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End Game: Understanding the Bitter End of  
Evictions

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**End Game:  
Understanding the Bitter End of Evictions**

Michael Gottesman  
Supervised Analytic Writing Project  
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## I. INTRODUCTION

“We have a bit of a problem here,” says State Marshal Robert Miller. He stands on the front porch of an apartment with eviction papers in hand. The landlord began an eviction action weeks ago for nonpayment of rent, and this morning Miller has come to put the tenant out. But he arrived to find that the tenant took one last chance to stick it to her landlord: She ripped some cabinets off the wall, allowed her daughter to write on the doors and walls, and “bulked out” (a practice where the tenant leaves all possessions in order to create a high moving bill for the landlord). Miller calls the landlord with an update. She insists that until this point, she and her tenant of three years had been on good terms. Angry with her tenant, who is not home this morning, the landlord considers canceling the removal to allow the tenant time to move her own possessions, which would save the landlord the moving costs and marshal fees associated with the removal. After deliberating, she decides that she has lost enough rent on this property already and she has no choice but to foot the high moving bill to get the tenant out of her property.<sup>1</sup>

A few weeks later, Miller faces an entirely different situation. As he approaches another apartment to remove a tenant on this rainy morning, he stops his car to wait behind a school bus while two people wheel a handicapped child onto the bus. He soon discovers that he will be removing the single mother and two brothers of that child from their apartment. As movers load the child’s medical bed onto the city truck, her two sons get drenched lugging boxes to the neighbor’s porch. The mother says she could not pay the rent because an administrative snag delayed welfare assistance checks. She has no idea where they will stay tonight, or what will happen when her son returns from school.<sup>2</sup>

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<sup>1</sup> Author’s Personal Observation, Removal at 66 Gorham St., Hamden, Conn. (Mar. 9, 2006).

<sup>2</sup> Author’s Personal Observation, Removal at 83 Willis St., New Haven, Conn. (May 16, 2006).

Legal scholars have studied residential evictions extensively, but have written surprisingly little on the final stage, when the marshal comes to put the tenants out—what I call removal.<sup>3</sup> Legal writing on evictions falls into four broad categories commenting on: (1) the rights of actors in the process—including the right against retaliatory evictions<sup>4</sup> and the rights of particular groups<sup>5</sup>; (2) the fairness and constitutionality of current and proposed policies—notably, policies regarding evictions for drug use<sup>6</sup> and for third-party criminal activity in the apartment<sup>7</sup>; (3) proposals for reform of the summary process<sup>8</sup>; and (4) descriptions of what actually happens in the course of the summary process actions—primarily who gets evicted,<sup>9</sup> how judicial systems handle the dispute over entitlement to property,<sup>10</sup> and what effect legal representation has on the length of that process.<sup>11</sup> My

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<sup>3</sup> I use “removal” rather than “eviction” to emphasize that I am examining only that portion of the process where the marshal removes the tenant from the property, and not the legal process more broadly.

<sup>4</sup> See, e.g., George M. Armstrong, Jr. and John C. LaMaster, *Retaliatory Eviction as Abuse of Rights*, 47 LA. L. REV. 1 (1986); James Hughes, *Retaliatory Eviction*, 102 MIL. L. REV. 143 (1983).

<sup>5</sup> See, e.g., Paris R. Baldacci, *Pushing the Law to Encompass the Reality of Our Families: Protecting Lesbian and Gay Families from Eviction from Their Homes*, 21 FORDHAM URB. L.J. 973 (1994).

<sup>6</sup> See, e.g., Peter J. Saghir, *Home is Where the No-Fault Eviction Is: The Impact of the Drug War on Families in Public Housing*, 12 J.L. & POL'Y 369 (2003); Caroline Castle, Note, *You Call That a Strike?: A Post-Rucker Examination of Eviction from Public Housing Due to Drug Related Criminal Activity of a Third Party*, 37 GA. L. REV. 1435 (2003); Note, *State Statute Allowing Eviction of Tenant Convicted of Drug Offense is not Punitive and, Therefore, does not Violate Either Double Jeopardy Clause or Excessive Fines Clause - Taylor v. Cisneros*, 102 F.3d 1334 (3d Cir. 1996), 27 SETON HALL L. REV. 1161 (1997).

<sup>7</sup> See, e.g., Regina Austin, *“Step on a Crack, Break Your Mother’s Back”: Poor Moms, Myths of Authority, and Drug-Related Evictions from Public Housing*, 14 YALE J.L. & FEMINISM 273 (2002); David C. Pulice, *Supreme Court Holds Federal Drug Law Permits Evictions: Public Housing Tenant Need Not have Knowledge of Drug Use*, 4 LAWYERS J. 2 (2002); Nelson H. Mock, Note, *Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties*, 76 TEX. L. REV. 1495 (1998); Alicia Werning Truman, Note, *Unexpected Evictions: Why Drug Offenders Should Be Warned Others Could Lose Public Housing if They Plead Guilty*, 89 IOWA L. REV. 1753 (2004)

<sup>8</sup> See, e.g., J. Royce Fichtner, Note, *The Iowa Mobile Home Park Landlord-Tenant Relationship: Present Eviction Procedures and Needed Reforms*, 53 DRAKE L. REV. 181 (2004); Randy G. Gerchick, Comment, *No Easy Way Out: Making the Summary Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759 (1994)

<sup>9</sup> Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*. 14 HOUSING POL'Y DEBATE 461.

<sup>10</sup> See, e.g., LAWYERS’ COMMITTEE FOR BETTER HOUSING, *NO TIME FOR JUSTICE: A STUDY OF CHICAGO’S EVICTION COURT* (2003), available at <http://www.selfhelpsupport.org/library.cfm>.

<sup>11</sup> See, e.g., John Bolton & Stephen Holtzer, Note, *Legal Services and Landlord-Tenant Litigation: A Critical Analysis*, 82 YALE L.J. 1495 (1973); Steven Gunn, *Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?*, 13 YALE L. & POL'Y REV. 385 (1995); Lawrence McDonough, *Wait a Minute! Residential Eviction Defense is Much More than “Did You Pay the Rent?”*, 28 WM. MITCHELL. L. REV. 65 (2001); Robert

project falls into the last category, broadly, and aims to fill two holes there. First, the vast majority of current writing discusses only rules governing the phases of an eviction action leading up to and including the trial or settlement, and stops short of the removal. Second, writing that does discuss executions does not go beyond recitation of rules to offer empirical data on how the process unfolds.<sup>12</sup>

Popular depictions fill this gap in our empirical knowledge of evictions and feed our imaginations. In Michael Moore's *Roger & Me* we see Flint, Michigan Deputy Sheriff Fred Ross knock on a tenant's door and move the family's belongings, Christmas tree and all, out to the curb on Christmas Eve.<sup>13</sup> In Ralph Ellison's *Invisible Man* we read the narrator's account of a removal in which two men carry out of the apartment a chair with the tenant, a "motherly-looking old woman," still sitting in it.<sup>14</sup> In *Awake and Sing*, Broadway drew on the scene of a family being removed to capture the despair of the Depression.<sup>15</sup> And a search of the *New York Times* reveals that the media depicts the link between evictions and homelessness as direct and immediate.<sup>16</sup> These popular representations offer only a one-

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Daines, *Landlord-Tenant Litigation and the Impact of Free Legal Services* (1991) (unpublished manuscript, Yale Law School) (on file with author).

<sup>12</sup> Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*. 14 HOUSING POL'Y DEBATE 461, 461 (noting the lack of data on removals).

<sup>13</sup> ROGER & ME (Warner Bros. 1989)

<sup>14</sup> RALPH ELLISON, INVISIBLE MAN 261 (1952).

<sup>15</sup> CLIFFORD ODETS, AWAKE AND SING (1935).

<sup>16</sup> Searching for "evict! /5 homeless!" reveals 400 hits in the *New York Times* alone. Although not every search result draws a link between evictions and homelessness many do, including: Ian Urbina, "Keeping it a Secret as the Family Car Becomes a Home," N.Y. TIMES, April 2, 2006, at 1 (collecting stories of two families who had been evicted and immediately resorted to living in their cars); Leslie Kaufman, "State Revamps Plan To Give Assistance to Homeless," N.Y. TIMES, Dec. 11, 2004, at B1 ("Perhaps the greatest impact on homelessness in the city will come from the funds that will go to families facing eviction. . . ."); Nina Bernstein, "Immigrant Group Sues State Over Halt to Some Benefits," N.Y. TIMES, Dec. 7, 2004, at B3 ("I am worried that I will be evicted and become homeless.").

dimensional view of the tail-end of eviction actions: desperate tenants getting the short end of the stick in rather dramatic fashion.<sup>17</sup>

This project seeks not to replace these images, but to draw upon empirical research to provide a more nuanced account of what actually happens in the final stage of evictions. The law touches a person's life in a powerful way during an eviction: At stake for the landlord is possession of a large asset, and a cash flow that the landlord often relies upon to make regular mortgage payments; at stake for the tenant is possession of the place he has called home for the past months or even years. At the tail end of an eviction, these interests sharpen and come into direct conflict with one another. This paper seeks to understand how the removal process unfolds, who makes it to the final stage of evictions, how they behave, and how the process affects their lives.

Adding nuance to the current one-dimensional view of removals has inherent value in allowing us to understand better how the law affects individuals' lives, but it also has instrumental value. Empirical research on *how* the current removal process works, establishes a foundation for broader deductions about *for whom* it works and *how well*. One prominent voice in the world of housing policy noted:

Having good data on this vast, hidden housing problem would seem an essential ingredient for developing housing policies and programs that might decrease the incidence and negative impact of what, for most of those affected, must be a profoundly traumatic experience . . . .<sup>18</sup>

This paper begins to provide empirical research on this under-studied topic. In doing so and in drawing deductions from these findings to suggest paths for future research, this paper advances scholarship on an area of law that powerfully affects all parties involved.

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<sup>17</sup> As far as the author is aware, *Pacific Heights* offers the only popular depiction that prompts the audience to root for the landlord, and against the tenant, who refuses to leave his rental apartment and ruins the lives of his landlords. *PACIFIC HEIGHTS* (Warner Bros. 1991).

<sup>18</sup> Hartman & Robinson, *supra* note 12, at 461-62.

Part II briefly explains the laws governing the eviction process—both the process by which landlords and tenants settle their dispute over possession of the property, and the process by which landlords remove tenants who have lost that dispute. Part III examines how the removal process unfolds in practice. To describe the phases of the removal process and how various actors play their respective roles, this Part analyzes data from various legal forms completed during removals in 2005. To supplement these data, this Part also relies upon field research: observations of removals in New Haven and interviews with landlords, marshals, tenants, and community agency workers.<sup>19</sup> Part IV discusses the demographics of removals, examining socioeconomic features of landlords and tenants involved in removals. Part V discusses why tenants get to the removal phase, focusing on whether tenants at this phase are merely gaming the system in some way. In light of these descriptions of how the process unfolds, whom it involves, and why it begins, Part VI draws lessons about what parts of this process work well and which could be improved. Part VI concludes.

## II. GETTING TO REMOVAL

Connecticut provides landlords a judicial procedure called “summary process” for evicting tenants who have violated terms of their lease or whose leases have expired.<sup>20</sup> A number of works exhaustively catalogue the steps of Connecticut summary process actions.<sup>21</sup>

This Part briefly summarizes the phases of a New Haven eviction in order to establish the

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<sup>19</sup> For an explanation of research methodology, see Appendix 1.

<sup>20</sup> CONN. GEN. STAT. tit. 47a (2006). Other states grant similar grounds for evictions. *See, e.g.,*

<sup>21</sup> *See, e.g.,* PAUL MARZINOTTO, CONNECTICUT SUMMARY PROCESS MANUAL (1986); Gunn, *supra* note 11, at app.; Mark Setterfield, *The Eviction Process in Connecticut* (Trinity Ctr. for Neighborhoods, Research Project 16, April 1996), available at [http://www.trincoll.edu/depts/tcn/Research\\_Reports/resrch16.htm](http://www.trincoll.edu/depts/tcn/Research_Reports/resrch16.htm); Steven Shepard, *Withholding Rent in Connecticut: The History and Application of the “Habitability” Defense to Eviction Actions* (2005) (unpublished manuscript, Yale Law School) (on file with author). The housing courts also publish user’s guides. STATE OF CONNECTICUT JUDICIAL BRANCH, A LANDLORD’S GUIDE TO SUMMARY PROCESS (EVICTION) (2004), available at <http://www.jud2.ct.gov/webforms/Publications/landlordguide.pdf>; STATE OF CONNECTICUT JUDICIAL BRANCH, A TENANT’S GUIDE TO SUMMARY PROCESS (EVICTION) (no date). And community agencies also publish guides. *See, e.g.,* LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT (LARCC), TENANT’S RIGHTS: EVICTIONS (2006), available at [http://www.larcc.org/pamphlets/housing/tr\\_eviction.htm](http://www.larcc.org/pamphlets/housing/tr_eviction.htm).



legal context in which removals take place, and to compare how other jurisdictions handle this process.

**A. New Haven**

Landlords in Connecticut have a number of legal grounds for evicting tenants,<sup>22</sup> but almost every eviction begins because the tenant has failed to pay rent.<sup>23</sup> And the same holds true for New Haven evictions ending in removal:

**Figure 1<sup>24</sup>**

<b><u>Cause for Beginning an Eviction</u></b>	<b><u>Percent of Total Cases (n=105 evictions in 2005)</u></b>
Nonpayment of rent	93%
Where one originally had the right or privilege is now terminated/ lapse of time	5%
Violation of lease	2%

The law grants other grounds for evictions,<sup>25</sup> but landlords rarely use these.

Before starting an eviction, a landlord must serve the tenant with a Notice to Quit, asking the tenant to leave the property within five days and stating the reason why.<sup>26</sup> For

<sup>22</sup> CONN. GEN. STAT. § 47a-23(a) (2006).

<sup>23</sup> Past studies of New Haven and other jurisdictions have concluded that nonpayment of rent accounts for over ninety percent of all eviction actions. *See, e.g.,* Daines, *supra* note 11, at 24 tbl. “Cause of Action”; Gunn, *supra* note 11, at 397; HOMEBASE, *supra* note 176, at 9 (finding that eight of its nine sample evictions were for nonpayment); Rafael Podolsky, *A Study of Eviction Cases in Hartford: A Follow-Up Review of the Hartford Housing Court* 7 tbls. 6&7 (1995) (unpublished report, Legal Assistance Resource Center) (on file with author); Rafael Podolsky, *A Study of Eviction Cases in New London: Case Processing in a Non-Housing Court District* 3 tbl. 4 (1992) (unpublished report, Legal Assistance Resource Center) (on file with author).

<sup>24</sup> ONLINE HOUSING COURT DATABASE.

<sup>25</sup> Other grounds include when a residential rental agreement or lease terminates for any of the following reasons: by reason of any expressed stipulation therein; nuisance or serious nuisance; when the occupant never had a right to occupy the premises; when the occupant originally did have a right, but that right has terminated; when the occupant refuses to agree to a “fair and equitable” rent increase; and when the landlord intends either to permanently remove the rented unit from the housing market, or intends to occupy it as his principal residence. CONN. GEN. STAT. § 47a-23(a).

<sup>26</sup> CONN. GEN. STAT. § 47a-23(a). In nonpayment cases, the marshal may not serve this notice on the tenant before the ten-day grace period for payment has lapsed. CONN. GEN. STAT. § 47a-15(b). Neither the New Haven Housing Court nor the marshals record how many Notices to Quit marshals serve on tenants in a given year, so it is difficult to determine how often parties resolve their differences at this stage.

service of all papers, the law calls for in-hand or abode service by marshals, not landlords;<sup>27</sup> anecdotal data suggests that marshals typically comply with these obligations.<sup>28</sup> After the five-day notice period, a landlord formally enters a summary process action by having a Summons and Complaint served on the tenant. This alerts him that he or his attorney must appear in court and issue a response by a certain date.<sup>29</sup> In 2005, marshals served 2007 Summons and Complaint forms in the City of New Haven,<sup>30</sup> representing 6.1% of New Haven's 33,167<sup>31</sup> residential rental units.<sup>32</sup> If the tenant fails to appear for a court date, the Housing Court grants a default judgment and then issues an Execution, meaning the landlord wins and gets to move to the removal phase.<sup>33</sup> A majority of cases that get to removal—sixty-seven percent in 2005—end this way.<sup>34</sup>

Removed tenants rarely have representation through this process. Whereas fifteen percent of all evicted tenants typically secure representation,<sup>35</sup> or under two percent of

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<sup>27</sup> CONN. GEN. STAT. § 52-57(a) (“Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.”).

<sup>28</sup> See *infra* notes 98-102 & accompanying text.

<sup>29</sup> *Id.*

<sup>30</sup> Interview with Suzanne Colasanto, Clerk, New Haven Housing Court, in New Haven (October 13, 2006).

<sup>31</sup> U.S. CENSUS BUREAU, FACT SHEET: NEW HAVEN CITY, CONNECTICUT (2000), available at [http://factfinder.census.gov/servlet/QTable?\\_bm=y&-qr\\_name=DEC\\_2000\\_SF3\\_U\\_DP4&-geo\\_id=16000US0952000&-ds\\_name=DEC\\_2000\\_SF3\\_U&-lang=en&-redoLog=false&-sse=on](http://factfinder.census.gov/servlet/QTable?_bm=y&-qr_name=DEC_2000_SF3_U_DP4&-geo_id=16000US0952000&-ds_name=DEC_2000_SF3_U&-lang=en&-redoLog=false&-sse=on) [hereinafter FACT SHEET: 2000]

<sup>32</sup> A relatively negligible portion were served on commercial tenants; and tenants receiving more than one Summons and Complaint a year did not account for much of the overall total. Telephone Interview with Michael D’Andrea, Assistant Clerk, New Haven Housing Court, in New Haven, Conn. (Nov. 21, 2006).

<sup>33</sup> CONN. GEN. STAT. § 47a-26 to -26(a) (2006).

<sup>34</sup> Based on 200 removals in 2005, over half of all removals in that year, this percentage is likely representative of removals as a whole. This number was calculated in the following way: First, names were gathered from Executions used in removal cases. CONNECTICUT SUPERIOR COURT, SUMMARY PROCESS EXECUTION FOR POSSESSION [hereinafter SUMMARY PROCESS EXECUTIONS] (Jan. 1-July 5, 2005). Then, entering these names into the New Haven Housing Court’s online database revealed the procedural overview of each case. CONNECTICUT SUPERIOR COURT, HOUSING CASE LOOK-UP [hereinafter ONLINE HOUSING COURT DATABASE] (2006), available at <http://www.jud.state.ct.us/housing.htm>.

<sup>35</sup> Daines, *supra* note 11 at 18. See also NO TIME FOR JUSTICE, *supra* note 10 at 4 (finding that five percent of all evicted tenants appearing in Chicago’s housing court appeared with representation).

removed tenants in 2005 had representation,<sup>36</sup> suggesting that represented tenants settle disputes before removal more often than do unrepresented tenants.<sup>37</sup> And although those who secure legal representation often do so through legal service organizations,<sup>38</sup> only one out of five represented tenants in this sample had a legal aid lawyer, suggesting that legal aid lawyers are especially adept at resolving their cases before the removal phase. On the other side of the case, large landlords typically use private attorneys, but “mom and pop” landlords often navigate this process pro se.<sup>39</sup>

If the tenant does not default, the parties move toward trial. Immediately before trial, the landlord and tenant meet with a Housing Specialist,<sup>40</sup> a trained mediator, which leads to a settlement in over ninety percent of cases.<sup>41</sup> When parties settle, the judge approves the stipulated agreement and the eviction process ends. If the tenant violates the stipulated agreement (which happens often<sup>42</sup>), the landlord is entitled to obtain an Execution and move to the removal phase. Roughly one-hundred cases make it past these phases to trial.<sup>43</sup> When a

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<sup>36</sup> This number was calculated based on an analysis of the first 271 individuals removed in 2005. SUMMARY PROCESS EXECUTIONS; and ONLINE HOUSING COURT DATABASE.

<sup>37</sup> Shelly White confirmed that the vast majority of cases New Haven Legal Assistance lawyers settle their eviction cases before removal. Interview with Shelly White, Attorney, New Haven Legal Assistance, in New Haven (Dec. 14, 2006).

<sup>38</sup> Of Gunn’s eighty-eight cases with tenant representation, fifty-nine of them involved representation by legal aid or legal services lawyers. Gunn, *supra* note 11 at 12.

<sup>39</sup> See *infra* Figure 11.

<sup>40</sup> CONN. GEN. STAT. § 47a-69.

<sup>41</sup> Interview with Cynthia Texeira, Housing Specialist, New Haven Housing Court Clerk, in New Haven, Conn. (May 18, 2006). See also, CITIZENS’ ADVISORY COUNCIL FOR HOUSING MATTERS, REPORT TO THE GENERAL ASSEMBLY 4 (2005), available at [http://www.ct.gov/ecl/lib/ecl/cac-2005\\_full\\_report.pdf](http://www.ct.gov/ecl/lib/ecl/cac-2005_full_report.pdf) (reporting that, statewide, housing specialists settle ninety-five percent of cases).

<sup>42</sup> In thirty-nine percent of removals, landlords obtained Executions after violations of stipulated judgments. ONLINE HOUSING COURT DATABASE. (based on analysis of the first 119 removals in 2005)

<sup>43</sup> Telephone Interview with Mike D’Andrea, *supra* note 32; Shepard, *supra* note 21 at 34 (reporting 103 trials in 2004).

tenant wins at trial, which rarely happens,<sup>44</sup> he may remain in the property in good standing; when the landlord wins, the judge issues an Execution.

Once the landlord has served the tenant with an Execution a marshal can return after twenty-four hours to remove him and his belongings from the apartment.<sup>45</sup> Half of the tenants who receive an Execution move out before removal day—377<sup>46</sup> out of 757<sup>47</sup> in 2005. The other half of cases result in removal. When a marshal removes a tenant, he is responsible for placing the tenant’s belongings on the curb—the landlord reimburses the marshal for all costs, including the cost of hiring movers.<sup>48</sup> Then “[t]he chief executive officer of the town shall remove and store” these belongings for fifteen days.<sup>49</sup> New Haven delegates this responsibility to the Department of Public Works (DPW),<sup>50</sup> and the DPW notifies tenants that they have twenty-two days to retrieve their possessions.<sup>51</sup> If tenants want to retrieve their belongings during this period, Connecticut law dictates that the municipality may charge tenants for the cost of storage.<sup>52</sup> Most municipalities do so,<sup>53</sup> but New Haven does not charge tenants for storage costs. This practice has no legal basis. A legal aid lawyer<sup>54</sup> and the New

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<sup>44</sup> Telephone Interview with Mike D’Andrea, *supra* note 32. A landlord who owns about thirty units has lost only three eviction trials in the past thirty years. Telephone Interview with Ron Candelora, Immediate-Past President, New Haven Landlord Association (Dec. 18, 2006).

<sup>45</sup> CONN. GEN. STAT. § 47a-42.

<sup>46</sup> SUMMARY PROCESS EXECUTIONS (Jan. 1-Dec. 31, 2005).

<sup>47</sup> Memoranda from Frank Blee, Eviction Warehouse Manager, New Haven Department of Public Works, Fiscal Year Performance Indicators [hereinafter DPW Performance Indicators] (June 2005 and June 2006) (on file with author).

<sup>48</sup> CONN. GEN. STAT. § 47a-42.

<sup>49</sup> CONN. GEN. STAT. § 47a-42.

<sup>50</sup> NEW HAVEN, CONN., CODE § 2-276 (2005) (“Authority over abandoned property”), *available at* <http://www.municode.com/resources/gateway.asp?pid=11090&sid=7>

<sup>51</sup> Memorandum from the DPW, City of New Haven, Notice to Evictees Reclaiming Household Goods Moved During Eviction [herinafter Notice to Evictees] (no date) (on file with author).

<sup>52</sup> CONN. GEN. STAT. § 47a-42.

<sup>53</sup> *See e.g.*, Telephone Interview with Sharon, Clerk, East Haven Department of Public Works (Nov. 13, 2006); Telephone Interview with John Cabral, Jr., Program Specialist, Hamden Community Service Department (Nov. 13, 2006); Telephone Interview with Ronda Carroll, Clerk, Hartford Department of Public Works (Nov. 13, 2006); Telephone Interview with Emily Barbero, Clerk, Building Department of the Town of Torrington (Nov. 13, 2006).

<sup>54</sup> Interview with Shelly White, *supra* note 37.

Haven Housing Court Clerk<sup>55</sup> claim that the decision not to charge tenants is mostly political—the City wants to extend a courtesy to those seen as the “poorest of the poor”—and partly practical—it is too much of a hassle to charge tenants and if the City charged for pickup, the retrieval rates would decrease and need for storage space would increase.<sup>56</sup> But this policy also likely creates an incentive for tenants to remain in the premises in order to receive free moving and storage services. If the tenant does not retrieve his property within the set time frame, the town sells it at public auction.<sup>57</sup>

The number cases that make it through this process to removal has been declining recently. Total removals scheduled—data is not available for removals actually carried out—steadily dropped from 1125 in 2001 to 757 in 2005.<sup>58</sup> Data on initiation of summary process actions, which exist for only the past three years, also show a decline in evictions begun: 2303 in 2003 versus 2007 in 2005. Nobody can explain the reason for this trend with certainty. Perhaps as the cost of evictions increases landlords resolve more disputes through negotiating outside the legal system.<sup>59</sup> Alternatively, the improvement in the economy may mean fewer disputes need to be settled in the first place, because a greater proportion of tenants have enough money to pay rent.<sup>60</sup>

### ***B. Comparison to Other Jurisdictions***

Each state has developed eviction procedures and laws that differ from one another in some ways. On a procedural level, for instance, states process evictions in slightly different

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<sup>55</sup> Interview with Suzanne Colasanto, Clerk, New Haven Housing Court, in New Haven (Dec. 15, 2006).

<sup>56</sup> In Hartford where tenants must pay storage fees, for example, only seven to ten percent of tenants retrieve their goods. Telephone Interview with Ronda Carroll, *supra* note 53. For a counterexample, though, see the Town of Torrington, where thirty to fifty percent of tenants retrieve their belongings despite having to pay for storage. Legal Assistance Resource Center, Memo on Redemption Rate by Town, 2006 (on file with author).

<sup>57</sup> CONN. GEN. STAT. § 47a-42.

<sup>58</sup> DPW Performance Indicators, *supra* note 47. In 2001, the DPW scheduled 1125 removals.

<sup>59</sup> Interview with Suzanne Colasanto, Clerk, New Haven Housing Court, in New Haven (Oct. 6, 2006).

<sup>60</sup> Interview with Robert Solomon, Professor, Yale Legal Services Organization at Yale Law School, in New Haven, Conn. (Oct. 11, 2006).

fora from one another—housing sessions of trial courts, municipal courts, small claims courts.<sup>61</sup> More substantively, states choose different points at which to slow down or speed up the legal proceedings—at the opening of litigation, or at the Execution phase.<sup>62</sup> But, taken as a whole, most state laws governing the dispute for possession roughly resemble those outlined in Section II.A insofar as they call for landlords to notify tenants at each step and allow tenants ample opportunity to state their cases, while providing speedy resolution.<sup>63</sup> In terms of legal process then, removals across the country often share similar back-stories.

At the removal phase, state laws and procedures differ from one another on a number of dimensions. As Figure 2 shows, states have developed their own rules on everything from service of papers to retrieving removed possessions. The most notable difference between New Haven and elsewhere is that tenants in New Haven never pay for moving or storage of their goods, whereas elsewhere they often do:

**Figure 2**

<b><u>Step of Removal Phase</u></b>	<b><u>New Haven</u></b>	<b><u>Examples of Differences in Other Jurisdictions</u></b>
<i>Service of Process</i>	<ul style="list-style-type: none"> <li>• Method: In-hand or abode</li> <li>• Server: Marshal</li> </ul>	<ul style="list-style-type: none"> <li>• Method: Substituted<sup>64</sup></li> <li>• Server: Anyone over 18, other than landlord<sup>65</sup></li> </ul>
<i>Waiting period between Execution and removal</i>	<ul style="list-style-type: none"> <li>• 24 hours</li> </ul>	<ul style="list-style-type: none"> <li>• 72 hours<sup>66</sup></li> </ul>
<i>Who moves tenant's goods</i>	<ul style="list-style-type: none"> <li>• Marshal hires private movers and bills landlord</li> </ul>	<ul style="list-style-type: none"> <li>• Landlord moves goods or hires private movers, and stores possessions<sup>67</sup></li> <li>• Landlord can choose to take possession and store goods in</li> </ul>

<sup>61</sup> See MARCIA STEWART ET AL., EVERY LANDLORD'S LEGAL GUIDE 396 (8th ed. 2006).

<sup>62</sup> Rhode Island moves eviction actions into court more slowly than does Connecticut; Massachusetts slows down cases at the end by granting longer automatic Stays of Execution. See, Setterfield, *supra* note 21.

<sup>63</sup> See STEWART, *supra* note 61 (collecting eviction laws from all fifty states).

<sup>64</sup> See, e.g., NEW YORK CITY CIVIL COURT HOUSING PART, EVICTION (2006), available at <http://www.nycourts.gov/courts/nyc/housing/eviction.shtml>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

		apartment <sup>68</sup> <ul style="list-style-type: none"> <li>• Landlord may dispose of tenant's property<sup>69</sup></li> </ul>
<i>Length of time goods must be held before being auctioned</i>	<ul style="list-style-type: none"> <li>• 15 days</li> </ul>	<ul style="list-style-type: none"> <li>• 7 days<sup>70</sup></li> <li>• 6 months<sup>71</sup></li> </ul>
<i>How tenants may retrieve goods</i>	<ul style="list-style-type: none"> <li>• May retrieve belongings free of charge</li> </ul>	<ul style="list-style-type: none"> <li>• May retrieve belongings of personal value for free<sup>72</sup></li> <li>• Must pay appropriate parties for moving and storage fees<sup>73</sup></li> </ul>

This local study examines how each of the categories of rules affects actors in New Haven.

Given the variation of procedures across these dimensions, this study of New Haven cannot present universal findings about removals. But this local study's findings inform other jurisdictions by identifying how certain *types* of removal laws affect experiences of the landlord-tenant end game.

### III. REMOVALS IN NEW HAVEN

To give a complete picture of removals, including what losses the process entails and where those losses lie, this Part begins before the removal day and ends after that day.

#### A. Scheduling a Removal

After the housing court issues an Execution, the final phase of an eviction begins with the scheduling of the removal. A variety of actors in this process grant tenants a small

<sup>67</sup> See, e.g., ARIZ. REV. STAT. ANN. § 33-361 (2006); SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, FORCIBLE DETAINERS (2006), *available at* <http://www.superiorcourt.maricopa.gov/justicecourts/info/copy%20of%20forcible-detainer.asp>.

<sup>68</sup> See, e.g., NEW YORK CITY CIVIL COURT HOUSING PART, *supra* note 66; MINN. STAT. § 504B.365 (2006). For an explanation of Minnesota removal laws, see LAWRENCE MCDONOUGH, RESIDENTIAL UNLAWFUL DETAINER AND EVICTION DEFENSE (2004), *available at* <http://www.probono.net/areas/libraryfiles/ud2000.doc>.

<sup>69</sup> See, e.g., ALA. CODE § 18-16-108 (2006); WYO STAT. ANN. § 1-21-1210 (2006).

<sup>70</sup> See, e.g., DEL. CODE ANN. Tit. 25 § 5715. For an explanation of Delaware removal laws, see DELAWARE LEGAL LINK, SUMMARY OF THE DELAWARE RESIDENTIAL LANDLORD TENANT CODE, *available at* [http://www.lscd.com/Home/PublicWeb/Content/Housing/summary\\_of\\_the\\_landlord\\_tenant\\_code.htm#Actions%20for%20Summary%20Possession](http://www.lscd.com/Home/PublicWeb/Content/Housing/summary_of_the_landlord_tenant_code.htm#Actions%20for%20Summary%20Possession)

<sup>71</sup> See, e.g., MASS. GEN. LAWS ch. 239 § 3 (2006).

<sup>72</sup> See, e.g., *Id.*

<sup>73</sup> See, e.g., ARIZ. REV. STAT. ANN. § 33-361 (2006); DEL. CODE ANN. Tit. 25 § 5715; OKLA. STAT. ANN. tit. 41 § 133 (2006); MINN. STAT. § 504B.365 (2006)

windfall of time at least once or twice before the removal day. Although the laws dictate that marshals may remove tenants as soon as twenty-four hours after serving an Execution, data show that removals actually happen an average of twenty days after the judge signs the Execution,<sup>74</sup> with the median period being seventeen days.<sup>75</sup>

### ***1. Landlords***

A landlord has few affirmative duties in a removal. But he can still shape the process, primarily by deciding how quickly to effectuate the eviction. To move an eviction forward, a landlord must first hire a marshal to serve the Execution on the tenant. Thanks to a 2000 lobbying effort by landlords to put a cap on marshal fees,<sup>76</sup> marshals now charge statutorily mandated rates<sup>77</sup>—\$125 for the first hour of removal and \$75 for each additional hour.<sup>78</sup> So landlords do not comparison shop based on price. Instead, most landlords choose a marshal whom they already know. And if they do not know one, they contact the state marshal association and get a list of marshals based in their area.

Next, the landlord must decide when to have the marshal serve the Execution on the tenant. Most landlords have the marshal serve the Execution on the tenant immediately.<sup>79</sup> Then once the marshal serves the Execution, a landlord must decide how quickly to press for the actual removal of his tenants. When they talk to the marshal, landlords typically indicate whether they want the tenant out immediately, or whether they want to drag their feet a bit.

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<sup>74</sup> To arrive at this number, I calculated the average (mean) number of days between the date the judge entered on an Execution and the date the state marshal entered on the inventory he completed at the actual removal. SUMMARY PROCESS EXECUTIONS (Jan. 1-Dec. 31, 2005); Various State Marshals, Eviction Goods Inventory [hereinafter Eviction Goods Inventories] (Jan. 1-Dec. 31, 2005) (on file with author).

<sup>75</sup> *Id.*

<sup>76</sup> Telephone Interview with Robert Miller, State Marshal and President of the Connecticut Marshal's Association, (Dec. 14, 2006)

<sup>77</sup> CONN. GEN. STAT. § 52-261 (2006).

<sup>78</sup> Miller reports that he previously charged \$100 per hour and he knew of many marshals who charged much more than that. Interview with Robert Miller, *supra* 76.

<sup>79</sup> Interview with Tommy Russo, State Marshal, in New Haven, Conn. (May 23, 2006).



Foot-dragging at the end of this process might seem counterintuitive, given that the landlord has already lost rent and delays mean more lost rent. Nevertheless, some landlords do it. One landlord who had already lost two months of rent asked the marshal to serve his tenants with an Execution, then instructed the marshal to give the tenant three or four weeks to vacate the property.<sup>80</sup> In addition to demonstrating sympathy for the tenants, this decision intended to serve the landlord's financial interest. The cost of removing tenants is quite high—near \$1000—and often represents more money than does a month of lost rent.<sup>81</sup> Therefore, giving tenants time to move themselves out of the apartment might actually save the landlord money.

Although no one can predict how quickly a landlord will shepherd an eviction through its final stage, two factors ostensibly make a difference. The first is why the landlord began the eviction. A marshal who has been doing evictions since 1969<sup>82</sup> has observed that landlords tend to move more quickly in nuisance or violation of lease cases. A landlord who owns over 200 rental units throughout New Haven said this observation squares with her behavior.<sup>83</sup> She moves more quickly in these cases than in nonpayment cases because nuisances and violations tend to cause wider disruptions in the neighborhood than do nonpayment cases, and because she has more sympathy for those who cannot or did not pay rent than she does for those causing trouble.<sup>84</sup> Nuisance and violation evictions are so rare, though, that this observation is hard to test empirically—only two percent of 2005 landlords cited violations of a lease and none cited nuisance.<sup>85</sup>

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<sup>80</sup> Author's Personal Observation, Removal at 78 Lilac St., New Haven, Conn. (May 18, 2006).

<sup>81</sup> See *infra* Subsection III.C.3.

<sup>82</sup> Interview with Russo, *supra* note 79.

<sup>83</sup> Interview with Ardelle Cowie, Owner, Chelsea Company, in New Haven, Conn. (Oct. 10, 2006).

<sup>84</sup> *Id.*

<sup>85</sup> See *infra* Figure 1.

Second, the size of the landlord appears to affect the speed with which a landlord carries out a removal. But it does so in an unexpected way. A prominent eviction lawyer who has represented New Haven landlords for years hypothesized that larger landlords remove tenants more quickly than do “mom and pop” landlords, because the former are rule-bound and therefore will proceed uniformly fast, whereas the latter may be expected to delay removals more often in response to tenants’ personal appeals for delay.<sup>86</sup> But data demonstrate the opposite result. Landlords may be split into four different categories of entities. Roughly in descending order of the overall size of enterprise, they are: (1) the Housing Authority of New Haven (HANH); (2) cooperatives; (3) persons arranged in partnerships, corporations, or limited liability corporations; and (4) individuals who own properties alone or with another individual. Although not technically landlords, banks and mortgage companies also initiate evictions when foreclosing on a property. Larger landlords take longer than do smaller landlords to remove a tenant after the Execution is issued:

**Figure 3<sup>87</sup>**

<b>Type of Landlord</b>	<b>Average number of days from issuance of Execution to removal of tenant</b>
HANH	27
Cooperatives	28
Partnerships/corporations/LLCs	21
Individuals	17
<b>Other Actors Initiating Evictions</b>	
Banks/ mortgage companies	24

These data roughly reflect the relative strength of incentives and decision-making complexities different types of landlords face. That is, persons within a larger agency face

<sup>86</sup> Telephone Interview with David Schancupp, Attorney, Shiff and Schancupp, in New Haven, Conn. (Aug. 24, 2006).

<sup>87</sup> SUMMARY PROCESS EXECUTIONS; Eviction Goods Inventories.

less sharp incentives to act quickly than do sole proprietorships, because the former see little direct benefit of quick action to recover a source of revenue.<sup>88</sup>

## **2. Marshals**

Marshals have two fairly circumscribed jobs during this phase of the eviction: to schedule the removal with DPW; and to serve the tenant with the Execution. In fulfilling this latter duty marshals can and do behave in ways that affect the landlords' and tenants' experiences at removal.

Until recently, deputy sheriffs served process and carried out removals. But the sheriff system came under attack in the late 1990s. Deputy sheriffs militated for reform because they were appointed by the elected high sheriffs in each county, and therefore could not plan their lives beyond the next election.<sup>89</sup> Outsiders criticized the sheriff system for being a corrupt, patronage-ridden vestige of county government.<sup>90</sup> In a 2000 referendum, Connecticut voters scrapped the sheriff system<sup>91</sup> and legislators replaced it with life-tenured marshals. Now to become a marshal, someone must submit an application, pass an examination, and be appointed by the State Marshal Commission.<sup>92</sup> Once appointed, marshals operate as independent contractors, compensated purely on a fee-for-service basis.<sup>93</sup> The fees seem ample as marshals based in New Haven County made an average of \$103,000 and a

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<sup>88</sup> The largest agency here, the Housing Authority, also views tenants with more sympathy than does the average landlord. Interview with Robert Solomon, Clinical Professor, Yale Law School, in New Haven (Dec. 17, 2006) (Solomon chairs the Housing Authority of New Haven's board of commissioners).

<sup>89</sup> Dave Altimari, *Sheriff System: End of the Line?*, HARTFORD COURANT, Oct. 29, 2000, at B1.

<sup>90</sup> *Id.*

<sup>91</sup> Dave Altimari, *Voters Abolish Centuries-Old Sheriff System*, HARTFORD COURANT, Nov. 8, 2000, at A21.

<sup>92</sup> CONN. AGENCIES REGS. § 6-38b-3 to -5 (2006). The eight-person commission consists of persons appointed by various government officials, including the Chief Justice, representatives and the governor. CONN. GEN. STAT. § 6-38b (2006).

<sup>93</sup> CONN. GEN. STAT. § 6-38a (2006). They receive one-dollar annual salary from the state. CONN. GEN. STAT. § 6-33 (2006).

median of \$77,000 in 2005.<sup>94</sup> For these fees they serve process, carry out removals, and collect debts anywhere in the state.<sup>95</sup> Since they must find their own clients for this work and cannot cut prices to attract business, marshals have strong financial incentives to do whatever it takes to keep their clients—landlords, in the case of removals—happy.

The first thing marshals must do for their clients is contact the DPW to schedule an eviction, a straightforward duty. Once he receives an Execution, the marshal calls Frank Blee, manager of the DPW's eviction warehouse, and makes an appointment for the next available time with a City moving truck.<sup>96</sup> Any decisions to delay this call to DPW are made by the landlord and are not within the marshal's discretion.

Serving the tenant with the Execution involves more discretion on the part of the marshal. He must decide how and when to serve it. The law clearly prescribes in-hand or abode service.<sup>97</sup> By and large, marshals' behavior comports with the legal rules here. All marshals report following the same protocol. They knock on a tenant's door and if the tenant answers, they hand the tenant the Execution. Marshals are able to use this in-hand service about half of the time.<sup>98</sup> This is not fail-proof, though. In some cases, especially when the tenant does not speak English, the marshal cannot determine if he is handing the Execution to the right person.<sup>99</sup> When the marshal and tenant do speak a common language, some marshals take the opportunity to explain the process to the tenant, and advise them to move their valuable possessions out of the property before the scheduled removal.<sup>100</sup> If the tenant is not home, marshals report that they insert the Execution into the apartment under the front

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<sup>94</sup> Office of State Ethics, State Marshals 2005 Annual Statement of Income (on file with author).

<sup>95</sup> CONN. GEN. STAT. § 52-261 (2006).

<sup>96</sup> For discussion of the details of scheduling a moving truck, see *infra* Subsection III.A.3

<sup>97</sup> Conn. Gen. Stat. § 52-57(a).

<sup>98</sup> Interview with Tommy Russo, State Marshal (May 31, 2006).

<sup>99</sup> *Id.*

<sup>100</sup> Interview with Gerald Capiello, Jr., State Marshal, in New Haven, Conn. (Mar. 28, 2006).

door<sup>101</sup>—this satisfies the requirements of abode service. And this practice seems to be effective. Tenants confirm that they typically received their Execution in their hand or under their door.<sup>102</sup> And a legal aid<sup>103</sup> lawyer reports almost never challenging an eviction for improper service of the Execution, because tenants rarely register that complaint.<sup>104</sup>

When to serve an Execution often becomes more complicated than how to serve it. Most marshals serve the tenant immediately and indicate on the Execution that they will be back to remove the tenant twenty-four hours later, the statutory minimum amount of time for notice.<sup>105</sup> They do this even though they normally cannot schedule an appointment with the DPW truck until at least a week later. Marshals notify the tenant they will return in twenty-four hours for two reasons. First, if a time slot opens on Blee’s schedule the marshal can move his removal earlier if he has already given the tenant notice. This allows the landlord to get his apartment back more quickly. Second, warning tenants that their removal is imminent may scare them into moving out immediately, in which case the landlord not only gets his property back quickly, but also he saves costs associated with the removal.<sup>106</sup> Both results please the landlord.

In tension with this long-term interest, though, is the marshal’s short-term interest in getting paid for the day of the removal. On the removal day, the marshal earns \$125 for the first hour and seventy five dollars for each additional hour.<sup>107</sup> And he sees none of this

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<sup>101</sup> Interview with Russo, *supra* note 98.

<sup>102</sup> *See, e.g.*, Telephone Interview with Kelly, Removed Tenant, in New Haven, Conn. (Aug. 28, 2006); Telephone Interview with Veronica, Removed Tenant, in New Haven, Conn. (May 31, 2006). [Note: In total, I interviewed fifteen tenants. All tenants were guaranteed anonymity, so all names are pseudonyms.]

<sup>103</sup> Interview with Shelly White, *supra* note 54.

<sup>104</sup> Interview with Solomon, *supra* note 60.

<sup>105</sup> CONN. GEN. STAT. § 47a-42.

<sup>106</sup> Interview with Capiello, *supra* note 100. (“We’re working for the landlord, so we try to get the tenants out as soon as possible.”)

<sup>107</sup> Interview with Robert Miller, State Marshal and President of the Connecticut Marshal’s Association, in New Haven, Conn. (May 16, 2006); Interview with Russo, *supra* note 79.

money if the tenant moves before the removal. Thus, the marshal has an incentive to act in such a way that increases the chances a tenant will stay in the apartment until removal. The way to do this would be to schedule an appointment with the DPW for a few days in the future, but then wait until the day before the DPW appointment to serve the tenant. In this scenario, the tenant will not have time to move, and the marshal will therefore get paid for carrying out the removal. Although no marshal admits to doing this, themselves, two marshals believe that some of their colleagues engage in this practice.<sup>108</sup>

Thus, the system creates minor incentives for the marshals to act in ways that serve either landlords or themselves in this preparatory phase. To the extent marshals employ discretion in scheduling, they have little reason (aside from compassion) to prioritize tenants' interests. Reforms might shift or disrupt these incentives.

### ***3. Department of Public Works***

The New Haven DPW plays a key role in determining when a tenant will be removed from his apartment. By statute, the City must pick up the tenant's possessions at the curb, and in New Haven the DPW fulfills this duty.<sup>109</sup> Instead of, say, the marshal moving a tenant's possessions to the curb in the morning and the City picking them up in the afternoon, marshals carry out removals based on when the DPW can send a truck to sit at the curb to take immediate possession of the tenant's belongings. No marshal ever carries out a removal without first coordinating a DPW truck to meet him at the removal location. So the DPW acts as the bottleneck in scheduling a removal.

Evictions Warehouse Manager Blee dispatches the DPW trucks. He sends one of two large moving trucks to accompany marshals on removals and tries to schedule each truck for

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<sup>108</sup> All marshals who asserted this belief asked for it not to be attributed to them.

<sup>109</sup> *Supra* notes 49-50 and accompanying text.

more than one removal each morning. He only schedules removals at 7:30 a.m., 10:00 a.m., and 12:30 p.m., because if he starts them any later in the day they might last beyond normal business hours and the City would have to pay the DPW workers overtime.<sup>110</sup> But even with two trucks at his disposal, he cannot keep up with the pace of removals. When a marshal calls, Blee typically has to schedule the removal at least a full week later. Thus, Blee's normal scheduling constraints tend to grant tenants a windfall of time.

It is not rare for the DPW to delay removals even longer than a week in some cases. When one truck is out of commission, as was the case for much of Spring 2006 after an employee backed a dump truck into one moving truck, Blee might not be able to accommodate a marshal's request for two weeks or more. Furthermore, the DPW has only a limited staff to complete a wide variety of tasks, some of them urgent. The employees who drive the eviction trucks, for instance, also drive the snow plows in the winter. So, when a snowstorm hits New Haven and the city needs to be plowed, Blee cancels evictions scheduled for that day, and reschedules them for the next available day, giving the tenants yet another windfall of time.<sup>111</sup>

In some cases, the DPW makes a more deliberate decision to delay removals. Although the DPW technically is charged with carrying out removals whenever necessary, the City adheres to a tradition of imposing a moratorium around Christmas. This unwritten rule has endured from the mid-1990s when New Haven County Sheriff Henry Healey used to

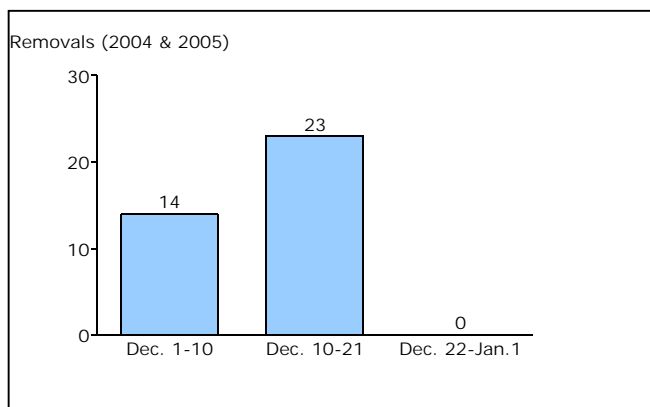
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<sup>110</sup> Interview with Frank Blee, Eviction Warehouse Manager, New Haven Department of Public Works, in New Haven, Conn. (Mar. 27, 2006).

<sup>111</sup> One tenant "prayed [his] butt off" for this type of haphazard delay. Bob was scheduled to be evicted on May 2, 2006. He started packing on May 1, but did not finish by the next day. Fortunately for him, the DPW workers had only one truck available that day and they ran out of time because a removal earlier in the day delayed them. Around two o'clock, Bob received a call saying he would not be removed that day. During his removal two weeks later, he was muttering to himself "God is great" because his prayer had been answered. Interview with Bob, Removed Tenant, in New Haven, Conn. (May 16, 2006); Author's Personal Observations, Removal at 74 Orange St., New Haven, Conn. (May 16, 2006).

set the policies for removals. He never tried to make this moratorium law, but he had so much control over his colleagues that he simply told the sheriffs that they were not to carry out any removals around Christmas and New Year's out of respect for the tenants.<sup>112</sup> With the decentralized marshal system replacing the sheriff system, no one person today has as much influence over the officials carrying out the removals as did Healey. But, Figure 4 strongly suggests that the DPW still adheres to Healey's instructions:

**Figure 4**<sup>113</sup>



The fact that in 2004 and 2005 no removals took place in the last ten days of December, and every other ten-day period saw removals take place, shows that the moratorium is firmly in place. Of course, this moratorium and the one around Thanksgiving<sup>114</sup> provide DPW employees with much appreciated holiday breaks. But they serve a larger purpose. Through these moratoria the City extends tenants a courtesy. Other cities give tenants a break in other ways. In the District of Columbia, for example, a tenant may not be removed when the National Weather Service predicts that the temperature at the National Airport will drop below freezing in the next twenty-four hours.<sup>115</sup> In extending these courtesies, cities make a

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<sup>112</sup> A number of interviewees recalled Sheriff Healey's moratorium. *See, e.g.*, Interview with John Pottenger, Clinical Professor, Yale Law School, in New Haven, Conn. (April 10, 2006); Interview with Peter Criscuolo, State Marshall, in New Haven, Conn. (Mar. 27, 2006).

<sup>113</sup> Eviction Goods Inventories (Dec. 1-Dec. 31, 2004 and Dec. 1-Dec. 31, 2005).

<sup>114</sup> Interview with Frank Blee, Eviction Warehouse Manager, New Haven Department of Public Works, in New Haven, Conn. (Oct. 3, 2006).

<sup>115</sup> D.C. CODE § 45-2551(k) (2005).



conscious attempt to build good-will with those individuals most likely to feel marginalized by the removal process. Blee reports that nobody in the City administration opposes the moratorium, adding: “The Mayor has sympathy for these people. And he wants to express that.”<sup>116</sup>

### ***B. Preparing To Be Removed***

Most tenants appear to understand the ramifications of their impending removal. They learn about the removal process through various avenues. A tiny minority obtain their knowledge from attorneys: under two percent of removed tenants had legal representation during the first phase of the eviction.<sup>117</sup> Some learn about the process from the marshal who serves the Execution.<sup>118</sup> Many ask friends and neighbors about the process<sup>119</sup>; and others know about removals through past experience.<sup>120</sup> Through these various sources, tenants appear to understand the basics: they will be removed, their property will be packed and stored, and they can retrieve their property later.

If most tenants appear to understand what happens to them and to their possessions in a removal, the next question is what they do in the face of that knowledge. As stated above, half of tenants move out of the property before the removal day.<sup>121</sup> Those who do not move immediately might try to delay the removal by asking the landlord for a few extra days to move their belongings, themselves. Granting this request typically serves the landlord’s interest since it allows the landlord to save the marshal’s fee and moving costs associated

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<sup>116</sup> Interview with Blee, *supra* note 114.

<sup>117</sup> See *supra* note 36 & accompanying text.

<sup>118</sup> Interview with Capiello, *supra* note 100.

<sup>119</sup> See Rudy Kleysteuber, Repeat Play in Eviction Actions, 20 (2006) (unpublished manuscript, Yale Law School) (on file with author).

<sup>120</sup> See *infra* Subsection V.B.2.

<sup>121</sup> See *supra* note 46 & accompanying text.

with removals. Some tenants recognize the landlord's and use last-minute pleas as a simple way to extend their rent-free living.<sup>122</sup>

Those with children might use the time between Execution and removal to arrange for the children to stay elsewhere. Roxanne sent her daughter to live with her grandmother<sup>123</sup>; Sheryl sent her daughter to live with a family friend.<sup>124</sup> Both said they did this because they had not yet found a place to live in the school district, but did not want to transfer their daughters to a new school in the middle of the year.

As for possessions, most removed tenants leave a significant amount of valuable items in the apartment.<sup>125</sup> Few have anywhere to store their possessions. Furthermore, they understand that they need not fear losing their possessions if they do not pack them, because the landlord pays to pack these items—an expense of over \$250<sup>126</sup>—and the DPW stores them for over a month— private storage would cost \$200.<sup>127</sup> Some portion of tenants take full advantage of the system and leave everything behind in order to get a free move while they are relocating or to increase the landlord's moving bill; others pack some of their possessions and leave only their unwanted possessions and trash.<sup>128</sup>

Although a number of community agencies help tenants avoid evictions before they start and help tenants navigate the legal battle, remarkably few community agencies play any role in helping tenants relocate in the days between an Execution and a removal.<sup>129</sup>

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<sup>122</sup> See, e.g., Author's Personal Observation, *supra* note 80. A tenant convinced the landlord to delay the removal a few days, then made no effort to move himself and his family out of the apartment.

<sup>123</sup> Interview with Roxanne, Removed Tenant, in New Haven, Conn. (April 10, 2006).

<sup>124</sup> Interview with Sheryl, Removed Tenant, in New Haven, Conn. (May 3, 2006).

<sup>125</sup> See *infra* Figure 5.

<sup>126</sup> Interview with Crosby, *supra* note 136 (assuming an average apartment requires three movers).

<sup>127</sup> *Id.*

<sup>128</sup> I discuss in greater detail what types of possessions the tenant typically leaves for the City to collect in Subsection III.C.2.

<sup>129</sup> Community Mediation, for example, runs a Rent Bank to help tenants avoid evictions, and it provides qualifying tenants with security deposits to help them move on to another apartment. But none of the eighty-two

### ***C. Removal***

Eventually, it comes time for the marshal to remove the tenant. Three features of the process are particularly striking: how many valuable possessions tenants leave behind; how costly the process is to tenants and landlords; and how, despite being high-stakes procedures, removals almost always occur without resistance or violence.

#### ***1. The Removal Process***

Just before a removal the landlord typically checks one last time that spending money on this process is necessary. He might drive by the property late the night before or early the morning of the removal to see if it looks like the tenants are still living there. The landlord cannot and does not enter the property, but if he can determine that the tenants have left and moved themselves out entirely, he might cancel the removal at the last minute. If the tenant has left so much as one lamp, though, the landlord must go ahead with the removal in order to reclaim possession of the property.<sup>130</sup> So last-minute cancellations do happen, but only rarely.

After checking the property, the landlord plays no role in the removal. In fact, the landlord leaves the scene entirely. Most landlords know not to get involved with the actual removal, and if they do not know, marshals strongly advise them to stay away.<sup>131</sup> In Marshal Tommy Russo's experience, tenants get worked up much more often when the landlord

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tenants who used the Rent Bank program in 2005 were at the Execution phase; and very few, if any at all, of the ninety-four families using the security deposit program were at this phase. COMMUNITY MEDIATION, ANNUAL REPORT 2005, at 8-10 (2006) (on file with author); Telephone Interview with Cristina Urrutia, Housing Case Manager, Community Mediation, in New Haven, Conn. (Oct. 11, 2006).

<sup>130</sup> CONN. GEN. STAT. § 47a-42.

<sup>131</sup> Interview with Russo, *supra* note 79. Books guiding landlords through evictions counsel landlords not to get involved in the removal of the tenant and the tenant's possessions. *See e.g.*, MARCIA STEWART, RALPH WARNER & JANET PORTMAN, EVERY LANDLORD'S LEGAL GUIDE 400 (2006).

appears at the removal. Tenants often want to play out hostilities that were engendered in the eviction process.<sup>132</sup> Excluding landlords from the process reduces the chances of conflict.

Removal days start early. For the first one of the day, the marshal typically arrives just before 7:30 a.m. Once the DPW truck and movers arrive in front of the property, the marshal knocks on the front door. If the tenant does not answer, the marshal uses the landlord's key to enter the apartment. In a quarter of removals in 2005 a marshal found a tenant home.<sup>133</sup> When the tenant is home, the marshal informs the tenant he is there to complete the eviction and explains that the tenant must leave immediately. Tenants normally are expecting to see the marshal, but rarely are prepared to leave right away. Some are not fully dressed; most request time to gather their possessions. Marshals exercise some discretion in how they respond: One gives the tenant only enough time to find his coat and wallet,<sup>134</sup> and others allow the tenant to remain in the house for the duration of the removal in order to pack some belongings.<sup>135</sup> Once the marshal explains the process to the tenant and surveys the apartment, he signals to the movers to start packing the tenants' belongings.

## ***2. Possessions***

Movers trudge into the property with cardboard boxes. They pack everything tenants have left aside from perishables, paint, chemicals, plants and garbage. And they construe "garbage" narrowly. Broken fans, old bills, worn stuffed animals all get packed. The owner of one moving company said he and his employees never throw anything away: "To you it's

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<sup>132</sup> *Id.*

<sup>133</sup> Eviction Goods Inventories indicate whether the tenant was home.

<sup>134</sup> Author's Personal Observation, 109 James St., New Haven, Conn. (Mar. 27, 2006).

<sup>135</sup> Author's Personal Observations, *supra* notes 2, 80, 111.

garbage, but to them it's all they have, so we still have to protect it all."<sup>136</sup> This attitude means that tenants do not face much risk of losing their possessions in the move.

Marshals hire the movers. Some opt for the more expensive movers both because these movers handle the tenants' belongings respectfully and because these movers are less likely to steal something for which the marshal would be liable. Other marshals hire the cheaper movers, who typically arrive in a rented van and use soggy boxes they have pulled out of dumpsters in order to cut costs. These movers tend not to treat tenants' possessions with as much respect as do the former set of movers—one mover packed belongings into boxes at the top of a staircase then tumbled them down the stairs to another worker.<sup>137</sup>

As mentioned above, tenants take different approaches to the impending removal of their possessions. Adina, for example, treated it as a free move. A single woman suffering from asthma, she could not move her own belongings and could not afford to pay someone to do it. She was in the hospital at the time of her removal, but sent her nephew to meet the marshal at the apartment and to pack up two boxes of clothing for her to use until she reclaimed her possessions from the warehouse. When asked why Adina did not have her belongings moved before removal, her nephew said, "Why would she? They're going to move it and keep it for free anyway."<sup>138</sup> Others treat the eviction as free trash removal. They take everything they want, and leave the rest behind. In some cases, the tenants will actually sign a statement consenting to the City delivering the goods straight to the landfill. This only happened in a small handful of cases in 2005, though.<sup>139</sup>

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<sup>136</sup> Interview with Ron Crosby, Owner, Crosby's Moving Company, (May 17, 2006) (Crosby's sends a moving crew on removals almost every day).

<sup>137</sup> Author's Personal Observation, Removal at 268 Day St., in New Haven, Conn. (May 23, 2006).

<sup>138</sup> Interview with Jose, in New Haven, Conn. (Mar. 27, 2006).

<sup>139</sup> Eviction Goods Inventories.

Most tenants leave valuable, hard-to-move items behind. Figure 5 lists items and the percentage of cases where a marshal found these items left in an apartment:

**Figure 5**<sup>140</sup>

<b>Item</b>	<b>Percentage of cases in which at least one of this item was left behind</b>
Chair/ couch	88%
Boxes (all loose belongings get packed in boxes)	86%
Mattress/ box spring	78%
Large table (kitchen or coffee)	76%
TV	63%
Dresser/ Bureau	45%

Tenants leaving loose items that got packed into boxes had, on average, eighteen boxes worth of goods, with the median being 12 boxes.<sup>141</sup> Other items frequently found during a removal include: washers, dryers, refrigerators, stoves, air conditioners, microwaves, vacuums, bicycles, and children’s toys.<sup>142</sup> This finding that a high proportion of tenants leave behind a number of valuable items suggests that tenants understand and take advantage of the free moving and storage services provide in a removal. This finding also suggests we must pay attention to what happens to these possessions after removal to understand the tenant’s full experience of this process.<sup>143</sup>

Movers carry the possessions to the curb where they hand them off to DPW workers. As this happens, the marshal inventories everything that goes into the truck. At the end of the removal, the tenant and a DPW worker to sign the inventory. No statute mandates this practice. Marshals do this to avoid disputes. Before the advent of these inventories, some tenants would go to the warehouse to pick up their belongings and claim that a nice television

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<sup>140</sup> Analysis of 50 randomly selected removals from various months throughout 2005. Eviction Goods Inventories.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *See infra* Subsection III.D.3.

or couch was missing, and try to get the City or the marshal to buy them a new one.<sup>144</sup> Now, if tenants do this, Blee shows the tenant the inventory and that usually ends the dispute.<sup>145</sup>

### 3. Costs

For the tenant, a removal represents not only the sudden loss of a home and the temporary loss of personal belongings, but also the loss of some dignity. Jane struggled to beat a drinking problem and keep her life together. When she got removed from her apartment, the process humiliated her and set her back because she felt it announced to the whole world that she did not have her life together enough to maintain her home.<sup>146</sup> When Bob asked his friend about removals, the friend's main advice was not to be home when it happened so as to avoid the shame that accompanies hearing the knock on the door.<sup>147</sup> Dignitary costs cannot be quantified, but still should be counted in the tally of losses removals inflict.

More quantifiable are the landlords' financial costs. Although each case varies, a typical landlord loses roughly \$3000 over the full course of an eviction, almost one-third of which goes toward the removal phase. This amount is high in absolute terms, but becomes even more significant in light of the fact that landlords are often not much wealthier than their tenants.<sup>148</sup> Figure 6 breaks down the expenses of a typical eviction from start through removal:

**Figure 6**

Item	Expense
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<sup>144</sup> Interview with Miller, *supra* note 107.

<sup>145</sup> *Id.*; Interview with Criscuolo, *supra* note 112.

<sup>146</sup> Email from Jane, Removed Tenant, to author (Aug. 18, 2006, 12:59PM) (on file with author).

<sup>147</sup> Interview with Bob, *supra* note 111.

<sup>148</sup> See Irving Welfeld, *Poor Tenants, Poor Landlords, Poor Policy*, PUB. INT., Summer 1988, at 110, 112; Dennis Hevesi, *For Small Landlords, All Problems are Big*, N.Y. TIMES, Mar. 1, 1998, at K1.

<b><i>Getting to the removal phase</i></b>	
Lost rent (assuming \$576/month <sup>149</sup> X 1.5 months <sup>150</sup> )	\$864
Serving Notice to Quit on tenant	\$40 <sup>151</sup>
Serving Summons and Complaint on tenant	\$52 <sup>152</sup>
Court filing fee	\$120 <sup>153</sup>
<b>SUBTOTAL</b>	<b>\$1076</b>
<b><i>Removal phase</i></b>	
Serving Execution	\$50 <sup>154</sup>
Additional lost rent (assuming \$576/month X 20 days <sup>155</sup> )	\$384
Marshal's fee (assuming 2 hours <sup>156</sup> at \$125 for the first hour and \$75 for each additional hour <sup>157</sup> )	\$200
Movers' fee (assuming 2 hours at \$130/hour <sup>158</sup> )	\$260
Changing locks	\$60 <sup>159</sup>
<b>SUBTOTAL</b>	<b>\$954</b>
<b><i>Optional expenses</i></b>	
Attorney	\$1000 <sup>160</sup>
<b>SUBTOTAL</b>	<b>\$1000</b>
<b>GRAND TOTAL</b>	<b>\$3030</b>

Not all landlords hire attorneys, but the overwhelming majority of them—seventy-two percent<sup>161</sup>—did in 2005, and therefore faced a total loss of near \$3000.

<sup>149</sup> Average price for a rental unit in New Haven. HomeGain.com, *available at* [http://www.homegain.com/local\\_real\\_estate/CT/new\\_haven.html](http://www.homegain.com/local_real_estate/CT/new_haven.html) (This estimate is based on accumulating the 2000 census tract data into zip code boundaries, adjusting for population variances and density, and mapping these zip code areas to city and county boundaries.).

<sup>150</sup> Daines, *supra* note 11, at 47 tbl. “Disposition Time.” He finds that an average eviction, from the service of a Notice to Quit to the Final Disposition, takes somewhere between forty-three and seventy-four days. Thus, my assumption of 1.5 months of lost rent represents a conservative estimate.

<sup>151</sup> Serving the first tenant costs \$30; serving additional tenants costs \$10; marshals charge for gas and mileage. This estimate of an average comes from LANDLORD’S GUIDE, *supra* note 21.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> CONN. GEN. STAT. § 52-261 (2006).

<sup>155</sup> To calculate the total period of lost rent, we must add to the disposition time the time it takes to move from Execution to removal—twenty days, on average. *Supra* note 74 & accompanying text.

<sup>156</sup> When Robert Miller charges tenants up front, he charges for two hours because in his experience an average removal takes this long.

<sup>157</sup> *Id.*

<sup>158</sup> *See supra* note 126 & accompanying text.

<sup>159</sup> Telephone Interview with Anthony Lauria, Landlord, in New Haven, Conn. (Oct. 10, 2006).

<sup>160</sup> A local attorney reported this fee on the condition of anonymity, so his fees would not become public. In quoting this amount, the attorney assumed an unrepresented tenant. If the tenant has representation, the landlord’s attorney typically needs to do more work than average and, therefore, charges more. Representation also typically helps the tenants delay the process, which inflicts a greater loss of rent on the landlord. *See generally* Bolton, *supra* note 11; Gunn, *supra* note 11; Daines, *supra* note 9.

<sup>161</sup> SUMMARY PROCESS EXECUTIONS.



#### 4. Violence

Although each removal presents a different set of circumstances, virtually all of them share one common characteristic: Removals occur without violence or resistance. Given that the stakes are high and that any tenant making it to the removal has acted somewhat stubbornly in the face of opportunities to resolve this dispute, it is remarkable that more tenants do not resist or act violently upon removal. Tenants in New Haven have certainly taken drastic measures, such as handcuffing themselves to the radiator,<sup>162</sup> when the marshal tries to remove them. And elsewhere, tenants have acted violently: patrolling the front porch with guns in anticipation of the marshal's arrival,<sup>163</sup> and even beating and burning to death the marshal when he arrived to carry out the removal.<sup>164</sup> But incidents of resistance and violence are surprisingly rare. The New Haven Police Department (NHPD) was called to assist with only two removals in 2005,<sup>165</sup> which represents a tiny portion of the 380 total removals that year. This finding shows that the vast majority of tenants resign themselves to being removed. And some even see their removal as necessary. One tenant said that although he was depressed that he got removed, he "understood that it had to happen" because he owed the landlord over \$4000.<sup>166</sup>

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<sup>162</sup> Interview with Schancupp, *supra* note 86.

<sup>163</sup> Dan Uhlinger, *Barricaded Man's Eviction Renewed*, HARTFORD COURANT, July 10, 2001, at B1; Dan Uhlinger, *A Brief Break from Barricades; Man Fails in Bid To Get Police Aid Against Eviction*, HARTFORD COURANT, May 19, 2001, at B5; Dan Uhlinger, *Facing Eviction, Man Vows He'll Die First; With Rifle, Barricades, Resident Rejects Eviction Order*, HARTFORD COURANT, May 17, 2001, at A3.

<sup>164</sup> Sean Gardiner, et al., *A Violent History*, NEWSDAY (N.Y.), Aug. 23, 2001, at A3; Sean Gardiner et al., *"Despicable Crime": City Marshal Beaten, Torched in Brooklyn*, NEWSDAY (N.Y.), Aug. 22, 2001, at A5.

<sup>165</sup> I arrived at this number by comparing the New Haven Police Department records for landlord-tenant disputes to the DPW's log of removals to find overlapping dates and addresses. New Haven Police Department (NHPD), Call Information Maintenance Log, Landlord-Tenant Disputes, (Jan. 1-Dec.31, 2005); Eviction Goods Inventories.

<sup>166</sup> Interview with Bob, *supra* note **Error! Bookmark not defined.**

#### ***D. After a Removal***

Most actors in the removal process feel the effects of a removal beyond the actual removal day. Landlords have to spend money on repairs and they continue losing revenue until they rent their property. Tenants need to find somewhere to live. And the DPW has to handle tenants' possessions.

##### ***1. Landlords***

After removing a tenant, the landlord's financial losses continue in the form of repairs and lost rent. Some tenants intentionally damage apartments by pulling out the baseboards and light fixtures,<sup>167</sup> or by pouring cement down the drain.<sup>168</sup> When a tenant has abused the apartment, the landlord must spend a significant amount of money just to repair the property—in one case where a tenant allowed his dog to defecate all over the apartment, repairs cost upwards of \$2000.<sup>169</sup> But according to a landlord who has been involved in a number of removals, this behavior is not the norm and tenants rarely plot out how to damage the apartment.<sup>170</sup>

Filling an apartment with new tenants after a removal takes time. Before the removal, uncertainties of timing prevent the landlord from promising an incoming tenant when the apartment will be available. Once the apartment does become available, how long it takes to fill it depends on a number of factors, especially location and size. A landlord who owns properties throughout New Haven says she can fill a one-bedroom apartment near downtown by the first of the following month, no matter the time of year; a multiple-bedroom near

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<sup>167</sup> Interview with Criscuolo, *supra* note 112. (Criscuolo once removed a woman's estranged husband in the morning and the tenant returned later that night only to rip out fixtures in the apartment.)

<sup>168</sup> Interview with Ardelle Cowie, Owner, Chelsea Company, in New Haven, Conn. (Dec. 14, 2006).

<sup>169</sup> Telephone interview with Anthony Lauria, *supra* note 159.

<sup>170</sup> Interview with Cowie, *supra* note 83.

downtown normally sits empty until the start of a new academic term in the fall or winter; and an apartment outside of downtown can take two months to rent.<sup>171</sup>

A landlord may sue a tenant to recoup eviction expenses—e.g., marshal’s fee, mover’s fee.<sup>172</sup> But because suing tenants costs money and tenants are often judgment-proof, landlords rarely do this.<sup>173</sup>

## ***2. Where Tenants Go***

Some writers depict evictions, and especially removals, as leading directly and immediately to life on the streets. As noted above, the media portray the link between evictions and homelessness as robust.<sup>174</sup> And homeless advocates treat the link in the same way. A prominent writer and advocate for the homeless asserts that “forced displacement frequently results in outright homelessness.”<sup>175</sup> A San Francisco homelessness advocacy organization published a report titled “When Rent Comes Due: Breaking the Link Between Evictions and Homelessness.”<sup>176</sup> And organizations’ and municipalities’ homelessness prevention plans often consider prevention of evictions as a direct solution for homelessness.<sup>177</sup>

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<sup>171</sup> *Id.*

<sup>172</sup> CONN. GEN. STAT. § 471-35b (2006).

<sup>173</sup> Interview with Ori Spiegel, Attorney, Law Offices of Lawrence A. Levinson, in New Haven, Conn. (Dec. 14, 2006) (reporting under five percent of clients sue tenants after removal); Telephone Interview with Robert Miller, *supra* note 76 (reporting that he hears about landlords suing tenants in under five percent of cases).

<sup>174</sup> *See supra* note 16 & Accompanying text.

<sup>175</sup> Hartman & Robinson, *supra* note 12, at 468. *See also* Martha R. Burt, *Homeless Families, Singles, and Others: Findings from the 1996 Survey of Homeless Assistance Providers and Clients* 12 HOUSING POL’Y DEBATE 737 (2001).

<sup>176</sup> HOMEBASE, WHEN RENT COMES DUE: BREAKING THE LINK BETWEEN HOMELESSNESS AND EVICTION (1989).

<sup>177</sup> *See, e.g.*, MAYOR’S HOMELESS ADVISORY COMMISSION, THE NEW HAVEN TEN YEAR PLAN TO END HOMELESSNESS 22-24 (2005); NATIONAL ALLIANCE TO END HOMELESSNESS, A PLAN, NOT A DREAM: HOW TO END HOMELESSNESS IN TEN YEARS 9 (2000) (“In the past homelessness prevention focused primarily on stopping eviction or planning for discharge from institutions like jail or mental hospitals.”)

Data suggest a more complicated picture of this link between removals and homelessness. A high proportion of homeless individuals in New Haven shelters<sup>178</sup> were, indeed, once evicted. And eviction played a central role in making many of these individuals homeless: At Columbus House, New Haven's largest shelter, twenty to twenty-five percent of clients report evictions as a primary cause of homelessness;<sup>179</sup> data from the two women's shelters New Haven Home Restoration operates show thirty-one percent of clients indicate eviction as a primary cause of their homelessness;<sup>180</sup> at Life Haven, a shelter for women with children and pregnant women, a caseworker estimates that up to half or two-thirds of the women coming to the shelter have recently experienced an eviction.<sup>181</sup> These data are self-reported, so may not be entirely accurate, but they suggest a link between evictions and the homeless shelter population.

But tenants do not necessarily go immediately from an eviction to a homeless shelter. Of the eight removed tenants in 2005 who eventually checked in to one of the shelters run by New Haven Home Restoration, only half checked in to the shelter within a month of the removal date.<sup>182</sup> Hard data is thin on this point, so we cannot know if this small sample size is an accurate depiction of timing between removal and homelessness; and we do not whether people were living on a friend's couch or on the street before checking in to the shelter. John Thomas, a case worker at Immanuel Baptist Emergency Shelter, says that tenants often take a

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<sup>178</sup> Robert Ellickson has argued that we should be precise when discussing homeless populations and should consider homeless persons living on the streets as distinct from those living in shelters. Robert C. Ellickson, *The Homelessness Muddle*, PUB. INT., Spring 1990, at 45.

<sup>179</sup> Interview with Dick Caplan, Clinical Director, Columbus House, in New Haven, Conn. (Apr. 10, 2006). Note that all intake data is self-reported, so may not be accurate. Since shelters may not release client names for comparison with lists of individuals evicted, this self-reported data is the best data available on this topic.

<sup>180</sup> Email from Kara Capone, Director of Programs, New Haven Home Recovery (NHHR), to author (Oct. 10, 2006, 4:58PM) (on file with author).

<sup>181</sup> Interview with Diane Ecton, Caseworker, LifeHaven, in New Haven, Conn. (Apr. 10, 2006).

<sup>182</sup> I asked the staff who administered NHHR's shelters to compare a list I compiled of removed individuals with a list of their clients and when the clients checked in to the shelter. Email from Kara Capone, *supra* note 180; Email from Tasha Peters, Staff, Careways Shelter, to author (Oct. 11, 2006, 4:38PM) (on file with author).

while to check into a shelter after an eviction. He describes a normal path from eviction to shelter: The tenant gets evicted, moves in with a family member, borrows too much money or overstays his welcome, gets kicked out, moves to a friend's couch, eventually gets kicked out for similar reasons, and so on until the evicted tenant has exhausted his support network and has nowhere to go but a shelter.<sup>183</sup>

Interviews with tenants roughly square with Thomas's explanation. Before the day of removal, most tenants had already arranged to stay with family or friends in town. Adina was going to move in with her sister.<sup>184</sup> Sheryl moved in with her son.<sup>185</sup> Roxanne lived with her daughter.<sup>186</sup> Jeff luckily had a friend with an extra bedroom.<sup>187</sup> And Bob had a trickier task of convincing his ex-girlfriend to let him move in with her.<sup>188</sup> It was the rare tenant who did not know where he would spend the night after their eviction.

These data on where tenants go after a removal likely omits the most desperate individuals, those more likely to become part of the homeless population living on the streets. The ones who do not have friends or family in the area, or are not resourceful enough to find a bed in a shelter are precisely the individuals who cannot be found after they have been evicted. Therefore, although this study lends insight into the link between evictions and the homeless in shelters, it does not say much about the link between evictions and the street homeless.

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<sup>183</sup> Interview with John Thomas, Case Worker, Immanuel Baptist Emergency Shelter, in New Haven, Conn. (May 22, 2006). For a similar storyline, see Melanie Lefkowitz, *The Housing Squeeze*, *NEWSDAY* (N.Y.), June 18, 2006, at A4 ("I think the sense out there is, you get evicted, you go directly to a homeless shelter. But for most people, that's not how it works. You spend a couple of nights with a family member, you spend a week with someone else," said Judith Goldiner, a staff attorney with the Legal Aid Society.).

<sup>184</sup> Interview with Jose, *supra* note 138.

<sup>185</sup> Interview with Sheryl, *supra* note 124.

<sup>186</sup> Interview with Roxanne, *supra* note 123.

<sup>187</sup> Interview with Jeff, Removed Tenant, in New Haven, Conn. (Apr. 17, 2006)

<sup>188</sup> Interview with Bob, *supra* note 111; Email from Bob, to author (Aug. 30, 2006, 1:32PM) (on file with author).

### ***3. What Happens to Tenants' Possessions***

When the DPW truck pulls away from a removal, tenants have not lost their possessions.

#### *a. Reclaiming possessions*

The DPW truck drives from a removal to the city's eviction warehouse, where it deposits all possessions from one property into one bin. Connecticut law mandates that these belongings remain in the warehouse for at least fifteen days before going to public auction,<sup>189</sup> but New Haven notifies tenants that they have twenty-two calendar days from the time of their removal to retrieve their belongings.<sup>190</sup> During this period, tenants may claim their possessions free of charge by calling Blee and arranging a time to do so.<sup>191</sup> The only rules are that tenants must provide their own moving truck and labor to get the possessions onto the truck, and tenants must take everything. In 2005, twenty-nine percent of all removed tenants retrieved their possessions.<sup>192</sup> DPW workers can never predict who will retrieve their possessions—it does not appear to be correlated with the location of the removal or the quantity or value of goods.<sup>193</sup>

In practice, the DPW relaxes some rules at this stage for the benefit of removed tenants. Blee does not strictly enforce the rule about taking everything, for instance. He discourages what he calls partial-pickups. Nonetheless eight percent of tenants collecting their belongings in 2005 took only some of their possessions.<sup>194</sup> In addition, the DPW gives tenants significantly longer than the minimum time period to reclaim their goods. Although

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<sup>189</sup> *Supra* note 49 & accompanying text.

<sup>190</sup> Notice to Evictees.

<sup>191</sup> Most surrounding towns charge the tenant for storage fees. Hamden, for example, places the possessions in commercial storage and to reclaim his possessions the tenant must pay the storage fee. *See* Telephone Interview with Cabral, *supra* note 53.

<sup>192</sup> Eviction Goods Inventories.

<sup>193</sup> Interview with Chris and Andy, Eviction Warehouse Employees, Department of Public Works, in New Haven (Mar. 20, 2006).

<sup>194</sup> *Id.*

the DPW tells tenants they have twenty-two days, the DPW actually holds a tenant's possessions for an average of fifty-five days before auctioning them.<sup>195</sup> And tenants benefit from this delay: Fifty-four percent of tenants reclaiming their possessions in 2005 did so more than twenty-two calendar days after their removals. On average, tenants claimed their possessions twenty-seven calendar days after removal.<sup>196</sup> This windfall of time is a product of how auctions are announced and scheduled. The DPW holds only one auction per month. And it must give the tenants notice of the auction. Since many tenants do not have reliable addresses, the DPW publishes a notice in the *New Haven Register* once a month, to which Blee says a surprising number of tenants respond.<sup>197</sup> Then the DPW holds an auction no less than twenty-two calendar days after this announcement appears in the newspaper. These delays add together to grant tenants a significantly longer amount of time to reclaim their possessions than statutes mandate.

Storing tenants' goods for extra days imposes little marginal cost, if any at all, on the DPW. The warehouse is one open room that rarely fills up. So the expense of operating the warehouse is fixed and does not vary with amount of possessions being stored.

#### *b. Auctioning possessions*

Items that are not claimed during this holding period must be auctioned to the public.<sup>198</sup> In the middle of every month, on the second or third Monday, the DPW hosts an auction at its warehouse. The *New Haven Register* announcement notifying tenants of the auction serves as the only publicity for this event. From one auction to the next the number of

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<sup>195</sup> This finding is based on an analysis of a sample of 111 cases chosen throughout the year. Eviction Goods Inventories; City of New Haven Department of Public Works, Auction Notices (throughout 2005) (on file with author).

<sup>196</sup> To arrive at this number, I analyzed data available on forms tenants must complete upon reclaiming their possessions. City of New Haven Department of Public Works, General Waiver and Release as to Possessions (throughout 2005) (on file with author).

<sup>197</sup> Interview with Blee, *supra* note 114.

<sup>198</sup> See *supra* note 57 & accompanying text.

bidders varies greatly for no apparent reason: One recent month saw around twenty bidders<sup>199</sup> and the following month only five.<sup>200</sup> Quality of goods being auctioned does not affect turnout, because potential bidders may not preview the lots.

At 10 a.m. sharp Blee starts the auction, leading the bidders—mostly twenty-something minorities—in front of the first bin. Blee calls out the bin number and starts the bidding at ten dollars. Attendees squeeze between stacks of boxes to get their first look at what is in the rear of the bin. Blee waits patiently while two or three people inspect the goods. The majority of goods are in stacks of plain cardboard boxes that bidders are not allowed to open for the sake of time, so there is an element of guesswork involved. Bidders try to divine from the exposed items whether the bin is worth bidding on. Blee renews his call for an opening bid, this time reminding the crowd that they could find anything in the boxes: a television, computer, microwave. Nobody bids. Blee mutters “Pass” and moves on. Most bins get the same kind of reaction. Some sets of boxes garner ten dollar bids. Then Blee gets to bin three, which holds a leather couch and chair. This one sees heavy bidding before selling to Russ for \$250,<sup>201</sup> a definite outlier on the high end of the auction price range.

Auction sales data confirm that this bid is unusual. According to the eight months in 2005 for which detailed auction data is available, only twenty-eight percent of all bins received any bids whatsoever.<sup>202</sup> And of those that did sell, the vast majority—eighty-three percent—went for the minimum bid of ten dollars.<sup>203</sup> In 2005, the auction produced only

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<sup>199</sup> Author’s Personal Observation, Eviction Goods Auction, New Haven Department of Public Works Eviction Goods Warehouse, 315 Peck St., New Haven, Conn. (Mar. 20, 2006).

<sup>200</sup> Author’s Personal Observation, Eviction Goods Auction, (Apr. 17, 2006).

<sup>201</sup> Author’s Personal Observation, *supra* note 199.

<sup>202</sup> City of New Haven Department of Public Works, Bins To Be Auctioned (Jan., Feb., Mar., Apr., June, July, Sept., Oct., 2005) (on file with author).

<sup>203</sup> *Id.*



\$980 in total revenue.<sup>204</sup> According to the law, if a tenant's goods are sold at auction the tenant may file a claim for the difference between the price of the goods sold at auction and the cost to the City for moving and storage.<sup>205</sup> But Blee has not handled a single remittance request in his seven years.<sup>206</sup>

Data confirm one aspect of this auction to be typical, though. Bins that sell often go to one buyer: Russ. Everyone at the warehouse knows him. He has been to just about every auction in Blee's memory in order to buy goods for the consignment shop he runs out of his home.<sup>207</sup> In 2005, he purchased forty percent of the lots sold at auction.<sup>208</sup> According to anecdotal evidence, whenever a bin contains valuable goods, Russ outbids everyone—the other bidders at these auctions do not look as though they are affluent, and they are typically just trying to make purchases for their own apartments for below market price.<sup>209</sup> Indeed, data show that Russ prevails in bidding on the more expensive lots: Even though he bought only forty percent of the lots in 2005, by dollar amount he accounted for nearly half of all sales. In a recent auction, Blee watched Russ shatter the previous eviction auction record of \$350 by bidding \$1000 on a lot that contained a sixty-inch television.<sup>210</sup>

#### **Part IV. DEMOGRAPHICS OF REMOVALS IN NEW HAVEN**

One might assume that tenants in evictions are poor and landlords are always rich.

This study bears out the former assumption, but challenges the latter.

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<sup>204</sup> DPW Performance Indicators, (June 2005 and June 2006) (on file with author).

<sup>205</sup> Notice to Evictees. The City takes \$195 for moving and fifty dollars for storage.

<sup>206</sup> Interview with Blee, *supra* note 114.

<sup>207</sup> *Id.*

<sup>208</sup> New Haven DPW, Bins To Be Auctioned, *supra* note 202.

<sup>209</sup> Author's Personal Observation, *supra* note 199; Author's Personal Observation *supra* note 200.

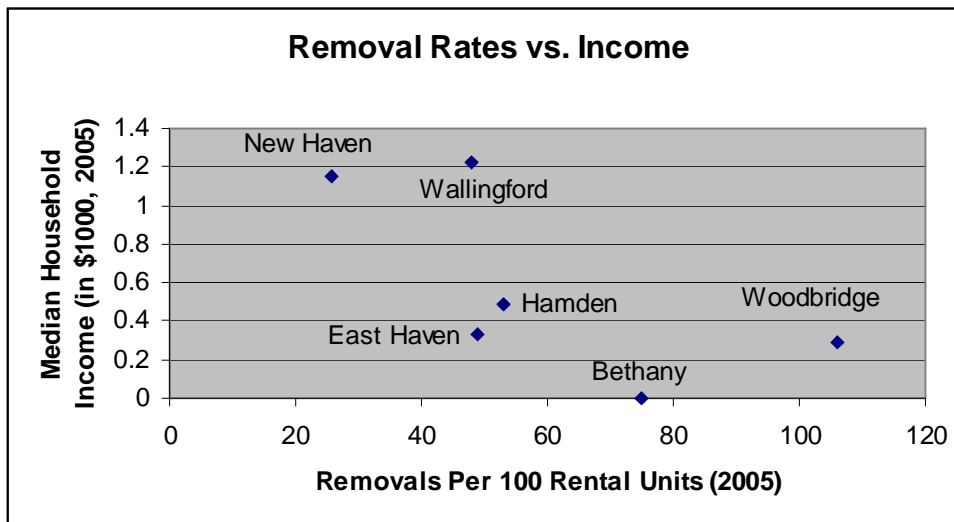
<sup>210</sup> Interview with Blee, *supra* note 114.

### A. Tenants

A number of municipal studies throughout the country have shown that “those who are evicted are typically poor, women and minorities.”<sup>211</sup> Data from New Haven support these conclusions, and reveal the additional insight that removed tenants often have no adult roommates.

On a municipal level, evictions moderately correlate to median household income. New Haven sees more removals per rental unit than do most surrounding, wealthier municipalities (with the exception of Wallingford, an aberration I cannot explain). Graphing removals per renter-occupied unit against median household income shows an inverse correlation between median income and removals per unit:

Figure 7<sup>212</sup>



<sup>211</sup> See Hartman & Robinson, *supra* note 9 (collecting data from seven local studies on eviction to demonstrate a clear trend that evictees are typically African American or Latino, poor, and female).

<sup>212</sup> Total rental units were found U.S. CENSUS BUREAU, FACT SHEETS (2000) for named municipalities, available at <http://factfinder.census.gov/servlet>. Removal statistics were reported in telephone interviews. Telephone Interview with Henry McCully, Director, Wallingford Department of Public Works, in Wallingford, Conn. (May 23, 2006); Telephone Interview with John Cabral, Jr., *supra* note 53; Telephone Interview with Sharon, Clerk, East Haven Department of Public Works, in East Haven, Conn. (May 23, 2006) Telephone Interview with Gerry Shaw, Clerk, Selectman’s Office, in Woodbridge, Conn. (May 23, 2006); Telephone Interview with Nancy McCarthy, Town Clerk, Town of Bethany, (May 23, 2006). Data on median household income comes from U.S. CENSUS BUREAU, FACT SHEETS (2000) for named municipalities, available at <http://factfinder.census.gov/servlet>.

This scatterplot shows a moderate inverse correlation between wealth and removal rate— $r = -.68$ . Surely other factors come into play when explaining the incidence of removals in a given municipality, but this one appears to have at least some explanatory power in New Haven County.

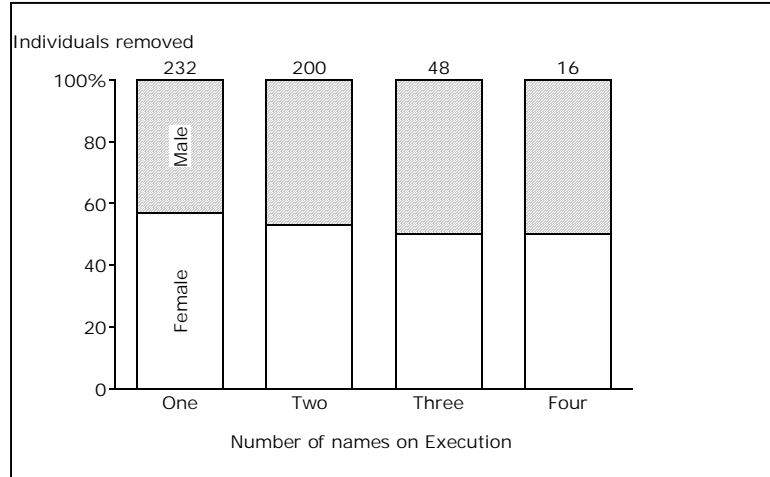
Within New Haven, most evictions take place in the low-income neighborhoods. Appendix 2a shows New Haven census tracts by median household income. Most evictions cluster in the low-income—or lightly shaded—neighborhoods. The low-income neighborhoods where removals occur map fairly clearly onto the minority neighborhoods in New Haven. Appendix 2b shows removals concentrated in Black neighborhoods, such as Dwight Street and Dixwell; and Appendix 2c shows removals also concentrated in Hispanic neighborhoods, such as the Hill and Fair Haven. These findings corroborate previous findings, and in so doing they serve as a reminder that when we discuss what effect removals have on tenants, we are primarily talking about a group of people who live on the edge of economic security.

New Haven data also corroborate that evictions disproportionately affect women. Of the 496 individuals whose gender could reasonably be discerned by their names, 54% were female and 46% were male.<sup>213</sup> New Haven data reveal yet another layer of interesting detail that may explain this gender disparity: The greatest gender disparity occurs at the single-tenant level, where women comprise 57% of individuals removed. The following figure shows gender data for various levels of occupancy:

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<sup>213</sup> SUMMARY PROCESS EXECUTIONS (Jan. 1-Dec. 31, 2005).

**Figure 8**<sup>214</sup>



According to observation<sup>215</sup> and interviews<sup>216</sup> a number of these women are single mothers—children are not listed on Executions, so an adult living only with persons under eighteen appears as a single tenant on an Execution. The strain of providing for children presents a challenge, and single mothers likely fall short of their rent payments because they have less time to work and more expenses than do others.<sup>217</sup> This explanation of the gender disparity implies that removals often affect children.

One finding that other reports have not made is that most removed tenants live without an adult roommate. Executions issued in almost two thirds of cases ending in removal list only one individual’s name:

**Figure 9**<sup>218</sup>

<b>Number of Named Tenants Listed on Execution Ending in Removal</b>	<b>% of All 2005 Executions Ending in Removal (n = 379)</b>
0 (i.e., only listed “Does”)	3%
1	64%
2	28%
3	4%
4	1%

<sup>214</sup> SUMMARY PROCESS EXECUTIONS (Jan. 1-Dec. 31, 2005).

<sup>215</sup> Interview with Maria, Removed Tenant, in New Haven, Conn. (May 16, 2006); Interview with Roxanne, *supra* note 123; Interview with Sheryl, *supra* note 124.

<sup>216</sup> Interview with Ecton, *supra* note 181; Interview with Solomon, *supra* note 60.

<sup>217</sup> See Interview with Ecton, *supra* note 181.

<sup>218</sup> SUMMARY PROCESS EXECUTIONS (Jan. 1-Dec. 31, 2005)

Tenants might live with friends or partners whose names do not appear on the lease. If a landlord wants to remove individuals occupying his apartment and suspects that some people not listed on the lease co-occupy his property, he must list those individuals as “John Doe” and “Jane Doe.” Even taking into account these “Does,” data show that a plurality of removals involve only one adult tenant:

**Figure 10**<sup>219</sup>

<b>Number of Tenants Listed on Execution Ending in Removal (Count “Does” as Tenants)</b>	<b>% of All 2005 Executions Ending in Removal (n = 379)</b>
1	46%
2	22%
3	19%
4	11%
5 or more	3%

Tenants living alone likely face a higher rent burden than do tenants splitting rent payments.

And perhaps these tenants do not try as hard as do tenants living as a social unit—

boyfriend/girlfriend, husband/wife, family—to avoid upheaval.

### **B. Landlords**

Landlords have been vilified by the American public.<sup>220</sup> Such popular images rely, in part, on the assumption that the landlord is the “fat cat who takes unfair advantage of the little mice who rent from him.”<sup>221</sup> But no empirical work has shown whether landlords involved in evictions are actually “fat cats.” Data below suggest that although most landlords have more resources than do tenants, certainly not all do.

To determine how sophisticated and well-resourced a plaintiff any given landlord is, we might look to whether the landlord has representation in his eviction. As mentioned above, a

<sup>219</sup> *Id.*

<sup>220</sup> *See, e.g.,* Welfeld, *supra* note 148, at 110 (recapping a Saturday Night Live skit in which a tenant writes a poem about killing his landlord).

<sup>221</sup> *Id.* *See also, Small Landlords, supra* note 148 (“Many people . . . consider even the small owner ‘a land baron’—greedy, uncaring, with money to burn—when the reality is he’s just another Joe Schmo or an Abdul trying to make a living.”).

lawyer costs in the ballpark of \$1000 for a typical eviction.<sup>222</sup> So this is a cost that less wealthy landlords would likely avoid. Although the existence or absence of legal representation does not provide a perfect indicator of wealth, it offers a rough understanding of a landlord's resources. Data show that most types of landlords hire lawyers for every eviction, but that "mom and pop" landlords only do so only about a third of the time:

**Figure 11**<sup>223</sup>

<b>Landlords</b>	<b>Total removals in 2005</b>	<b>Percentage of cases in which evictor had representation</b>
HANH	37	100%
Cooperatives	5	100%
Partnerships/ corporations/ LLCs	156	97%
Individuals	153	35%
<b>Other Actors Initiating Evictions</b>		
Banks/ mortgage companies	25	100%

Thus, in cases involving institutional or organized landlords, tenants *are* usually facing off against a relative "fat cat" who likely has financial and legal resources. But when a tenant faces a "mom and pop" landlord, more often than not the two parties are on relatively equal footing in that both have neither the resources to secure a lawyer nor the legal sophistication that comes along with representation. This finding challenges the common assumption that landlords are "fat cats," and portrays "mom and pop" operations in a more sympathetic light.

### **Part V. WHY TENANTS GET TO A REMOVAL**

As shown above, an overwhelming majority of evictions result from nonpayment of rent.<sup>224</sup> A central question then is why tenants fail to pay rent and get removed: Can they honestly not pay rent or are they gaming the system? An understanding of why tenants get to a removal informs how much sympathy (and perhaps legal protection) tenants deserve.

<sup>222</sup> See *supra* note 160 & accompanying text.

<sup>223</sup> SUMMARY PROCESS EXECUTIONS (Jan. 1-Dec. 31, 2005).

<sup>224</sup> *Supra* Figure 1.

## ***A. Honest Reasons***

Since evictions primarily affect poor individuals,<sup>225</sup> it is reasonable to assume that most removed tenants truly could not pay rent. Anecdotal data support this assumption, and provide insight into the circumstances that lead tenants to miss rent payments.

### ***1. Losing Income***

Many removed tenants lose sources of income just before their evictions. One tenant was working a seasonal job and could not make ends meet when the off-season came;<sup>226</sup> another fell behind on payments when her live-in boyfriend, who was splitting rent payments with her, went to prison and left his girlfriend with the full rent burden<sup>227</sup> (a surprisingly common set of facts, according to a caseworker at a women's shelter<sup>228</sup>); yet another lost her apartment when Section 8 discontinued payments to the landlord because the apartment had too many defects to pass the annual Section 8 inspection.<sup>229</sup> Such stories of genuinely not being able to pay rent come as no surprise given the economic demographics of New Haven: Over a quarter of the city's population lives in poverty;<sup>230</sup> nearly a third of all housing units in the city are subsidized,<sup>231</sup> and nearly half of tenants in the city spend over thirty percent of household income on housing,<sup>232</sup> a proportion considered to be at the limit of affordability.

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<sup>225</sup> *Supra* Section IV.A.

<sup>226</sup> Interview with Steve, *supra* note 187.

<sup>227</sup> Telephone Interview with Jessica, Removed Tenant, in New Haven, Conn. (Aug. 28, 2006).

<sup>228</sup> Interview with Ecton, *supra* note 181.

<sup>229</sup> Interview with Roxanne, *supra* note 123.

<sup>230</sup> U.S. CENSUS BUREAU, 2005 AMERICAN COMMUNITY SURVEY: SELECTED ECONOMIC CHARACTERISTICS, NEW HAVEN CITY, CONNECTICUT (2005), available at <http://factfinder.census.gov/servlet> (reporting that 27.2% of all people in New Haven had incomes below the poverty level in the previous year).

<sup>231</sup> CONNECTICUT DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, AFFORDABLE HOUSING APPEALS LIST (2005), available at <http://www.ct.gov/ecd/cwp/view.asp?a=1105&q=251248&ecdNav=#Housing> (30%)

<sup>232</sup> *Id.* (46%). See generally, Janny Scott and Randal C. Archibold, *Across Nation Housing Costs Rise as Burden*, N.Y. TIMES (Oct. 3, 2006) ("The burden of housing costs in nearly every part of the country grew sharply from 2000 to 2005.")

These stories and statistics suggest that a large portion of people affected by evictions and removals genuinely lack the wherewithal to avoid this legal process.

## 2. *Mental Illness*

Another set of tenants fail to pay rent not necessarily because they lack income, but because they cannot conform their behavior to what is expected of a reliable tenant. Scholars and policy-makers often allude to the link between mental health and homelessness.<sup>233</sup> But nobody has examined mental illness in removed individuals.

Doing so reveals a fairly high incidence rate of mental illnesses amongst removed persons. Somewhere between nine to thirty-eight percent of all individuals removed in 2005 have been diagnosed with a mental illness in the Connecticut mental health system in the past decade.<sup>234</sup> These individuals received the following diagnoses:

Figure 12<sup>235</sup>

<b>Diagnostic Category</b>	<b>Percentage of Removed Individuals Receiving Diagnosis Range (Midpoint)</b>
Axis I (Psychotic illnesses. E.g., depression, bi-polar)	6-23% (14.5%)
Axis II (Personality disorders. E.g., obsessive-compulsive,	2-10% (6%)

<sup>233</sup> See, e.g., MICHAEL ALLEN, *SEPARATE AND UNEQUAL: THE STRUGGLE OF TENANTS WITH MENTAL ILLNESS TO MAINTAIN HOUSING* (1996); FEDERAL TASK FORCE ON HOMELESSNESS AND SEVERE MENTAL ILLNESS, *OUTCASTS ON MAIN STREET* (1992); PAUL KOEGEL ET AL., “The Causes of Homelessness,” in *HOMELESS IN AMERICA* 24, 31 (Jim Baumohl ed., 1996); NATIONAL COALITION FOR THE HOMELESS, *MENTAL ILLNESS AND HOMELESSNESS: NCH, FACT SHEET #5* (2006), available at [http://www.nationalhomeless.org/publications/facts/Mental\\_Illness.pdf](http://www.nationalhomeless.org/publications/facts/Mental_Illness.pdf); National Resource and Training Center on Homelessness and Mental Health, Publications, available at <http://www.nrchmi.samhsa.gov/publications/default.asp> (collecting sources on mental illness and homelessness)

<sup>234</sup> CONNECTICUT DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES DATABASE (2006). To determine the prevalence of mental illness in removed individuals, I commissioned staff at the Connecticut Mental Health Center to compare a database of all mental health patients diagnosed in Connecticut with my list of 521 individuals removed in 2005. Because I could provide only names as identifying information for removed individuals, this exercise could not be precise. A number of individuals had common names, so it was unclear whether to count them as a hit or not. To resolve this problem, researchers created a range, with the low end of the range not counting any individuals when a name appeared more than once in the mental health database, and the high end of the range counting every individual whose name appeared anywhere in the mental health database.

<sup>235</sup> *Id.* Totals do not equal the stated range—forty-seven to 198—because some individuals have multiple diagnoses.



paranoid, schizoid)	
Substance Abuse (Drug or alcohol addictions)	5-26% (15.5%)

These data reveal only individuals with identified mental illnesses, though, and a number of mental illnesses go undetected. Looking to other potential indicators of mental illness, such as arrest, therefore, might provide a more complete picture. Or a more refined estimate might rely on those evaluated for competency to stand trial, since that designation indicates someone suspected of presence of mental illness:

**Figure 13**

<b>Activity</b>	<b>Percentage of Removed Individuals Range (Midpoint)</b>
Arrested by New Haven Police Department <sup>236</sup>	25-70% (48%)
Evaluated for Competence to Stand Trial <sup>237</sup>	13-29% (21%)

These data do not show how often mental illnesses actually led to removals in 2005, but they do show that some significant portion of removed tenants likely suffer from a mental illnesses that may impede efforts to avoid removal.

### ***3. Using Tenant Self-help to Destructive Effect***

Tenants only rarely become defendants in evictions because they use the self-help mechanism of withholding rent to send a message to the landlord about the conditions of the premises. Steven Gunn found that forty-two percent of all tenants evicted asserted the landlord's failure to repair substandard housing conditions as the reason for nonpayment of rent.<sup>238</sup> But a legal aid lawyer reports that tenants offering this explanation typically raise no complaints about conditions until the eviction begins; and only once the eviction starts does

<sup>236</sup> CRIMINAL JUSTICE SYSTEMS DATABASE (2006).

<sup>237</sup> CONN. MENTAL HEALTH CENTER DATABASE (2006).

<sup>238</sup> Gunn, *supra* note 11 at 398 tbl.8.

the tenant assert this in his defense.<sup>239</sup> Indeed, Maria admitted exactly this progression of events: She missed rent payments, the landlord began an eviction, then she complained about insufficient heating.<sup>240</sup> Few tenants actually cause their own eviction by withholding.

#### **4. Gentrification**

Finally, some tenants miss payments because they cannot keep up with price increases. This happens especially in gentrifying neighborhoods, where a landlord raises rent either simply because his property has increased in value, or because he wants to push the tenant and renovate the apartment out in order to rent it at a significantly higher price.<sup>241</sup> None of the tenants interviewed experienced this. Although one tenant fears that these types of evictions are on the rise in the Hill neighborhood where landlords are trying to capitalize on Yale's recent growth,<sup>242</sup> neither interviewees nor data confirmed this trend.

#### **B. Gaming Reasons**

Some tenants appear to make it to the removal phase for gaming reasons. Likely gaming reasons include (a) seeking out perverse incentives in the housing assistance system tied to being removed from an apartment or (b) just behaving as a "bad apple" who intends to live rent-free for a few weeks or months while the summary process unfolds. Since the systemic incentives have dried up in recent years, most who now game the system do so for the latter reason.

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<sup>239</sup> Interview with Shelly White, *supra* note 54.

<sup>240</sup> Interview with Maria, *supra* note 215. *But see* Telephone Interview with Lynne, Removed Tenant, in New Haven, Conn. (Aug. 22, 2006). Lynne reported withholding rent to send the landlord a message when she found that everyone in the building did cocaine in the common areas and the landlord was not addressing the situation.

<sup>241</sup> For a depiction of evictions resulting from gentrification in the Bay Area during the internet boom, see *BOOM: THE SOUND OF EVICTION* (Whispered Media 2002).

<sup>242</sup> Interview with Sheryl, *supra* note 124.

### *1. Seeking Systemic Incentives*

At least one author has claimed that state and local housing programs create perverse incentives to get evicted by offering subsidies to tenants on the condition that they have been evicted in the past.<sup>243</sup> Indeed, that may have been the case years ago, but no longer. Over the years, assistance programs have taken measures to reduce systemic incentives for tenants to get evicted.

The largest actor in New Haven housing assistance, and therefore the first place to look to understand how systemic incentives shape tenant behavior, is the Housing Choice Voucher Program (commonly known as “Section 8”) administered by the Housing Authority of New Haven (HANH). In the Section 8 program tenants pay thirty percent of their income for rent and federal funds cover the balance of their rent.<sup>244</sup> HANH provides 4500 vouchers to tenants in New Haven,<sup>245</sup> constituting fourteen percent of New Haven’s 33,167 renter-occupied units, and it has a 1,000-person wait-list<sup>246</sup> (these numbers do not include statistics for RAP and T-RAP vouchers<sup>247</sup>). Selection from the wait-list used to depend on a range of preferences, including homelessness.<sup>248</sup> Given the high demand for these vouchers, prioritizing homeless persons meant that, in practice, HANH never served anyone *until* they became homeless.<sup>249</sup> This fact created an incentive for people to make themselves

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<sup>243</sup> Daines, *supra* note 11, at 23.

<sup>244</sup> CONN. AGENCIES REGS. § 17b-804-1 (2004).

<sup>245</sup> Interview with Maureen Novak, Special Assistant to the Deputy Executive Director, Housing Authority of the City of New Haven, in New Haven, Conn. (Nov. 17, 2005). The utilization rate for these vouchers typically falls just below ninety percent. Interview with Solomon, *supra* note 88.

<sup>246</sup> Interview with Maureen Novak, Special Assistant to the Deputy Executive Director, Housing Authority of the City of New Haven, in New Haven, Conn. (Nov. 17, 2005). The Section 8 waiting list last opened for the month of April 2005. In that month, 8,000 people signed up for the list.

<sup>247</sup> The Connecticut Department of Social Services contracts John D’Amelia & Associates to administer its rental assistance program. Repeated calls to this company were not returned.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

homeless,<sup>250</sup> and one way to do that was to get evicted and removed. Now selection for vouchers depends on a “pure waiting list.”<sup>251</sup> So having been evicted does not help applicants get a voucher; and, in fact, being evicted may make it harder to find an apartment once a tenant receives a voucher, since landlords perform credit and judgment checks and an eviction would be a legitimate reason for refusing to rent.<sup>252</sup>

Another player in New Haven housing assistance that could shape tenants’ behavior with incentives is Community Mediation’s Eviction and Foreclosure and Prevention Program (EFPP, commonly known as the “Rent Bank”). EFPP pays the back rent for qualified tenants in danger of being evicted.<sup>253</sup> If Community Mediation prioritized those tenants with the most imminent evictions, then we might expect to see savvy tenants trying to make it to the tail-end of an eviction simply to get the Rent Bank to pay its rent. In the past, tenants likely gamed EFPP, but no longer. Ten years ago, Community Mediation required only that the tenant produce a letter from a landlord saying the tenant was behind in rent. Tenants had an interest in not paying rent; and their landlords had an interest in getting paid the full rent. So both parties could conspire to represent their situation in such a way that would get EFPP to pay rent to the landlord. Indeed, the executive director remembers seeing a tenant and a landlord huddled over the hood of their car jointly writing a letter testifying to the tenant’s nonpayment. When they came in the office, the executive director felt they were not using the Rent Bank for the right reasons.<sup>254</sup> Since that incident, Community Mediation has implemented eligibility requirements that decrease the likelihood of a tenant gaming the

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<sup>250</sup> *Id.* Novak says she has heard stories of people doing exactly this.

<sup>251</sup> *Id.*; Email from Robert Solomon, Chairperson of the Board of Commissioners, Housing Authority of New Haven, to author (May 24, 2006 8:53AM).

<sup>252</sup> Email from Robert Solomon, Chairperson of the Board of Commissioners, Housing Authority of New Haven, to author (May 24, 2006 8:53AM).

<sup>253</sup> CONN. AGENCIES REGS. § 17b-804-1 (2004).

<sup>254</sup> Interview with Charlie Pillsbury, Executive Director, Community Mediation, in New Haven, Conn. (May 19, 2005).

system. It requires: (1) that applicants have a gross family monthly income of less than sixty percent of the state median income adjusted for family size; (2) that applicants' rent is less than or equal to sixty percent of their gross family monthly income; and (3) that applicants show they have experienced a severe hardship that prevented rent payment and that is not likely to recur, something case specialists investigate through interviews.<sup>255</sup> These criteria ensure that the Rent Bank dispenses money to individuals who genuinely need it.<sup>256</sup> One indicator that individuals are not gaming this system is that caseworkers see very few repeat applicants.<sup>257</sup> And if tenants are able to game this system, they do so in small numbers: only eighty-two tenants received EFPP assistance in 2005.

## ***2. Taking advantage of the length of summary process***

Some tenants appear to game the system by simply not paying rent and then living rent-free for the duration of the summary process. This practice generally saves tenants at least two rent payments,<sup>258</sup> which, for some, outweighs whatever potential damage this practice does to one's reputation with future landlords. It is reasonable to assume that individuals who have learned how to game the system in this way will likely become repeat players.<sup>259</sup> If someone with limited means has found a way to secure, say, a year of housing for the cost of nine months' rent (plus a security deposit, perhaps), then that individual will likely use this "discount" somewhat regularly.

Nearly everyone involved in New Haven removals has a story about repeat players. When asked if she has seen the same individuals as defendants in multiple eviction actions,

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<sup>255</sup> Community Mediation, Eviction Prevention and Foreclosure Program (unpublished pamphlet) (on file with author).

<sup>256</sup> Interview with Pillsbury, *supra* note 254.

<sup>257</sup> *Id.*; Telephone Interview with Urrutia, *supra* note 129.

<sup>258</sup> See *supra* notes 150 & 155 & accompanying text.

<sup>259</sup> For a discussion of spending strategies income-strapped individuals employ, see KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK (1997).

Housing Court Clerk Suzanne Colasanto blurts out “God yes!” then rattles off three or four names.<sup>260</sup> She gets calls from landlords asking whether an individual has ever been evicted, and occasionally she does not even have to look up the names because she knows they have been evicted multiple times. State Marshal Peter Criscuolo remembers arriving at one tenant’s apartment to remove her only to find that most of her belongings were still packed in boxes from her last removal just six months earlier.<sup>261</sup> Likewise, a mover remembers arriving at one tenant’s apartment to find that he had moved her belongings from the eviction warehouse into that apartment within the past year.<sup>262</sup> Data bear out these stories of repeat players: Of the first 244 individuals<sup>263</sup> removed from New Haven apartments in the first three months of 2005, seventy-seven—or thirty-two percent—were defendants in more than one summary process action between June 2002 and August 2006.<sup>264</sup> These repeat players appear to inflict losses on individuals and corporate landlords in the highest rates—roughly a third of tenants renting from these types of landlords are repeat players:

**Figure 14**<sup>265</sup>

<b>Landlords</b>	<b>Total individuals in sample removed by this type of landlord</b>	<b>Percentage of individuals who were repeat players</b>
Individuals	100	36%
Partnerships/ corporations/ LLCs	116	33%
HANH	22	5%
Cooperatives	6	0%
<b>Other Actors Initiating Evictions</b>		
Banks/ mortgage companies	13	15%

<sup>260</sup> Interview with Suzanne Colasanto, Clerk, New Haven Housing Court, in New Haven (May 18, 2006).

<sup>261</sup> Interview with Criscuolo, *supra* note 112.

<sup>262</sup> Interview with Chris, Mover, Crosby’s Moving Company, in New Haven, Conn. (May 16, 2006).

<sup>263</sup> From January 1, 2005, to July 5, 2005 272 individuals got removed, but repeat player data is only available for 244 of those individuals. This data excludes twenty-eight individuals for one of two reasons: either (1) the electronic database lacked information on them, or (2) it was too difficult to confirm the tenant was a repeat evictee because the database identifies tenants only by name and tenants with common names were, therefore, likely to appear as repeat evictees even if they were unique evictees.

<sup>264</sup> ONLINE HOUSING COURT DATABASE.

<sup>265</sup> *Id.*; SUMMARY PROCESS EXECUTIONS.

Although data for other types of landlords are too thin to yield conclusions, they point toward findings one might expect. The Housing Authority likely sees few repeat players because it conducts thorough credit checks.<sup>266</sup> Likewise for cooperatives, since if one cooperator fails to pay his share of the mortgage others have to make it up.

Surely some of these repeat players deserve to be counted in the category of individuals evicted for “honest” reasons, but anecdotal evidence suggests that some portion of these repeat players are, in fact, gaming the system. The clerk and the housing specialist at the New Haven Housing Court explain that a number of repeat players they see do not appear to be the most desperate defendants who have repeatedly fallen on hard times. Instead, they describe an extremely attractive couple who are both employed by the City, “appear to be church-goers and would be mistaken for wealthy landlord-types” but come in to the court every few months and lose as defendants in evictions; or there is the couple who make a habit of renting nice houses with pools in outlying neighborhoods or towns, then inevitably fail to pay their rent after a few months, get evicted and move into another house.<sup>267</sup>

Data show that repeat players understand better than non-repeat players how to draw out the eviction process. In total, thirty-seven percent of all evictions started in 2005 resulted in Executions.<sup>268</sup> By contrast, sixty-nine percent of all repeat tenants had made it to the Execution phase in their previous removals.<sup>269</sup> Perhaps repeat players simply know how to handle an eviction the second time, but this significant differential suggests that some portion of repeat tenants intend to game the system and live rent-free as long as possible. Further evidence for the assertion that repeat players have learned to game the system comes in the

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<sup>266</sup> Interview with Maureen Novak, *supra* note 246.

<sup>267</sup> Interview with Colasanto, *supra* note 260; Interview with Texeira, *supra* note 41.

<sup>268</sup> ONLINE HOUSING COURT DATABASE.

<sup>269</sup> *Id.*

form of default judgments: whereas seventy-two percent of non-repeat players in this sample had default judgments entered against them, only fifty-six percent of repeat players lost on default judgments.<sup>270</sup> This means the summary process moves somewhat more slowly for repeat players, on average. It is unclear whether repeat players better avoid default judgments simply because their experience allows them to understand the eviction process, or if they avoid default judgments because they are strategically trying to extend their “discount” period. Nonetheless, these data show that repeat players know how to live rent-free longer than do non-repeat players.

## VI. LESSONS LEARNED

The above account of removals not only helps explain how the law affects people’s lives at this key stage in landlord-tenant relations, but also yields insight into where the system works well and where it could be improved. These lessons apply most directly to New Haven, but might easily be extended.

### *A. What Works Well*

In many respects, the legal system works well when a landlord-tenant relationship breaks down entirely. At the scheduling phase, fairly strict service requirements effectively alert tenants of their removal. During removal, granting the state a monopoly of power and excluding the landlord from the removal effectively limit the amount of violence at the end of this high-stakes process. The marshals’ practice of inventorying all possessions ensures transparency in the handling of possessions, which both limits the amount of litigation following removal day, and ensures that nobody handling the tenant’s possessions steals from the tenant. The fact that the marshals and DPW coordinate their eviction schedules

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<sup>270</sup> *Id.* (sample includes the first 244 individuals removed in 2005).



means that tenants' possessions do not at any point sit on the curb. This eliminates opportunities for tenants' belongings to be stolen. Perhaps more importantly, it does not humiliate the tenants by putting on display all their personal possessions. Then once the goods leave the property, the systemic delays between a removal and an auction gives tenants extra opportunity to retrieve their goods without significantly increasing the cost of storage. Taken as a whole, these practices make the removal process effective and somewhat more humane than might be assumed. Indeed, actors on all sides of the process—a legal aid lawyer,<sup>271</sup> a landlord,<sup>272</sup> and a marshal<sup>273</sup>—reported general satisfaction with the system and no desire for major changes.

### ***B. Where the System Could Improve***

Removals occur surprisingly often in New Haven, and they create substantial losses for both the landlord and the tenant beyond the costs associated with the first phase of evictions. Although many parts of this process work well and some “customers” from all sides of the removal report satisfaction, parts could still be improved. Reforms should be guided by three concerns common to legal reform: efficiency, process, and equity. The first generally benefits the landlord, while the latter two generally benefit the tenant. Balancing the tension between these ensures that reforms will be even-handed.

#### ***1. Efficiency Improvements***

The legal system should aim to prevent removals altogether. But when tenants must be removed, as inevitably they will, the system should return apartments to landlords quickly after the legal battle ends.

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<sup>271</sup> Interview with White, *supra* note 37

<sup>272</sup> Interview with Cowie, *supra* note 168.

<sup>273</sup> Interview with Miller, *supra* note 76.

First, preventing a removal altogether would decrease administrative costs by saving the landlord from paying the incremental cost of almost \$1000<sup>274</sup> to remove a tenant, and saving the municipality the time and expense of picking up the tenant's belongings. One way to prevent removals is to create disincentives to get removed. As currently structured, removals provide moving and storage services to tenants. In New York City, tenants wanting to retrieve their goods must pay landlords the cost of moving and storage.<sup>275</sup> Whereas half of all New Haven tenants receiving an Execution remain in their property until removal, in New York four out of five tenants receiving Executions move out.<sup>276</sup> Given that New Haven's rental unit vacancy rate is almost double New York City's—6.4%<sup>277</sup> versus 3.6%<sup>278</sup>—ease of finding another apartment does not explain the difference in tenants' behavior. Rather, incentives linked to the storage policy likely affect tenants' calculations. A new system could create a cost-sharing scheme: Most simply, the tenants and the DPW could each be responsible for half of expenses; or perhaps the tenant's relative wealth might be taken into account by indexing his share of costs to his monthly rent burden. Such a scheme would decrease the tenant's incentives to get to the end of a removal, because it would eliminate free moves. Therefore, this reform would likely achieve the efficiency goal of decreasing the total number of removals. But this system also takes into account equity concerns as it would still place fewer burdens on poor tenants than do most jurisdictions.

Second, speeding up removals would decrease the amount of rent landlords lose in a given eviction and would decrease the moral hazard of tenants living rent-free. Indeed, the

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<sup>274</sup> See *supra* Figure 6.

<sup>275</sup> See *supra* NEW YORK CITY CIVIL COURT HOUSING PART, *supra* note 64.

<sup>276</sup> Rebecca Webber, *Issue of the Week: Evictions*, GOTHAM GAZETTE, Nov. 12, 2001, available at <http://www.gothamgazette.com/iotw/affordhousing/doc1.shtml>.

<sup>277</sup> U.S. CENSUS BUREAU, 2005 AMERICAN COMMUNITY SURVEY: SELECTED HOUSING CHARACTERISTICS, NEW HAVEN CITY, CONNECTICUT (2005), available at <http://factfinder.census.gov/servlet>.

<sup>278</sup> U.S. CENSUS BUREAU, 2005 AMERICAN COMMUNITY SURVEY: SELECTED HOUSING CHARACTERISTICS, NEW YORK CITY, NEW YORK (2005), available at <http://factfinder.census.gov/servlet>.

immediate-past president of the New Haven Landlord Association reports that most complaints he received about the removal system during his tenure related to how slow marshals and the DPW were to remove a tenant who had been served with an Execution.<sup>279</sup> One simple, albeit expensive, way to speed up all removals would be for the DPW to buy a new truck and hire more employees.

If the City cannot speed up all removals but instead institutes a “fast track” program to speed up selected removals, it should not base priority on payment of an expedition fee as it does with its sidewalk repair program. This would contravene equity concerns as those landlords who have the slimmest margins and, therefore, need the fastest removals in order to keep up with their mortgage payments are precisely the landlords who would least likely be able to pay to participate in this priority system (although, the details would matter here, because if the DPW can afford to set a fee smaller than the additional rent a landlord would lose in a non-expedited removal, small landlords may find it cheaper, overall, to pay the expedition fee than not to pay that fee). Instead, the City might consider giving “fast track” privileges on the basis of how few apartment units a landlord owns. Small landlords cannot prevent evictions as well as can large landlords, because they often do not have the know-how or the resources to screen tenants.<sup>280</sup> And, judging by the fact that the majority of “mom and pop” operations do not hire attorneys,<sup>281</sup> they do not have the resources to absorb the financial losses of a removal. How to define small landlords could be debated, but one proposal would be to say all landlords who own five units and fewer get scheduling priority over landlords owning more than five properties. Critics might argue that this would unfairly

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<sup>279</sup> Interview with Candelora, *supra* note 44.

<sup>280</sup> See Interview with Lauria, *supra* note 159; Stephanie O’Neill, *Tenants from Hell*, L.A. TIMES, Aug. 8, 1993, at K1.

<sup>281</sup> See *supra* Figure 11.

burden large landlords. But data suggest that large landlords have a higher tolerance for delays at this point in the process.<sup>282</sup> Creating laws that treat small landlords differently from large ones would certainly create transaction costs, but it is possible and has been done before, namely in the federal Fair Housing Act of 1968.<sup>283</sup> Decreasing the losses on small landlords would encourage more individuals to enter the rental market as landlords, which would increase the total housing available.

## ***2. Process Improvement (Dignity Concerns)***

Although the proposed system might sound harsh on tenants with its higher storage costs and its speedier removals, the system should still aim to limit dignitary harms<sup>284</sup> to tenants. The best way to do this would be to help tenants relocate before the removal and save them the humiliation of being kicked out of their home.

Community agencies could focus more resources on assisting tenants in the removal phase. A number of agencies try to prevent evictions, or to resolve them before the removal phase, but none specifically assist tenants once they have received an Execution.<sup>285</sup> Tenants might be more likely to seek or accept assistance at this point because it has become clear that they lost the legal battle for possession. An agency would be able to target its clients fairly easily, by contacting the housing court each week and checking where Executions have been served. The agency could then visit the tenant's home and if the tenant does not appear to understand what is happening—because they do not speak English, suffer from mental health issues, or lack information on evictions—the agency could demystify the process.

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<sup>282</sup> See *supra* Figure 3.

<sup>283</sup> 42 U.S.C. § 3603(b) (exempting small landlords from statutes outlawing discriminatory rental and sales practices).

<sup>284</sup> See *supra* notes 146-147 & accompanying text.

<sup>285</sup> Telephone Interview with Cristina Urrutia, Housing Case Manager, Community Mediation, in New Haven, Conn. (Dec. 5, 2006).

Then the agency could assist these tenants by helping them locate affordable housing. Not only would this preserve the tenant's dignity, but also it would benefit landlords and municipalities by saving them removal costs. The Community Mediation Executive Director is optimistic about such an organization, saying it would both fill a gap in services and would provide a benefit to a wide range of constituents.<sup>286</sup> Surely not all tenants at this stage are able to or want to move immediately to another property for which they must pay rent, but some sizeable proportion of tenants would likely accept this assistance and would succeed at avoiding removal.<sup>287</sup>

This proposal might be criticized as creating additional incentives for tenants to stay in their apartment until these informal forms of assistance kick in. But the current system already creates incentives to stay in an apartment until the bitter end of an eviction, so this proposal would likely not alter a tenant's calculations about how to act; but it would reduce the costs to all actors involved.

### ***3. Equity Improvement***

A process so widely associated with poverty as is the removal process should evince some concern for the poor. Perhaps the most explicit way the City could do this is in how it distributes unclaimed goods. As it stands, the auction benefits few parties other than Russ. It neither effectively redistributes goods to those in need, nor recoups much money for the DPW. Rather than auctioning goods, the DPW should unpack the boxes, separate out valuable items and give these items away. Perhaps it could be first-come-first-served with each person able to take only one item per turn. Doing this would require the DPW to forego

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<sup>286</sup> Interview with Charlie Pillsbury, Executive Director, Community Mediation, in New Haven (Dec. 12, 2006).

<sup>287</sup> For an example of a tenant who wanted to move, but could not find a new apartment in the limited time she had to search after work hours, see Interview with Roxanne *supra* note 123.

only a negligible amount of revenue. And it would allow the City to build the good-will that comes with gift-giving amongst those who are likely to be marginalized.

This program has a precedent. In the recent past, before sending the contents of unsold bins to the landfill DPW employees would extract valuable items—coffee tables, fans, chairs, bicycles. Then Blee would display these items in the eviction warehouse and give them to anyone who inquired. Between 2001 and 2005, Blee gave goods away to 1046 individuals,<sup>288</sup> primarily single mothers, former inmates reentering society, and the temporarily jobless.<sup>289</sup> And it was not rare for the recipients of these giveaways to be removed at some point. Blee marked all items he gave away, and occasionally saw these markings when he collected items at a later removal.<sup>290</sup> Through this initiative, then, the City was mitigating the cruelty of the removal process, albeit somewhat indirectly. The City ceased this post-auction giveaway program, because it wanted to avoid liability for items it gave away,<sup>291</sup> but it would do well to replace the auction with some reincarnation of it—perhaps by allowing students to establish a volunteer agency to distribute these goods.<sup>292</sup>

## VII. CONCLUSION

Eviction laws must balance significant interests against one another: on the one hand, the landlord's property interest in his apartment and his financial interest in reclaiming it in a speedy manner; on the other hand, the tenant's "personhood"<sup>293</sup> and possessory interests in retaining his home. These interests sharpen at the end of an eviction action. Different systems have attempted to balance these interests in various ways. The common law, for example,

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<sup>288</sup> DPW Performance Indicators, (June 2001, June 2002, June 2003, June 2004 June 2005, June 2006) (on file with author).

<sup>289</sup> Interview with Blee, *supra* note 114.

<sup>290</sup> *Id.*

<sup>291</sup> Telephone Interview with Frank Blee, Eviction Warehouse Manager, New Haven Department of Public Works (Dec. 13, 2006).

<sup>292</sup> Interview with Solomon, *supra* note 88.

<sup>293</sup> Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 993-96 (1982).

placed its thumb on the side of the landlord, due to his superiority of estate.<sup>294</sup> During the revolution of landlord-tenant law in the mid-twentieth century, laws began to make a more sincere effort to strike a balance between the two sides of the equation, and even favor the tenants' interests in some cases.<sup>295</sup> Compared to Western European countries, though, summary process laws in the United States still appear to be quite harsh on tenants—in Ireland, for example, landlords must wait until one year's rent is in arrears before initiating an eviction.<sup>296</sup> But laws do not tell the full story.<sup>297</sup> To truly understand how our current legal system treats parties involved in evictions, we must examine how the process unfolds in practice, whom it affects and how it affects them.

The total breakdown of a landlord-tenant relationship inevitably produces significant losses. Which losses can be avoided and where losses should lie are regular topics of debate in the Connecticut legislature<sup>298</sup> and will continue to be debated by legislators, community agencies, lawyers and academics in the future. This study provides a starting point for these debates by elucidating how removals currently work, what losses they entail, and how the system might improve.

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<sup>294</sup> Karl Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 WIS. L. REV. 925, 926 (1989).

<sup>295</sup> *Id.*, at 51-52; Manheim, *supra* note 294, at 926.

<sup>296</sup> THE LAW REFORM COMMISSION, GENERAL LAW OF LANDLORD AND TENANT 181 (2003).

<sup>297</sup> See, e.g., ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991).

<sup>298</sup> Connecticut legislators, for example, sought to revise the state's removal laws during both the 2004 and 2006 sessions. Both times, legislators proposed to allow the landlord to take immediate possession of and dispose of any belongings tenants leave behind. S. Res. 232, 2004 Leg., Reg. Sess. (Conn. 2004); S. Res. 361, 2006 Leg., Reg. Sess. (Conn. 2006). Academics, advocates and interest groups on both sides of the issue weighed in on the proposals. Hearing on S. Res. 361 Before the House Judiciary Committee, 2006 Leg., Reg. Sess., Mar. 3, 2006 (Conn. 2006), available at <http://www.cga.ct.gov/2006/JUDdata/chr/2006JUD00303-R001300-CHR.htm>.

## APPENDIX 1: Methodology

This paper relies heavily upon primary source and field research. In order to be as transparent as possible about the strengths and weaknesses of this research, this Appendix outlines the methodology used to collect key pieces of data.

### *Eviction Documents*

The removal phase of evictions generates a number of legal documents. Through Freedom of Information Act (FOIA) requests, I accessed all such documents produced in the City of New Haven in 2005:

- Executions: I gleaned from Executions served on removed tenants the names of parties (including landlords' attorneys), date of issuance, and address of the premises. Using this information, I gathered further data about the legal process that lead to eviction through the Online Housing Court Database. This database details the names of parties, presence of attorneys on both sides, and procedural history such as whether the landlord won a default judgment. Furthermore, this database catalogues previous eviction actions against any given tenant.
- Eviction Goods Inventories: I relied on the marshals' inventories of tenants belongings to learn the date of the removal, whether the tenant was present at the removal and a list of all items left behind by tenants.
- Auction records: I used auction records to determine who attended the auction, which bins were sold, who bought those bins, and for how much.

### *Personal Observations:*

To contextualize the data gleaned from legal documents, I observed key parts of the removal phase:



- Removals: I observed thirteen residential removals. These were arranged on random dates—either I would call a marshal or Frank Blee, the manager of the DPW’s eviction warehouse, to arrange this, or they would call me when they scheduled removals—so there is no reason to believe that this sample was subject to selection bias. During every removal, I was granted full access and was able to observe what happened inside and outside the premises: the marshal’s interaction with the tenant, the state of the apartment before being packed, the movers’ conduct in packing the belongings, the tenants’ reactions to the removal, and the transfer of belongings to the DPW truck. Commercial removals are outside the scope of this paper, but for comparative purposes, I observed one such removal.
- Property Pick-ups: Pick-ups are often scheduled just minutes in advance, so I could not arrange to observe many of these. Nonetheless, I observed two tenants reclaim their belongings at various points when I was at the eviction warehouse.
- Auctions: I observed three monthly auctions, two in the spring and one in the fall. Blee confirms that these months were not particularly skewed in any way.

*Interviews:*

To supplement what I learned from the legal documents and personal observations, I interviewed a number of actors involved in all parts of the removal phase:

- Tenants and Their Attorneys: I interviewed fifteen tenants, whom I found in a variety of ways. I approached some tenants at their removals, found others at shelters, sent interview requests to removed tenants at their last known addresses, posted advertisements in the New Haven Advocate and on Craigslist.org. Overall, this sample may present a selection bias, as my methods likely excluded the most

desperate tenants who end up living on the streets after being evicted, those who are not able to be reached by postal mail or advertisements and do not check in to a shelter. In addition to speaking directly to tenants, I also spoke to five legal services or legal aid attorneys who represent tenants in evictions.

- Landlords and Their Attorneys: I interviewed four landlords, including the immediate past president of the New Haven Landlord Association. When landlords secure representation, they often deputize the attorney to handle the entire eviction, so the attorneys often know more about the experience of handling an eviction than do the landlords. With this in mind, I interviewed three landlords' attorneys. This total sample includes both individual and corporate landlords owning from two to over 200 apartments. I located these landlords primarily by cold calling names from Executions.
- State Marshals: I interviewed five of the eleven state marshals based in the City of New Haven. Collectively, these marshals have over a century of experience with removals. I was referred to these marshals by landlords' and tenants' lawyers, or by other marshals. Often these interviews took place while the marshal was supervising a removal.
- Department of Public Works: I conducted a number of interviews with the manager of the eviction warehouse and the City of New Haven DPW staff who pick up tenants' belongings from evictions. In addition, I spoke with staff at departments of public works or their counterparts in eight other municipalities to gather comparative data.

- Housing Court: I interviewed the New Haven Housing Court Clerk a number of times, and also interviewed an assistant clerk, and a housing specialist.
- Community Agencies: I spoke to employees of a number of agencies that might play a role in tenants' experiences, including the Executive Director and caseworkers at Community Mediation (administrators of the Rent Bank), the Executive director and caseworkers at the three largest shelters in the City of New Haven, and staff members at the Housing Authority of New Haven, Connecticut Department of Children and Families, Connecticut Department of Social Services, and National Student Partnerships.

#### *Other Sources of Data*

In addition, I relied on primary data from other sources that shed light on the removal process:

- Mental Health Client Listings: In order to understand the link between mental health and removals, I relied on client listings in the databases of the Connecticut Mental Health Center, the Connecticut Department of Mental Health and Addiction Services, and Criminal Justice Solutions. For privacy reasons, others accessed this data, compared it to a list of removed tenants I generated, and reported findings to me.
- Shelter Intake Records: In order to understand the link between removals and homelessness, I secured shelter intake data, including the name of the client and the date of check-in. Again, for privacy reasons, others accessed this data, compared it to my list of removed tenants, and reported findings to me.

- New Haven Police Department Incident Logs: In order to understand how often removals became violent or required police assistance, I secured a copy of the New Haven Police Department's incident log for landlord-tenant disputes in 2005.
- Marshal Income Statements: In order to understand the state actors responsible for carrying out removals, I made a FOIA request to secure 2005 income statements for all state marshals based in New Haven County.