NEW MEXICO LAW REVIEW

Volume 52
Issue 1 *Winter*

Winter 2022

Ashamed, Judged, and Unsafe: A Qualitative Study of Tenant Justice Perceptions to Inform the Redesign of Housing Court

Daniel W. Bernal
Stanford University

ASHAMED, JUDGED, AND UNSAFE: A QUALITATIVE STUDY OF TENANT JUSTICE PERCEPTIONS TO INFORM THE REDESIGN OF HOUSING COURT

Daniel W. Bernal*

ABSTRACT

Scholars have long suspected that tenants were skeptical of housing court, but prior studies—relying principally on surveys—have not borne that out. This qualitative empirical study draws from in-depth interviews and finds, in contrast to these previous studies, that tenants find the housing court process anything but fair, and describe a startling disconnect between their reasons for court attendance and their experiences of the hearings. Such negative justice perceptions may affect participation in housing court, compliance with judgments, and overall confidence in the judicial process. This Article suggests several legal and policy reforms to better align the housing court experience and tenant attendance goals, including more readable and empathetic court documents, amendments to rules of procedure for housing courts, and structural changes to the eviction hearing.

* J.D., Ph.D.; Stanford Legal Design Lab Fellow. I would like to thank Deborah Rhode, Rob MacCoun, Juliet Brodie, and Jacob Goldin for their thoughtful reviews of earlier drafts of this paper. I am especially grateful to Margaret Hagan at the Stanford Legal Design Lab for visualizing some of these experiences. I would also like to thank the Pima County Consolidated Justice Court for sharing data, providing space, and collaborating with researchers during the project. Finally, the project could not have been realized without the generous support of the National Science Foundation and without the team of insightful and hard-working interns who conducted surveys and assisted with the interview process—Timothy Reyna, Alexander Relich, Ireland O'Connell, Jack O'Sullivan, Madz Smith-Ledford, Vi Ramassini, Katherine Rybiy, and Eric Roshak.

> ***In eviction court, I feel like . . . "a scorpion being eaten up by a thousand shrieking ants . . . there is too many of them and there's only one of me."*** [1]

INTRODUCTION

It is late summer in Arizona; daily high temperatures rarely dip below triple digits. Nicole works nights and should be sleeping days.[2] But she cannot. Not in the apartment her landlord rented her with the faulty air conditioner. She notified the property manager, but he was not able to fix the problem.[3] She called local AC technicians, but they refused to work on her unit without the landlord's approval.[4] She never got it. Eventually, the leak in the AC worsened, flooding the boxes she never unpacked.[5] In the stagnant water, mold grew.[6] This was the final straw for Nicole. With allergies and corneal ulcers, a mold infection could lead to blindness.[7] So, she notified her landlord and stopped paying rent.[8]

Today, Nicole is being evicted. The judge stops and considers her story. He turns to her landlord's lawyer: "I am really torn on this, counsel. . . . I am going to set this for a bench trial."[9] The lawyer stands up, indignant. "Your Honor, the statute clearly requires that she do certain things. She has not done those things. She is rent striking!"[10] The judge interrupts him and asks clarifying questions. But, the lawyer picks Nicole's case apart:

> She has full use of [the apartment]. . . . If she's not there, she doesn't know if the repairs have been made. If she is there, then she is rent-striking and has not provided sufficient notice. . . . The statute is clear that if she does not do those things, she is rent-striking. There is no offset. There's not anything else. She owes this amount. . . . She still has [a] claim against the property, but not in this action.[11]

The landlord's argument proves fatal. The judge asks Nicole a few other questions;[12] and with each one, Nicole's voice grows softer and softer. She is out of her depth and has no lawyer to hold her up. A few minutes later, the printer whirrs

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1. Interview with Diego, Pima Cnty. Consol. Just. Ct. (Mar. 7, 2019). All names of tenants have been changed to protect confidentiality. All exchanges during court proceedings have been verified through court audio records. All transcripts on file with author.
2. Trial Transcript at 9, Property Grp. Mgmt. v. Nicole (Ariz. Pima Ctny. Consol. Ct., Sept. 2018) (audio recording and transcript on file with author) (litigant names have been changed and case number redacted to protect confidentiality).
3. *Id.* at 2.
4. *Id.* at 7.
5. *Id.* at 3.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 10.
10. *Id.*
11. *Id.*
12. *Id.* at 10–12.

and the hearing is over. Nicole walks back out into the familiar heat, judgment in hand, now owing her landlord $2,000. In all of this, she has been desperately searching for someone to hear her, someone to respond to her life-threatening issue. Today's hearing was just another disappointment. To assert her rights, she will now need to pay a lawyer or somehow figure out how to sue her landlord herself. All while homeless.

When COVID-19 eviction moratoriums lift, one out of every five renters may soon stand in Nicole's shoes.[13] Many may face not only legal debt and the loss of housing, but also deteriorating mental and physical health,[14] homelessness or less safe housing,[15] job loss,[16] and even suicide.[17] To staunch this impact, elected officials

13. Michelle Wilde Anderson & Shamus Roller, Opinion, *The Time for a Nationwide Eviction Moratorium Is Now*, HILL (July 25, 2020), https://thehill.com/opinion/civil-rights/508998-the-time-for-a-nationwide-eviction-moratorium-is-now. The initial eviction moratorium for certain federally covered properties expired on July 24, 2020. *See* Coronavirus Aid, Relief, and Economic Security Act § 4024, 15 U.S.C. 9058. Numerous states and the District of Columbia have placed additional moratoriums on eviction. For a review (and rating) of the eviction moratoriums enacted by each state, see *COVID-19 Housing Policy Scorecard*, EVICTION LAB, https://evictionlab.org/covid-policy-scorecard/ (last visited Mar. 16, 2021). Even states, however, that have not imposed eviction moratoriums have had de facto moratoriums with widespread court closures. *See, e.g.*, Dan Horn, *Landlord Sues to Reopen Eviction Court, Says Tenants Are Becoming 'Squatters'*, CINCINNATI ENQUIRER (June 2, 2020, 10:37 PM ET), https://bit.ly/3gGeAsO.

14. I originally surveyed the literature on the effects of eviction in Daniel W. Bernal, *Pleadings in a Pandemic: The Role, Regulation, and Redesign of Eviction Court Documents*, 73 OKLA. L. REV. 573, 574–75 nn.3–6 (2021). For the health effects of eviction, see, e.g., Janet Currie & Erdal Tekin, *Is There a Link Between Foreclosure and Health?*, 7 AM. ECON. J. 63, 86–87 (2015) ("[T]he estimates imply that 2.82 million foreclosures in 2009 resulted in an additional 2.21 million nonelective [hospital] visits. . . ."); Theresa L. Osypuk, Cleopatra Howard Caldwell, Robert W. Platt & Dawn P. Misra, *The Consequences of Foreclosure for Depressive Symptomatology*, 22 ANNALS EPIDEMIOLOGY 379, 385 (2012); Matthew Desmond, Carl Gershenson & Barbara Kiviat, *Forced Relocation and Residential Instability Among Urban Renters*, 89 SOC. SERV. REV. 227, 246–48 (2015) (reviewing health consequences of forced moves); Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, Sharon M. Coleman, Deborah A. Frank, Mariana Chilton, Maureen Black, Timothy Heeren, Justin Pasquariello, Patrick Casey, Eduardo Ochoa & Diana Cutts, *Unstable Housing and Caregiver and Child Health in Renter Families*, PEDIATRICS, Feb. 1, 2018, at 1, 8, https://pediatrics.aappublications.org/content/pediatrics/141/2/e20172199.full.pdf (finding three forms of housing instability to be associated with adverse caregiver and child health); Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 312—13 (2015) (finding that evicted mothers were more likely to suffer from depression, report worse health for themselves and their children, and more parenting stress).

15. Maureen Crane & Anthony M. Warnes, *Evictions and Prolonged Homelessness*, 15 HOUS. STUD. 757, 769–71 (2000); MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 299–300 (2016); Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1751 (2015) ("Multivariate analyses suggest that renters who experienced a forced move relocate to poorer and higher-crime neighborhoods. . . .") (authorities previously cited in Bernal, *supra* note 14, at 575 n.4).

16. Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 46, 47 (2016) (finding that the likelihood of being laid-off is "between 11 and 22 percentage points higher for workers who experienced a preceding forced move," compared to workers who did not) (authorities previously cited in Bernal, *supra* note 14, at 575 n.5).

17. *See generally* Katherine A. Fowler, Matthew Gladden, Kevin Vagi, Jamar Barnes & Leroy Fraier, *Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis:*

and judicial actors have enacted various solutions, such as eviction moratoriums, rental assistance, and remote hearings. But, the success of such actions will hinge upon how tenants perceive their own standing within the judicial system, the needs they bring with them to court, and the extent to which those needs are addressed.

When litigants perceive justice actors and systems to be fair, they are more likely to be satisfied with the outcome.[18] Litigants who perceive a justice experience as unfair are less likely to comply with a court decision, report less trust in judicial actors, and may be less likely to go to court to solve their problems.[19] Self-represented litigants and litigants of color are most likely to have negative justice perceptions.[20] Yet, while housing court is disproportionately filled with self-represented litigants and litigants of color,[21] survey studies find that tenants overwhelmingly describe the process as fair.[22] Such studies may be subject to reporting biases and other limitations,[23] and, appear to conflict with research showing that the summary nature of eviction proceedings hamstrings participation and the ability to employ substantive defenses.[24]

This Article provides suggestive evidence that these positive self-reports may mask the deep distrust many tenants harbor about housing court. Through original, empirical data from an in-depth interview study of twenty-eight tenants post-hearing,[25] I find that tenants overwhelmingly experience housing court as a disappointing reaffirmation of their status as members of the American underclass. Interviewees explain that hearings are only "fair" because laws are biased against tenants and believe that justice is only available for those who can afford it. Some of

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Findings from 16 National Violent Death Reporting System States, 2005-2010, 105 AM. J. PUB. HEALTH 311 (2015). There is scholarly debate as to whether these socio-economic effects are caused by an eviction or are merely correlated with it. *See* John Eric Humphries, Nicholas Mader, Daniel Tannenbaum & Winnie van Dijk, *Does Eviction Cause Poverty? Quasi-Experimental Evidence from Cook County, IL* 27–28 (Cowles Found., Discussion Paper No. 2186, 2019) (finding only small causal effects of an eviction order on financial strain, household moves, and neighborhood quality and suggesting that the significant distress prior to eviction court for both evicted and non-evicted tenants may be a greater cause, and not the eviction itself, on the fallout of this process); *see also* Richard Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households*, NYU LAW 1 (Dec. 2018), http://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf (finding "some evidence that evictions lower earnings modestly, but little evidence that they substantially worsen employment outcomes or increase receipt of public assistance") (authorities previously cited in Bernal, *supra* note 14, at 575 n.6).

18. *Infra* Section I(A).

19. *Id.*

20. *See infra* notes 41–48.

21. *See* Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, 7 SOC. SCI. 649, 649 (2020) (finding that Black and Latinx renters faced higher eviction rates).

22. *See infra* Section I(A).

23. *See infra* Section I(A); *see also* Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court,* 47 CONN. L. REV. 741, 750 (2015).

24. *See infra* Section I(B).

25. This interview study was conducted in parallel with a survey study, which overwhelmingly finds positive justice perceptions for housing court tenants. The draft manuscript of this survey study is on file with the author. *See* Daniel W. Bernal, Through the Evicting Lens: How Experiences in Housing Court Differ by Gender and Past Justice Experience (Feb. 13, 2021 (unpublished manuscript) (on file with author).

this distrust stems from judicial actors' unwillingness to address unsafe housing issues. A shocking three-quarters of tenants in our study identified at least one habitability issue—broken air conditioners, mold, cockroach infestations—yet, none of these issues were resolved during the judicial process.[26] But, this distrust also comes from a deep sense of shame. For many, eviction is not just a legal judgment, but a moral one. Tenants believe that those involved perceived them as poor, lazy, and unworthy, and felt judged, dismissed, and silenced. This sense of judgment fostered resignation, not indignation. Confidence in the justice system had eroded slowly, until the jagged edges were mostly gone.

It may appear intuitive that tenants lack confidence in the fairness of housing court proceedings. But, it is one thing to suspect brokenness in a system, and quite another to target specific areas for reform. Although jaded, respondents came to court for a particular reason. I hypothesized that negative justice perceptions might be related to a disconnect between reasons for attendance and the reality of housing court. Respondents clustered into three primary attendance-motivators: (1) to seek information or outcome, (2) to hold the landlord accountable, and, overwhelmingly, (3) to perform—and defend—their own narrative of good citizenship. For many, social performance was necessary to counter the perceived narrative that they were nothing other than stereotyped members of the underclass. Most housing courts designed to quickly process summary eviction proceedings—like the Arizona court I studied—are not designed to meet these goals. Like Nicole, tenants often leave court not only disappointed in the outcome, but also confused by the process, and frustrated by all of the arguments they were unable to make.

Understanding tenants' reasons for attending (or not attending) court is critical in addressing access-to-justice disparities.[27] But, while there is a renewed interest in designing policy to increase access to justice in housing courts,[28] there is a lack of research to inform such policy reforms. This Article helps to close that gap, and provides insight not only to courts and policy makers adapting to increased caseloads and socially distanced judging in this pandemic, but to all those interested in the redesign of housing court.[29] Although the small sample size prevents broad generalizations, the in-depth interview methodology provides insights that tenants might otherwise be reluctant to share, which can help to explain behavior and result in improved policy design.[30] I suggest three types of reform, each targeting a disconnect between expressed tenant goals and the experience of the hearing. First, to resolve tenant confusion, I suggest readable and empathetic language for a revised civil minute entry form.[31] Second, for tenants who leave their hearings unable to hold their landlord accountable, I suggest amending Rule 13 of the Arizona Rules of

26. *See infra* Section III(B)(4).

27. *See infra* Section I(C) notes 69–104 and accompanying text; *see also* Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS 49 (2019).

28. For a review of some of the most current eviction system interventions, see Stanford Legal Design Lab, EVICTION INNOVATION, https://evictioninnovation.org/.

29. *See infra* Section I(D).

30. In-depth interviews have often resulted in high impact studies about questions of law and culture. *See* Sara Sternberg Greene, *Race, Class, and Access to Civil Justice,* 101 IOWA L. REV. 1263, 1281 n.119 (2016) (collecting examples).

31. *See infra* Section IV(A).

Procedure for Eviction Action to require all judges to solicit any allegations that the landlord has not maintained the home in a safe condition.[32] Third, to better support tenants seeking to perform a narrative of good citizenship, I suggest judicial training and changes to the order, length, and content of the hearing.[33]

The remainder of the Article proceeds in five parts. First, I review the civil justice literature that explains why litigant perceptions of housing court matters. Second, I describe my data and methodology. Third, I explain how tenants evaluate their eviction hearings by exploring the metaphors they use to describe their experiences, and their evaluations of the judge, court, and justice system. Fourth, I explore the three primary reasons tenants give for court attendance, and how the court might more directly accommodate those motivations. Finally, I conclude with some suggestions on how housing court might be reimagined to help restore faith in our justice system.

I. LITERATURE REVIEW

A. Procedural Justice & Housing Court

Research into the consequences of civil justice problems has largely centered on investigations of how people's experiences with the legal system affect the law's legitimacy.[34] Procedural justice concerns the fairness of court procedures and interpersonal treatment, and distributive justice concerns the fairness of case outcome.[35] The most prominent theorization of procedural justice, Tyler and Lind's group value model,[36] posits that justice judgments and perceptions of self-worth within a community are influenced by the respect, trustworthiness, and neutrality of authority figures overseeing a dispute.[37] Over four decades of social psychological literature demonstrate that, for many litigants, procedural justice perceptions rival, if not outweigh, distributive justice perceptions.[38] When citizens perceive justice

32. *See infra* Section IV(B).

33. *See infra* Section IV(C).

34. Rebecca L. Sandefur, *What We Know and Need to Know about the Legal Needs of the Public,* 67 S. C. L. REV. 443, 457 (2016).

35. For a meta-analysis of procedural justice scholarship, see Rob MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Justice*, 1 ANN. REV. LAW & SOC. STUDIES 171, 184–85 (2005).

36. *See generally* E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988).

37. *Id.* In this model, people are inherently concerned about their social standing, and desire to maintain bonds with their valued groups and group authorities. Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, in ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 115–91 (1992); *see generally* TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990). Therefore, respect, trustworthiness, and neutrality communicated by an authority figure express relational or symbolic information about one's valued community status. *Id.*

38. For an analysis of the literature and a problematization of a "direct horse race comparison" between procedural and distributive justice, see MacCoun, *supra* note 35, at 185; *see also* Jonathan D. Casper, Tom R. Tyler, & Bonnie Fisher, *Procedural Justice in Felony Cases*, 22 LAW & SOC'Y REV. 483 (1988); TOM R. TYLER &YUEN J. HUO, TRUST IN THE LAW (2002); Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513 (2003).

system actors to be fair, they are more likely to be satisfied with the outcome,[39] view the system as having greater legitimacy, and are more willing to comply with the law, legal authorities, and court mandates.[40]

These studies show that court is not perceived equally by all litigants. Demographics, past court experiences, and distrust in the legitimacy of courts and motives of civil justice actors, can all affect litigant perception.[41] For example, *pro se* litigants report lower rates of satisfaction with the system.[42] Litigants of color generally report more negative perceptions, less trust in the legitimacy of the court, less identification with the community and country, and more negative experiences with legal authorities.[43] In one study, Black respondents were twice as likely as white respondents to believe that court outcomes are "seldom" or "never" fair as they were to believe that they are "always" or "usually fair."[44] Minority defendants report worse treatment, lower perceptions of the quality of the court's decision-making process, and less trust in the motives of court actors.[45] These experiences translate into less satisfaction with the court and its decision, and lower compliance.[46]

To date, procedural justice surveys in housing court have bucked these trends. Abuwala and Farole found that positive perceptions of housing court were driven by perceptions that court processes were fair.[47] Jones, Heuer, Penrod, and Udell, also confirmed that perceived positive treatment has a direct positive effect on perceptions of fairness and satisfaction.[48] With the exception of a 2013 study in

39. Jason A. Colquitt, Donald E. Conlon, Michael J. Wesson, Christopher O. L. H. Porter, K. Yee Ng, *Justice at the Millenium: A Meta-Analytic Review of 25 years of Organizational Justice Research*, 86 J. OF APPLIED PSYCH. 425, 425 (2001).

40. *See* TYLER & HUO, *supra* note 38, at 11.

41. *Id.*

42. JANE W. ADLER, ET AL., RAND CORP., SIMPLE JUSTICE: HOW LITIGANTS FARE IN THE PITTSBURGH COURT ARBITRATION PROGRAM 72 (1983), https://www.rand.org/pubs/reports/R3071.html (finding that pro se litigants were more likely "to believe that they had been treated unfairly" in comparison to represented litigants).

43. *See* TYLER & HUO, *supra* note 38; *see also* Tom R. Tyler, T.R. & Cheryl J. Wakslak, *Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority*, 42 CRIMINOLOGY 253 (2004).

44. DAVID B. ROTTMAN RANDALL HANSEN, NICOLE MOTT, & LYNN GRIMES, NAT'L CTR. FOR STATE COURTS, PERCEPTIONS OF THE COURTS IN YOUR COMMUNITY: THE INFLUENCE OF EXPERIENCE, RACE AND ETHNICITY 4 (2003), https://www.ojp.gov/pdffiles1/nij/grants/201356.pdf; TYLER & HUO, *supra* note 38, at 11.

45. ROTTMAN ET AL., *supra* note 44, at 4.

46. *Id.*

47. Rashida Abuwala & Donald J. Farole, *The Perceptions of Self-Represented Tenants in Community-Based Housing Court,* 44 COURT REV. 56, 60–61 (2008). Eighty-five percent of tenants surveyed had a nonpayment of rent case and around 60% ended agreeing to pay money to the landlord. And, they found that perceptions of the judge were highly correlated with the fairness factor across both contexts. *Id.* at 58–59.

48. Angela M. Jones, Larry Heuer, Steven Penrod, & David Udell, *Perceptions of Access to Justice Among Unrepresented Tenants: An Examination of Procedural Justice and Deservingness in New York City Housing Court,* 19 J. FORENSIC PSCYH. RESEARCH & PRACTICE 72, 72 (2019). But, they largely did not find that tenants' sense of deservingness correlated with their satisfaction with outcome, procedure, and judge.

the Bronx housing court,[49] procedural justice housing studies have been overwhelmingly positive. Jones and her co-authors found that over half of all respondents selected the highest score on all measures.[50] Abuwala and Farole found that 90% of all tenants characterized their perceptions of the judge positively across all factors, and about 80% of all tenants were satisfied with their court experiences.[51] Indeed, the survey results in a parallel study I conducted with many of the same tenants generally support these positive ratings. For example, only 18% of respondents disagreed with the statement that "[t]he judge made the right decision."[52] And, only 24% disagreed with the statement that "[t]he process by which my case was decided was fair."[53]

Some authors have been quick to qualify this optimistic finding. For example, Jones and her co-authors noted that, while tenants were highly satisfied with the outcome and procedure, those self-reports conflicted with the researchers' in-court observations, which found that tenants had "limited opportunities" to describe their claims or "demonstrate their understanding of the proceedings."[54] This optimistic perception of court processes is not limited to the housing-court context.[55] Such self-reporting is likely to be skewed by respondents' inclinations to provide a socially desirable response.[56] And, fairness perceptions may not signal actual fairness.[57] By presenting on tenant interviews conducted immediately after a procedural justice survey, this study provides some insight to the limitations of procedural justice survey data.

B. Summary Eviction Proceedings

In *Lindsey v. Normet*, the Supreme Court held that legislatures may limit triable issues in the judicial process of summary eviction—including warranty of habitability issues—without violating the Due Process and Equal Protection Clauses

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49. NEW SETTLEMENT APARTMENTS' COMMUNITY ACTION FOR SAFE APARTMENTS & COMMUNITY DEVELOPMENT PROJECT, TIPPING THE SCALES: A REPORT OF TENANT EXPERIENCES IN BRONX HOUSING COURT 19 (2017), https://takerootjustice.org/wp-content/uploads/2019/06/CDP.WEB_.doc_Report_CASA-TippingScales-full_201303.pdf?%3E.

50. Jones et al., *supra* note 48, at 80. The survey used a nine-point Likert scale, where the following percentage of all respondents indicated "9" or strongly agree for each category: 68% for fair outcomes, 70% for outcome satisfaction, 70% for procedure satisfaction, and 78% for satisfaction with the judge.

51. *See* Abuwala & Farole, *supra* note 47, at 59–61.

52. *See* Bernal, *supra* note 25. Survey data on file with author. Thirty-three precent strongly agreed, 25% agreed, 22% neither agreed nor disagreed, 11% disagreed, and 8% strongly disagreed.

53. *See id*. Twenty-three percent strongly agreed, 36% agreed, 17% neither agreed nor disagreed, 12% disagreed, and 12% strongly disagreed.

54. Jones et al., *supra* note 48, at 84.

55. *See, e.g.*, M. SOMJEN FRAZER, THE IMPACT OF THE COMMUNITY COURT MODEL ON DEFENDANT PERCEPTIONS OF FAIRNESS: A CASE STUDY AT THE RED HOOK COMMUNITY JUSTICE CENTER, CENTER FOR COURT INNOVATION iii (2006), https://www.courtinnovation.org/sites/default/files/Procedural_Fairness.pdf (noting that defendant responses to the traditional criminal court and responses to the community court were both very positive).

56. *See* Abuwala & Farole, *supra* note 47, at 58 (noting that respondents high percentages may be skewed for this reason); *see also* Deborah J. Cantrell, *Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 FORDHAM L. REV. 1573, 1583 (2002) (suggesting that survey responses are skewed positive by the "halo effect").

57. Steinberg, *supra* note 23, at 746.

of the Constitution.[58] City authorities had recently declared a building unfit for habitation (citing broken windows, missing steps, and improper sanitation), and the tenants refused to pay rent until the landlord remedied the issues.[59] Instead, the landlord threatened eviction, and the tenants filed a 42 U.S.C. § 1983 action seeking a declaratory judgment that the Oregon statute was facially unconstitutional.[60] The Court sided with the State, justifying the summary nature of the proceedings (including the two- to six-day pleading timeline, and the denial of defenses based on a landlord's breach of a duty to maintain the premises) because the statute intended to "obviate resort to self-help and violence . . . [by] provid[ing] a speedy, judicially supervised proceeding to settle the possessory issue in a peaceful manner."[61] "The tenant is not foreclosed from instituting his own action against the landlord and litigating his right to damages or other relief in that action."[62]

Over the past fifty years, substantive protections for tenants have improved at the federal[63] and state[64] levels. But, eviction procedures have not evolved to ensure that these protections are realized.[65] In fact, the summary nature of eviction

58. *See* Lindsey v. Normet, 405 U.S. 56 (1972).

59. *Id.* at 58–59.

60. *Id.* at 59–60.

61. *Id.* at 71–72 (noting also that common-law allowed for extra-judicial evictions, which were "fraught with 'violence and quarrels and bloodshed'" (citing Entelman v. Hagood, 95 Ga. 390, 392 (1895)). The Court in *Entelman v. Hagood* primarily justified the strict pleading timeline by looking at the history of the summary eviction proceeding, which has roots in two statutes created in medieval England, the statute of forcible entry, which punished persons who entered another's land unlawfully, *see* 8 Hen. 6, ch. 9 (1429) (Eng.), and the statute of forcible detainer, which criminalized the conduct of persons who refused to leave another's land after initially entering it lawfully; *see* 5 Rich. 2, ch. 8 (1381) (Eng.). 95 Ga. 390.

62. *Lindsey*, 405 U.S. at 66.

63. For an example of federal legislative changes, see, for example, The Fair Housing Act, 42 U.S.C. § 3601 (1968), and Title VIII of the Civil Rights Act of 1967, 42 U.S.C. §§ 3601–16 (1994 & Supp. 1997). For examples of federal court rulings, see Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Brown v. Southall Realty Co., 237 A.2d 834 (D.C. App. 1968); Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961).

64. The most extensive statewide reform was the enactment of the Uniform Residential Landlord-Tenant Act (URLTA). Unif. Resid. Landlord-Tenant Act, 9 U.L.A. 107 (Supp. 1999). For example, URLTA provides that landlord noncompliance is a defense to action for possession or nonpayment of rent. *Id.* at 408. Twenty-two states have enacted all or part of URLTA, and many other states have introduced similar acts. *See* Report to the House of Delegates, American Bar Association Resolution 115B (2016),
https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2016_hod_midyear_meeting_electronic_report_book.pdf. This includes Arizona. *See* Residential Landlord and Tenant Act, ARIZ. REV. STAT. ANN. § 33 ch 10 (2018).

65. Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 138 (2000); David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 423 (2011); *see* Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 575 (1982). For a discussion of the tenants' rights revolution, see Gerald Korngold, *Whatever Happened to Landlord-Tenant Law?*, 77 NEB. L. REV. 703, 703 (1998) (recognizing that in this era, "no area of the law was more vibrant than landlord-tenant"). The first case to recognize that a tenant could raise an implied warranty of habitability claim as a defense to eviction was *Javins v. First National Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970). *See* Korngold, *supra*, at 704 & n.5. Two years after *Javins*, the National Conference of Commissioners on Uniform State Laws

proceedings may frequently prevent tenants from employing substantive defenses.[66] A recent study of 40,000 evictions found only eighty instances of tenants asserting their landlords' breach of the implied warranty of habitability as a defense to nonpayment of rent, even though many in the study experienced substandard rental conditions.[67] Federal due process requirements may have evolved, and relevant state law may give many judges authority to hear these claims.[68] But, this Article primarily explores how the summary nature of eviction proceedings affects tenant-justice perceptions in order to make a policy argument for addressing these claims.

C. Legal Inaction & Civil Justice

Another strain of civil justice literature explores why most individuals with civil justice issues never approach the bench.[69] The Comprehensive Legal Needs Survey conducted by the American Bar Association found that while almost half of all low-income individuals report having one or more justiciable civil legal needs, over three-quarters of those with needs avoided the justice system entirely.[70] Aversion to legal resolution spans all demographics, but is concentrated in persons of a certain class and color. While low-income individuals are significantly more likely than their high-income neighbors to report experiencing civil legal problems,[71] they are significantly less likely to resolve those problems through the legal system.[72] While both Black and white respondents are resistant to seeking out help from the formal legal system, white respondents were more likely than Black respondents to seek out help in some circumstances, particularly when self-help measures failed and the consequences of ignoring the problem were significant.[73] The negative impacts of these civil justice problems are often more severe for low income households, and

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drafted the Uniform Residential Landlord and Tenant Act. *See id.* at 703–04. Section 2.104(a) codifies landlords' duty to make all repairs necessary to put and keep the premises in a fit and habitable condition, some version of which has now been adopted by statute in almost half the states. *State Adoptions of URLTA Landlord Duties*, Nat'l Conf. State Legislatures, https://perma.cc/R35S-3PUE.

66. Super, *supra* note 65, at 434–39; *see* Alan M. Weiberger, *Up from* Javins*: A 50-Year Retrospective on the Implied Warranty of Habitability*, 64 ST. LOUIS U. L.J. 443, 459–61 (2020) (finding that "tenants who fell behind [in rent] were unable to summon a building inspector for fear of eviction or withhold rent until repairs are made").

67. Paula A. Franzese, et al., *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS L. REV. 1 (2016).

68. Nicole's judge got this wrong. *See infra* Section IV(B) notes 307–13.

69. *See* Sandefur, *supra* note 27, at 49.

70. CONSORTIUM ON LEGAL SERVS. & THE PUB., AM. BAR ASS'N, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS: MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY (1994), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedstudy.pdf.

71. Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, AM. BAR FOUND., 9 (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa._aug._2014.pdf.

72. *See* Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. OF SOC. 339, 346–49 (2008); *see also* Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525, 551–54 (1980–81).

73. *See* Sandefur, *supra* note 72, at 350.

disproportionately impact people of color.[74] As Sandefur notes, "Taken together, existing evidence reveals that civil justice experiences can be an important engine in reproducing inequality."[75]

Theoretical and empirical research offers insight as to why people do nothing in response to their justice problems. Most of this scholarship fits within one of four approaches: "gap studies,"[76] legal consciousness,[77] "top-down,"[78] or "bottom-up."[79] Gap studies attempt to understand if and why there are differences between formal law and law in action.[80] Scholars find that groups often develop—and follow—their own norms, rather than formal law.[81] Legal consciousness scholars find that many citizens—especially those in subordinate positions—have an adversarial relationship with the law and see it as something to be resisted, as a foreign, occupying power, a tool of the powerful that is dangerous to oppose openly but which may be resisted subtly and tactically through "weapons of the weak."[82] The "top down" approach focuses on whether aspects of legal institutions—e.g., systemic barriers—affect whether people seek remedies.[83] Finally, the "bottom-up" approach seeks to understand "the process by which a legal system acquires its cases."[84] One such study found that high-income households were more likely than low-income households to seek a legal remedy for civil justice issues.[85] The study

74. Sandefur, *supra* note 71, at 10.

75. Sandefur, *supra* note 72, at 340.

76. *Id.* at 340–41.

77. Laura Beth Nielson, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment,* 34 LAW & SOC'Y REV. 1055 (2000).

78. The "top down" approach to the study of access to justice starts with legal institutions and focuses on aspects of these institutions that affect whether people seek remedies through them. *See, e.g.*, DEBORAH L. RHODE, ACCESS TO JUSTICE 85–93 (2004). Much of this literature focuses on the gate-keeping function that lawyers play. Stewart Macaulay, *Lawyers and Consumer Protection Laws*, 14 LAW & SOC'Y REV. 124 (1979).

79. The "bottom-up" approach is described *infra* notes 84–87.

80. See Sandefur, *supra* note 72, at 340–41.

81. *See, e.g.*, ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991) (studying ranchers and farmers in rural California and finding that they settle disputes completely ignorant of their legal rights because most people in the area find the costs of learning about the law and submitting to formal resolution procedures to be so high that it is easier to fall back on norms); Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55 (1963) (studying businessmen in contractual relations and finding that they frequently settle their disputes without regard to the original contract in place or reference to potential legal sanctions because they believe that they can settle disputes better than their lawyers).

82. *See* PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE (1998).

83. RHODE, *supra* note 78, at 85–93.

84. Sandefur, *supra* note 72, at 341; *see, e.g.,* CAROL J. GREENHOUSE ET. AL., LAW AND COMMUNITY IN THREE AMERICAN TOWNS (1994); *see* Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4 (1983); Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525, 532 (1980); Calvin Morrill et al., *Legal Mobilization in Schools: The Paradox of Rights and Race among Youth*, 44 LAW & SOC'Y REV. 651 (2010).

85. *See generally* William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .* , 15 LAW & SOC'Y REV. 631 (1980–81).

attributed these differences to unequal distribution of resources—such as knowledge, money, and time—that facilitate the law's use.[86]

A new wave of scholarship focuses on inaction in response to *civil justice* issues. Sandefur's Middle City study finds that many people do not think of their problems as legal.[87] Respondents in Sandefur's study were less likely to cite cost as a reason for not accessing the legal system,[88] and instead described their justice situation as "bad luck" and "part of life."[89] When asked about why they did not seek legal help, respondents frequently stated that they "[didn't] need any."[90] In another study, Sandefur found that the top five reasons for inaction included: (1) shame and embarrassment, (2) unfavorable power dynamics, (3) fear based on past experiences with the adversarial party, (4) gratitude towards the adversarial party, and (5) frustrated resignation.[91]

Greene's interview study found three other primary motivations for inaction: (1) negative *criminal* justice experiences and perceptions contribute to resistance to seeking out help from the *civil* justice system, (2) negative experiences with public institutions affected their desire to get involved in any kind of formal hearing, and (3) respondents developed personal narratives as self-sufficient citizens who take care of their own problems, making them less likely to seek help.[92] In addition, Sudeall and Richardson show that for public defender clients, who are certainly not strangers to the legal system or lawyers, civil justice is unfamiliar territory.[93] For these clients, a number of cognitive, procedural, and structural obstacles make it difficult to use the civil legal system to address relevant needs.[94]

The study of legal inaction is reframing the access to justice debate. While the historical approach towards this "crisis of unmet need" has been to get more people to attend court—by providing a lawyer or other self-help—Sandefur argues that unresolved justice issues require a wider range of solutions.[95] Sandefur frames the access to civil justice problem as both that access is *restricted*, and that access is systemically *unequal*.[96] Access is *restricted*, she argues, when "only some people,

86. *See id.* at 633–37.

87. Sandefur, *supra* note 34, at 448, 449, n.46 (explaining that people described their civil justice problems as "legal" in only 9% of all cases).

88. *Id.* at 450 (finding that cost only factored in to 17% of all cases).

89. *Id.* at 449.

90. *Id.* at 450.

91. *See* Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction, in* TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 123–26 (2007).

92. Sara Sternberg Greene, *Race, Class, and Access to Civil Justice,* 101 IOWA L. REV. 1263, 1266–67 (2016).

93. *See* Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs,* 52 UC DAVIS L. REV. 2105 (2019).

94. *Id.* at 2149 (explaining hurdles, including "pressure imposed by an inflexible work schedule and the inability to miss a day's pay, the inability to get oneself physically to an office or courthouse, limits on the clientele legal services organizations can serve, or simply the belief that those services do not or cannot address you or your needs").

95. *See* Sandefur, *supra* note 27, at 50.

96. *Id.* at 51.

and only some kinds of justice problems, receive lawful resolution."[97] The solution to restriction is *expanding* access to justice—when "lawful resolution happens for more people and problems than it does now."[98] Access is *unequal* when "some groups—wealthy people and white people, for example—are consistently more likely to get access than other groups, like poor people and racial minorities."[99] The solution for unequal access is to *equalize* access to justice—when "the probability of lawful resolution is the same for all groups in the population."[100] As Sandefur and Greene demonstrate, perceptions of restricted and unequal access are drivers of inaction—and inequity.[101]

This Article contributes to this literature by clarifying the reasons that motivate tenants' participation (or non-participation) in the justice system to address their housing concerns. Most tenants (in Arizona, about 80%) do not attend their eviction hearings.[102] And, while landlords file millions of eviction actions every year, most tenants choose not to participate in this legal process, and do not otherwise use the law—by counterclaiming or filing a separate claim—to enforce their housing rights.[103] Tenants may avoid the legal system for any number of reasons,[104] but perceptions of restricted and unequal access may play a part. And, by better understanding the motivations of those who choose to participate, we may be able to improve the tenant experience of housing court, and foster future participation.

D. Human-Centered Design

Finally, this Article draws from the growing body of justice innovation literature to provide recommendations for an improved housing court. Justice scholars have long theorized the need to reform court practices and procedures to

97. *Id.* Sandefur uses the example of a landlord-tenant. *Id.* at 51. ("Some of these tens of millions of justice problems are lawfully resolved, but research and observation show that many—particularly those involving a vulnerable party like a low-income tenant facing a powerful party like a property management company—are not.").

98. *Id.*

99. *Id.*

100. *Id.*

101. *See* Sandefur, *supra* note 27; Greene, *supra* note 92, at 1265.

102. Nationwide, documented default rates for eviction hearings range from 35% to over 90%. *See* DESMOND *supra* note 15, at 73 n.4. For Arizona default rates, see Daniel W. Bernal & Andy Yuan, *The Limits of Legal Nudges: A Field Experiment on the Impact of Self-Help Mailers in an Arizona Housing Court* 4 (under review 2022) (default data on file with authors).

103. *See* Franzese et al., *supra* note 67, at 3; *see also* Super, *supra* note 65, at 389–90.

104. Other reasons for inaction may include lack of awareness of the consequences of not going to court, costs of understanding their court case, confusion as to available defenses, and stigma and biases that inhibit their pursuit of going to court to advocate for themselves. For example, Matthew Desmond found that many individuals didn't show up to their court cases because they believed that if they just left the unit they wouldn't have an eviction on their record. *See* DESMOND, *supra* note 15, at 280. Compare this with research in tax that shows that many low-income individuals do not apply for the EITC tax credit because they were not aware of it—and changed their behavior subsequently with better information. *See, e.g.,* Raj Chetty and Emmanuel Saez, *Teaching the Tax Code: Earnings Responses to an Experiment with EITC Recipients,* 5 AMER. ECON. J.: APPLIED ECONS. 1, 2 (2013). And, the costs of understanding eviction documents are certainly not trivial. *See* Bernal *supra* note 14, at 588 n.72.

better serve customers.[105] But, this conversation has been recently reinvigorated with a wave of new scholarship advocating for human-centered design to make civil justice more accessible to people without lawyers.[106] These scholars aim to create a court system that is more human-centered, with better procedural justice outcomes, and improved experience of litigants (particularly those that are self-represented) with emphasis on respect, dignity, and participation.[107] For scholars like Quintanilla, the focus on procedural justice, dignity, and litigant participation is necessary to balance out other priorities, like judicial efficiency.[108]

One of the primary methodologies used among human-centered designers is qualitative interviewing. Interviewers seek to "empathize and immerse themselves with intended beneficiaries and stakeholders . . . to uncover their needs and experiences, embracing and identifying those needs in order to determine stakeholders' interest and goals before narrowing and identifying the problems to be solved."[109] From a human-centered design perspective, the first step towards housing court reform is to fully understand how it is experienced by the people who use it—or who choose not to use it. These interviews contribute to existing literature to help scholars and court practitioners understand tenant needs and experiences in housing court.

II. DATA AND METHODOLOY

A. Sample Selection

The data in this study consist of twenty-eight interviews with tenants immediately following their eviction hearings from February to April 2019 in one Arizona housing court. In collaboration with Pima County Consolidated Justice Court ("PCCJC"),[110] researchers set up tables outside the eviction courtroom, advertising with bilingual signs[111] and two large flags indicating affiliation with the University of Arizona. Researchers approached tenants waiting for their hearings to

105. Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform),* 62 FLA. L. REV. 1227, 1274 (2010); *see also* Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications,* 17 GEO. J. LEGAL ETHICS 423, 423 n.1 (2004) (listing statistics on some majority pro se courts.).

106. For a review of these methodologies, *see* Daniel W. Bernal and Margaret Hagan, *Redesigning Justice Innovation: A Standardized Methodology*, 16 STAN. J. C.R. & C.L. 335, 352 (2020); *see also* Shannon Salter & Darin Thompson, *Public-Centered Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal*, 3 MCGILL J. OF DISP. RESOL. 113 (2016–17).

107. *See generally* Victor D. Quintanilla, *Human-Centered Civil Justice Design,* 121 PENN ST. L. REV. 745, 749–51 (2017).

108. *Id.* at 750.

109. *Id.* at 749.

110. PCCJC operates under a consolidated justice court model, which means that all eviction actions are filed in one centralized court rather than in smaller local courts. This contrasts, for example, with Maricopa County, which has over eighteen individual justice courts located in local jurisdictions. This consolidated court model may negatively impact court attendance rates, as geographic distance from the court impacts court attendance. *See* Bernal & Yuan, *supra* note 102, at 10.

111. While survey materials were available in Spanish, only one tenant chose to conduct the survey in Spanish. This may have been reflective of the fact that only two of our team members were bilingual.

inform them about the study. And, the court clerk handed tenants a flyer after their hearings. Survey participants were compensated with a $10 Walmart gift card for the ten-minute survey and were offered an additional $40 for the hour-long interview. Any person over eighteen who had participated in an eviction hearing that day was eligible.[112] Interviewees comprised a subset of surveyed tenants (twenty-eight out of ninety-five). Survey results will be reported in a companion article.

In Arizona, when a tenant fails to pay rent or commits a material violation of the lease, the landlord serves her with a notice to either cure the breach or vacate the premises. Once the time on this notice expires,[113] the landlord has the option to file for eviction. Tenants must be served with a summons and complaint, and a five-minute hearing is statutorily set between two and six days of filing. PCCJC processes 13,000 eviction actions per year—just over one thousand every month.[114] Six out of every hundred rented homes in the area will experience eviction in a given year, making this jurisdiction one of the top twenty-five evicting areas in the country.[115]

Interviewees tended to be middle-aged, low-income, unemployed, and concentrated within high-poverty zip codes.[116] Forty percent identified as disabled. More identified as persons of color (42% Hispanic, 12% Black, 8% Native American, and 13% mixed race) than as white (41%).[117] While some reported a college degree (12%) or not finishing high school (13%), most reported either a high school diploma (30%), or some college (44%). Almost 90% attended court for a nonpayment of rent case and faced a lawyer hired by their landlord. At these hearings, tenants could achieve one of three outcomes: (1) a *completed* case, signifying that the court has entered judgment for the landlord-plaintiff, (2) a *vacated* case, signifying that the court has dismissed the case, and (3) a *continued* case, signifying that the judge has set the case for a longer hearing.[118] For interviewed tenants, 80% of all cases were completed, 16% were vacated, and 4% were continued. Ultimately, 84% of all cases were decided in favor of the landlord, with an average judgment against the tenant of $1,244.[119]

Tenants were statistically more likely to report that they had been summoned to court previously than to report that they had used court to get

112. Therefore, our study included some tenants who were not named tenants on a pending eviction action, but who were living at the address and had come to court to defend themselves.

113. Nonpayment of rent requires a five-day notice, material lease violations require either a five-day or ten-day notice depending on severity, and material and irreparable breaches can be as short as twenty-four-hours. Thirty and sixty day notices also exist for different issues. *See* ARIZ. REV. STAT. §§ 33-1368, 33-1342 (2021).

113. *See* Bernal & Yuan, *supra* note 102, at 10.

114. *Id.*

115. *See* EVICTION LAB, *Eviction Rankings: Top Evicting Large Cities in the United States*, https://evictionlab.org/rankings/#/evictions?r=United percent20States&a=0&d=evictionRate&lang=en.

116. For a complete breakdown of the demographics of survey respondents, see Bernal, *supra* note 25, at 3–4.

117. *Id.* Respondents were able to select more than one identity.

118. This means that tenants can remain in the house until the matter is resolved, although rent continues to accrue.

119. In addition, I also calculated the difference between the amount alleged in the complaint and the total judgment amount. Surprisingly, 35% of tenants end their case owing less than the amount alleged in the complaint. For all original survey data, see Bernal, *supra* note 25, at 5–6.

something they need.[120] The most common reasons that interviewees reported having been summoned to court were prior evictions (28%) and experience with the criminal justice system (44%). Almost half reported having been summoned to court two times (16%) or three or more times (32%). There were significant differences in reporting between interviewed and surveyed tenants, with interviewees more likely to report that they had been summoned to court before[121]—and summoned more often[122]—and that they had used court to get something they needed.[123] Several even changed their survey responses[124] upon reflecting during our conversation. While there are many potential reasons for this variance, it may support Sandefur's hypothesis that citizens do not classify many civil justice issues as legal.[125] Many interviewees seemed to keep (or guard) those past experiences—particularly criminal experiences—in a different mental category—and were reluctant to check the box until they realized it was appropriate (or safe) to do so.

B. Data Collection & Analysis

I hired and trained research assistants to administer and input surveys, and to help conduct some interviews. A researcher was available whenever eviction court was in session for the months of February, March, and April in 2019. Research assistants were responsible for administering the surveys and setting up interviews.[126]

One of the major contributions of this study design is that conducting interviews immediately after survey completion can help to explain or even to problematize survey responses. For example, tenants largely ranked the process as fair in the survey (although there were significant gender and racial differences).[127] But, in the interview, as tenants processed their experiences more fully, they often expressed greater frustration. Perhaps more importantly, several problematized the concept of fairness, attempting to draw a finer distinction between fairness as adherence to the letter of the law and fairness as adherence to the spirit of the law.[128]

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120. $p = 0.0015$. *See id.* at 6–7.

121. Eighty percent of interviewed tenants reported that they had been previously summoned to court, compared with only 52% of tenants who only completed a survey. *Id.*

122. Interviewed tenants were statistically more likely to report that they had been summoned to court 3 or more times. *Id.*

123. Forty-eight percent of interviewed tenants reported that they had used court to get something they need, compared with only 19% of tenants who only completed the survey. *Id.* (survey data on file with author).

124. Because I entered the survey aware of the bias in the literature towards overly just reports of procedural justice, see *supra* notes 47–50 and accompanying text, I chose to allow tenants to change their responses through the interview, though they were never directly prompted to do so. This decision was to allow tenants to report their most current understanding of the question. Five out of twenty-eight interviewed tenants requested to change their answers—or simply did so—during the interview.

125. *See* Sandefur, *supra* note 72, at 339.

126. Interviews were primarily conducted during the busiest weeks of the eviction calendar, when I personally attended court. Four interviews were conducted by one of my assistants, who were cross-trained for this purpose.

127. *See* Bernal, *supra* note 25, at 12–13.

128. *See infra* Section III(C)(3) notes 242–59.

Taken together, the data lends insight to the inherent limitations—and potentially misleading nature—of procedural-justice surveys.

Interviews took place in one of the client interview rooms at PCCJC. The semi-structured interview progressed through each section of the survey, asking the interviewee to elaborate on her evaluation of the judge, the court process, her landlord, the landlord's lawyer, reasons for attendance, and past experiences with court.[129] Additional time was spent on the tenants' experiences with court, and all interviewees were invited to provide a metaphor for their experiences. Finally, interviewees were asked to elaborate on how their past justice experiences and present eviction cases colored their experiences with the justice system.

All of the interviews were transcribed by a professional transcriber. Transcriptions were then coded through a grounded-theory process.[130] First, we created a "profile" of each interviewee, identifying the concepts they identified as most important, and paying attention to the metaphors they used to explain their experiences. These concepts were then mapped onto the general framework of the sections of the survey.[131] Once all the interviews underwent this first round of coding, the concepts that resonated throughout several profiles broadened into categories and nodes. The transcripts then were all loaded into a standard qualitative data analysis program (Nvivo) and each interview was iteratively re-coded using the categories and nodes.[132] I then conceptualized these themes and concepts by mapping their contents, boundaries, and interrelationships.

III. HOUSING COURT EVALUATIONS

A. Guiding Metaphors

To avoid reporting biases, and allow tenants to frame their experiences without the constraints of any expected response, I began by asking tenants if they could compare the experience of housing court to anything else.[133] If they needed help, I encouraged them to fill in the blank, "Eviction court is like. . . . " Most tenants

129. For brevity, I do not report on tenant-evaluations of the landlord and landlord-lawyer in this Article. But, I also coded and wrote up the major themes for these housing court actors, and find much of the same focus on class-status.

130. *See, e.g.,* JULIET CORBIN & ANSELM STRAUSS, BASICS OF QUALITATIVE RESEARCH: TECHNIQUES AND PROCEDURES FOR DEVELOPING GROUNDED THEORY 48, 159–60, 195 (3d ed. 2008). Generally, a "grounded" approach involves applying specific codes to data through an iterative series of coding cycles that ultimately lead to the development of a theory that is "grounded" in the data itself. *Id*.; *see also* JOHNNY SALDANA, THE CODING MANUAL FOR QUALITATIVE RESEARCHERS 51 (2d. ed. 2013).

131. Although many spanned more than one section and some tenants had little to say in some of the sections.

132. During the iterative coding process, some categories and nodes were deleted or revised to better fit the data.

133. I thank my friend Ben McDermott for giving me the idea to use metaphors, a strategy which he incorporated in his Ph.D. dissertation. *See* Benjamin R. McDermott, Pre-Service Elementary Teachers' Affective Dispositions Towards Mathematics (2014) (Ph.D. dissertation, University of Texas at El Paso) (on file with author); *see also* Necdet Güner, *Using Metaphor Analysis to Explore High School Students' Attitudes Towards Learning Mathematics,* 133 EDUC. 39 (2012); David Hagstrom, Ruth Hubbard, Caryl Hurtig, Peter Mortola, Jill Ostrow & Valerie White, *Teaching is Like . . . ?* 57 EDUC. LEADERSHIP 24 (2000); Hong-bo Zheng & Wen-juan Song, *Metaphor Analysis in the Educational Discourse: A Critical Review*, 8 CHINA FOREIGN LANGUAGE, 42–49 (2010).

came up with some comparison, and I distilled responses into three general categories. The first describes the immediate experience of the hearing (eviction as terror and anticipation); the second centered on the tenant's position in society (eviction as a reminder of class status); the third focused on the outcome of eviction (eviction as violence or consumption). I include visual representations of some of these metaphors drawn by Margaret Hagan of the Stanford Legal Design Lab.

1. Eviction as Terror & Anticipation

This first theme was expected: tenants were terrified to go to court. Tenants compared preparing for their hearings like a clock ticking,[134] having something always hovering above them,[135] and, most commonly, like going to the dentist.[136] For this group, eviction was scary, but routine. Even if everything would be fine,

134. Interview with Jacob, Pima Cnty. Consol. Just. Ct. (Mar. 27, 2019).

135. *Id.*

136. Interview with Katie, Pima Cnty. Consol. Just. Ct. (Mar. 29, 2019); Interview with William & Susan, Pima Cnty. Consol. Just. Ct. (Mar. 26, 2019); Interview with Paul, Pima Cnty. Consol. Just. Ct. (Mar. 25, 2019); Interview with Sarah, Pima Cnty. Consol. Just. Ct. (Mar. 28, 2019).

they did not want to deal with it.[137] And, they suspected that many tenants only chose to participate in their cases once the pain of the eviction got bad enough to justify the cost and the fear of the judicial process.

Other tenants focused their comparison on the hearing itself. To set the scene, PCCJC schedules as many as eighty evictions every hour. And the tenants cram in—children and partners and landlords and attorneys all shoulder-to-shoulder in the pews. Many days, there are wheelchairs and walkers in the aisles. Tenants watch and wait as judges call up others one-by-one. The process is visible, public.

137. Interview with Paul, *supra* note 136; Interview with Sarah, *supra* note 136.

Everyone approaches the table alone.[138] To Alberto, a veteran who was disputing a bedbug infestation, waiting in that courtroom inspired dread. Especially without a lawyer. As he described it:

2. Eviction as a Reminder of Class Status

I did not anticipate this second category of responses, and was surprised that it became the most common. Rather than focus on the mechanics of the judicial process, these tenants considered how the experience reflected their own social standing and value. These comparisons are richer with some context; so I only provide a select number.

Rosa carried pictures with her of the dog urine and feces leaking from upstairs. She stopped paying rent after repeatedly asking the landlord to fix the issue, and was evicted (as she saw it) because she did not do so in writing. To Rosa, this technicality could only deprive her of her rights "because I'm a peon renter. . . . We don't count. We're nothing."[139] Paul used the same metaphor. He believed that his landlord illegally revised the lease so that his disability payments no longer covered rent, and described court as "[d]isrespectful, like treating you like you're just another . . . peon. They make you feel like you're just another . . . you don't care about paying the rent."[140] Paul felt like housing court was a place where the peon went to be judged; Rosa believed that the outcome resulted from her peon status.

This was not William's first eviction hearing, and he'd been in prison before. But he thought that eviction court was just like "traffic court," a way for the city and the landlords to make money off the little guy. His apartment complex had a crime issue; recently, thieves broke into his car, leaving a screwdriver jammed into the ignition. The landlord would not make the place safer, and the police, like the courts, were more likely to find him guilty than to help. But, as his partner and co-tenant Susan expressed, the hearing was like Pink Floyd's *The Wall*:[141]

138. Alberto also compared the eviction table to an island, where he was all alone. *See* Interview with Alberto, Pima Cnty. Consol. Just. Ct. (Mar. 28, 2019).

139. Interview with Rosa, Pima Cnty. Consol. Just. Ct. (Mar. 20, 2019). The term "peon" refers to any person of low social status, and historically referred to a member of the landless laboring class in Spanish America. *See Peon*, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/peon.

140. Interview with Paul, *supra* note 136.

141. Interview with William & Susan, *supra* note 136.

After his roommate lost his job and could not come up with his portion of rent, Javier came to court to try to make the judge see that he was not in the same "category" as his roommate. But, he found that the judicial process of eviction was like "chicken feed,"[142] the judge tossing out judgments indiscriminately. Despite his efforts to perform another narrative, he was just

142. Interview with Javier, Pima Cnty. Consol. Just. Ct. (Apr. 29, 2019). There were several other examples of these class-based views. *See, e.g.*, Interview with Jason, Pima Cnty. Consol. Just. Ct. (Apr. 29, 2019) ("I don't know how to explain how insignificant I feel, next to . . . these people are big business, and I am just another . . . cog in the wheel. You know, it's an insignificant piece of what they need to stay big business."); Interview with Robert, Pima Cnty. Consol. Just. Ct. (Mar. 27, 2019) ("Just another poor person being treated like nobody . . . [by] people who are really supposed to be there, like judges. And the courts are supposed to there for [us]. You know what I mean? It's just another, it's just another day. Not another day but another instance of the system not working.").

> [T]ossed in a group with everyone else. . . . I don't know if the judge would ever see us as anything else. . . . And the way the system's set up is you're not going to get a chance to make him see any different. You're always going to be that, and that's just what they want.[143]

3. Eviction as Violence

This final category is an extension of the second. These tenants experienced their evictions not only as a reaffirmation of their class status, but as a potentially fatal act of violence against them, a violence that was socially acceptable only because of their class status.

Diego is a 59-year old Chicano who spent over ten years in prison for drug distribution. He has been struggling to survive the six years he has been out of prison, and is most proud of the trailer he is buying through monthly payments.[144] He only gets $750 per month for his disability, and rent costs $335, with utilities around $200.[145] To supplement, he landscapes the trailer park for a $100 rent reduction, and sells tamales. But, his stove stopped working and the property manager gave the landscaping gig to someone else. Without these side hustles, Diego fell behind.

Post eviction, Diego will not only have to move, but will lose all of the improvements and investment he has put into the trailer. When I asked Diego about his investment in this house, he said, "Quite a bit of money; everything I had."[146] Diego believed that his home is the stability keeping him out of jail. He said, "I mean, I got out of prison in 2015, with not a single penny. . . . [I] got a job. . . . [I was] saving, saving, saving. . . . That home was the first thing I bought since 1985. . . . They want to take it all away and it just, it hurts."[147] Given this context, Diego described the eviction process as follows:[148]

143. Interview with Javier, *supra* note 142.

144. Interview with Diego, *supra* note 1.

145. *Id.*; *see also* Civil Complaint filed against Diego (Feb. 28, 2019) (on file with author).

146. Interview with Diego, *supra* note 1.

147. *Id.*

148. *Id.*

As a scorpion, Diego does not see himself as a powerless actor. But, even he has been overwhelmed by a system controlled by others, a system that is eating him. As he sees it, the landlords work with the judges, and he has

> [H]eard that this manager has sold a couple of trailers more than once. When they get down to the point when we're going to pay it off, he finds something [wrong and] kicks them out and then he . . . sell[s] the trailer all over again [and gets] his down payments.[149]

To Joe, eviction is going for the jugular. He was evicted because his roommate, while drunk, broke the windows of a car that repeatedly parked in his space. He knew his roommate deserved punishment, but eviction was too harsh. In one sense, the eviction was "fair" because the landlord had tacked a crime-free addendum in the lease and the police had been called. But it was also unfair—there

149. *Id.*

had not been any problems in five years of renting and the landlord needed to find a "middle ground," to "not go for the jugular right away and say[], 'Get out.'"[150]

Taken together, these metaphors betray the underlying terror, judgment, and violence many tenants experience in the judicial process of summary eviction. I include them first as a lens through which to view all other eviction relationships and ideologies. In understanding how tenants evaluate the judge, for example, we must understand that these evaluations are often coming from tenants who have long felt that the system is biased against them, who experience eviction as a form of violence, who fear that they are being judged for being poor.

B. Judge

Other procedural justice studies have shown that the judge is the most important actor in determining perceptions of fairness.[151] Our survey results were no exception: the strongest predictor of a tenant indicating confidence in the fairness of the justice system was whether the tenant felt the judge gave her the opportunity to tell her story.[152] Judicial personality looms large when tenants are asked to visualize themselves as future participants in the justice system. Sarah believed that the judge had vast discretionary power, and whispered to herself as she waited, "Please let it be a good person, just let it be a good person."[153] While surveyed tenants overwhelmingly portrayed their judges in positive terms, with only 8% disagreeing with the statement "The judge treated me with respect,"[154] interviews revealed more negative perceptions. The following themes were the most common: judge as dismissive, predetermined, judgmental, an outsider, legally constrained, and human.

1. Judge as Dismissive

Over half of all interviewees found the judge dismissive. Many lamented that the judge let the landlord speak first, shunting the tenant's story to the end.[155] This voice deferral grew worse as the hearings progressed, particularly when tenants felt their landlords were lying. Many tenants expressed frustration with the judge recommending that they talk it over with their landlords. They came to court because they wanted to be heard by someone in authority, because they were unable to reach an agreement with their landlords. As one tenant described:

> Three or four times she put up her hands to me and said, "Sir, you'll have your chance to speak. . . . Hold on, you'll get a chance, hold on you'll get a chance," and then as soon as they got to the end, the last one was, "Hold on, you'll get a chance to talk about

150. Interview with Joe, Pima Cnty. Consol. Just. Ct. (Mar. 19, 2019).

151. FRAZER, *supra* note 55, at 24–25; *see also* Abuwala & Farole, *supra* note 47, at 60–61; ERIN J. FARLEY, ELISE JENSEN & MICHAEL REMPEL, IMPROVING COURTROOM COMMUNICATION: A PROCEDURAL JUSTICE EXPERIMENT IN MILWAUKEE 2–3 (2014).

152. Bernal, *supra* note 25, at 12.

153. Interview with Sarah, *supra* note 136.

154. Bernal, *supra* note 25, at 12.

155. As a legal matter, it makes sense that the landlord-plaintiff would speak first before the tenant responds. I only note that tenants negatively reacted to this order and that its practical effect may be to reduce tenant participation.

> this with your landlord," and I'm like, "You guys! You guys aren't listening. . . . Nobody wants to listen!"[156]

Several tenants felt that the judge denied them a voice because they had not complied with certain regulatory guidelines or because of the speed of the hearing. A few could not speak because they were not on the lease; others were silenced as soon as they admitted to unpaid rent or evidenced improper notice; still others felt muted by the speed of the process: "The judge wasn't interested in really what I had to say, because he was constantly focused on the fact of I did not personally have [a court document] served on [the landlord] by 12 o'clock noon."[157] "He seemed genuinely compassionate, but just didn't hear, you know. . . . All he wanted to hear was if we owed the money or not. He didn't elaborate on anything else."[158] "Well, the judge, for one, did not let me explain anything."[159] "So it gets repetitive. . . . I'm sure he cares, but it was like at a certain point, you're just reading numbers off a page. It's like, who cares? You know what I mean?"[160]

2. Judge as Predetermined

For some tenants, the dismissive demeanor was evidence of a predetermined outcome—not only for themselves, but for all poor tenants. One tenant repeated four times that the judge did not listen and then lamented, "They listen to the wrong people."[161] I excerpt three descriptions of this predetermined-outcome theme below:

> [The judge] wanted it limited to the five minutes and not go beyond it. . . . That's unfair to me because that's again, pushing a resolution, which is not gonna be in my favor if he's already predetermined not to hear the facts;[162]

> [The judges are] supposed to be neutral, but they aren't in this courtroom. There's a presumption of guilt on the tenant part;[163]

> I was very surprised at [the judge's] demeanor because his attitude towards me was anger, and to shut me up, and to rule against me, and that was his mission. He did not want me talking. He did not want me challenging him or putting out facts of law. He just wanted to rule against me.[164]

156. Interview with Alberto, *supra* note 138.
157. Interview with Mary, Pima Cnty. Consol. Just. Ct. (Mar. 22, 2019).
158. Interview with Lourdes, Pima Cnty. Consol. Just. Ct. (Apr. 29, 2019).
159. Interview with Lola, Pima Cnty. Consol. Just. Ct. (Apr. 29, 2019).
160. Interview with Javier, *supra* note 142.
161. Interview with Irene, Pima Cnty. Consol. Just. Ct. (May 1, 2019).
162. Interview with Javier, *supra* note 142.
163. Interview with Mary, *supra* note 157.
164. Interview with Valeria, Pima Cnty. Consol. Just. Ct. (Mar. 27, 2019).

For these tenants, a pro-landlord ruling felt like the path of least resistance. Constrained by time, judges needed to quickly get to an outcome. And, some tenants felt that their stories, which complicated the tenant-didn't-pay-rent narrative, just got in the way. As Irene described her case,

> Yeah, [the judge] just wants to get rid of it. It's annoying to him. It's a burden for him to have to deal with it . . . because each time he was just annoyed. . . . But I feel like just the case in general, he just didn't want to have to deal with it. Because he would not listen to me.[165]

Other tenants attributed their pro-landlord rulings as evidence of systemic bias. "Yeah, I wish I woulda known that the judge really don't care about the renter, or what your issue is. It's all about the almighty dollar. That's all it's about."[166] Such exchanges reflect the eviction-as-reminder-of-class-status framing. As one tenant noted, "Landlords, they always winning."[167]

3. Judge as Judgmental

Many tenants expressed concern that the judge was judging them not only legally, but also morally. As one tenant concluded, "Judges, they can be rude. If they feel that you're doing something wrong, you're not paying your rent or something, being judgmental."[168] For many tenants, this feeling of being judged and disrespected is a daily experience. But, coming from a judge, it stung worse. Lola, one of several tenants in our study who disclosed mental health issues, described her experience this way:

> [B]eing disrespected by you or somebody else, I can brush that off. . . . But being disrespected by your landlord or a judge, like wow, now I know what you really think of me. I must be scum of the Earth. I made a statement in there: "I'm better off to go slice my wrists, than [to] even think you would understand me."[169]

As Lola explained in detail throughout her interview, she could not brush off her landlord's disrespect because she had to live with interacting with him on a daily basis.[170] And she could not brush off the judge's disrespect because the judge was her last hope, a final verdict of society's judgment of her.[171]

Many tenants worried that the judge—perhaps a stand-in for society—saw them as a bad person. They pleaded with the judge to see beyond what the landlord wrote in the complaint. Valeria noted, "So, I don't know if understanding means that I'm trying my best to work and just try to work every day, so he kinda understood

165. Interview with Irene, *supra* note 161.

166. Interview with Rosa, *supra* note 139.

167. Interview with Diego, *supra* note 1.

168. Interview with Shanice, Pima Cnty. Consol. Just. Ct. (Mar. 28, 2019).

169. Interview with Lola, *supra* note 159.

170. *Id.*

171. *Id.*

that I'm not just being. . . . I'm trying."[172] Emmie cried after leaving a hearing because she felt like she was "a child . . . being punished," and felt like a "piece of crap for not being able to pay [rent]."[173] Rosa told me that she most wished that judges would understand that tenants "are not always bad people. Sometimes there's issues. [The judge] should take it on a one-on-one basis, on what's going on in that person's life."[174]

Robert, a tenant not named on the lease, understood why the judge did not allow him to speak, but objected to the landlord characterizing him as "one of the illegal[s]" living there.[175] He wanted to be able to "sit at the table," and be able to say, "This is why I say I'm not there illegal[ly]."[176] Robert was most worried that the judge would think that they were, "Just posted up at his place. Just like bums or something."[177] He came to court, in part, to clear his name: "Maybe I'd have still be evicted but not with looking like trash, I mean."[178]

Judges must intimately understand the ignominy of eviction. When Jess listened to her landlord read the list of charges against her in open court, she "just felt crawling under a rock."[179] She described it as "taking everything [she] had" just to show up.[180] Jess's landlord told us that he felt the eviction hearing reflected poorly on him too, and she recoiled; "Nothing was said about you and how you handled things. . . . You were saying it about another person. You weren't saying it about yourself."[181] For Jess, her character was on the line. And she feared she would not be able to set the record straight.[182] As Javier explained, the monotony of the eighty evictions per hour makes it difficult for the judges to ever see them as anything but a number:

> I don't know if the judge would ever see this as anything else, because he's been, I would imagine he's been doing it for God knows how long, so he's only ever going to see this. And the way the system's set up is you're not going to get a chance to make him see any different. You're always going to be that, and that's just what they want.[183]

4. Judge as an Outsider

A final criticism tenants expressed was that judges were so far removed from the tenants they were judging. As Diamond described, "Let's be real. What judge here has been evicted? Now, I can tell the judges who are humble and

172. Interview with Valeria, *supra* note 164.
173. Interview with Emmie, Pima Cnty. Consol. Just. Ct. (Mar. 27, 2019).
174. Interview with Rosa, *supra* note 139.
175. Interview with Robert, *supra* note 142.
176. *Id*.
177. *Id.*
178. *Id.*
179. Interview with Jess, Pima Cnty. Consol. Just. Ct. (Apr, 29, 2019).
180. *Id.*
181. *Id.*
182. *See id.*
183. Interview with Javier, *supra* note 142.

understand certain things, but let's be real here. He's a white judge. He does not understand everything."[184] For Diamond, that the judge was of a different race and class meant that he could never fully hear her across the differences. She evaluated her individual judge fairly positively; however, she argued that judges "relate more to the landlord than the tenants 110 percent."[185] Lola wanted judges with "life experiences of what we go through: addiction, losing your kids, being on the street, living off of a certain income, living off of welfare."[186] Instead, all judges "went to Harvard and [are] high class snobby. [They] couldn't even smoke a joint if they wanted to."[187] Mary went so far as describing the judge as a landlord litigator.[188] Irene lamented a lack of empathy from judges and staff, who see defendants as numbers, not people, "But if the roles were reversed and that was maybe their daughter, their sister, their mother, I'm pretty sure they'd be a lot more nicer [sic] and polite and professional, and they're not."[189]

Tenants felt the judge-as-outsider paradigm most intimately when tenants felt unheard while raising habitability issues. Of the twenty-eight interviewed tenants, nineteen mentioned that they had some habitability issue they wished the judge would have considered. Some were unable to state their claim because of the pace of the hearing. Others mentioned their problems, but the judge told them that the issues were not appropriate, although they retained the right to bring a suit later. None filed any other claim against their landlords, leaving every issue unresolved. Some framed the failure to address these tenant-issues as a failure of the judge's ability to identify with tenants. For example, Rosa said this of her judge: "He doesn't hear. Sure, shouldn't he care that. . . . Let me tell you, if that judge had to live where I was living and there was [sic] feces and urine being dropped. And you have to dodge where you're walking, he wouldn't feel that way."[190]

For these tenants, judges did not understand that these habitability issues were directly linked to the tenants' (non)payment of rent. Failing to hear or deferring these issues branded the judge as an outsider, someone who did not understand what it meant to be a tenant in town.

5. Judge as Legally Constrained

One common, neutral evaluation of the judge was the perception that his ruling was legally mandated. As one tenant described it, "He wasn't a bad judge, he did what he had to do. It's just messed up. Things are just the way that they are. He has to keep his job too."[191] Another noted, "But I think if, by law he could have, I think he would have. I just think the way the law is, he wasn't allowed to."[192] Still another said, "I guess he was still constricted by the letter of the law."[193]

184. Interview with Diamond, Pima Cnty. Consol. Just. Ct. (May 3, 2019).
185. *Id.*
186. Interview with Lola, *supra* note 159.
187. *Id.*
188. Interview with Mary, *supra* note 157.
189. Interview with Irene, *supra* note 161.
190. Interview with Rosa, *supra* note 139.
191. Interview with Diamond, *supra* note 184.
192. Interview with Robert, *supra* note 142.
193. Interview with Jason, *supra* note 142.

These tenants distinguished the person of the judge from the law. Many of these tenants ranked the judges highly for allowing them to tell their stories even though they understood that it would not make any difference. For example, Jason said that his story would not help "because of [the judge's] legal bindings."[194] Still, he believed telling it would give him "more a sense of fair play."[195] This voice effect tracks with procedural justice literature,[196] and suggests that tenants may still experience eviction hearings positively if they have a chance to tell their stories, even if the telling has no bearing on case outcome. But, it does not change an underlying perception that the law—and, therefore, the larger justice system—is biased against tenants.

6. Judge as Human

A final theme from tenants, which was overwhelmingly positive, related to the humanity of the judge. Several tenants reflected positively on judges looking them in the eye,[197] saying good morning,[198] and speaking in colloquial terms. For example, when I asked why one tenant rated the judge as highly respectful, he simply noted that the judge said, "How are you doing?" Another tenant noted, "Well, for one thing, when I started, she said—just not in those words—like, 'hold your horses, young man,' you know, and, uh, so right there, the way she said it to me was respect[ful]."[199] The unifying theme seems to be that tenants rated judges highly when they felt like they were being treated like people, not numbers. In contrast, tenants expressed frustration about judges constantly looking at their computer screens.[200] Interestingly, tenants even reacted positively to *stern* judges when they felt they were being spoken to as equals. One tenant, who "strongly agreed" with all questions about the judge noted, "I just like the judge because he's just straight up; he didn't BS nobody. He put me in my place twice. . . . I spoke out of turn and I shouldn't have done that . . . but he was very cordial. . . . And I was like, 'I'm gonna shut up.'"[201]

Tenants wanted the judge not to assume that they were a bad person just because they were being evicted:

> Respect? He let me say my story and he didn't treat me like I was a bad person for being evicted and not being able to pay rent. . . . I didn't feel so intimidated. I didn't feel like I was a piece of crap for not being able to pay my rent or that. You know what I mean?[202]

194. *Id.*

195. *Id.*

196. *See supra* Section I.A.

197. *See, e.g.*, Interview with Valeria, *supra* note 164 ("He looked me in the eye and he basically [said], 'Do you have any questions?'"); Interview with Katelyn, Pima Cnty. Consol. Just. Ct. (Apr. 30, 2019) ("[A]nd the way that he made eye contact made a big difference.").

198. Interview with Jacob, *supra* note 134.

199. Interview with Diego, *supra* note 1.

200. Interview with Lola, *supra* note 159.

201. Interview with Christopher, Pima Cnty. Consol. Just. Ct. (Mar. 25, 2019).

202. Interview with Emmie, *supra* note 173.

And, tenants wanted to feel like the judge was human and cared about what happened to them after they left the courtroom. One tenant described respect as:

> [J]ust the kindness he had in his voice. The sincerity, pretty much. . . . He sounded kind of apologetic, like he really meant that he had to do this and he was really open about a lot of stuff. Just very, very open about, very easy with it. Easy going in the words and everything else in how he was saying it.[203]

Tenants also specifically responded positively to judges distributing social resources to tenants after the hearing.[204] These resources included information about rental assistance and local shelters.

For tenants, good judges spoke kindly, went out of their way to ensure that tenants did not feel morally judged, and expressed concern about what happened to the tenant after the judgment printed. And good judging, at least in part, appeared to soothe some of the stigma of perceived social standing. But, as one tenant noted,

> To see these judges, you just don't have belief in your justice system. One nice judge is every million[th] judge or something. . . . Like one in one thousand you'll get and they're nice, they're understanding, they're polite. The rest of them, "Get the hell out of my courtroom because I don't want to hear your side of the story."[205]

C. Court Processes

Tenants largely conflated their view of the court process with their view of the judge. When they felt the judge treated them fairly, they also experienced the process fairly. Procedural justice—rather than distributive fairness—more closely mapped onto overall confidence in the justice system for many tenants.[206] But, while tenants largely assessed their hearings as "fair," they overwhelmingly expressed frustration with the system. Out of twenty-eight tenants, nineteen believed that the process was biased towards the landlord, nineteen admitted to not understanding the process, seventeen said that it was too fast, and fifteen felt that the court was "uncaring" and just business. Tenants also frequently distinguished "fairness" from "rightness."

1. Court as Confusing

Tenants expressed confusion with the complex notice and pleading documents,[207] the hearing, and the civil minute entry document received afterwards. Several did not understand they had lost until they went over the paperwork with researchers. Because judges often encourage tenants to work out a deal with their

203. Interview with Paul, *supra* note 136.

204. Interview with Emmie, *supra* note 173.

205. Interview with Lola, *supra* note 159.

206. In our sample, tenants who had better outcomes expressed a more negative view of the court process. But, our sample size for these tenants was too small to generalize.

207. *See generally* Bernal, *supra* note 14 (analyzing the complexity of eviction notice and pleading documents in Arizona).

landlords post-judgment, many tenants misinterpreted the judge's comments to signify that the court had not ordered an eviction. Valeria, like many tenants, attempted to read through the civil minute entry with me:

> For the rent, late fees, that's $150. . . . This doesn't say anywhere that he gave me a chance to talk to the landlord. Does it say it anywhere? *The court be fully advised*. . . . I am the plaintiff, right? Am I?. . . . Oh my gosh, I got confused with this. *And try to recover by the plaintiff*. So they, in other words, won, right?[208]

Diego described his experience in court as "dumbfounding" and questioned, "Like, which way did it go, which way did it go?. . . . I didn't hear a verdict, you know. I didn't hear a decision. Was there a decision? So am I getting evicted?"[209] I've included four other excerpts of questions tenants expressed after their hearings:

> I really didn't understand what he meant, but he just told me I could go and I could, if those things can't be fixed, if they don't be fixed, then we just move. Otherwise, I could file a motion, I guess, saying that she doesn't fix nothing. That's what he said. I didn't quite understand everything he said;[210]

> I don't know what it means. *The court will be divided by the*. . . . I don't know much about this. Just that I had to be here. She gave me this. I have to pay that. Everything like that. Yeah, okay. . . . Yes. I need to take care of business. That's what it is;[211]

> I understood it, but when I'm reading this, especially with the utilities, I don't understand that;[212]

> Anyways, basically it says my last date that I can basically be there, unless I work something out. . . . I don't know if eviction still gets pushed through and it's just, I don't know exactly how that would work. Because then I'm paying them, but I still basically got an eviction, so does that still come out as an eviction on my history?[213]

Tenants were rarely passive: they sought out legal aid, filed complaints with the Attorney General, filed letters with the judge, showed the judge cell phone pictures, brought eyewitnesses, and presented binders full of evidence.[214] But, no tenant filed an Answer or Counterclaim, and many expressed confusion with their

208. Interview with Valeria, *supra* note 164. *See also* Interview with Shanice, *supra* note 168 (halting reading of the civil minute entry, punctuated by "I do not understand.").

209. Interview with Diego, *supra* note 1.

210. Interview with Emmie, *supra* note 173.

211. Interview with Mateo, Pima Cnty. Consol. Just. Ct. (Mar. 27, 2019).

212. Interview with Shanice, *supra* note 168.

213. Interview with Javier, *supra* note 142.

214. Interview with Eduardo, Pima Cnty. Consol. Just. Ct. (Mar. 28, 2019).

role in court and how to prepare.[215] For example, Sandra had criminal court experience, but did not know what part she had to play in the eviction hearing. She wrote a letter to explain her situation but she thinks the judge never read it.

> I was already uncomfortable when I first went up because I was supposed to go sit in a certain seat or stand at the podium or whatever . . . [The judge] goes, "Well, go ahead and sit down," so I went back to my seat and he goes, "No, in these seats," because nobody really sat there. . . . [And I wanted to say], "Your Honor, read the freaking letter, just read the letter." I didn't know my part.[216]

Sandra was used to having a public defender, but, in "[e]viction, I guess you're on your own."[217]

For many tenants, both the time to eviction—two to six days from filing—and the length of the hearing—five minutes—were too short. When I asked Jess to describe the one thing she would want to change about the eviction process, she replied, "Time . . . more time."[218] Most tenants framed time constraints as either limiting their preparation or truncating their story. Shanice, a Section 8 housing recipient whose accounts were frozen for suspected fraud, was not able to show the judge the bank records that she brought to court with her because "it was done fast."[219] She lamented, "I should've. If I had time, I would have. If I had time, I would have."[220] Valeria wanted to explain to the judge a fire that related to her non-payment but lamented that the hearing was "very short, just 'pick a number.' You know what I mean?" [221] She left the hearing frazzled and wished the judge would have asked her, "Can you elaborate a little bit more?"[222] Sarah compared the speed of the judicial process in Arizona to the speed of the process in other states where she had faced eviction.[223] Jason compared it to the speed of other judicial processes he faced, concluding that "[n]o other part of court moves that fast." [224]

Some tenants described short timelines as proof of systemic bias. Five minutes was not enough to get into the nuance of any particular case—in which tenants felt they would be heard and exonerated. It was only enough to enter judgment. These tenants described this as follows:

> The judges will openly state, and I've seen this, unfortunately, [in] more than one situation, that this should've been a five-minute case and the presumption that I see, as the opposing side, is I'm going to lose. I'm . . . only gonna be given five minutes, enough

215. *Id.*
216. Interview with Shanice, *supra* note 168.
217. *Id.*
218. Interview with Jess, *supra* note 179.
219. Interview with Shanice, *supra* note 168.
220. *Id.*
221. Interview with Valeria, *supra* note 164.
222. *Id.*
223. Interview with Sarah, *supra* note 136.
224. Interview with Jason, *supra* note 142.

> time for them to state their case and for the judge to rule against me;[225]

> It was too fast. . . . It wasn't enough time to let me explain my situation. . . . They only had time to understand the corporation's position. . . . They put the case from their point of view. They didn't put the case from the tenant point of view;[226]

> So [the judge] just seemed [like] he just wanted you in and out. He didn't care what the facts were. . . . "Okay, you owe this much money. I'm going to decide with the plaintiff. You either pay it or get the hell out.". . . . And that's in and out. . . . It took him five minutes to agree with them. . . . And that was it. . . . It was already decided. . . . It could've been a second. In my head, because of my anxiety and stuff getting worked up, it felt like it was five minutes that it took him to just [say], "Well, you're screwed. Go on your way. Bye."[227]

2. Eviction as Business

Tenants overwhelmingly described themselves as the "business" of the landlords, the lawyers, and the courts. These responses recall a 2015 inquiry by the Department of Justice into the police and courts of Ferguson, Missouri, which found that the municipal court sought primarily to "maximize revenue,"[228] resulting in "constitutionally deficient procedures"[229] and "erode[d] police legitimacy and community trust."[230] Post Ferguson, such language should be particularly concerning to stakeholders. William explicitly compared housing court to traffic court: "It's just favorable to the city and keeping it, the money, coming in and keeping the money and finances flowing. . . . "[231] While many of these comments were directed at the landlords or their lawyers, many tenants viewed landlords, lawyers, and courts to be inextricably intertwined, and to all view poor tenants from the cold perspective of profit. I intertwine the descriptions here to match this sentiment:

> Some judges are just there for business and, "Okay, you're this number, you can go away or something." I don't know, they don't try to work through it good. . . . It's just gonna be all business, not gonna listen to my side of the story;[232]

225. Interview with Mary, *supra* note 157.

226. Interview with Eduardo, *supra* note 214.

227. Interview with Lola, *supra* note 159.

228. *See* CIV. RTS. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 10 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter DOJ FERGUSON INVESTIGATION].

229. *Id.* at 42.

230. *Id.* at 15.

231. Interview with William & Susan, *supra* note 136.

232. Interview with Valeria, *supra* note 164 (but noting later that her judge was not like this).

> The landlords don't care about the tenants. . . . It's a business arrangement;[233]

> It seems like. . . . [eviction is] all about money games;[234]
> It rains, it pours. . . . these judges don't care. They see, "Oh, this is a million dollar business. We're going to agree with them. Screw what the little person has to say;"[235]

> That's how it always seems like it is because those guys making a lot of money to just basically show up, just because he went somewhere and has a certificate. But now he gets to use that advantage to now get richer and. . . . take advantage of the lower groups of people . . . those fees are getting paid by people that don't have it.[236]

For these tenants, eviction-as-business directly contrasts with their desire for human decency and further affirms their suspicion that they are treated as a different class. One tenant, who owned his own business, said that as a business owner, he understands hardship and would not evict someone; eviction takes a "very cold-hearted person."[237] As he concludes, "You're their business."[238] A tenant spoke for this need for humanity:

> I mean, it's a business agreement. We get it. We know we have to pay the rent, but goodness gracious! Can you have some humanity here? Just give me an extension;[239]

> I think it was slightly inhumane because it's like, "Hey, did you pay your rent or did you not pay your rent?". . . . I guess it is just all business. There's no human aspect to it of, "Hey, what happened? Why were you not able to pay your rent?"[240]

> My opinion is that they should have more humanity about it. And if they were in the same situation, they we would want the same thing done for them. But everybody's just black and white. "This is my job and this is just what it is."[241]

These sentiments clearly reflect tenant bias; and, perhaps even the most just evictions would be perceived unjustly by some tenants. But, a judicial process that provides a greater opportunity to be heard may be able to counteract this perception.

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233. Interview with Mary, *supra* note 157.
234. Interview with Rosa, *supra* note 139.
235. Interview with Lola, *supra* note 159.
236. Interview with Javier, *supra* note 142.
237. Interview with Christopher, *supra* note 201.
238. *Id.*
239. Interview with Diamond, *supra* note 184.
240. *Id.*
241. *Id.*

3. Outcome as Fair, but Not Right

While tenants overwhelmingly noted that the cases were decided "fairly" in the survey, tenants complicated these ratings during the interviews. Many tenants saw "fairness" as adherence to a black letter law that was inherently unfair to people of the underclass. To these tenants, what was "fair" was not necessarily right and was just another reminder of the law's bias towards those with power. In fact, many interviewees rejected the fair/unfair dichotomy. When Javier was asked whether his judgment was fair, he recoiled at the question, saying, "I've gotta strongly disagree [with] that. I mean, fair by whose standards?. . . . [F]air to me is way different than fair to the court because fair to the court, they're looking at it as strictly numbers. To me, this is a breakdown of my general life."[242]

When I asked Robert whether it was fair for his landlord to start this eviction process against him, Robert asked, "By law or by moral?" When I asked him to explain further, he said,

> Well, by the law, I guess, it is [fair] because it's the law. I didn't pay the rent. . . . But as [a] right, I strongly disagree . . . because there was nothing different from December, January, and February as in March other than I know it's because we complained about the cockroaches, plumbing, the cat, the manager, the neighbors . . . and ever since we started complaining about that, that's when his attitude started going.[243]

Robert applied this notion of fairness to all judicial actors. For example, he agreed that the judge listened to his side, yet noted, "I think he cared but he couldn't hear my side because, by law, I really couldn't have a side. But he was fair. He was careful."[244]

Jason similarly differentiated fairness and rightness. When he was asked whether the judge made the right decision, he asked me, "According to me, or according to the law?"[245] He described his court hearing as follows:

> I wouldn't call it fair, but I would call it the way it has to be. . . . I don't believe the world is fair. And so, we each have our own definition of what the world would be, to be fair. . . . The letter of the law's definition of fairness won out . . . . The law gave them the right to do what they did. But I disagree that it was a humane thing to do.[246]

Jason then noted that while his landlord and the judge believed in the letter of the law, he believed in the spirit of the law. He wished that those in power would be more understanding and forgiving but admitted that this would leave "a lot of openings for people to game the system."[247] While Jason understood the judge's legal

242. Interview with Javier, *supra* note 142.

243. Interview with Robert, *supra* note 142.

244. *Id.*

245. Interview with Jason, *supra* note 142.

246. *Id.*

247. *Id.*

restraints, he was still disappointed that the judge was unable to hear his specific case. He concluded, "It still disappoints me that we're in a world that can't do that."[248]

For some tenants fairness came down to the fact that they signed a contract with which they had no ability to negotiate. I asked Valeria if what she saw as ridiculous late fees were fair and she said they were: "Due to the fact that I'm not a lawyer and I have no say of it, and I guess I would have to abide by the rules because I did sign the contract."[249] When asked if his eviction was fair, Joe, who had signed a crime-free addendum in his lease, responded,

> I said it's not either fair or unfair because . . . the person who's signing this nine, twelve, fourteen page lease should be made aware [that] if someone calls the police and they come to your place, with or without a cause, you could be evicted the next day. Twenty-four hours later.[250]

As Joe described it, his roommate had broken the contract, but they had no knowledge of this provision and no ability to bargain against it. And, as this was their first violation in five years, management should have cut them a break. In contrast, Joe noted that the law requires tenants to notify their landlords in writing that their air conditioning is not working before they are allowed to use rent money to fix the issue.[251] Joe sees this process as putting an unfair burden on the tenant, when the landlord should be the responsible party.[252]

For other tenants, fairness required a much more comprehensive understanding of their situation—why, for example, they had been unable to pay rent. Shanice disagreed that it was fair for her landlord to file for an eviction because "they knew what I was going through. They knew what was going on. They knew I was trying to catch up."[253] Paul raised a number of issues and the judge agreed, in part, and reduced Paul's late fees. Paul commented, "That was fair, but I mean fair, fair, for me would be taking away everything."[254] He appreciated the reduction, but felt any fees were unfair when he had tried to pay.

For other tenants, true fairness required more active judging, a lawyer, or legal help from someone who knew the law. Mary took issue with the fact that the judge told her that he must "assume" that she knows the law because "you're acting as your own attorney."[255] She did not want to act as her own lawyer and felt this was an unfair ruling, even though it was the law. As Eduardo saw it, "If you don't know the law, you got no opportunity with the law."[256] He went to a legal aid organization to "get the words."[257] Robert argued that in court, the County should have someone

248. *Id.*
249. Interview with Valeria, *supra* note 164.
250. Interview with Joe, *supra* note 150.
251. *Id.* (referring to ARIZ. REV. STAT. § 33-1364 (2021)).
252. *Id.*
253. Interview with Shanice, *supra* note 168.
254. Interview with Paul, *supra* note 136.
255. Interview with Mary, *supra* note 157.
256. Interview with Eduardo, *supra* note 214.
257. *Id.*

spend a few minutes with each tenant beforehand to identify all of the issues—particularly for people receiving federal aid. He dismissed this as a "fairy tale," but I encouraged him to cast his vision for a better system. Robert replied,

> I think everyone should be heard. The landlord has the lawyer over there. . . . there shouldn't be a stronger table. If the person that is renting should be evicted, then whatever's being [brought] against them needs to be heard, and they have the right to voice that with someone who knows what's going on, the word, the language. Then the person that's evicting the person should be able to be heard but also should be holstered. Not just have the run of the game. Know what I mean? It should be equal.[258]

Tenants also struggled with the fairness of disallowing tenants to speak in court when they were minutes late for their case. In our sample, several tenants showed up minutes late to their hearings and, depending on the luck of case order, were either granted or denied the chance to tell their stories. This contributed to a tenant's sense of fairness and rightness. They understood that they had made a mistake by showing up late, but they wanted the system to accommodate them, especially when time usually remained to hear cases. Javier describes his reaction:

> Three minutes late or something like that. . . . but I've never been to this place. . . . you're never going to be in this building until you have to be in this building and then once you're in this building, you're in a rushed state. . . . It just seems like it's always set up for you to always fail. . . . How hard would it be to re-pull up that tab and be like, "All right, what do you got to say?"[259]

D. Justice System

Tenants varied in their assessment of how this interaction with housing court impacted their views of the justice system. Valeria left more confident, finding it to be an "eye-opener" that the judge "do[es] care about us citizens. . . . "[260] Eva expressed qualified confidence in the greater justice system: "For this case, this day, with that judge, yes."[261] Irene left convinced court was no longer an option:

> If they're not going to listen to me when I'm coming in and had an actual, legitimate case and facts to support what I'm saying, and you're not listening to me. How does that make me secure, that if I have an issue, to come back to you guys?. . . . It doesn't give me that security, like oh, they're really going to take care of me. And it sucks.[262]

By far, however, the vast majority of tenants were unmoved by housing court. They saw eviction and the larger justice system as yet another reminder of

258. Interview with Robert, *supra* note 142.

259. Interview with Javier, *supra* note 142.

260. Interview with Valeria, *supra* note 164.

261. Interview with Eva, Pima Cnty. Consol. Just. Ct. (Mar. 25, 2019).

262. Interview with Irene, *supra* note 161.

their status as the American underclass. To these tenants, the justice system operates to keep the poor down. They would take someone to court, if at all, only as a last resort.[263] Some had traumatic past experiences—a settlement against a police department for leaving a woman naked in a cell with only an x-ray vest to cover her,[264] a 16-year old daughter kidnapped, and an 18-year old son murdered with little investigation.[265] But, for most tenants, confidence in the justice system eroded slowly. The dull pain no longer instilled indignation, but resignation—an old wound that would sometimes bleed.

1. No Justice for the Poor

Most tenants viewed justice as out of reach for the poor. Lola said that her experience in housing court reminded her that the justice system "is shi***, and there's no justice for people that are below everybody else."[266] Some believed that property ownership or personal wealth gave one legal standing. Diego said that going to court made no difference because "[t]he landlords are always winning. . . . that's the way it was since before time began."[267] Jason opined that "court is only for the . . . one percenters. . . . And not for my kind of people."[268] Rosa had "no faith" in the system because "the courts are for whoever has the money." [269] Jason's case was "unjust" and was "perpetrated that way by law."[270]

This view colored not only tenants' perceptions of their current court experiences, but also their willingness to go to court in the future. They would not go *because* they were poor. After Shanice described a long list of housing violations her landlord had enacted against her, she said she would not go to court to solve them. When I asked her why, she responded, "I would if I had the money, I would."[271] Jess responded similarly, "I usually don't have the money to file for stuff like that."[272] Valeria estimated that going to court would take at least a month, a lawyer would cost at least $2,000, and that even then she was "scared [the landlords will] always win, so I'll be looking [like] the bad person."[273]

Tenants also took a broad view of systemic bias. For example, Eduardo believed that the courts, social services, immigration authorities, and county were all well-networked.[274] So, when he wrote a letter to the Attorney General about his housing conditions, he was shocked that the judge had not received his paper.[275] He described himself as feeling "neglected," a feeling which was exacerbated because

263. *See, e.g.*, Interview with Mateo, *supra* note 211.

264. Interview with Sandra, Pima Cnty. Consol. Just. Ct. (Mar. 27, 2019).

265. Interview with Rosa, *supra* note 139.

266. Interview with Lola, *supra* note 159.

267. Interview with Diego, *supra* note 1.

268. Interview with Jason, *supra* note 142.

269. Interview with Rosa, *supra* note 139.

270. Interview with Jason, *supra* note 142.

271. Interview with Shanice, *supra* note 168.

272. Interview with Jess, *supra* note 179.

273. Interview with Valeria, *supra* note 164.

274. *See* Interview with Eduardo, *supra* note 214.

275. *See id.* (noting "I think, the attorney general and them, are hand in hand, they communicate. Aren't they?").

he was turned away from many social services. Because of an issue with his immigration visa, his welfare expired and he is trying to make ends meet by donating plasma at different centers. He asked whether "la justicia" was "una solución o una problema."[276] To him, procedural justice cannot make up for deficits in distributive justice—the courts "don't find the solution. They just go through the procedure."[277] Even beyond the courts, no one listened to him—not the immigration office, not the social workers, not the welfare center. He was alone, a forgotten member of the underclass.

Javier said he felt that the hearing, "Just reaffirmed my opinion about what it was and what we are."[278] He grew up in Section 8 housing and noted, "You're always going to be poor. You're always going to be basically not enough, not worthy, not good enough to be fair, basically."[279] This hearing was just a reification of the "category" society put him in at birth, that the "system's designed to keep us where we are . . . you're wrong . . . unless you can afford for an attorney. . . . [Y]ou are a number until you have the numbers to show you actually matter."[280] Javier saw the eviction hearing as a transfer of money from the poor tenants to the rich landlords, attorneys, and judges: "Exactly. They're taking chunks out of us and [we are] nothing [to them], little kernel[s] in their basket."[281] The "court costs and the attorney fees are just a slap in the face to let you know you're a b****, basically."[282]

When Javier considered the potential of using the court system for his own benefit, he just laughed and told me a story about someone smashing in his car window at his current apartment. He did not call the cops, because he felt that it was more likely that he would go to jail than see justice. The courts were no better. His mom took a landlord to court after black mold ruined most of their possessions. They won a small judgment, but "considering that [they] literally lost everything, [the judgment] was literally nothing."[283] He felt that the amount was just "another affirmation of who [they] are. And what controls where [they] are at."[284] When Javier considered whether he would take his landlord to court, he noted that eviction already made him look like a "lazy bum," and taking his landlord to court would only make him look weak, saying, "And in a system where you're already poor, you're not also going to be weak."[285]

These negative justice perceptions suggest that housing court may sometimes fail to provide the support tenants desire. In the following section, I explore my hypothesis that these negative justice perceptions might be related to a disconnect between the reasons tenants provide for court attendance and the reality of housing court.

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276. *Id.*
277. *Id.*
278. Interview with Javier, *supra* note 142.
279. *Id*.
280. *Id.*
281. *Id.*
282. *Id.*
283. *Id.*
284. *Id.*
285. *Id.*

IV. COURT ATTENDANCE NARRATIVES & SUGGESTIONS FOR REFORM

By understanding the factors that weigh heavily in the tenants' decision to attend their hearings, policymakers can improve tenants' experiences and alter justice perceptions. For this section, I also draw on the survey results reported in the companion study to avoid any self-selection bias that might result from only reporting interview results. Most responses to the final survey question, "Not all tenants show up to court. Why did you choose to come?" fit into three categories: (1) to achieve an improved outcome or get information, (2) to dispute the landlord's accusations, and (3) to perform—and defend—the tenant's identity as a good citizen. Interviewed tenants expressed all three of these goals, but overwhelmingly identified with the final rationale, identifying social performance as critical to countering perceived negative stereotypes. Unfortunately, many housing courts are ill-suited to meet these goals. For each, I provide some legal and policy suggestions for reform.

A. Improved Outcomes or Information

Forty percent of all surveyed tenants indicated that they attended court because they wanted to achieve a better outcome or understand either the court judgment or their options.[286] While some tenants in this group attended court in order to avoid a *worse* outcome, many of the consequences they believed they were avoiding by doing so—fines, eviction on their record, jail-time—would not have occurred even if they were absent.[287] Others attended for information-gathering, or to avoid any unnecessary surprises. As Sarah described it, "I didn't want to just find out later on what was going on by hearsay. I actually wanted to be there in person, so that way I'm like, 'Okay, now I know what's going on, now I know what to do.'"[288]

Neither the court documents nor the hearings gave these information-seeking tenants much clarity. Robert went to court to "find out exactly what was going on so [he] wasn't in the dark completely,"[289] but left confused, saying, "I just know now that we definitely are not going to be able to say anything and they more than likely will give you a couple days to get your stuff together and go."[290] Javier felt all the confusion was evidence of a larger conspiracy:

> It's better for them for us not to know, so they basically keep all these little obstacles up so we have to jump through so many hoops to find out information. But the information should just be readily available and not . . . hidden in a corner somewhere. . . . But no,

286. *See* Bernal, *supra* note 25, at 7 (finding that thirty-one out of the seventy-eight tenants, or 39.74% who responded to this question indicated that they attended court to affect some improved outcome or to avoid some bad consequence).

287. *Id.* Skipping an eviction hearing cannot lead to jail time or fines. And, whether an eviction will appear on a tenant's record depends entirely on the outcome of a case, not a tenant's choice to attend the hearing.

288. Interview with Sarah, *supra* note 136.

289. Interview with Robert, *supra* note 142.

290. *Id.*

> they want us to stay dumb. They want to make us think that we don't have a chance. . . . [291]

To provide the clarity that tenants seek, policymakers can work to ensure that the documents used throughout the process are readable and actionable. Judgments should be revised to clearly explain not only what happened, but what will happen next. At this crucial point, better connection to social resources might improve perceptions of procedural justice and restore confidence in the justice system. And, courts might even experiment with explicit attempts to empathize and recognize the inherent dignity of litigants.

An example of a civil minute entry reads:

> The Court, being fully advised in the premises, finds Plaintiff is entitled to recover by its complaint. A Writ of Restitution (Order of Eviction) may be issued on Tuesday, March 05, 2021, and is effective immediately upon being served.[292]

This might be revised as follows:

> You lost your eviction case today. You now legally owe your landlord $1,210. You must leave your home by noon next Tuesday, March 5, 2021. If you do not leave by then, your landlord can get the constable to remove you by force.
>
> This judgment says nothing about your character or your value. We know this is a hard time for many, and understand that this eviction might put you in a tough spot. If you don't have a place to stay, you can contact (520) 123-4567 to see if there is space at a local shelter. We have attached a checklist of next steps many tenants find helpful.

More readable (and empathetic) language like this may improve the tenant experience. Revised scripts must be rigorously tested to ensure understanding and intended effect.

Courts must also ensure that tenants do not skip court or miss opportunities to make a legal claim because they misunderstand their rights and options.[293] I have previously made the case for more readable eviction court documents, and have published prototypes to that effect.[294] These documents should be timely and

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291. Interview with Javier, *supra* note 142.

292. *See* Civil Minute Entry, JP 72 (on file with author). The Self-Represented Litigants Workgroup previously suggested changes to this language. *See* Order Continuing This Matter and Reopening the Petition for Comment, In the Matter of Rules 5(a), 5(b)(6), 5(b)(7) and Add Rules 13(h) and 20, (Ariz. Dec. 14, 2016) (No. R-16-0040), https://www.azcourts.gov/Portals/20/2016 percent20December percent20Rules percent20Agenda/R_16_0040.pdf.

293. *See* Bernal, *supra* note 14, at 37 (providing suggestive evidence that complex, landlord-created notice pleading documents impact court-attendance rates).

294. *Id.*

responsive—e.g., providing tenants information about pandemic protections.[295] While all courts should draw from existing research, each should investigate the top reasons tenants facing eviction in their court seek to attend or otherwise participate in their hearing. Then, the court should clearly describe in pleading documents whether such goals are achievable and how tenants might best prepare. If courts are not going to hear warranty of habitability claims, tenants should know beforehand. By managing expectations, courts may be able to improve the tenant experience.

B. Landlord Accountability

One fifth of all surveyed tenants[296] attended court to vindicate themselves against their landlords. Several felt like they needed to go to court to counteract the lies spoken by their landlord.[297] Katie wrote, "I made my payment in full a week ago. [The] [l]andlord did not dismiss [the] case beforehand and I don't trust the current management, to be honest."[298] Others wanted to ensure their landlords could not slander their reputations in front of the judge. Jess came because her landlord "was exploiting me and my medical condition, telling them who my doctor was, my doctor's orders, how much I weigh."[299] Jess's story shows just how visible tenants can feel in a courtroom. In our sample, landlords accused tenants of drug use, crimes, bad parenting, and mental instability. Finally, some tenants felt they had to hold their landlords accountable, not only for their own situation, but for other tenants. Eva described her reason for attendance as follows: "Because this man is powerful in his own world of deception . . . and if he's doing it to me, he's probably doing it to others."[300]

But, the vast majority of tenants in this category came to court because they believed they had a legal claim against their landlords. Nineteen of the twenty-eight interviewed tenants complained about unresponsive maintenance, eighteen identified dangerous conditions on the premise, and fifteen said they had to make all the repairs themselves. William complained about a "slumlord" who, rather than fix the leak in the roof or the cooler, sent eviction notices.[301] Christopher noted a leaky roof, faulty plumbing system, and roach infestation.[302] Lola's apartment festered with black mold that repeatedly sent her oldest daughter to the hospital for asthma attacks, and Child Protective Services informed her that she need to "[f]ix it, move, or lose your kids."[303] Robert's landlord used a bug bomb on a next door unit without

295. *Id.* I am currently involved in a randomized field experiment in Hamilton County, OH, to analyze the effect of a redesigned eviction summons to encourage tenants during the pandemic to seek help and leverage available protections.

296. *See* Bernal, *supra* note 25, at 8 (13 of the 78 tenants who responded indicated this response).

297. *Id.* Other examples included: "Because I want to stop the managers who step out of code." "Because my landlord lied and I needed to appeal it." *Id.*; *see also* Interview with Charles, Pima Cnty. Consol. Just. Ct. (Mar. 20, 2019) (noting that he wanted to "give it to [my landlord] the legal way for all the verbal abuse.").

298. *Id.*

299. Interview with Jess, *supra* note 179.

300. Interview with Eva, *supra* note 261.

301. Interview with William & Susan, *supra* note 136.

302. Interview with Christopher, *supra* note 201.

303. Interview with Lola, *supra* note 159.

notice to neighbors, flooding Robert's property with roaches, and then stood outside laughing as Robert emptied all his belongings on the street.[304] Shanice rented a formerly vacant building and the landlord refused to fix the locks when people entered her house at night.[305] Eva moved into a home unaware of a broken water pipe 3.5 feet beneath her driveway, using 39,000 gallons of water her first month.[306]

The court addressed none of these very serious claims against landlords during the hearings, despite the fact that Arizona law allows such claims, and even obligates the judge to uncover defenses by questioning the tenant.[307] The Arizona Rules of Procedure for Eviction Actions provide:

> If the defendant appears and contests any of the factual or legal allegations in the complaint or desires to offer an explanation, the judge should determine whether there is a basis for a legal defense to the complaint . . . by questioning the defendant in open court. If the court determines that a defense or proper counterclaim *may* exist, the court *shall* order a trial on the merits.[308]

And, Arizona statutory law provides, "In an action for possession based upon nonpayment of the rent . . . if the landlord is not in compliance with the rental agreement or this chapter, the tenant may counterclaim for any amount which he may recover under the rental agreement or this chapter."[309] Many of the habitability issues tenants suffered are explicitly included in the chapter—e.g., broken air conditioner,[310] broken pipes,[311] insect infestations,[312] missing or unlocked doors that constitute "a hazardous condition or a potential attraction to trespassers."[313]

The design of Arizona housing court is intuitive. The short initial hearing is a triage device meant to identify complex cases that would benefit from trial. At this stage, the rules require less formality. The court has the discretion after this initial hearing to require a tenant to file an answer, and can properly decline to hear allegations at the trial that were not previously raised.[314] But, the tenant is not

304. Interview with Robert, *supra* note 142.

305. Interview with Shanice, *supra* note 168.

306. Interview with Eva, *supra* note 261.

307. Such affirmative duty does not conflict with Rule 2.2 of the Code of Judicial Conduct, which requires a judge to "perform all duties of judicial office fairly and impartially." ARIZ. CODE JUD. CONDUCT R. 2.2. The comment to the rule clearly states that "[i]t is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard." *Id.* Comment 4.

308. ARIZ. R. P. EVIC. ACT. 11(c)(1) (emphasis added).

309. ARIZ. REV. STAT. § 33-1365 (2021). *See also* ARIZ. R. P. EVIC. ACT. 8(d) ("If a residential landlord is not in compliance with the rental agreement or statute, the tenant may counterclaim for any amount the tenant is entitled to recover under the rental agreement or statute.").

310. *See* ARIZ. REV. STAT. § 9-1303(1)(d) (2021); ARIZ. REV. STAT. § 33-1324(A)(4), (6) (2021).

311. *See* § 33-1324(A)(4).

312. *See* § 9-1303(1)(i).

313. *See id.* § 9-1303(1)(e).

314. ARIZ. R. P. EVIC. ACT. 11(f).

required to answer before the initial hearing,[315] and may make an oral answer on the record at that time without paying an answer fee.[316]

The hearings I observed all followed the same pattern. The landlord spoke for the first three to four minutes, listing off all of the charges against the tenant, while the judge chimed in to make sure that the landlord had complied with all of the procedural requirements. Then, the judge asked the tenant if what the landlord said was true, usually framing the question bluntly: "Do you agree that you didn't pay your rent?" The answer is often "Yes, but . . . ," though the explanation is often severed. Sometimes, tenants will engage in some back-and-forth with the judge or the landlord. But, more often, tenants do not even have the opportunity to raise the issues that they wanted to tell the judge.

Our study suggests that this triage hearing is not working as intended. While sample selection certainly played a role, nineteen of our interviewees identified some grievance against the landlord; yet, only one case was continued for trial. The language that lawyers representing landlords use (and judges adopt) is that such counterclaims can be "severed" under Rule 13(c)(2)(E) of the Arizona Rules of Procedure for Eviction Actions. But this rule is inapposite, providing only that if the *landlord* has "other damages for breach," that are "substantial and disputed such that a fair trial of the claims would likely delay the prompt determination of the eviction action, the court may sever those claims and dismiss them without prejudice, permitting the *plaintiff* to reassert the claims in a separate civil proceeding."[317]

If judges fail to continue to appropriate cases, the results should be appealed. And, there should be clear guidance from the presiding judge of Pima County Justice Court and the Arizona Supreme Court as to whether such claims can indeed be "severed." But, five minutes is simply not long enough for the judge to address all of these substantive and procedural safeguards that benefit the tenant in a meaningful way.

To solve this problem, I recommend an amendment to Rule 13 of the Arizona Rules of Procedure for Eviction Actions, which lists topics that the judge must review in every eviction hearing.[318] Along with determining that the tenant received proper notice, if the landlord accepted partial payment, if the rental unit is subsidized, and if the landlord is legally entitled to possession,[319] the rules should also require the judge to ask the tenant whether the landlord has committed any material violations of the lease. For example, the judge might inform the tenant that she has the right, under Arizona law, to ask for money from her landlord if the landlord failed to keep the unit in safe and working condition. The judge could then be required to provide some of the most common examples, and ask the tenant if she did not pay for any of those reasons. Such a rule would certainly be opposed by landlord lobbyists,[320] and might raise the cost of eviction, which would undoubtedly be passed on to tenants. But, it might create valuable opportunities for tenants to tell

315. *Id*. 11(c)(2).

316. *Id*.

317. ARIZ. R. P. EVIC. ACT. 13(c)(2)(E) (emphasis added).

318. *Id.* 13(a).

319. *Id.*

320. *See* Bernal & Yuan, *supra* note 102, at 44 (providing an example of landlord influence in Arizona).

the stories they came to share. And, such opportunities have the potential to drastically improve procedural justice evaluations and confidence in the judiciary.

Even for tenants without cognizable legal claims, courts must also consider the rhetorical effect of this initial hearing. In another study, I am analyzing the audio recordings of all the eviction hearings for tenants in this sample to answer questions, such as the following: How does a tenant's talking time during her eviction hearing compare to that of her landlord, the landlord's lawyer, and the judge? Does this vary by gender and race? How might this disparity impact perceptions of procedural justice and willingness to participate in future judicial proceedings? As judges experiment with different scripts, more research will be needed to determine their impact.

C. Performance of Good Citizenship

But, the majority of tenants surveyed and interviewed were less concerned with holding their landlord accountable or securing an improved result. Instead, they attended court to perform—and defend—their identities as good citizens.[321] Some expressed this as an internal characteristic; they were the kind of person—responsible, moral, right—who obeys a court summons or who exercises their rights: "Because it was the responsible thing for me to do to keep my roof over my head";[322] "I was issued a summons . . . it was my responsibility"; [323] "Because we know our rights and want to be treated as such."[324] Others located the sense of duty externally.[325] As one surveyed tenant put it, she attended court because "you must."[326] These tenants attended "out of respect for the court,"[327] for religious reasons,[328] because it was their responsibility as a tenant,[329] or because it "[s]eemed like the right thing to do."[330] Valeria chose to come to court because she "want[ed] to respect the judge and the law."[331] She emphasized that she had been *summoned*,

321. *See* Bernal, *supra* note 25, at 16 (finding that twenty-three out of seventy-eight tenants, or 29.48% of tenants who wrote responses to this question reflected on their sense of self) (original survey data on file with author).

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.* (noting that eleven out of the seventy-eight tenants, or 14.10%, who responded to this question indicated that they attended court because it was the law).

326. *Id.*

327. *Id.*

328. *See id.*; *see, e.g.*, Interview with Paul, *supra* note 136 ("Like I said, because it was respecting the courts and the government system. Because pretty much in the Bible it says obey everything from governments and no matter how much you don't agree it, it's still right to pay attention and observe the rights and rules of . . . Treat everybody with love and give them the respect that they deserve as well."); *see also* Interview with Emmie, *supra* note 173 (mentioning that her parents were Jehovah Witnesses, and that she was raised to respect authority).

329. As Jacob noted, "Because I'm the one who's pretty, I'm the one renting it. I'm the one who's working, putting those hours to make sure I have a place to stay. Keep me and my girlfriend, and everything that goes along within that place, is under my responsibility. It's in my agreement that I hereby state that I am responsible for my just actions." Interview with Jacob, *supra* note 134.

330. Bernal, *supra* note 25.

331. Interview with Valeria, *supra* note 164.

saying, "I feel a part of being in the United States, I mean a citizen of the United States, you have to abide by the law. . . . I'm American, and I believe that we should respect the law and face your actions, your consequences."[332]

Tenants, however, also wanted to prove that they were *not* the kind of people that their landlords claimed they were and which they believed the judge would assume them to be. Many believed they did not deserve eviction.[333] But, more attended simply "[t]o save face."[334] They agreed that they were legally responsible, but wanted to show their moral blamelessness. Diego attended so the judge would see that he was "not guilty."[335] He reasoned, "I have always been guilty because I'm a criminal, but on this one, I wasn't guilty. I was guilty of not paying the rent, but not guilty of using the money to survive from the rent. You know what I mean?"[336]

Diamond, a Black, single mother who worked as a nurse, fought to preserve her self-image. "I went through something that made me look unstable . . . [but that] doesn't mean that I'm a screw-up for life."[337] She emphasized that, contrary to her perceived judgment by society, she was not on food stamps and does not receive welfare. She made a mistake buying her kids Christmas presents instead of paying her rent and was evicted in her last semester of nursing school, forcing her to move to a worse place to live "with crackheads."[338] That place burned down and she had to move again, and she said it all just "makes you look unstable."[339] She went to court to correct that image:

> So, I just wanted to go and stand up for myself, and show that I wasn't just a person that didn't care about paying their rent . . . I wanted to show my face, show that I'm not just some, excuse me, hood rat. I'm not the lowest of the caste system down here . . . I'm a human being and I work hard for my money every single day. And I wanted to come here and show that.[340]

For Diamond, attendance was about personal absolution, not social change. Still, she feared that the system only saw her class and color: "[W]hat do I know? I'm just a crazy, angry, angry Black girl."[341]

Valeria came for her own personal integrity, because she does not like to "run from . . . problems."[342] Mateo noted that he went to court to get "straight" with

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332. *Id*.

333. *See* Bernal, *supra* note 25, at 12. Responses included: "I did not believe I desirved [sic] the eviction." "Because I knew I was right for one." "Not guilty," "I was in the right . . . " "Because I was wrongfully sent to court." *Id.*

334. *Id.*

335. Interview with Diego, *supra* note 1.

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.* (noting also that she thought "the judge saw that in me, but he still had to do black and white.")

341. *Id*.

342. Interview with Valeria, *supra* note 164.

his landlord.[343] Attending to him was "a personal value," "the right thing."[344] Alberto went to court, in part, because his landlord accused him of attracting bedbugs because he was dirty, and he could not have that assertion go unchallenged in court.[345] Lourdes considered, "Especially when your name is being put out there, you need to address the issues, and get it cleared up."[346] Shanice did not "want to be pictured as an irresponsible person."[347] Jess skipped previous eviction hearings because she feared she would be judged, and noted that most tenants did not show up, "[b]ecause they're having trouble getting it together and they're embarrassed and so humiliated and self-efficacy is down low and they just don't feel like, they don't want to be further embarrassed."[348]

Tenants' desire for moral exoneration was more common in our interviews that our survey. While the surveys were positive, the interviews felt performative. As someone in the court who had time to listen, I acted as a stand-in for judicial actors. Tenants wanted to convince me they were not the kind of people they feared the judge and the landlord assumed them to be. Over a third expressed gratitude that we were holding the interviews; some even indicated that our study increased their confidence in the justice system.

To best serve tenants who feel a need to perform a good-citizen narrative, courts should learn to listen better and find ways of separating legal and perceived moral judgment. Improved listening requires both structural and personnel changes.

One proposed structural reform is lengthening the woefully inadequate five-minute hearing. Tenants processed on what is, in effect, an eviction assembly line hear their cases framed in the same narrative by the same attorney in front of the same judge. If they owe rent, the rest of their story is silenced. Courts and researchers should experiment with different ways of performing this hearing. Courts could consider allowing extended hearings for tenants who show up, incentivizing attendance and participation. Courts could allow tenants to speak *before* charges are brought, to exert some control over the framing, which would allow the judge to more accurately tailor her judgment to make tenants feel heard. More broadly, policymakers may also consider whether eviction court should look less adversarial and more relational. Even if there is insufficient political will to change the eviction process, courts can independently create alternative listening spaces—help centers, social workers, story booths—to address these concerns. Housing court must be re-envisioned as a place where tenants are affirmed—and re-created—as good citizens, rather than as members of the underclass.

One proposed personnel reform is appointing judges whose race and gender best reflects court customers, or at least training judges to consider how to serve

343. Interview with Mateo, *supra* note 211 (feeling he had "a shot with her," in part, because he went to church with her).

344. *Id. See also* Interview with Sarah, *supra* note 136 (noting that she was willing to face all her fear because her mother taught her to "own your own destiny. Don't let somebody run it for you."). Sarah also knew that she had to take initiative, and even though she didn't believe that the eviction was not her fault—she got really sick—she at least "wanted to voice what [she] was going through." *Id.*

345. Interview with Alberto, *supra* note 138.

346. Interview with Lourdes, *supra* note 158.

347. Interview with Shanice, *supra* note 168.

348. Interview with Jess, *supra* note 179.

customers convinced that the system is biased against them, who experience eviction as a form of violence, and who fear that they are being judged for being poor. While observing a housing court in Hamilton County, Ohio, I watched a Black, female judge look mostly Black, female tenants in the eyes and tell them that she knew they were trying, that she understood that catastrophe could happen to anyone, that she did not consider them bad people for being evicted. In Pima County, Arizona, I watched a judge stay on the bench after a tenant's hearing to answer questions and to let the tenant vent, long after the ink on the judgment had dried. Small actions like these may go a long way towards avoiding perceptions of judges as dismissive, pre-determined outsiders. How would these judges respond to a tenant who is a minute late? To a tenant shaking from recent experiences of trauma? To a tenant who cannot think straight because she has not slept in days? How would they treat tenants who lost work because of the pandemic, and months later, are finally being evicted? Sarah prayed about her judge, "Please let it be a good person, just let it be a good person."[349] Encouraging expressions of empathy might lead tenants to believe more judges are the "good people" that they need to restore their confidence in the judiciary.

V. CONCLUSION

Housing court was not *designed* for tenants. The quickness, the efficiency, the limitation on triable issues are all meant to improve the landlord-customer experience. This systemic, restricted, and unequal access has consequences for civil justice. Tenants are also court customers. Courts must better understand what tenant-customers expect from their hearings, how they experience their time in court, and how those experiences color their perceptions of justice. Many experience terror, confusion, and moral judgment in the process, and leave with an overwhelming sense that they are beneath justice. And, many of the reasons which motivate tenants to attend their hearings are often unresolved in judicial forums. Housing courts must reflect on their practices and consider the necessary design for these consumer needs.

Courts, legislatures, and government agencies might also consider how to design housing court to serve citizens losing their homes. Housing court produces homelessness. Yet, many of the newly unhoused leave court not knowing where they will go next. Housing court could become, not only a place of judgment, but also a site of intervention. Social services could table outside the courtroom and provide options for emergency rental assistance *before* a judgment is entered. Local non-profits could conduct intake for newly unhoused persons *immediately* after the hearing. Volunteers could sit down with defendants (the tenants) and make them aware of the steps to navigate an eviction. Housing court could be reimagined as a site of social-judicial partnership, a place where tenants are reminded that even though the law is fair, they are not alone.

Lawyers and judges and activists must also pay greater attention to how the design of our housing court system communicates worth. White's theory of constitutive rhetoric argues that the law creates roles and relationships.[350] Lawyers are not merely offering conclusions as to how cases should be decided; instead, they

349. Interview with Sarah, *supra* note 136.

350. *See* James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. CHI. L. REV. 684, 692 (1985).

are saying, "Here—in this language—is the way this case and similar cases should be talked about. The language I am speaking is the proper language of justice in our culture."[351] Do we agree that the language of eviction is the proper language of justice we choose for our culture? I think of Nicole, whose voice became more muted each time the judge and attorney tried to fit her story into the law. As White concludes, citizens must "test the law by asking whether your own story . . . is properly told by these speakers and in this language."[352] For Nicole and Javier and Diamond, this is a test that housing court failed.

We can create a more just process. Eviction proceedings might be redesigned to resolve the habitability claims of tenants, to hear tenant stories and frustrations, and to make timely connections to social resources. By understanding the social and moral stigma many tenants fear and by engaging in active listening, judges can affirm the innate dignity of each tenant who faces eviction. Such experiences of justice may ripple outwards, strengthening trust and participation in the larger justice system. And, as courts prepare to process the evictions of millions of Americans in the aftermath of the pandemic, such reforms may prove even more essential.

351. *Id.* at 690.

352. *Id.* at 697.