So we kind of shifted our resources to focus more on going after landlords on repairs. And be persistent. . . . [W]e've gotten really good awards on them." Interview with GLSP Att'ys (June 11, 2019).

267. *See supra* note 117 and accompanying text.

268. Interview with GLSP Att'ys (June 11, 2019). Relatedly, GLSP attorneys emphasized the importance of being a regular presence in courts: "[T]here is a value to having representation on a consistent basis in front of the same judge representing tenants. Because, you know, we may not

The study data demonstrating that the effect of lawyers was more pronounced in rural cases (see Part III.B.3) may be reflective of the fact that in smaller courts, cases are more likely to reach the hearing stage and/or end in a substantive judgment. It is also concerning, given the number of rural jurisdictions that are "legal deserts"—places without significant numbers of lawyers, or no lawyers at all.[269] But it may provide some guidance to statewide legal aid organizations with limited resources, suggesting that those cases with a lawyer on the landlord side should be prioritized in terms of providing tenant representation. Similarly, data revealed that filing of an answer did appear to delay eviction more effectively when a lawyer was involved on behalf of the landlord.[270] While we are not sure of the precise reason for this, it may counsel toward prioritizing or channeling resources toward cases where the opposing party is represented by a lawyer, either for purposes of legal representation or other legal assistance.

Other forms of assistance—including nonlawyers (for example, court navigators[271])—could be helpful as well. To the extent an advantage is gained through repeat player status,[272] and by knowing what defenses are relevant (and which are not), nonlawyers can also convey such information. Because this area of law is not particularly complex, if authorized to do so and appropriately trained, nonlawyers can help tenants to understand where the push points are and what information is relevant.[273]

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win the first time we raise the legal argument . . . . But when we come back with it again, they pay more attention. Because they see we're not going away." *Id.*

269. *See, e.g.*, Pruitt et al., *supra* note 15.

270. *See supra* note 156.

271. MARY E. MCCLYMONT, GEO. L. CTR., NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS (June 2019), https://napco4courtleaders.org/wp-content/uploads/2019/08/Nonlawyer-Navigators-in-State-Courts.pdf [https://perma.cc/FF72-K4J3].

272. *See supra* note 195 (describing Galanter's work on the success of repeat players).

273. While such assistance may be helpful, it is not intended as a substitute for full legal representation and may not be as effective. As demonstrated in Part III.B.3, landlords represented by a lawyer were more likely to secure a writ and a higher monetary judgment than those represented by agents. Of course, these results cannot be translated directly to the tenant context, and agents do not typically undergo the sort of formal training that might be envisioned for the nonlawyer programs described above. *Cf.* KRITZER, *supra* note 225, at 201 (concluding, based on detailed analysis of several legal settings, that "expertise is central to effective advocacy" but that "[t]he presence or absence of formal legal training is less important than substantial experience with the setting").

B. Answer Forms

Data from the study show how an answer form's structure is both revealing of a court's operations and can also bear directly on the proceedings, or even the outcomes, of cases. They also demonstrate tenants' tendency to use the answer as a vehicle for telling their personal narratives, rather than a strategic vehicle to deploy legal defenses.

As a starting point, answer forms should be written in plain language, use as little legal jargon as possible, and be tailored to the literacy levels and language abilities of the relevant population.[274] Many answer forms can be confusing and may be organized in ways that lead to tenant misunderstandings.[275] Use of plain language, white space, relevant and relatable visual images, and attention to readability (including issues such as font and capitalization) can all make answer forms more effective.[276]

If the role of answer forms is to provide the court with relevant factual details to aid in fairly resolving the case, they are currently failing in that role. It may be that a tenant has no legal defense—in many cases, he or she simply will not have the money to pay rent. But by failing to provide the tenant with any guidance as to the defenses they can properly raise and to the facts that the court will understand as relevant, the current answer form essentially functions as ineffective counsel in every pro se case. For that reason, those advising self-represented tenants about how to approach the eviction process should

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274. *See* D. James Greiner, Dalié Jiménez & Lois R. Lupica, *Self-Help, Reimagined*, 92 IND. L.J. 1119 (2017) (discussing solutions for overcoming "situational barriers" and "barriers to understanding"). For a discussion of the importance of legal literacy, which can empower individuals to make more effective use of existing legal protections, see Alissa Rubin Gomez, *Demand-Side Justice*, 28 GEO. J. ON POVERTY L. & POL'Y. (forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3802670 [https://perma.cc/NJ6Y-52Z6].

275. "In one county, I know that they give the court date. They say you have seven days to answer, but then in the next paragraph they'll tell you the court date. And so I've seen a lot of people get confused and think I just need to go to court on that date. And not realize that if they don't file an answer, they'll have a default judgment if they go to court on that date. So that can be very confusing if there's multiple dates and too much explanation in the affidavit. And then on the other hand there's some affidavits where there really isn't enough explanation and they maybe don't mention, you have seven days to file an answer. They aren't clear enough about that." Interview with GLSP Att'ys (June 11, 2019).

276. Greiner et al., *supra* note 274, at 1134–35; Lois R. Lupica, Tobias A. Franklin & Sage M. Friedman, *The Apps for Justice Project: Employing Design Thinking to Narrow the Access to Justice Gap*, 44 FORDHAM URB. L.J. 1363, 1382–85 (2017); NAT'L ASS'N FOR CT. MGMT., PLAIN LANGUAGE GUIDE: HOW TO INCORPORATE PLAIN LANGUAGE INTO COURT FORMS, WEBSITES, AND OTHER MATERIALS 12 (2019); *see also* Margaret Hagan, *A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly*, 6 IND. J.L. & SOC. EQUAL. 199, 234 (2018) (offering suggestions for improved communication regarding white space, font, etc.).

always pair advice about filing an answer with advice as to what and whether it may make sense to file in that tenant's case.

Answer forms could be more effective by providing more detail as to what does or does not constitute a defense, and letting litigants know what information is relevant to their defenses and/or counterclaims. They should be more explicit in offering as options actual (and operable) defenses—for example, the landlord did not make a demand before filing—rather than options that exist primarily as a vehicle for the tenant to tell her story through information that will be irrelevant to the legal proceeding (e.g., large open spaces).[277] Providing more detailed information in the answer form would not only be helpful to a judge resolving the dispute, but also to tenants who, upon coming to court, will engage in negotiations with the landlord and/or the landlord's attorney. Having some knowledge of the law—and of the minimum protections to which they are entitled—would be more empowering to tenants and could counterbalance problematic power dynamics that occur in negotiation discussions. If the answer is intended to be a functional document in a legal proceeding and is oriented toward a group of people who more likely than not will have no legal training, the failure to provide such information undermines the goal of the proceedings and makes the court's job more difficult.

The obvious retort is that the provision of such information would give an unfair advantage to tenants; yet it is difficult to see—setting aside the legal profession's protectionist instincts—how providing information about the law is unfair. Instead, one might understand the current form as putting tenants at an unfair disadvantage. The argument that it constitutes an unfair advantage to have knowledge about the law presupposes the trappings of an adversarial process, where every party has legal representation—here, if one is being pragmatic, there is no way to ensure a just outcome without baking those elements into the process itself. To the extent landlords or other stakeholders have concerns that providing more information to tenants would encourage false responses, that is something that the legal process is well designed to sort out.

As important a role as the answer may serve, self-help strategies that emphasize filing an answer without providing any further assistance may be counterproductive. Our data demonstrate that many tenants who do file an answer under the current system—likely without any guidance or support—may be misled as to what role it serves or can serve and may become frustrated or end up in a worse position (e.g.,

277. The answer form from County U (not included in the study analysis) consists only of blank/write-in spaces.

being subject to a monetary judgment). Advising tenants to file an answer should therefore always be done in conjunction with more detailed advice about the process and how to complete the answer form effectively.

C. Formal Versus Informal Procedures

Most of the literature on informal procedures focuses on out-of-court dispute resolution mechanisms, such as negotiation, mediation, and arbitration.[278] The relative informality of these processes is often thought to be beneficial for pro se litigants, sparing them "the ordeal of navigating court rules" and suggesting that, by "talking informally under the auspices of a neutral third party, better results could be achieved with less trauma."[279] Others have suggested that benefits of the informal process include higher levels of flexibility and party participation in the decisionmaking process.[280] Research has shown, however, that informal processes may be subject to additional nonlegal pressures,[281] reflect underlying resource inequalities,[282] and prioritize procedural justice elements to the exclusion of substantive and distributive justice goals.[283] While settlements reached through such informal processes are subject to judicial review, such review often serves as a "rubber stamp," with judges eager to approve settlements already agreed upon by the parties.[284]

Little scholarly research has focused on the varying formality court procedures may have within a more traditional, "formal" setting—even within a hearing. The data described above suggest that the same critiques that apply in the mediation context likely apply here as well. In some instances, informality may further the goals of justice—where the informality is used, for example, to compensate for a lack of procedural expertise by relaxing evidentiary rules for pro se litigants to ensure the court has all of the necessary and relevant information before it. But, without certain protections in place and similar levels of

278. *See, e.g.*, Ellen Waldman, *How Mediation Contributes to the "Justice Gap" and Possible Technological Fixes*, 88 FORDHAM L. REV. 2425 (2020); Howard S. Erlanger, Elizabeth Chambliss & Marygold S. Melli, *Participation and Flexibility in Informal Processes: Cautions from the Divorce Context*, 21 LAW & SOC'Y REV. 585 (1987).

279. Waldman, *supra* note 278, at 2427.

280. Erlanger et al., *supra* note 278, at 589.

281. *Id.* at 597 (noting that "the 'flexibility' of the informal setting invites the intrusion of nonlegal considerations into what are ostensibly legal decisions").

282. *Id*. at 585–86.

283. Waldman, *supra* note 278, at 2427.

284. Erlanger et al., *supra* note 278, at 598.

knowledge and expertise across parties, informality may be more harmful than helpful.[285]

In exploring the role of mediation in housing court, Ellen Waldman argues that:

> [M]ediation, as it currently is presented to pro se parties in the lower courts, risks significant depredations of justice. This risk flows directly from the ethics rules that either discourage or outright forbid mediators from providing disputants with exactly the information they need to make informed judgments as they bargain over housing, time with children, and scarce financial resources.[286]

In the instant context, a similar dynamic is presented by clerks who are unable to provide legal advice and answer forms that are not very instructive as to how litigants should approach the process.

We do not suggest that the solution is to formalize the process in courts that currently adopt a less formal approach.[287] Indeed, a more informal approach—particularly when combined with additional opportunities to be present or heard—may provide an opportunity for helpful interventions, including the more active judging approach discussed above. Instead, we suggest that an embracing of the informal approach must be combined with a recognition that procedural justice is not the only metric for success. As Colleen Shanahan and her coauthors have observed:

> [C]ourts must make explicit that the goal of interaction with litigants is to solve a particular problem, which is different than resolving a two party adversarial dispute. This approach requires embracing rather than avoiding the informality of law and process in state civil courts. It also requires engaging transparently with resources outside the court system. And it can necessarily include using the power of the judicial branch to balance the economic, racial, or other disproportionate power of one party. None of this is new—it is what state civil courts have been doing on an individual scale—but it is making this role intentional, systemic, and transparent.[288]

Informality is not a substitute for structural disadvantage or inequality. When one party lacks critical knowledge about the process and/or the law, there is no reason to think that informal procedures—

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285. Elizabeth MacDowell has studied the role of informality and "delegalization" in family law cases. Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. ON POVERTY L. & POL'Y 473, 487–99 (2015). She concludes that although such approaches were initially seen as ways to expand access to justice, in practice such informality has meant that "much decision-making affecting legal rights takes place largely without reference to legal rights and norms and, in many cases, without a written record or the possibility of appellate review." *Id.* at 495. She argues that it has also allowed for greater pervasiveness of race and gender bias. *Id.* at 495–96.

286. Waldman, *supra* note 278, at 2428.

287. *See* Erlanger et al., *supra* note 278, at 603 (arguing that "reform must be directed at improving the informal processes rather than at substituting a more formal, and probably less desirable, one").

288. Shanahan et al., *supra* note 13, at 41.

regardless of whether they appear to be fair procedurally—are any more likely to result in substantive justice.

One way to address this issue might be increased judicial engagement. This is one area where we saw some very effective examples through observation of judges intervening to introduce an element of the law about which the tenants, or perhaps both parties, were previously unaware. More informal procedures may serve an important role if paired with increased engagement, either by judges or other court personnel (as deemed appropriate), or with other means of educating litigants about what is legal, what evidence is relevant, and how to navigate the process.[289] Similarly, while allowing litigants an opportunity to tell their story is critical—in part to avoid the "silencing" Bezdek described[290]—our study shows that doing so without additional assistance may be counterproductive. Paired with the problem-solving court model that aims to address "the whole range of a person's legal and social issues at once" and active judicial engagement, giving tenants a greater voice could be effective in achieving procedural and substantive justice outcomes.[291]

D. Law Schools and Legal Education

As described above, this study confirms that there can be a high level of informality in the court setting, particularly in the context of lower-level state courts. This is something that students may not be particularly well prepared for, given the traditional law school focus on formal (and federal) court. Andrea Seielstad describes the expectations that legal education typically sets for students for how cases will be resolved in court:

> Students expect . . . that the "hearing" will have certain characteristics. It will be formal. It will be adversarial. Each side will have an opportunity to present opening and closing remarks as well as testimony and evidence through direct and cross-examination. It will be governed by rules—strictly so. Rules of evidence, rules of procedure. It goes without

289. *Id.* at 45:

> [S]tate civil courts must empower all of their actors to fully and flexibly engage in this problem solving role. This means giving judges and other court staff different roles than they have traditionally played. We need to acknowledge and support judges playing a problem solving role. We need to equally empower and support court staff other than judges who play crucial roles in providing information, explaining law, and shaping the outcome of cases.

290. Bezdek, *supra* note 1, at 536 (arguing that "tenants are silenced by dynamics occurring in and around the court room").

291. Rachel Kleinman, *Housing* Gideon*: The Right to Counsel in Eviction Cases*, 31 FORDHAM URB. L.J. 1507, 1531 (2004); *see also* Engler, *supra* note 221, at 2028 (arguing that a judge "must be as active as necessary to ensure that the legal system's promise of fairness and substantial justice is not frustrated by the litigant's appearance without a lawyer").

> saying that these rules will be written. And there will be substantive standards, ascertainable by a thorough and accurate application of principles of legal research and doctrinal analysis. At the end of each side's presentation of the case, a judge, magistrate, or jury—in any case, a neutral factfinder—will apply, dispassionately and fairly, the relevant law to the relevant facts and render a decision. In some cases, the opportunity to appeal will arise. But there, too, there will be written rules and substantive law to guide the practitioner. . . . [Many] students enter their third year of law school fully expecting to be able represent a client in accordance with the formalistic model I have just set forth. This expectation is reinforced by popular images and law school texts and curricula based on a prototypical vision of the American system of justice and what it means to be a lawyer in that system.[292]

Many law students will never practice—or do so only rarely—in federal court. For those students in more rural areas, the practices described in this Article may be much closer to their experience than those that are the primary focus of their law school education. Students should be exposed through their classwork to the reality of a variety of different court models—through court observation and clinical education. This will not only prepare many of them for the realities of practice, but also imbue them with a broader view of what the law and legal practice look like on the ground, which is critical for those students who may go into government or other policymaking positions.

We would also be well served by expanding our understanding of what "lawyering" means. Lawyering need not mean only representing an individual client in a case in a courtroom, but also helping to make the system as a whole more accessible for self-represented litigants.[293] For example, lawyers could be extremely useful in the process of designing (and redesigning) answer forms so that

they effectively relay information about the law and what the parties are entitled to, facilitating fairer negotiations and a better decisionmaking process.

CONCLUSION

There are many factors at play in the dispossessory process that are beyond the scope of this paper and yet are critically important—for example, trends in the suburbanization of poverty and a lack of affordable housing. But we hope that by providing a more granular

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292. Seielstad, *supra* note 24, at 128 (footnotes omitted).

293. *See* Cathryn Miller-Wilson, *Harmonizing Current Threats: Using the Outcry for Legal Education Reforms to Take Another Look at Civil* Gideon *and What It Means to Be an American Lawyer*, 13 U. MD. L.J. RACE RELIGION GENDER & CLASS 49, 65 (2013) ("[T]he morally activist lawyer, regardless of the identity of her clients, must also have as a central professional concern the plight of those who cannot afford representation."); *see also* Kleinman, *supra* note 291, at 1530–31 (arguing for a shift in the lawyer's role from "a zealous advocate and a player in an adversarial system" to a focus on countering inequities inherent in the legal system).

picture of the eviction process and how its components affect litigants' experiences and outcomes we can inform discussions about how to best advise self-represented litigants and about broader systemic reform.

One of the most powerful takeaways from the study is that elements typically associated with good or fair process—filing an answer, scheduling an individual hearing, the ability to tell one's story in court—do not necessarily result in better outcomes for tenants. We suspect this is primarily for two reasons: First, because these mechanisms do nothing to disrupt the underlying legal framework or change what decisionmakers view as relevant to the ultimate outcome, they only exacerbate the law's tendency to favor landlords' rights over those of tenants. This is an area where legal advocacy—in exploiting the few openings available to tenants or in evolving the law itself—is critical. Second, providing tenants with procedural vehicles such as an answer or a hearing—their proverbial "day in court"—is not necessarily helpful without guidance as to how to use those tools effectively; without such assistance, tenants often end up dissatisfied and frustrated by their experience. Thus, to the extent that smaller, more rural courts are characterized by higher levels of access or procedural justice, they may help tenants to feel better about their experience in the short term, but ultimately, those tenants may also be more likely to face an adverse judgment.

If we are to understand the dispossessory process as a legal process, and not as a vehicle for rent collection, it should make a better attempt to live up to that designation. Even under the current legal system, there are changes that can be made to ensure the process is as fair as possible, not only in theory, but in tangible ways, providing all parties with as much knowledge as possible about the law, clear expectations, and a process that attempts to elicit all relevant information from both sides before reaching as fair a resolution as possible.

From the tenant's perspective, the law has many shortcomings that inevitably limit how much fairness the process can provide. One tenant's takeaway, having experienced the eviction process in both Counties R and S, was that the system provides tenants with little to no recourse:

> Honestly, the only thing I've learned is that the tenant has very few rights if any. And that it doesn't matter if you have a slumlord, doesn't matter if you have someone who is allowing the home to go in foreclosure and they're not even taking your rent and paying the mortgage with it. The court's going to rule in their favor. And I mean, I understand that you have a contract and you have to live up to your end of the contract. But if they're not living up to their end, then the contract's broken on their end. What protections do

> tenants have? We have none. . . . [W]e have to carry the eviction on our record, and now it makes it more impossible to find a place to live afterwards. . . . [I]t doesn't seem fair.[294]

The effects of this view may have ramifications far beyond the eviction process. For those who see the dispossessory process as emblematic of the justice system, their experience may engender negative sentiment about the broader role that courts play in access to justice. By maintaining a system that attempts to provide procedural justice but leaves little possibility for substantive justice, we do the system a disservice and cause litigants to lose faith and trust in the legal system as a vehicle for redressing their problems.

294. Interview with Tenant 9, Cnty. R (Sept. 5, 2018).