

End Game: Understanding the Bitter End of Evictions

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I. INTRODUCTION¹

“We have a bit of a problem here,” State Marshal Robert Miller says.² He stands on the front porch of an apartment with eviction papers in hand. The landlord began an eviction action weeks ago for nonpayment of rent, and this morning Miller has come to put the tenant out. But he arrived to find that the tenant took one last chance to stick it to her landlord: She ripped some cabinets off the wall, allowed her daughter to write on the doors and walls, and “bulked out” (a practice where the tenant leaves all possessions in order to create a high moving bill for the landlord). Miller calls the landlord with an update. The landlord insists that until this point, she and her tenant of three years had been on good terms. Angry with her tenant, who is not home this morning, the landlord considers canceling the removal to allow the tenant time to move her own possessions, which would save the landlord the moving costs and marshal fees associated with the removal. After deliberating, she decides that she has lost enough rent on this property already and she has no choice but to foot the high moving bill to get the tenant out of her property.

A few weeks later, Miller faces an entirely different situation. As he approaches another apartment to remove a tenant on this rainy morning, he stops his car to wait behind a school bus while two people wheel a disabled child onto the bus. He soon discovers that he will be removing the single mother and two brothers of that child from their apartment. As movers load the child’s medical bed onto the city truck, her two sons get drenched lugging boxes to the neighbor’s porch. The mother says she could not pay the rent because an administrative snag delayed welfare assistance checks.

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¹ Throughout the article, the author includes information gathered from personal observations and interviews in Connecticut during 2005 and 2006. Where relied upon in the article, the author cites to the corresponding means by which he obtained this information. The names of removed tenants have been replaced in the article with a first name pseudonym to protect the tenant’s identity. The identity of all interviewed tenants and their associated pseudonyms are on file with the author.

² Author’s Personal Observation, Removal at 66 Gorham St., Hamden, Conn. (Mar. 9, 2006).

She has no idea where they will stay tonight, or what will happen when her disabled son returns from school.³

Legal scholars have studied residential evictions extensively, but have written surprisingly little on the final stage, when the marshal comes to put the tenants out—what I call removal.⁴ Legal writing on evictions falls into four broad categories. The first category comments on the rights of actors in the legal process, including the right against retaliatory evictions⁵ and the rights of particular groups.⁶ The second category comments on the fairness and constitutionality of current and proposed laws, notably laws regarding evictions for drug use⁷ and for third-party criminal activity in the apartment.⁸ The third category proposes ideas for reform of the eviction process.⁹ The fourth category describes what actually happens in the course of the eviction actions—primarily who gets evicted,¹⁰ how judicial systems handle the eviction process,¹¹ and what effect legal representation has on the length of that process.¹² This Note falls generally into the last category,

³ Author's Personal Observation, Removal at 83 Willis St., New Haven, Conn. (May 16, 2006).

⁴ I use "removal" rather than "eviction" to emphasize that I am examining only that portion of the process where the marshal removes the tenant from the property, and not the legal process more broadly. I have coined this term: "removal."

⁵ See, e.g., George M. Armstrong, Jr. & John C. LaMaster, *Retaliatory Eviction as Abuse of Rights: A Civilian Approach to Landlord-Tenant Disputes*, 47 LA. L. REV. 1 (1986); James A. Hughes, *Retaliatory Eviction*, 102 MIL. L. REV. 143 (1983).

⁶ See, e.g., Paris R. Baldacci, *Pushing the Law to Encompass the Reality of Our Families: Protecting Lesbian and Gay Families from Eviction from Their Homes—Braschi's Functional Definition of "Family" and Beyond*, 21 FORDHAM URB. L.J. 973 (1994).

⁷ See, e.g., Peter J. Saghir, *Home Is Where the No-Fault Eviction Is: The Impact of the Drug War on Families in Public Housing*, 12 J.L. & POL'Y 369 (2003); Caroline Castle, Note, *You Call That a Strike? A Post-Rucker Examination of Eviction from Public Housing Due to Drug Related Criminal Activity of a Third Party*, 37 GA. L. REV. 1435 (2003); Howard J. Brookman, Note, *Constitutional Law—Fifth Amendment and Eighth Amendment—State Statute Allowing Eviction of Tenant Convicted of Drug Offense is not Punitive and, Therefore, Does Not Violate Either Double Jeopardy Clause or Excessive Fines Clause—Taylor v. Cisneros*, 102 F.3d 1334 (3d Cir. 1996), 27 SETON HALL L. REV. 1161 (1997).

⁸ See Regina Austin, "Step on a Crack, Break Your Mother's Back": *Poor Moms, Myths of Authority, and Drug-Related Evictions from Public Housing*, 14 YALE J.L. & FEMINISM 273 (2002); David C. Pulice, *Supreme Court Holds Federal Drug Law Permits Evictions: Public Housing Tenant Need Not Have Knowledge of Drug Use*, 4 LAW. J. 2 (2002); Nelson H. Mock, Note, *Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties*, 76 TEX. L. REV. 1495 (1998); Alicia Werning Truman, Note, *Unexpected Evictions: Why Drug Offenders Should Be Warned Others Could Lose Public Housing if They Plead Guilty*, 89 IOWA L. REV. 1753 (2004).

⁹ See J. Royce Fichtner, Note, *The Iowa Mobile Home Park Landlord-Tenant Relationship: Present Eviction Procedures and Needed Reforms*, 53 DRAKE L. REV. 181 (2004); Randy G. Gerchick, Comment, *No Easy Way Out: Making the Summary Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759 (1994).

¹⁰ See, e.g., Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POL'Y DEBATE 461, 467–68 (2003).

¹¹ See, e.g., KAREN DORAN ET AL., LAWYERS' COMMITTEE FOR BETTER HOUSING, *NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT* (2003), <http://lcbh.org/images/2008/10/chicago-eviction-court-study.pdf>.

¹² John R. Bolton & Stephen T. Holtzer, Note, *Legal Services and Landlord-Tenant Litigation: A Critical Analysis*, 82 YALE L.J. 1495, 1496–03 (1973); Steven Gunn, *Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?*, 13 YALE L. & POL'Y REV. 385, 415–16 (1995);

and aims to fill two holes there. First, the vast majority of current writing discusses only rules governing the phases of an eviction action leading up to and including the trial or settlement, and stops short of the removal. Second, writing that does discuss executions typically stops after a recitation or analysis of the rules and does not offer empirical data on how the process unfolds.¹³

Popular depictions fill this gap in our empirical knowledge of evictions and feed our imaginations. In Michael Moore's *Roger & Me* we see Flint, Michigan, Deputy Sheriff Fred Ross knock on a tenant's door and move the family's belongings, Christmas tree and all, out to the curb on Christmas Eve.¹⁴ In Ralph Ellison's *Invisible Man* we read the narrator's account of a removal in which two men carry out of the apartment a chair with the tenant, a "motherly-looking old woman," still sitting in it.¹⁵ In *Awake and Sing*, Broadway drew on the scene of a family being removed to capture the despair of the Great Depression.¹⁶ A Westlaw search of the *New York Times* reveals that the media depicts the link between evictions and homelessness as direct and immediate.¹⁷ Yet these popular representations offer a one-dimensional view of the tail-end of eviction actions: desperate tenants getting the short end of the stick in rather dramatic fashion.¹⁸ This project seeks not to replace these images, but to draw upon empirical research to provide a more nuanced account of what actually happens in the final stage of evictions.

Landlords and tenants get to the final stage of evictions faster in the United States than they do in almost any other country. Although each state has its own laws, on average those laws permit an eviction to move from initiation to completion in just over a month and a half.¹⁹ By contrast, the legal process in other countries takes an average of 254 days²⁰—approximately four months in the UK and Belgium,²¹ six months in

Robert Daines, *Landlord-Tenant Litigation and the Impact of Free Legal Services* 33–35 (1991) (unpublished manuscript, Yale Law School) (on file with author).

¹³ Hartman & Robinson, *supra* note 10, at 461 (noting the lack of data on removals).

¹⁴ *ROGER & ME* (Warner Brothers 1989).

¹⁵ RALPH ELLISON, *INVISIBLE MAN* 267 (Random House 1995) (1947).

¹⁶ CLIFFORD ODETS, *A WAKE AND SING* (1935).

¹⁷ Searching for "evict! /5 homeless!" on Westlaw reveals 250 hits in the *New York Times* alone. Although not every search result draws a link between evictions and homelessness many do. See, e.g., Ian Urbina, *Keeping it a Secret as the Family Car Becomes a Home*, N.Y. TIMES, Apr. 2, 2006, at A11 (collecting stories of families who had been evicted and immediately resorted to living in their cars); Leslie Kaufman, *State Revamps Plan to Give Assistance to Homeless*, N.Y. TIMES, Dec. 11, 2004, at B1 ("Perhaps the greatest impact on homelessness in the city will come from the funds that will go to families facing eviction. . .").

¹⁸ *Pacific Heights* offers the only popular depiction this author could find that prompts the audience to root for the landlord. *PACIFIC HEIGHTS* (Warner Brothers 1990).

¹⁹ Simeon Djankov et al., *Courts: The Lex Mundi Project* app. at tbl.6 (Nat'l Bureau of Econ. Research, Working Paper No. 8890, 2002), available at <http://www.nber.org/papers/w8890>.

²⁰ *Id.* (based on a calculation of 109 countries).

²¹ *Id.*

Spain,²² nearly eight months in France,²³ and twenty-one months in Italy.²⁴ These countries use a number of formal legal mechanisms to delay the process further. In Ireland, for example, landlords may not initiate an eviction until rent is a full year late.²⁵ In France, a landlord may not actually kick a tenant out of an apartment at any point during the winter—between November 1 and March 15.²⁶

Economists suggest that the speedier U.S. process has salutary effects on the housing market: A fast eviction procedure decreases the risk a landlord faces of losing a significant portion of his revenue stream; this, in turn, means that property asset values increase.²⁷ Consequently, people have greater incentives to enter the market or continue in the market as landlords. Furthermore, faster eviction laws generally mean that rents will be lower, because of the higher long-run supply of housing available.²⁸ A speedy procedure, thus, has putative benefits for prospective tenants, as well as for landlords.

With these benefits, though, come costs. Being able to make it to the final phase of an eviction so quickly and readily exacts a toll on all parties involved. Tenants face dignity costs that come with being kicked out of their homes and uprooted from their neighborhood. In addition, they incur the monetary costs of having to find a new home, replace personal possessions, and potentially miss time on their job.²⁹ Landlords face the inconvenience of having to initiate a legal action and find new tenants; and they incur the monetary costs of lost rent, marshals' fees, attorneys' fees.³⁰ Finally, the state bears costs associated with picking up and storing tenants' belongings.³¹

Although the benefits of an eviction process that usher parties to this end point relatively quickly can be measured and modeled,³² the costs of such a process do not lend themselves to such tidy analysis. Therefore, what this process actually entails, who is involved, and how it affects those parties are all questions that have been under-studied. Answering these questions will complicate our understanding of the value tradeoffs our

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ THE LAW REFORM COMMISSION, CONSULTATION PAPER ON GENERAL LAW OF LANDLORD AND TENANT 181 (2003).

²⁶ Etienne Wasmer, *Housing Market Discrimination, Housing Regulations and Intermediaries* 6 (Am. Econ. Ass'n., Conference Paper, 2005), available at http://www.aeaweb.org/annual_mtg_papers/2005/0107_0800_1404.pdf.

²⁷ *Id.* at 15–16.

²⁸ *Id.* at 22.

²⁹ See *infra* Parts III.C.2–3, III.D.3.

³⁰ See *infra* Parts III.C.3, III.D.1.

³¹ See *infra* Part III.D.3.

³² See generally Wasmer, *supra* note 26.

legal system makes in this important area of law.

This Note begins to fill that gap in the literature. It presents a case study that gathers empirical research on removals. Specifically, this Note seeks to understand the salient effects of this process upon all parties involved in removals in one city. Focusing on how removals work in one city allows this Note to give a rich account of the process—including individuals' attitudes toward and experiences of the process, the lives it affects, and the personalities who play significant roles in it.

New Haven provides an excellent location for such a case study. Evictions and removals tend to occur in urban areas that have large rental markets and high poverty rates.³³ A large part of New Haven's population lives in just such a setting. Seventy point four percent of New Haven's housing units are renter-occupied.³⁴ Just less than a quarter of the city's population lives in poverty;³⁵ nearly a third of all housing units in the city are subsidized;³⁶ and nearly half of tenants in the city spend over 30% of household income on housing,³⁷ a proportion considered to be at the limit of affordability. Given this large rental market and relatively high rates of poverty, New Haven sees a number of removals each year.³⁸ The existence of a well-run housing court that maintains an online database of its docket means that relevant data is collected and available on these cases.³⁹ Furthermore, New Haven's laws governing removal are, in large part, middle-of-the road vis-à-vis other jurisdictions.⁴⁰ This city, therefore, provides an ideal site for beginning to build an understanding of what happens at the tail end of evictions.

Empirical findings from this case study suggest that the value tradeoffs

³³ See *infra* Part IV.A.

³⁴ U.S. CENSUS BUR., CENSUS 2000 DEMOGRAPHIC PROFILE HIGHLIGHTS: NEW HAVEN CITY, CONNECTICUT (2000), <http://factfinder.census.gov> (search "Fast Access to Information" for "New Haven City, Connecticut"; then follow the "2000" hyperlink under "Fact Sheet") [hereinafter FACT SHEET: 2000].

³⁵ U.S. CENSUS BUR., 2006 AMERICAN COMMUNITY SURVEY: SELECTED ECONOMIC CHARACTERISTICS (NEW HAVEN CITY, CONNECTICUT (2006)), <http://factfinder.census.gov> (search "Fast Access to Information" for "New Haven City, Connecticut"; then select "Economic Characteristics—Show More") (reporting that 21.0% of all people in New Haven had incomes below the poverty level in the previous year).

³⁶ CONN. DEP'T. OF ECON. & CMTY. DEV., 2007 AFFORDABLE HOUSING APPEALS PROCEDURE LIST—AMENDED (2007), <http://www.ct.gov/ecd/site/default.asp> (follow "Publications" hyperlink; then follow "Affordable Housing Appeals List: 2007" hyperlink).

³⁷ U.S. CENSUS BUR., PROFILE OF SELECTED HOUSING CHARACTERISTICS: 2000: NEW HAVEN CITY, CONNECTICUT (2000), <http://factfinder.census.gov> (search "Fast Access to Information" for "New Haven City, Connecticut"; then follow the "2000" hyperlink under "Fact Sheet"; then select "Housing Characteristics—Show More"). See generally Janny Scott & Randal C. Archibold, *Across Nation, Housing Costs Rise as Burden*, N.Y. TIMES, Oct. 3, 2006, at A1 ("The burden of housing costs in nearly every part of the country grew sharply from 2000 to 2005.").

³⁸ See *infra* notes 65–70 and accompanying text.

³⁹ Online Housing Court Database—Housing Case Look-up, <http://www.judst.ate.ct.us/housing.htm> (last visited Nov. 7, 2008) (hereinafter Online Housing Court Database).

⁴⁰ See *infra* Part II.B.

involved in opting for a fast eviction process are not quite as dramatic as one would expect. True, this process yields a relatively high amount of removals in a given year.⁴¹ These removals do inflict fairly high costs on what might be considered vulnerable populations—lower-income, urban tenants, especially single mothers and persons with mental illnesses.⁴² Such findings argue for a system that treats tenants with some sympathy. This study reveals that, in practice, the process is somewhat less harsh on tenants and somewhat more harsh on landlords than one might expect from looking only at the laws on the books. Landlords and the state actors often move the process more slowly than the law suggests, granting tenants somewhat of a reprieve.⁴³ And these actors also take measures to mitigate the costs of losing personal possessions.⁴⁴ On the landlord side, even though the process still moves relatively quickly it inflicts large costs in the form of lost rent payments and substantial fees throughout the process.⁴⁵ These landlords are often not wealthy and cannot always afford to absorb such costs.⁴⁶

This Note proceeds in six Parts. Part II briefly explains the laws governing the eviction process—both the process by which landlords and tenants settle their dispute over possession of the property, and the process by which landlords remove tenants who have lost that dispute. This Part focuses on New Haven laws, but also sets these laws in context by comparing them to the laws of other jurisdictions. Part III examines how the removal process unfolds in practice. This Part draws heavily upon original data gleaned from various legal forms completed during removals in 2005. To supplement these data, this Part also relies upon field research: observations of removals in New Haven and interviews with landlords, marshals, tenants, lawyers, and community agency workers.⁴⁷ Part IV discusses the demographics of removals, examining socioeconomic features of landlords and tenants involved in removals. Part V draws lessons about what parts of this process work well and which could be improved. Part VI concludes.

II. GETTING TO REMOVAL

Every state provides landlords a judicial procedure called “summary process” for evicting tenants who have violated terms of their lease or

⁴¹ See *infra* notes 65–70 and accompanying text.

⁴² See *infra* Part IV.A.

⁴³ See *infra* Part III.A.

⁴⁴ See *infra* Part III.B.

⁴⁵ See *infra* Figure 3.

⁴⁶ See *infra* Part IV.B.

⁴⁷ For an explanation of research methodology, see Appendix 1.

whose leases have expired.⁴⁸ A number of works exhaustively catalogue the steps of Connecticut summary process actions.⁴⁹ This Part does not repeat that information, but establishes the legal context in which removals take place by briefly summarizing the phases of an eviction action in New Haven. In addition, this Part highlights which parts of New Haven's laws are unique and which are more common by comparing how other jurisdictions handle this process.

A. New Haven

Landlords in Connecticut have a number of legal grounds for evicting tenants,⁵⁰ but almost every eviction begins because the tenant has failed to pay rent.⁵¹ The same holds true for New Haven evictions ending in removal: 93% begin for nonpayment, 5% begin when the tenant fails to leave at the end of his lease, and 2% begin when the tenant violates the terms of his lease.⁵² The law grants other grounds for eviction,⁵³ but

⁴⁸ See MARCIA STEWART ET AL., EVERY LANDLORD'S LEGAL GUIDE 447 (8th ed. 2006).

⁴⁹ See, e.g., PAUL MARZINOTTO, THE CONNECTICUT SUMMARY PROCESS MANUAL (1st ed. 1986 & 5th supp. 2002); Gunn, *supra* note 12, at app.; Mark Setterfield, *The Eviction Process in Connecticut: A Comparative Analysis* (Trinity Ctr. for Neighborhoods, Research Project 16, 1996) http://www.trincoll.edu/depts/tcn/Research_Reports/resrch16.htm (last visited Nov. 7, 2008); Steven Shepard, *Withholding Rent in Connecticut: The History and Application of the "Habitability" Defense to Eviction Actions* (2005) (unpublished manuscript, Yale Law School) (on file with author). The housing courts also publish user's guides. STATE OF CONNECTICUT JUDICIAL BRANCH, A LANDLORD'S GUIDE TO SUMMARY PROCESS (EVICTION) (2008), <http://jud.ct.gov/Publications/hm014.pdf>; STATE OF CONNECTICUT JUDICIAL BRANCH, A TENANT'S GUIDE TO SUMMARY PROCESS EVICTION: STEPS IN AN EVICTION ACTION (2007), <http://jud.ct.gov/Publications/hm015.pdf>. Community agencies also publish guides. See, e.g., LEGAL ASSISTANCE RES. CTR. OF CONN., TENANTS' RIGHTS: EVICTION (2008), http://www.larcc.org/pamphlets/housing/tr_eviction.htm (last visited Nov. 7, 2008).

⁵⁰ CONN. GEN. STAT. § 47a-23(a) (2007).

⁵¹ Past studies of New Haven and other jurisdictions have concluded that nonpayment of rent accounts for more than ninety percent of all eviction actions. See, e.g., Daines, *supra* note 12, at 24; Gunn, *supra* note 12, at 397; Rafael Podolsky, *A Study of Eviction Cases in Hartford: A Follow-Up Review of the Hartford Housing Court* 7 tbls. 6&7 (1995) (unpublished report, Legal Assistance Resource Center) (on file with author); Rafael Podolsky, *A Study of Eviction Cases in New London: Case Processing in a Non-Housing Court District* 3 tbl. 4 (1992) (unpublished report, Legal Assistance Resource Center) (on file with author).

⁵² Online Housing Court Database, *supra* note 39. These calculations are based on an examination of 105 eviction cases. I referred to the first 105 eviction goods inventories from the Department of Public Works' archives for the year 2005, and searched for each eviction by parties' last names. Various State Marshals, Eviction Goods Inventory (Jan. 1–Dec. 31, 2005) [hereinafter Eviction Goods Inventories 2005] (on file with author).

⁵³ A landlord may obtain a Notice to Quit in the following circumstances:

- (1) when a rental agreement or lease of such property, whether in writing or by parol, terminates for any of the following reasons: (A) By lapse of time; (B) by reason of any expressed stipulation therein; (C) violation of the rental agreement or lease or of any rules or regulations adopted in accordance with section 47a-9 or 21-70; (D) nonpayment of rent within the grace period provided for residential property in section 47a-15a or 21-83; (E) nonpayment of rent when due for commercial property; (F) violation of section 47a-11 or subsection (b) of section 21-82; (G) nuisance, as defined in section 47a-32, or serious nuisance, as defined in section 47a-15 or 21-

landlords rarely use these.⁵⁴

Before starting an eviction, a landlord must serve the tenant with a Notice to Quit, stating the reason for eviction and asking the tenant to leave the property within three days.⁵⁵ If the tenant does not leave after this period, a landlord may start an eviction.⁵⁶ He does so by having a Summons and Complaint served on the tenant—for service of all papers, the law calls for in-hand or abode service by marshals, not landlords.⁵⁷ At this point, the landlord and tenant are adversaries in a civil suit and must follow certain procedures as they head toward trial.⁵⁸ The process may not escalate to trial for two main reasons. First, the tenant may not show up for a court appearance, in which case the landlord can get a default judgment.⁵⁹ Or, second, the parties may stipulate an agreement at a mediation session with a Housing Specialist immediately before trial.⁶⁰ If neither of these events comes to pass, the parties go to housing court and the judge eventually renders a decision.⁶¹

If a judgment enters against the tenant at any point, or if the tenant violates the stipulated agreement, then the landlord receives an Execution—a legal form granting permission to have the tenant removed from his property.⁶² To enforce this legal entitlement, the landlord must then ask a state marshal to serve this Execution on the tenant.⁶³ Twenty-four hours after using reasonable efforts to serve the tenant, the marshal may return to the property to remove the tenant and all of his belongings.⁶⁴

A surprisingly large number of cases were initiated in 2005 and a surprisingly high proportion of them resulted in actual removals. In that year, marshals served 2,007 Summons and Complaint forms in the City of

80; or (2) when such premises, or any part thereof, is occupied by one who never had a right or privilege to occupy such premises; or (3) when one originally had the right or privilege to occupy such premises but such right or privilege has terminated. . . . CONN. GEN. STAT. § 47a-23(a) (2007).

⁵⁴ Searching the same sample of 105 eviction cases as used in *supra* note 52 revealed no instances where landlords used these grounds.

⁵⁵ CONN. GEN. STAT. § 47a-23(a) (2007). In nonpayment cases, the marshal may not serve this notice on the tenant before the fifteen-day grace period for payment has lapsed. *Id.* § 47a-15. Neither the New Haven Housing Court nor the marshals record how many Notices to Quit marshals serve on tenants in a given year, so it is difficult to determine how often parties resolve their differences at this stage.

⁵⁶ *Id.* § 47a-42.

⁵⁷ *Id.* § 52-57(a) (“Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.”). Anecdotal data suggests that marshals typically comply with these obligations. See *infra* notes 122–128 & accompanying text.

⁵⁸ CONN. GEN. STAT. §§ 47a-23, 47a-26 (2007).

⁵⁹ *Id.* §§ 47a-26–26a.

⁶⁰ *Id.* § 47a-69.

⁶¹ *Id.* § 47a-26d.

⁶² *Id.*

⁶³ CONN. GEN. STAT. § 47a-42a(b) (2007).

⁶⁴ *Id.* § 47a-42(b).

New Haven,⁶⁵ representing 6.1% of the city's 33,167⁶⁶ residential rental units.⁶⁷ Executions issued in over a third of these cases—757.⁶⁸ Just under a half of tenants receiving these Executions—377—moved themselves and their possessions out of their apartment before removal day;⁶⁹ the remainder—380—were removed by a marshal.⁷⁰

When a marshal removes a tenant, he is responsible for placing the tenant's belongings on the curb.⁷¹ Then "[t]he chief executive officer of the town shall remove and store" these belongings for fifteen days.⁷² The New Haven chief executive, or mayor, delegates this responsibility to the Department of Public Works (DPW),⁷³ and the DPW notifies tenants that they have twenty-two days to retrieve their possessions.⁷⁴ If tenants want to retrieve their belongings during this period, Connecticut law dictates that the municipality may charge tenants for the cost of storage.⁷⁵ Some municipalities do so,⁷⁶ but New Haven does not.⁷⁷ A legal aid lawyer⁷⁸ and the New Haven Housing Court Clerk⁷⁹ claim that the decision not to charge tenants is mostly political—the City wants to extend a courtesy to those seen as the "poorest of the poor." The decision not to charge tenants is also practical—if the City charged for pickup, the retrieval rates would decrease and need for storage space would increase.⁸⁰ If the tenant does not

⁶⁵ Interview with Suzanne Colasanto, Clerk, New Haven Housing Court, in New Haven, Conn. (Oct. 13, 2006).

⁶⁶ FACT SHEET: 2000, *supra* note 34.

⁶⁷ A relatively negligible portion were served on commercial tenants; and tenants receiving more than one Summons and Complaint a year did not account for much of the overall total. Telephone Interview with Michael D'Andrea, Assistant Clerk, New Haven Housing Court (Nov. 21, 2006).

⁶⁸ Memoranda from Frank Blee, Eviction Warehouse Manager, New Haven Dept. of Pub. Works (June 2005 & June 2006) [hereinafter DPW Performance Indicators] (on file with author).

⁶⁹ CONN. SUPER. CT., EXECUTION FOR POSSESSION (Jan. 1–Dec. 31, 2005) [hereinafter SUMMARY PROCESS EXECUTIONS].

⁷⁰ *Id.*

⁷¹ CONN. GEN. STAT. § 47a-42(a) (2007).

⁷² *Id.* § 47a-42(a).

⁷³ NEW HAVEN, CONN., CODE § 2-276 (2007).

⁷⁴ Memorandum from the DPW, City of New Haven on Notice to Evictees Reclaiming Household Goods Moved During Eviction [hereinafter Notice to Evictees] (on file with author).

⁷⁵ CONN. GEN. STAT. § 47a-42(c) (2007).

⁷⁶ *See, e.g.*, Telephone Interview with Sharon, Clerk, East Haven Dep't of Pub. Works (Nov. 13, 2006); Telephone Interview with John Cabral, Jr., Program Specialist, Hamden Cmty. Serv. Dep't (Nov. 13, 2006); Telephone Interview with Ronda Carroll, Clerk, Hartford Dep't of Pub. Works (Nov. 13, 2006); Telephone Interview with Emily Barbero, Clerk, Bldg. Dep't of the Town of Torrington (Nov. 13, 2006).

⁷⁷ *See infra* Part III.D.3.

⁷⁸ Interview with Shelly White, Attorney, New Haven Legal Assistance Association, in New Haven, Conn. (Dec. 14, 2006).

⁷⁹ Interview with Suzanne Colasanto, Clerk, New Haven Housing Court, in New Haven, Conn. (Dec. 15, 2006).

⁸⁰ In Hartford where tenants must pay storage fees, for example, only seven to ten percent of tenants retrieve their goods. Telephone Interview with Ronda Carroll, *supra* note 6. For a counterexample, see the Town of Torrington, where thirty to fifty percent of tenants retrieve their

retrieve his property within the set time frame, the town sells it at public auction.⁸¹

B. Comparison to Other Jurisdictions

Each state has developed its own eviction procedures and laws. On a procedural level, states process evictions in slightly different fora—housing sessions of trial courts, municipal courts, small claims courts.⁸² More substantively, states choose different points at which to slow down or speed up the legal proceedings: One state may impose delays at the opening of litigation while another opts to slow down the process at the enforcement phase.⁸³ But, taken as a whole, most state laws governing the dispute for possession share key attributes: they call for landlords to notify tenants at each step and they allow tenants ample opportunity to state their cases, while providing speedy resolution.⁸⁴ In terms of legal process then, removals across the country often share similar back-stories.

At the removal phase, state laws and procedures differ on a number of dimensions.⁸⁵ But New Haven's laws are roughly in the middle-of-the road in terms of the extent to which they favor landlords or tenants. Some of New Haven's laws favor tenants and/or disfavor landlords more than do other jurisdictions. Other parts of New Haven's eviction laws favor landlords and/or disfavor tenants more than do other jurisdictions.

Take removal of the tenant's belongings, for instance. New Haven requires the marshal to hire a private mover to take the tenant's goods out of the apartment. The marshal then bills the landlord for the cost of the movers. In New York City or Minnesota, by contrast, a landlord can simply choose to take possession of any goods the tenant leaves in the rental property, and the landlord can store those goods in the rental property.⁸⁶ In North Carolina or Wyoming, the landlord may even dispose of any personal belongings the tenant leaves behind.⁸⁷ These differences

belongings despite having to pay for storage. Memorandum from Legal Assistance Resource Center on Redemption Rate by Town, 2006 (on file with author).

⁸¹ CONN. GEN. STAT. § 47a-42(c) (2007).

⁸² See STEWART ET AL., *supra* note 48, at 394–96.

⁸³ Rhode Island moves eviction actions into court more slowly than does Connecticut; Massachusetts slows down cases at the end by granting longer automatic Stays of Execution. See Setterfield, *supra* note 49.

⁸⁴ See generally STEWART ET AL., *supra* note 48 (collecting eviction laws from all fifty states).

⁸⁵ States have developed their own rules on service of papers, the length of the waiting period between Execution and removal, who moves the tenant's belongings, how long a tenant's belongings must be stored, and how tenants may retrieve removed possessions. See Appendix XXX.

⁸⁶ See, e.g., New York City Court Housing Part: Eviction, <http://www.nycourts.gov/courts/nyc/housing/eviction.shtml> (last visited Oct. 12, 2008); MINN. STAT. § 504B.365 (2002). For an explanation of Minnesota removal laws, see LAWRENCE R. MCDONOUGH, RESIDENTIAL UNLAWFUL DETAINER AND EVICTION DEFENSE (10th ed. 2008), <http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html>.

⁸⁷ N.C. GEN. STAT. § 42-25.9 (2001); WYO. STAT. § 1-21-1210 (2007).

between New Haven and these other jurisdictions mean two things. First, they mean that the landlord in New Haven generally has to incur higher expenses to deal with tenants' belongings in the removal process. Second, it means that the tenant in New Haven is probably more likely to have an opportunity to retrieve belongings he has left behind than is the tenant in these other jurisdictions.

Once the tenant's belongings are removed from the apartment, New Haven's laws are more favorable toward the tenant than most, in some ways. New Haven allows tenants to retrieve their goods free of charge, for instance.⁸⁸ This gives people who probably do not have much money an opportunity to mitigate their losses. In some other jurisdictions—Arizona,⁸⁹ Delaware,⁹⁰ Oklahoma⁹¹—though, tenants have to reimburse all parties that incurred moving and storage fees before regaining possession of their belongings. This policy probably deters more tenants from retrieving their belongings than does New Haven's policy, because the cost of picking up possessions is a deterrent to picking up possessions.

But New Haven can be stricter toward tenants than other jurisdictions in some ways. Removed tenants in New Haven legally have only twenty-two days to retrieve their possessions from the city warehouse.⁹² In Massachusetts, though, tenants get six months—approximately eight times as long—to gather themselves and find a way to retrieve their possessions.⁹³

Although the laws governing specific aspects of evictions vary from place to place, New Haven provides one useful case study.

III. REMOVALS IN NEW HAVEN

To give a complete picture of removals, this Part begins before the removal day and ends after that day.

A. *Scheduling a Removal*

After the New Haven housing court issues an Execution, the final phase of an eviction begins with the scheduling of the removal. In scheduling a removal, a variety of actors typically delay the process at least once or twice before the removal day. Although the laws dictate that marshals may remove tenants as soon as twenty-four hours after serving an Execution, data show that removals actually happen an average of twenty

⁸⁸ Interview with Frank Blee, Eviction Warehouse Manager, New Haven Dept. of Pub. Works, in New Haven, Conn. (Oct. 3, 2006).

⁸⁹ See, e.g., ARIZ. REV. STAT. § 12-1565(b) (2003).

⁹⁰ DEL. CODE tit. 25, § 5715(e) (2006).

⁹¹ OKLA. STAT. tit. 41, § 130(D) (1999 & Supp. 2008).

⁹² Notice to Evictees, *supra* note 74.

⁹³ See, e.g., MASS. GEN. LAWS ch. 239, § 3 (2004 & Supp. 2007).

days after the judge signs the Execution,⁹⁴ with the median period being seventeen days.⁹⁵ This unscripted delay gives the tenants a windfall of time to live rent-free. At the same time, it increases the cost to the landlord by amplifying the period of lost rent.

1. Landlords

A landlord has few affirmative duties once the eviction has reached its final enforcement stages. But he can still shape the process, primarily by deciding how quickly to effectuate the removal. To move an eviction forward, a landlord must first hire a marshal to serve the Execution on the tenant.⁹⁶ As a result of a 2000 lobbying effort by landlords to cap marshal fees,⁹⁷ marshals now charge statutorily mandated rates⁹⁸—\$125 for the first hour of removal and \$75 for each additional hour.⁹⁹ So, landlords do not comparison shop based on price. Instead, most landlords choose a marshal whom they already know.¹⁰⁰ If they do not know one, they can contact the state marshal association and get a list of marshals based in their area.¹⁰¹

Next, the landlord must decide when to have the marshal serve the Execution on the tenant.¹⁰² Most landlords have the marshal serve the Execution on the tenant immediately.¹⁰³ Then once the marshal serves the Execution, a landlord must decide how quickly to press for the actual removal of his tenants.¹⁰⁴ When they talk to the marshal, landlords typically indicate whether they want the tenant out immediately, or whether they want to delay.¹⁰⁵ Foot-dragging at the end of this process might seem counterintuitive, given that the landlord has already lost rent and delays mean more lost rent. Nevertheless, some landlords choose to delay.¹⁰⁶ One landlord who had already lost two months of rent asked the marshal to serve his tenants with an Execution, then instructed the marshal

⁹⁴ To arrive at this number, I calculated the average (mean) number of days between the date the judge entered on an Execution and the date the state marshal entered on the inventory he completed at the actual removal. SUMMARY PROCESS EXECUTIONS, *supra* note 69; Eviction Goods Inventories 2005, *supra* note 52.

⁹⁵ SUMMARY PROCESS EXECUTIONS, *supra* note 69.

⁹⁶ See CONN. GEN. STAT. § 47a-42 (2007).

⁹⁷ Telephone Interview with Robert Miller, State Marshal & President of the Conn. Marshal's Ass'n (Dec. 14, 2006).

⁹⁸ CONN. GEN. STAT. § 52-261(b) (2007).

⁹⁹ Miller reports that he previously charged \$100 per hour and he knew of many marshals who charged much more than that. Interview with Robert Miller, *supra* note 97.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See CONN. GEN. STAT. § 47a-42(a) (2007).

¹⁰³ Interview with Tommy Russo, State Marshal, in New Haven, Conn. (May 23, 2006).

¹⁰⁴ *Id.*

¹⁰⁵ Interview with Robert Miller, *supra* note 97.

¹⁰⁶ *Id.*

to give the tenant three or four weeks to vacate the property.¹⁰⁷ In addition to demonstrating sympathy for the tenants, this decision intended to serve the landlord's financial interest. The cost of removing tenants is quite high—near \$1000—often higher than the cost of a month of lost rent.¹⁰⁸ Therefore, landlords might give tenants time to move out of an apartment in order to save money on moving fees.

There are other reasons the process may be delayed at this point, as well. In general, larger landlord entities delay the process more than do smaller ones.¹⁰⁹ Landlords may be split into four different categories of entities. Roughly in descending order of the overall size of enterprise, they are: (1) the Housing Authority of New Haven (HANH); (2) cooperatives; (3) persons arranged in partnerships, corporations, or limited liability corporations; and (4) individuals who own properties alone or with another individual. Larger landlords take longer than do smaller landlords to remove a tenant after the Execution is issued:

Figure 1¹¹⁰

Type of Landlord	Average number of days from issuance of Execution to removal of tenant
HANH	27
Cooperatives	28
Partnerships/corporations/LLCs	21
Individuals	17

Individual members of the larger entities face relatively weak incentives to propel the eviction forward. A single member of the Housing Authority, for instance, will not personally realize increased income from moving an eviction to its final stage quickly. An individual landlord, by contrast, will personally realize all of the benefit of evicting a tenant and filling the apartment with a rent-paying tenant. The speed with which various entities act at this stage in the process roughly reflects these relative incentives: The Housing Authority and Cooperatives take an average of twenty-seven and twenty-eight days, respectively, to go from issuance of an Execution to removal; partnerships, corporations and limited

¹⁰⁷ Author's Personal Observation, Removal at 78 Lilac St., New Haven, Conn. (May 18, 2006).

¹⁰⁸ See *infra* Part III.C.3.

¹⁰⁹ See *infra* Part III.A.1; Figure 1.

¹¹⁰ SUMMARY PROCESS EXECUTIONS, *supra* note 69. Although not technically landlords, banks and mortgage companies also initiate evictions when foreclosing on a property. On average, those actors take 24 days from issuance of Execution to removal of tenant. *Id.* and Eviction Goods Inventories 2005, *supra* note 52.

liability companies take twenty-one days; and individual owners take just seventeen days.¹¹¹ Thus, delay at this stage results, in some cases, from the somewhat dulled incentives larger landlord entities face.

2. Marshals

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

To become a marshal, someone must submit an application, pass an examination, and be appointed by the State Marshal Commission.¹¹² Once appointed, marshals operate as independent contractors, compensated purely on a fee-for-service basis.¹¹³ The fees are ample, as marshals based in New Haven County made an average of \$103,000 and a median of \$77,000 in 2005.¹¹⁴ For these fees they serve process, carry out removals, and collect debts anywhere in the state.¹¹⁵ Since they must find their own clients for this work¹¹⁶ and cannot cut prices to attract business,¹¹⁷ marshals have strong financial incentives to do whatever it takes to keep their clients—landlords, in the case of removals—happy.

The first thing marshals must do for their clients is contact the DPW to schedule an eviction,¹¹⁸ a straightforward duty. Once he receives an Execution, the marshal calls Frank Blee, manager of the DPW's eviction warehouse, and makes an appointment for the next available time with a City moving truck.¹¹⁹ Any decisions to delay this call to DPW are made by the landlord and are not within the marshal's discretion.¹²⁰

The marshal exercises some discretion in serving the tenant with the Execution. He must decide how and when to serve it. The law clearly prescribes in-hand or abode service.¹²¹ Marshals report using in-hand service about half of the time.¹²² This is not fail-proof, though. In some cases, especially when the tenant does not speak English, the marshal

¹¹¹ *Id.*

¹¹² CONN. AGENCIES REGS. § 6-38b-3-5 (2006); The eight-person commission consists of persons appointed by various government officials, including the Chief Justice, representatives and the governor. CONN. GEN. STAT. § 6-38b (2007).

¹¹³ CONN. GEN. STAT. § 6-33 (2007) (Marshals receive one-dollar annual salary from the state); CONN. GEN. STAT. § 6-38a (2007).

¹¹⁴ Office of State Ethics, State Marshals 2005 Annual Statement of Income (on file with author).

¹¹⁵ CONN. GEN. STAT. § 52-261 (2007).

¹¹⁶ Interview with Robert Miller, State Marshal & President of the Conn. Marshal's Ass'n, in New Haven, Conn. (May 16, 2006).

¹¹⁷ See CONN. GEN. STAT. § 52-261 (2007).

¹¹⁸ Interview with Robert Miller, *supra* note 116.

¹¹⁹ For discussion of the details of scheduling a moving truck, see *infra* Part III.A.3.

¹²⁰ Interview with Robert Miller, *supra* note 116.

¹²¹ CONN. GEN. STAT. § 47a-42(b).

¹²² Interview with Tommy Russo, State Marshal, in New Haven, Conn. (May 31, 2006).

cannot determine if he is handing the Execution to the right person.¹²³ When the marshal and tenant do speak a common language, some marshals take the opportunity to explain the process to the tenant, and advise them to move their valuable possessions out of the property before the scheduled removal.¹²⁴ If the tenant is not home, marshals report that they insert the Execution into the apartment under the front door¹²⁵—this satisfies the requirements of abode service, and this practice seems to be effective. Tenants confirm that they typically received their Execution in their hand or under their door,¹²⁶ and a legal aid lawyer reports almost never challenging an eviction for improper service of the Execution, because tenants rarely register that complaint.¹²⁷

3. *Department of Public Works*

The New Haven DPW plays a key role in determining when a tenant will be removed from his apartment. By statute, the City must pick up the tenant's possessions at the curb, and in New Haven the DPW fulfills this duty.¹²⁸ Instead of, say, the marshal moving a tenant's possessions to the curb in the morning and the City picking them up in the afternoon, marshals carry out removals based on when the DPW can send a truck to sit at the curb to take immediate possession of the tenant's belongings.¹²⁹ So the DPW acts as the bottleneck in scheduling a removal.

Evictions Warehouse Manager Blee dispatches the DPW trucks. He sends one of two large moving trucks to accompany marshals on removals and tries to schedule each truck for more than one removal each morning.¹³⁰ But even with two trucks at his disposal, he cannot keep up with the pace of removals.¹³¹ When a marshal calls, Blee typically has to schedule the removal at least a full week later.¹³² Thus, the DPW's normal scheduling constraints tend to grant tenants another windfall of time.

It is not rare for the DPW to delay removals even longer than a week in some cases. When a truck is out of commission, as was the case for much of Spring 2006 after an employee backed a dump truck into one moving truck,¹³³ the DPW might not be able to accommodate a marshal's request

¹²³ *Id.*

¹²⁴ Interview with Gerald Capiello, Jr., State Marshal, in New Haven, Conn. (Mar. 28, 2006).

¹²⁵ Interview with Tommy Russo, *supra* note 122.

¹²⁶ *See, e.g.*, Telephone Interview with Kelly, Removed Tenant (Aug. 28, 2006); Telephone Interview with Veronica, Removed Tenant (May 31, 2006). In total, I interviewed fifteen tenants.

¹²⁷ Interview with Shelly White, *supra* note 78.

¹²⁸ *See supra* notes 72–73 and accompanying text.

¹²⁹ Interview with Robert Miller, *supra* note 116.

¹³⁰ Interview with Frank Blee, *supra* note 88.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Interview with Frank Blee, Eviction Warehouse Manager, New Haven Dep't of Pub. Works (Mar. 27, 2006).

for two weeks or more. Furthermore, the DPW has only a limited staff to complete a wide variety of tasks, some of them urgent. The employees who drive the eviction trucks, for instance, also drive the snow plows in the winter.¹³⁴ So, when a snowstorm hits New Haven and the city needs to be plowed, Blee cancels evictions scheduled for that day, and reschedules them for the next available day.¹³⁵

In some cases, the DPW makes a more deliberate decision to delay removals. Although the DPW technically is charged with carrying out removals whenever necessary, the City adheres to a tradition of imposing a moratorium around Christmas.¹³⁶ This unwritten rule has endured from the mid-1990s when New Haven County Sheriff Henry Healey used to set the policies for removals. He never tried to make this moratorium law, but he had so much control over his colleagues that he simply told the sheriffs that they were not to carry out any removals around Christmas and New Year's out of respect for the tenants.¹³⁷ With the decentralized marshal system replacing the sheriff system, no one person today has as much influence over the officials carrying out the removals as did Healey.¹³⁸ But, data suggest that the DPW still adheres to Healey's instructions. Combining data from both 2004 and 2005, the first ten days of December saw fourteen tenants removed, the second ten days saw twenty-three tenants removed, and the final ten days saw zero tenants removed.¹³⁹

Of course, this moratorium and the one around Thanksgiving¹⁴⁰ provide DPW employees with much appreciated holiday breaks. But they serve a larger purpose, too. Through these moratoria the City extends tenants a courtesy. Blee has gotten the sense that these moratoria are an expression of the Mayor's sympathy for soon to be removed tenants.¹⁴¹

¹³⁴ *Id.*

¹³⁵ Author's Personal Observations, Removal at 74 Orange St., New Haven, Conn. (May 16, 2006).

¹³⁶ Interview with Frank Blee, *supra* note 88; Interview with Robert Miller, *supra* note 116.

¹³⁷ A number of interviewees recalled Sheriff Healey's moratorium. *See, e.g.*, Interview with John Pottenger, Clinical Professor, Yale Law Sch., in New Haven, Conn. (April 10, 2006); Interview with Peter Criscuolo, State Marshal, in New Haven, Conn. (Mar. 27, 2006).

¹³⁸ Deputy sheriffs used to serve process and carry out removals. The sheriff system came under attack in the late 1990s. Deputy sheriffs advocated for reform because they were appointed by the elected high sheriffs in each county, and therefore could not plan their lives beyond the next election. Dave Altimari, *Sheriff System: End of the Line?*, HARTFORD COURANT, Oct. 29, 2000, at B1. Outsiders criticized the sheriff system for being a corrupt, patronage-ridden vestige of county government. *Id.* In a 2000 referendum, Connecticut voters scrapped the sheriff system and legislators replaced it with a system of life-tenured marshals. Dave Altimari, *Voters Abolish Centuries-Old Sheriff System*, HARTFORD COURANT, Nov. 8, 2000, at A21. Now to become a marshal, someone must submit an application, pass an examination and be appointed by the State Marshal Commission. CONN. GEN. STAT. § 6-38f (2006). Once appointed, marshals operate as independent contractors, compensated purely on a fee-for-service basis. CONN. GEN. STAT. § 6-38a(a) (2006).

¹³⁹ Various State Marshals, Eviction Goods Inventory (Dec. 1–Dec. 31, 2004 & Dec. 1–Dec. 31, 2005) (on file with author).

¹⁴⁰ Interview with Frank Blee, *supra* note 88.

¹⁴¹ *Id.*

B. *Preparing To Be Removed*

Most tenants appear to understand the ramifications of their impending removal. A tiny minority obtain their knowledge from attorneys: under 2% of removed tenants had legal representation during the first phase of the eviction.¹⁴² Some learn about the process from the marshal who serves the Execution.¹⁴³ Many ask friends and neighbors about the process;¹⁴⁴ and others know about removals through past experience.¹⁴⁵ Through these various sources, tenants appear to understand the basics: they will be removed, their property will be packed and stored, and they can retrieve their property later.

If most tenants appear to understand what happens to them and to their possessions in a removal, the next question is what they do in the face of that knowledge. As stated above, half of tenants move out of the property before the removal day.¹⁴⁶ Those who do not move immediately might try to delay the removal by asking the landlord for a few extra days to move their belongings, themselves.¹⁴⁷ Granting this request typically serves the landlord's interest since it allows the landlord to save the marshal's fee and moving costs associated with removals.¹⁴⁸ Some tenants recognize the landlord's circumstance and use last-minute pleas as a simple way to extend their rent-free living.¹⁴⁹

Those with children might use the time between Execution and removal to arrange for the children to stay elsewhere. Roxanne sent her daughter to live with her grandmother;¹⁵⁰ Sheryl sent her daughter to live with a family friend.¹⁵¹ Both said they did this because they had not yet found a place to live in the school district, but did not want to transfer their daughters to a new school in the middle of the year.¹⁵²

As for possessions, most removed tenants leave a significant amount of valuable items in the apartment.¹⁵³ They understand that they need not fear

¹⁴² This number was calculated based on an analysis of the first 271 individuals removed in 2005. SUMMARY PROCESS EXECUTIONS, *supra* note 69; Online Housing Court Database, *supra* note 39. I obtained the parties' names from the Summary Process Executions in the Department of Public Works' archives. I then searched the Housing Court Database using these party names. The Housing Court Database indicates whether a party to an eviction was represented by legal counsel.

¹⁴³ Interview with Gerald Capiello, Jr., *supra* note 124.

¹⁴⁴ See Rudy Kleysteuber, Repeat Play in Connecticut Eviction Actions: A Quantitative and Qualitative Analysis 46 (2006) (unpublished manuscript, Yale Law School) (on file with author).

¹⁴⁵ Interview with Gerald Capiello, Jr., *supra* note 124.

¹⁴⁶ See SUMMARY PROCESS EXECUTIONS, *supra* note 69 and accompanying text.

¹⁴⁷ Interview with Robert Miller, *supra* note 116.

¹⁴⁸ Interview with Robert Miller, State Marshal & President of the Conn. Marshal's Ass'n, in New Haven, Conn. (Mar. 9, 2006).

¹⁴⁹ See, e.g., Author's Personal Observation, *supra* note 107.

¹⁵⁰ Interview with Roxanne, Removed Tenant, in New Haven, Conn. (April 10, 2006).

¹⁵¹ Interview with Sheryl, Removed Tenant, in New Haven, Conn. (May 3, 2006).

¹⁵² *Id.*

¹⁵³ See *infra* Figure 2.

losing their possessions if they do not pack them, because the landlord pays to pack these items—a roughly \$250 expense¹⁵⁴—and the DPW stores them for over a month—private storage would cost \$200.¹⁵⁵ Miller reports that some portion of tenants take full advantage of the system and leave everything behind in order to get a free move while they are relocating or to increase the landlord's moving bill,¹⁵⁶ others pack some of their possessions and leave only their unwanted possessions and trash.¹⁵⁷

Although a couple of community agencies help tenants avoid evictions before they start and help tenants navigate the legal battle, remarkably few community agencies play any role in helping tenants relocate in the days between an Execution and a removal.¹⁵⁸

C. Removal

Eventually, it comes time for the marshal to remove the tenant. Three features of the process are particularly striking. Two of these features illustrate the serious toll this process takes on its participants: how many valuable possessions tenants leave behind; and how costly the process is to tenants and landlords.¹⁵⁹ The third feature, though, shows that the process is somewhat less emotionally provocative than one might expect: Despite being high-stakes procedures, removals almost always occur without resistance or violence.¹⁶⁰

1. The Removal Process

Just before a removal the landlord typically checks one last time that spending money on this process is necessary.¹⁶¹ He might drive by the property late the night before or early the morning of the removal to see if it looks like the tenants are still living there.¹⁶² The landlord cannot and does not enter the property, but if he can determine that the tenants have

¹⁵⁴ Interview with Ron Crosby, Owner, Crosby's Moving Co., in New Haven, Conn. (May 17, 2006) (assuming an average apartment requires three movers).

¹⁵⁵ *Id.*

¹⁵⁶ Interview with Robert Miller, *supra* note 116.

¹⁵⁷ See *infra* Part III.C.2. (discussing in greater detail what types of possessions the tenant typically leaves for the City to collect).

¹⁵⁸ New Haven Legal Assistance Association helps some tenants navigate the eviction process so as to delay or avoid removal. Community Mediation runs a Rent Bank to help tenants avoid evictions, and it provides qualifying tenants with security deposits to help them move on to another apartment. COMMUNITY MEDIATION, ANNUAL REPORT 2005 8–9 (2006). But none of the eighty-two tenants who used the Rent Bank program in 2005 were at the Execution phase; and very few, if any at all, of the ninety-four families using the security deposit program were at this phase. *Id.* at 8–10; Telephone Interview with Cristina Urrutia, Hous. Case Manager, Cmty. Mediation (Oct. 11, 2006).

¹⁵⁹ See *infra* Part III.C.2–3.

¹⁶⁰ See *infra* Part III.C.4.

¹⁶¹ Interview with Tommy Russo, *supra* note 103.

¹⁶² *Id.*

left and moved themselves out entirely, he might cancel the removal at the last minute.¹⁶³ If the tenant has left any possessions whatsoever, though, the landlord may go ahead with the removal in order to reclaim possession of the property.¹⁶⁴ So last-minute cancellations do happen, but only rarely.¹⁶⁵

Removal days start early.¹⁶⁶ For the first one of the day, the marshal typically arrives just before 7:30 a.m. Once the DPW truck and movers arrive in front of the property, the marshal knocks on the front door. If the tenant does not answer, the marshal uses the landlord's key to enter the apartment. In a quarter of removals in 2005 a marshal found a tenant home.¹⁶⁷ When the tenant is home, the marshal informs the tenant he is there to complete the eviction and explains that the tenant must leave immediately.¹⁶⁸ Tenants normally are expecting to see the marshal, but rarely are prepared to leave right away.¹⁶⁹ Some are not fully dressed; most request time to gather their possessions.¹⁷⁰ Marshals exercise some discretion in how they respond:¹⁷¹ One gives the tenant only enough time to find his coat and wallet, but most others are sensitive to the situation and allow the tenant to remain in the house for the duration of the removal in order to pack whatever belongings he wants to take himself. Once the marshal explains the process to the tenant and surveys the apartment, he signals to the movers to start packing the tenants' belongings.¹⁷²

2. Possessions

Movers trudge into the property with cardboard boxes. They pack everything tenants have left aside from perishables, paint, chemicals, plants and garbage.¹⁷³ And they construe "garbage" narrowly.¹⁷⁴ Broken fans, old bills, and worn stuffed animals all get packed. The owner of one moving company said he and his employees never throw anything away: "To you it's garbage, but to them it's all they have, so we still have to protect it

¹⁶³ *Id.*

¹⁶⁴ CONN. GEN. STAT. § 47a-42 (2007).

¹⁶⁵ Interview with Tommy Russo, *supra* note 103.

¹⁶⁶ Unless otherwise noted in this paragraph, the description is based upon the author's personal observations of the eviction process at 109 James St., 83 Willis St., 74 Orange St. and 78 Lilac St. in New Haven, Connecticut on March 27, May 16, May 16, and May 18, 2006, respectively.

¹⁶⁷ Eviction Goods Inventories 2005, *supra* note 52. Eviction Goods Inventories indicate whether the tenant was home on the day of removal.

¹⁶⁸ Interview with Gerald Capiello, Jr., *supra* note 124.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*; Interview with Robert Miller, *supra* note 116; Interview with Tommy Russo, *supra* note 103.

¹⁷³ Interview with Ron Crosby, *supra* note 154. Crosby's Moving Company sends a moving crew on removals almost every day.

¹⁷⁴ *Id.*

all.”¹⁷⁵ This attitude means that tenants do not face much risk of losing their possessions outright in the move.

As mentioned above, tenants take different approaches to the impending removal of their possessions.¹⁷⁶ Adina, for example, treated it as a free move. A single woman suffering from asthma, she could not move her own belongings and could not afford to pay someone to do it. She was in the hospital at the time of her removal, but sent her nephew to meet the marshal at the apartment and to pack up two boxes of clothing for her to use until she reclaimed her possessions from the warehouse. When asked why Adina did not have her belongings moved before removal, her nephew said, “Why would she? They’re going to move it and keep it for free anyway.”¹⁷⁷ Others treat the eviction as free trash removal. They take everything they want, and leave the rest behind. In some cases, the tenants will actually sign a statement consenting to the City delivering the goods straight to the landfill.¹⁷⁸ This only happened in a small handful of cases in 2005, though.¹⁷⁹

The majority of tenants, though, leave valuable, hard-to-move items behind.

Figure 2 lists items and the percentage of cases where a marshal found these items left in an apartment:

Figure 2¹⁸⁰

Item	Percentage of cases in which at least one of this item was left behind
Chair/ couch	88%
Mattress/ box spring	78%
Large table (kitchen or coffee)	76%
TV	63%
Dresser/ Bureau	45%

Tenants leaving loose items that got packed into boxes had, on average, eighteen boxes worth of goods, with the median being 12 boxes.¹⁸¹ Other items frequently moved during a removal include: washers,

¹⁷⁵ *Id.*

¹⁷⁶ Unless otherwise noted in this paragraph, the description is based upon the author’s personal observations of the eviction process at 109 James St. and 139 Monroe St. in New Haven, Connecticut on March 27, 2006.

¹⁷⁷ Interview with Jorge, Nephew of Removed Tenant, in New Haven, Conn. (Mar. 27, 2006).

¹⁷⁸ Eviction Goods Inventories 2005, *supra* note 52.

¹⁷⁹ *Id.*

¹⁸⁰ Analysis of 50 randomly selected removals from various months throughout 2005. Eviction Goods Inventories 2005, *supra* note 52.

¹⁸¹ *Id.*

dryers, refrigerators, stoves, air conditioners, microwaves, vacuums, bicycles, and children's toys.¹⁸²

Movers carry the possessions to the curb where they hand them off to DPW workers.¹⁸³ As this happens, the marshal inventories everything that goes into the truck.¹⁸⁴ At the end of the removal, the tenant (if present) and a DPW worker sign the inventory.¹⁸⁵ No statute mandates this practice, Marshals do this to avoid disputes. Before the advent of these inventories, some tenants would go to the warehouse to pick up their belongings and claim that a nice television or couch was missing, and try to get the City or the marshal to buy them a new one.¹⁸⁶ Now, if tenants do this, Blee shows the tenant the inventory and that usually ends the dispute.¹⁸⁷

3. Costs

Costs are harder to quantify for tenants than for landlords. For the tenant, a removal represents not only the sudden loss of a home, but also the loss of some dignity. Jane struggled to beat a drinking problem and keep her life together.¹⁸⁸ When she got removed from her apartment, the process humiliated her and set her back because she felt it announced to the whole world that she was not composed enough to maintain her home.¹⁸⁹ When Bob asked his friend about removals, the friend's main advice was not to be home when it happened so as to avoid the shame that accompanies hearing the knock on the door.¹⁹⁰ In addition to such dignitary losses, tenants face the monetary expenses that come with having to find a new apartment, purchase new personal belongings, and/or take time off from work. The total cost of these various losses is normally quite high, but is hard to pinpoint.

More quantifiable are the landlords' financial costs. Although each case varies, a typical landlord loses roughly \$3000 over the full course of an eviction, almost one-third of which goes toward the removal phase.¹⁹¹ Figure 3 breaks down the expenses of a typical eviction from start through removal:

¹⁸² *Id.*

¹⁸³ *See, e.g.,* Author's Personal Observations, *supra* notes 2, 107, 135.

¹⁸⁴ Interview with Robert Miller, *supra* note 116. No state law requires marshals to take these inventories, but New Haven County forces marshals to do this.

¹⁸⁵ *See, e.g.,* Author's Personal Observations, *supra* notes 2, 107, 135.

¹⁸⁶ Interview with Robert Miller, *supra* note 116.

¹⁸⁷ *Id.*; Interview with Peter Criscuolo, *supra* note 137.

¹⁸⁸ E-mail from Jane, Removed Tenant, to Michael D. Gottesman, Author (Aug. 18, 2006, 12:59 EST) (on file with author).

¹⁸⁹ *Id.*

¹⁹⁰ Interview with Bob, Removed Tenant, in New Haven, Conn. (May 16, 2006).

¹⁹¹ *See* Figure 3.

Figure 3

Item	Expense
Getting to the removal phase¹⁹²	
Lost rent (assuming \$576/month ¹⁹³ X 1.5 months ¹⁹⁴)	\$864
Serving Notice to Quit on tenant	\$40
Serving Summons and Complaint on tenant	\$52
Court filing fee	\$120
SUBTOTAL	\$1076
Removal phase	
Serving Execution	\$50
Additional lost rent (assuming \$576/month X 20 days ¹⁹⁵)	\$384
Marshal's fee (assuming 2 hours at \$125 for the first hour and \$75 for each additional hour ¹⁹⁶)	\$200
Movers' fee (assuming 2 hours at \$130/hour ¹⁹⁷)	\$260
Changing locks	\$60 ¹⁹⁸
SUBTOTAL	\$954
Optional expenses	
Attorney	\$1000 ¹⁹⁹
SUBTOTAL	\$1000
GRAND TOTAL	\$3030

¹⁹² Unless otherwise noted, the calculation of expenses for getting to the removal stage are derived from A LANDLORD'S GUIDE TO SUMMARY PROCESS (EVICTION), *supra* note 49, at 3–5, and from CONN. GEN. STAT. § 52-261 (2006).

¹⁹³ Average price for a rental unit in New Haven. HomeGain, http://www.homegain.com/local_real_estate/CT/new_haven.html (last visited Nov. 20, 2008) (“HomeGain estimates are based on accumulating the most recent census tract data into zip code boundaries, adjusting for population variances and density, and mapping these zip code areas to city and county boundaries.”).

¹⁹⁴ Daines, *supra* note 12, at 47 tbl. “Disposition Time.” He finds that an average eviction, from the service of a Notice to Quit to the Final Disposition, takes somewhere between forty-three and seventy-four days. Thus, my assumption of 1.5 months of lost rent represents a conservative estimate.

¹⁹⁵ To calculate the total period of lost rent, we must add to the disposition time the time it takes to move from Execution to removal—twenty days, on average. See *supra* note 94 and accompanying text.

¹⁹⁶ When Robert Miller charges tenants up front, he charges for two hours because in his experience an average removal takes this long. Interview with Robert Miller, *supra* note 116.

¹⁹⁷ See Interview with Ron Crosby, *supra* note 154 and accompanying text.

¹⁹⁸ Telephone Interview with Anthony Lauria, Landlord (Oct. 10, 2006).

¹⁹⁹ A local attorney reported this fee on the condition of anonymity, so his fees would not become public. In quoting this amount, the attorney assumed an unrepresented tenant. If the tenant has representation, the landlord's attorney typically needs to do more work than average and, therefore, charges more. Representation also typically helps the tenants delay the process, which inflicts a greater loss of rent on the landlord. See generally Bolton & Holtzer, *supra* note 12; Gunn, *supra* note 12; Daines, *supra* note 12.

Not all landlords hire attorneys, but the overwhelming majority of them—72% of landlords who eventually removed a tenant²⁰⁰—did in 2005, and therefore faced a total loss of near \$3000. This amount is high in absolute terms, but becomes even more significant in light of the fact that landlords are often not much wealthier than their tenants.²⁰¹

4. Violence

Although each removal presents a different set of circumstances, virtually all of them share one common characteristic: Removals occur without violence or resistance.²⁰² Given that the stakes are high and that any tenant making it to the removal stage has acted somewhat stubbornly in the face of opportunities to resolve this dispute, it is remarkable that this process almost never climaxes in outright conflict at the removal.

One possible explanation for this is that the state monopolizes power at the removal.²⁰³ The landlord plays no role in the removal and is usually not at the apartment during the removal.²⁰⁴ Most landlords know not to get involved with the removal, and if they do not know, marshals strongly advise them to stay away.²⁰⁵ In Marshal Tommy Russo's experience, tenants get worked up much more often when the landlord appears at the removal.²⁰⁶ Tenants often want to play out hostilities that were engendered in the eviction process.²⁰⁷ Excluding landlords from the process reduces the chances of conflict.²⁰⁸

Sometimes the removal does take on a more hostile tone. Tenants in New Haven have certainly taken drastic measures, such as handcuffing themselves to the radiator,²⁰⁹ when the marshal tries to remove them. Elsewhere, tenants have acted violently: patrolling the front porch with

²⁰⁰ SUMMARY PROCESS EXECUTIONS, *supra* note 69. Executions list whether the landlord is represented. Therefore, to arrive at this percentage, I noted which Executions that resulted in removals in 2005 listed landlords' counsel, and divided that number by the total number of Executions.

²⁰¹ Irving Welfeld, *Poor Tenants, Poor Landlords, Poor Policy*, in 2 PERSPECTIVES ON PROPERTY LAW 374, 379–80 (Ellickson et al. eds., 1995); see Dennis Hevesi, *For the Small Landlord, All Problems are Big*, N.Y. TIMES, Mar. 1, 1998, § 11, at 1.

²⁰² Determined by comparing the New Haven Police Department records for landlord-tenant disputes to the DPW's log of removals to find overlapping dates and addresses. New Haven Police Department (NHPD), Call Information Maintenance Log, Landlord-Tenant Disputes (Jan. 1–Dec. 31, 2005) [hereinafter Call Information Maintenance Log].

²⁰³ The marshal, rather than the landlord, removes a tenant from the property. See *supra* Parts III.A.2 & III.C.1.

²⁰⁴ See, e.g., Author's Personal Observations, *supra* notes 2, 107, 135.

²⁰⁵ Interview with Tommy Russo, *supra* note 103; see, e.g., STEWART ET AL., *supra* note 48, at 384 (guiding landlords not to get involved in the removal of the tenant and the tenant's possessions).

²⁰⁶ Interview with Tommy Russo, *supra* note 103.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Telephone Interview with David Schancupp, Attorney, Shiff & Schancupp (Aug. 24, 2006).

guns in anticipation of the marshal's arrival,²¹⁰ and even beating and burning to death the marshal when he arrived to carry out the removal.²¹¹ But incidents of resistance and violence are surprisingly rare. The New Haven Police Department (NHPD) was called to assist with only two removals in 2005,²¹² which represents a miniscule portion of the 380 total removals that year.²¹³ This suggests that the vast majority of tenants are removed without significant resistance or violence requiring a police presence. And some even see their removal as necessary. One tenant said that although he was depressed that he got removed, he "understood that it had to happen" because he owed the landlord more than \$4000.²¹⁴

D. After a Removal

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

1. Landlords – Continuing Financial Losses

After removing a tenant, the landlord's financial losses continue in the form of repairs and lost rent. Some tenants intentionally damage apartments by pulling out the baseboards and light fixtures,²¹⁵ or by pouring cement down the drain.²¹⁶ When a tenant abuses the apartment, the landlord has to spend a significant amount of money just to repair the property—in one case where a tenant allowed his dog to defecate all over the apartment, repairs cost upwards of \$2000.²¹⁷ But according to a landlord who has been involved in a number of removals, this behavior is not the norm and tenants rarely plot out how to damage the apartment.²¹⁸

Filling an apartment with new tenants after a removal takes time. Before the removal, uncertainties of timing prevent the landlord from promising an incoming tenant when the apartment will be available. Once

²¹⁰ Dan Uhlinger, *Barricaded Man's Eviction Renewed, Foreclosed Owner Refuses to Leave Peacefully*, HARTFORD COURANT, July 10, 2001, at B1; Dan Uhlinger, *A Brief Break from Barricades; Man Fails in Bid To Get Police Aid Against Eviction*, HARTFORD COURANT, May 19, 2001, at B5; Dan Uhlinger, *Facing Eviction, Man Vows He'll Die First; With Rifle, Barricades, Resident Rejects Eviction Order*, HARTFORD COURANT, May 17, 2001, at A3.

²¹¹ Sean Gardiner et al., *A Violent History*, NEWSDAY, Aug. 23, 2001, at A3; Sean Gardiner et al., *"Despicable Crime:" City Marshal Beaten, Torched in Brooklyn*, NEWSDAY, Aug. 22, 2001, at A5.

²¹² Call Information Maintenance Log, *supra* note 202.

²¹³ SUMMARY PROCESS EXECUTIONS, *supra* note 69.

²¹⁴ Interview with Bob, *supra* note 190.

²¹⁵ Interview with Peter Criscuolo, *supra* note 137.

²¹⁶ Interview with Ardelle Cowie, Owner, Chelsea Co., in New Haven, Conn. (Dec. 14, 2006).

²¹⁷ Telephone interview with Anthony Lauria, *supra* note 198.

²¹⁸ Interview with Ardelle Cowie, *supra* note 216.

the apartment does become available, how long it takes to fill it depends on a number of factors, especially location and size. A landlord who owns properties throughout New Haven says she can fill a one-bedroom apartment near downtown by the first of the following month, no matter the time of year; a multiple-bedroom apartment near downtown normally sits empty until the start of a new academic term in the fall or winter; and an apartment outside of downtown can take two months to rent.²¹⁹

A landlord may sue a tenant to recoup eviction expenses if the rental contract allows for recovery of expenses relating to enforcement of the agreement—e.g., attorney’s fees, marshal’s fee, mover’s fee.²²⁰ But because suing tenants costs money and tenants who have defaulted on rent payments because they do not have enough money are often judgment-proof, landlords rarely do this.²²¹

2. Tenants – Link between Removal and Homelessness

Although a removal undoubtedly disrupts a tenant’s life, it does so in perhaps a less dramatic way than the current literature would suggest. Some writers depict evictions, and especially removals, as leading directly and immediately to life on the streets.²²² As noted above, the media portray the link between evictions and homelessness as robust.²²³ Homeless advocates treat the link in the same way. A prominent writer and advocate for the homeless asserts that “forced displacement frequently results in outright homelessness.”²²⁴ A San Francisco homelessness advocacy organization published a report titled “When the Rent Comes Due: Breaking the Link Between Evictions and Homelessness—An Eviction Prevention Action Plan.”²²⁵ Organizations’ and municipalities’ homelessness prevention plans often consider prevention of evictions as a direct solution for homelessness.²²⁶

²¹⁹ *Id.*

²²⁰ *Baumgartner v. Rowe*, No. CV074006655S, 2007 WL 2756924 (Conn. Super. Ct. Sept. 6, 2007); *Leonard Indus. Properties v. Maisano*, No. CV970412038S, 2001 WL 523563, at *5 (Conn. Super. Ct. Apr. 30, 2001); *Plaza Realty v. Wiggs*, No. CV H 8402–1292 HD, 1985 WL 263919, at *2 (Conn. Super. Ct. Apr. 26, 1985).

²²¹ Interview with Ori Spiegel, Attorney, Law Offices of Lawrence A. Levinson, in New Haven, Conn. (Dec. 14, 2006) (reporting under five percent of clients sue tenants after removal); Telephone Interview with Robert Miller, *supra* note 97 (reporting that he hears about landlords suing tenants in under five percent of cases).

²²² See *supra* note 14–16 and accompanying text.

²²³ See *supra* note 17 and accompanying text.

²²⁴ Hartman & Robinson, *supra* note 10, at 468.

²²⁵ HOMEBASE, WHEN THE RENT COMES DUE: BREAKING THE LINK BETWEEN EVICTION AND HOMELESSNESS—AN EVICTION PREVENTION ACCESS PLAN (1989).

²²⁶ See, e.g., MAYOR’S HOMELESS ADVISORY COMMISSION, THE NEW HAVEN TEN YEAR PLAN TO END CHRONIC HOMELESSNESS 22–24 (2005); NATIONAL ALLIANCE TO END HOMELESSNESS, A PLAN, NOT A DREAM: HOW TO END HOMELESSNESS IN TEN YEARS 13 (2000) (“In the past

Data suggest a more complicated picture of this link between removals and homelessness. A high proportion of homeless individuals in New Haven shelters were, indeed, once evicted. And eviction played a central role in making many of these individuals homeless: At Columbus House, New Haven's largest shelter, 20% to 25% of clients report evictions as a primary cause of homelessness;²²⁷ data from the two women's shelters that New Haven Home Restoration operates show 31% of clients indicate eviction as a primary cause of their homelessness,²²⁸ at Life Haven, a shelter for pregnant women and women with children, a caseworker estimates that up to half or two-thirds of the women coming to the shelter recently have experienced an eviction.²²⁹ These data are self-reported, so may not be entirely accurate, but they suggest a link between evictions and the homeless shelter population.

But tenants do not necessarily go immediately from an eviction to a homeless shelter. John Thomas, a case worker at Immanuel Baptist Emergency Shelter, says that tenants often take a while to check into a shelter after an eviction. He describes a normal path from eviction to shelter: The tenant gets evicted, moves in with a family member, borrows too much money or overstays his welcome, gets kicked out, moves to a friend's couch, eventually gets kicked out for similar reasons, and so on until the evicted tenant has exhausted his support network and has nowhere to go but a shelter.²³⁰

Interviews with tenants roughly square with Thomas's explanation. Tenants scrambled to find housing, but were usually able to do so without first resorting to a homeless shelter. Before the day of removal, most tenants had already arranged to stay with family or friends in town. Adina was going to move in with her sister.²³¹ Sheryl moved in with her son.²³² Roxanne lived with her daughter.²³³ Jeff luckily had a friend with an extra

homelessness prevention focused primarily on stopping eviction or planning for discharge from institutions like jail or mental hospitals.”).

²²⁷ Interview with Dick Caplan, Clinical Dir., Columbus House, in New Haven, Conn. (Apr. 10, 2006). Note that all intake data is self-reported. Since shelters may not release client names for comparison with lists of individuals evicted, this self-reported data is the best data available on this topic.

²²⁸ E-mail from Kara Capone, Dir. of Programs, New Haven Home Recovery, to Michael D. Gottesman, Author (Oct. 10, 2006, 4:58 EST) (on file with author).

²²⁹ Interview with Diane Ecton, Caseworker, LifeHaven, in New Haven, Conn. (Apr. 10, 2006).

²³⁰ Interview with John Thomas, Caseworker, Immanuel Baptist Emergency Shelter, in New Haven, Conn. (May 22, 2006). For a similar storyline, see Melanie Lefkowitz, *The Housing Squeeze*, NEWSDAY, June 18, 2006, at A4 (“‘I think the sense out there is, you get evicted, you go directly to a homeless shelter. But for most people, that’s not how it works. You spend a couple of nights with a family member, you spend a week with someone else,’ said Judith Goldiner, a staff attorney with the Legal Aid Society.”).

²³¹ Interview with Jorge, *supra* note 177.

²³² Interview with Sheryl, *supra* note 151.

²³³ Interview with Roxanne, *supra* note 150.

bedroom.²³⁴ And Bob had a trickier task of convincing his ex-girlfriend to let him move in with her.²³⁵ It was the rare tenant who did not know where he would spend the night after their eviction.²³⁶

3. *What Happens to Tenants' Possessions*

When the DPW truck pulls away from a removal, tenants have not necessarily lost their possessions for good. In practice, though, the majority of tenants never see those possessions again.

a. *Reclaiming Possessions*

In the post-removal phase, the system once again imposes some unscripted delays on an otherwise speedy eviction process. These delays mitigate the harshness of this process on removed tenants. The DPW truck drives from a removal to the city's eviction warehouse, where it deposits all possessions from one property into one bin.²³⁷ New Haven notifies tenants that their possessions will remain in the warehouse for twenty-two calendar days before going to auction.²³⁸ During this period, tenants may claim their possessions free of charge by calling Blee and arranging a time to do so.²³⁹ The only rules are that tenants must provide their own moving truck and labor to get the possessions onto the truck, and tenants must take all of their possessions in the bin²⁴⁰

In practice, the DPW relaxes some rules at this stage for the benefit of removed tenants. Blee does not strictly enforce the rule about taking everything, for instance. He discourages what he calls partial-pickups.²⁴¹ Nonetheless 8% of tenants collecting their belongings in 2005 took only some of their possessions.²⁴² In addition, the DPW gives tenants significantly longer than the minimum time period to reclaim their goods. Although the DPW tells tenants they have only twenty-two days, the DPW actually holds a tenant's possessions for an average of fifty-five days

²³⁴ Interview with Jeff, Removed Tenant, in New Haven, Conn. (Apr. 17, 2006).

²³⁵ Interview with Bob, *supra* note 190; E-mail from Bob, Removed Tenant, to Michael D. Gottesman, Author (Aug. 30, 2006, 1:32 EST) (on file with author).

²³⁶ Of the tenants I met, only one did not know where she would be spending the night after her removal. Interview with Maria, Removed Tenant, in New Haven, Conn. (May 16, 2006).

²³⁷ Interview with Frank Blee, *supra* note 133.

²³⁸ Notice to Evictees, *supra* note 74.

²³⁹ Most surrounding towns charge the tenant for storage fees. Hamden, for example, places the possessions in commercial storage and to reclaim his possessions the tenant must pay the storage fee. See Telephone Interview with John Cabral Jr., *supra* note 76.

²⁴⁰ Interview with Frank Blee *supra* note 88.

²⁴¹ *Id.*

²⁴² To arrive at this number, I analyzed data available on forms tenants must complete upon reclaiming their possessions. City of New Haven Dep't of Pub. Works, General Waiver and Release as to Possessions (throughout 2005) [hereinafter DPW, Possessions] (on file with author).

before auctioning them.²⁴³ And tenants benefit from this delay: Although only 29% of all removed tenants retrieved their possessions at all,²⁴⁴ 54% of these tenants did so more than twenty-two calendar days after their removals.²⁴⁵ On average, tenants claimed their possessions twenty-seven calendar days after removal,²⁴⁶ or five days after the statutorily-mandated time period.

This additional time is a product of how auctions are announced and scheduled. The DPW holds only one auction per month,²⁴⁷ and it must give the tenants notice of this auction.²⁴⁸ Since many tenants do not have reliable addresses, the DPW publishes a notice in the *New Haven Register* once a month, to which Blee says a surprising number of tenants respond.²⁴⁹ Then the DPW holds an auction no less than twenty-two calendar days after this announcement appears in the newspaper.²⁵⁰ These delays add together to grant tenants a significantly longer amount of time to reclaim their possessions than statutes mandate.

b. Auctioning possessions

Items that are not claimed during this holding period must be auctioned to the public.²⁵¹ In the middle of every month, on the second or third Monday, the DPW hosts an auction at its warehouse.²⁵² The *New Haven Register* announcement notifying tenants of the auction serves as the only publicity for this event. From one auction to the next the number of bidders varies greatly for no apparent reason: One recent month saw around twenty bidders²⁵³ and the following month only five.²⁵⁴ Potential bidders may not preview the lots,²⁵⁵ so quality of goods being auctioned can not affect

²⁴³ This finding is based on an analysis of a sample of 111 cases chosen throughout the year. Eviction Goods Inventories 2005, *supra* note 52; City of New Haven Dep't of Pub. Works, Auction Notices (throughout 2005) (on file with author).

²⁴⁴ To arrive at this number, I analyzed data available on forms tenants must complete upon reclaiming their possessions. See DPW, Possessions, *supra* note 242.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Interview with Frank Blee, *supra* note 88.

²⁴⁸ The City must use "reasonable efforts to locate and notify the defendant of such sale" and "post[] notice of such sale for one week on the public signpost nearest to the place where the eviction was made, if any, or at some exterior place near the office of the town clerk." CONN. GEN. STAT. § 47a-42(c) (2007).

²⁴⁹ Interview with Frank Blee, *supra* note 133.

²⁵⁰ Interview with Frank Blee, *supra* note 88.

²⁵¹ CONN. GEN. STAT. § 47a-42(c) (2007).

²⁵² Interview with Frank Blee, *supra* note 88.

²⁵³ Author's Personal Observation, Eviction Goods Auction, New Haven Dep't of Pub. Works Eviction Goods Warehouse, 315 Peck St., New Haven, Conn. (Mar. 20, 2006).

²⁵⁴ Author's Personal Observation, Eviction Goods Auction, New Haven Dep't of Pub. Works Eviction Goods Warehouse, 315 Peck St., New Haven, Conn. (Apr. 17, 2006).

²⁵⁵ Interview with Frank Blee, Eviction Warehouse Manager, New Haven Dep't of Pub. Works (Mar. 21, 2006).

turnout.

At 10 a.m. sharp Blee starts the auction, leading the bidders—mostly twenty-something minorities—in front of the first bin. Blee calls out the bin number and starts the bidding at ten dollars. Attendees squeeze between stacks of boxes to get their first look at what is in the rear of the bin. Blee waits patiently while two or three people inspect the goods. The majority of goods are in stacks of plain cardboard boxes that bidders are not allowed to open for the sake of time, so there is an element of guesswork involved. Bidders try to divine from the exposed items whether the bin is worth bidding on. Blee renews his call for an opening bid, this time reminding the crowd that they could find anything in the boxes: a television, computer, microwave. Nobody bids. Blee mutters “Pass” and moves on. Most bins get the same kind of reaction. Some sets of boxes garner ten dollar bids. Then Blee gets to bin three, which holds a leather couch and chair. This one sees heavy bidding before selling to Russ for \$250,²⁵⁶ a sum on the high end of the auction price range.²⁵⁷

Auction sales data confirm that this bid is unusual. According to the eight months in 2005 for which detailed auction data is available, only twenty-eight percent of all bins received any bids whatsoever.²⁵⁸ And of those that did sell, the vast majority—eighty-three percent—went for the minimum bid of ten dollars.²⁵⁹ In 2005, the auction produced only \$980 in total revenue.²⁶⁰ According to the law, if a tenant’s goods are sold at auction the tenant may file a claim for the difference between the price of the goods sold at auction and the cost to the City for moving and storage.²⁶¹ Blee has not handled a single remittance request, however, in his seven years on the job.²⁶²

As it stands, the auction does not effectively redistribute goods to those in need. In fact, it benefits few parties other than Russ. Everyone at the warehouse knows him.²⁶³ He has been to just about every auction in Blee’s memory in order to buy goods for the consignment shop he runs out of his home.²⁶⁴ In 2005, he purchased forty percent of the lots sold at auction.²⁶⁵ According to anecdotal evidence, whenever a bin contains valuable goods, Russ outbids everyone—the other bidders at these auctions do not look as

²⁵⁶ Author’s Personal Observation, *supra* note 253.

²⁵⁷ See City of New Haven Department of Public Works, Bins To Be Auctioned (Jan., Feb., Mar., Apr., May, June, July, Sept., Oct., 2005) [hereinafter Bins to be Auctioned] (on file with author).

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*; DPW Performance Indicators, *supra* note 68.

²⁶¹ Notice to Evictees, *supra* note 74. The City takes \$195 for moving and fifty dollars per month for storage. *Id.*

²⁶² Interview with Frank Blee, *supra* note 88.

²⁶³ Interview with Frank Blee, *supra* note 255.

²⁶⁴ *Id.*

²⁶⁵ See Bins to be Auctioned, *supra* note 257.

though they are affluent, and they are typically just trying to make purchases for their own apartments for below market price.²⁶⁶ Indeed, data show that Russ prevails in bidding on the more expensive lots: Even though he bought only forty percent of the lots in 2005, by dollar amount he accounted for nearly half of all sales.²⁶⁷

IV. DEMOGRAPHICS OF REMOVAL IN NEW HAVEN

With this understanding of the costs a removal inflicts on relevant parties, this Part delves into the question of who exactly are the landlords and tenants at the center of this process. One might assume that the tenants involved are poor and their landlords are rich. This study bears out the former assumption, but challenges the latter.

A. Tenants

A number of municipal studies throughout the country have shown that “those who are evicted are typically poor, women and minorities.”²⁶⁸ Data in this subsection supports these conclusions, and reveals the additional insight that removed tenants often have no adult roommates and suffer from mental illness in relatively high proportions.

On a municipal level, evictions moderately correlate to median household income.²⁶⁹ New Haven sees more removals per rental unit than do most surrounding, wealthier municipalities (with the exception of Wallingford, an aberration I cannot explain).²⁷⁰ Graphing removals per renter-occupied unit against median annual household income shows an inverse correlation between median annual income and removals per unit:

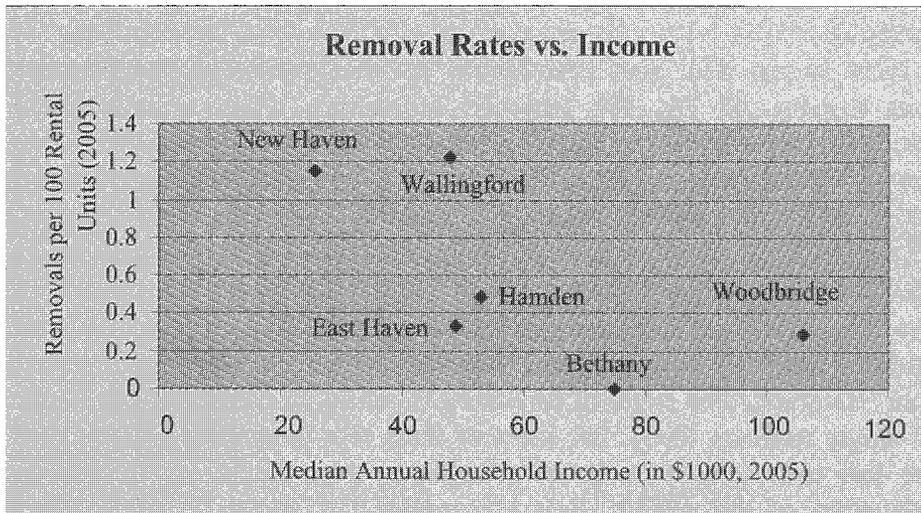
²⁶⁶ Author’s Personal Observation, *supra* note 253; Author’s Personal Observation, *supra* note 254.

²⁶⁷ See Bins to be Auctioned, *supra* note 257.

²⁶⁸ See Hartman & Robinson, *supra* note 10, at 467 (collecting data from seven local studies on eviction to demonstrate a clear trend that evictees are typically African American or Latino, poor, and female).

²⁶⁹ See *infra* Figure 4.

²⁷⁰ *Id.*

Figure 4²⁷¹

This scatterplot shows a moderate inverse correlation between income and removal rate — $r^2 = -.68$. Surely other factors come into play when explaining the incidence of removals in a given municipality, but this one appears to have at least some explanatory power in New Haven County.

Within the City of New Haven, most evictions take place in the low-income neighborhoods.²⁷² Appendix 2a shows New Haven census tracts by median household income. Most evictions cluster in the low-income neighborhoods.²⁷³ These findings corroborate previous findings,²⁷⁴ and in so doing they serve as a reminder that when we discuss what effect removals have on tenants, this is a group of people who live on the edge of economic security.

Furthermore, the low-income neighborhoods where removals occur in relatively high concentration map fairly clearly onto the minority neighborhoods in New Haven. Appendix 2b shows removals concentrated in Black neighborhoods, such as Dwight Street and Dixwell; and Appendix 2c shows removals also concentrated in Hispanic neighborhoods, such as the Hill and Fair Haven. Again, these findings corroborate previous

²⁷¹ Total rental units and data on median household income were found in U.S. CENSUS BUREAU, FACT SHEETS (2000) for named municipalities, available at <http://factfinder.census.gov>. Removal statistics were reported in telephone interviews. Telephone Interview with Henry McCully, Dir., Wallingford Dep't of Pub. Works (May 23, 2006); Telephone Interview with John Cabral, Jr., *supra* note 76; Telephone Interview with Sharon, Clerk, East Haven Dep't of Pub. Works (May 23, 2006); Telephone Interview with Gerry Shaw, Clerk, Woodbridge Selectman's Office (May 23, 2006); Telephone Interview with Nancy McCarthy, Town Clerk, Town of Bethany (May 23, 2006).

²⁷² See Appendix 2a.

²⁷³ *Id.*

²⁷⁴ See Hartman & Robinson, *supra* note 10, at 467–68 (collecting data from seven local studies on eviction to demonstrate a clear trend that evictees are typically poor).

findings,²⁷⁵ and in so doing serve as a reminder that removals, while based on economic circumstances, disproportionately affect certain racial minorities.

New Haven data also corroborate that evictions disproportionately affect women. Of the 496 removed individuals whose gender could reasonably be discerned by their names, 54% were female and 46% were male.²⁷⁶ New Haven data reveal yet another layer of interesting detail that may explain this gender disparity: The greatest gender disparity occurs at the single-tenant level, where women comprise 57% of individuals removed.²⁷⁷ According to observation²⁷⁸ and interviews,²⁷⁹ a number of these women are single mothers—children are not listed on Executions, so an adult living only with persons under eighteen appears as a single tenant on an Execution. The strain of providing for children presents a challenge, and single mothers likely fall short of their rent payments because they have less time to work and more expenses than others do.²⁸⁰ Such an explanation of the gender disparity implies that removals often affect children.

One finding that other reports have not made is that most removed tenants live without an adult roommate. Two-thirds of Executions served on tenants who were eventually removed listed only one individual's name.²⁸¹ Tenants living alone likely face a higher rent burden than do tenants splitting rent payments. Perhaps these tenants do not try as hard as do tenants living as a social unit—boyfriend/girlfriend, husband/wife, family—to avoid upheaval. Regardless of the explanation, this finding suggests that removals disproportionately affect those without the immediate social support structure of a rent-sharing roommate.

Scholars and policy-makers often allude to the link between mental health and homelessness.²⁸² But nobody has examined mental illness in removed individuals. Examining mental health data for removed tenants in New Haven reveals a fairly high incidence rate of mental illnesses amongst

²⁷⁵ *Id.* (collecting data from seven local studies on eviction to demonstrate a clear trend that evictees are typically African American or Latino).

²⁷⁶ See SUMMARY PROCESS EXECUTIONS, *supra* note 69.

²⁷⁷ *Id.*

²⁷⁸ Interview with Maria, *supra* note 236; Interview with Roxanne, *supra* note 150; Interview with Sheryl, *supra* note 151.

²⁷⁹ Interview with Robert Solomon, Professor, Jerome N. Frank Legal Servs. Org. at Yale Law Sch., in New Haven, Conn. (Oct. 11, 2006).

²⁸⁰ See Interview with Diane Ecton, *supra* note 229.

²⁸¹ See SUMMARY PROCESS EXECUTIONS, *supra* note 69.

²⁸² See, e.g., MICHAEL ALLEN, SEPARATE AND UNEQUAL: THE STRUGGLE OF TENANTS WITH MENTAL ILLNESS TO MAINTAIN HOUSING (1996); FEDERAL TASK FORCE ON HOMELESSNESS AND SEVERE MENTAL ILLNESS, OUTCASTS ON MAIN STREET (1992); Paul Koegel et al., *The Causes of Homelessness*, in HOMELESSNESS IN AMERICA 24, 31 (Jim Baumohl ed., 1996); NATIONAL COALITION FOR THE HOMELESS, MENTAL ILLNESS AND HOMELESSNESS: NCH FACT SHEET #5 (2008), available at http://www.nationalhomeless.org/publications/facts/Mental_Illness.pdf.

removed persons. Somewhere between nine to thirty-eight percent of all individuals removed in 2005 have been diagnosed with a mental illness in the Connecticut mental health system in the past decade.²⁸³ These individuals received the following diagnoses:

Figure 5²⁸⁴

Diagnostic Category	Percentage of Removed Individuals Receiving Diagnosis Range (Midpoint)
Axis I (Psychotic illnesses. E.g., depression, bi-polar)	6–23% (14.5%)
Axis II (Personality disorders. E.g., obsessive-compulsive, paranoid, schizoid)	2–10% (6%)
Substance Abuse (Drug or alcohol addictions)	5–26% (15.5%)

These data reveal only individuals with identified mental illnesses, though, and a number of mental illnesses invariably go undetected. We might look to other indicators of potential mental illness to get a more complete picture. One such indicator is whether a tenant has ever been evaluated for competency to stand trial, since that designation indicates someone suspected of presence of mental illness. Data reveal that somewhere between 13% and 29% (with a midpoint of 21%) of all removed tenants in 2005 had been arrested and evaluated for competence to stand trial.²⁸⁵ These data do not show how often mental illnesses actually led to removals in 2005, but they do show that some significant portion of removed tenants likely suffer from a mental illnesses that could impede efforts to avoid removal.

B. Landlords

Although the tenants involved in these removals largely fit the

²⁸³ CONNECTICUT DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES DATABASE (2006). To determine the prevalence of mental illness in removed individuals, I commissioned staff at the Connecticut Mental Health Center to compare a database of all mental health patients diagnosed in Connecticut with my list of 521 individuals removed in 2005. Because I could provide only names as identifying information for removed individuals, this exercise could not be precise. A number of individuals had common names, so it was unclear whether to count them as a hit or not. To resolve this problem, researchers created a range, with the low end of the range not counting any individuals when a name appeared more than once in the mental health database, and the high end of the range counting every individual whose name appeared anywhere in the mental health database.

²⁸⁴ *Id.* Totals do not equal the stated range of 47 to 198 because some individuals have multiple diagnoses.

²⁸⁵ *Id.*

stereotype of being poor and somewhat vulnerable, the landlords involved do not always fit the opposite stereotype of being rich. Landlords have been vilified by the American public.²⁸⁶ Such popular images rely, in part, on the assumption that the landlord is the “fat cat who takes unfair advantage of the little mice who rent from him.”²⁸⁷ But no empirical work has shown whether landlords involved in evictions are actually “fat cats.” Data in this subsection actually suggest that although some landlords are relative fat cats, many are not.

To determine how sophisticated and well-resourced any given landlord is, we might look to whether the landlord secures representation in his eviction. As mentioned above, a lawyer’s fee is in the ballpark of \$1000 for a typical eviction.²⁸⁸ So this is a cost that less wealthy landlords may likely avoid. Although the existence or absence of legal representation does not provide a perfect indicator of wealth, it offers a rough understanding of a landlord’s resources. Data show that most types of landlords hire lawyers for every eviction, but that individual landlords do so only about a third of the time:

Figure 6²⁸⁹

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

This finding challenges the common assumption that landlords are “fat cats,” and portrays individual or “mom and pop” operations in a more sympathetic light.

To summarize, on the one hand, the aforementioned costs inflicted on

²⁸⁶ See, e.g., Welfeld, *supra* note 201, at 374 (recapping a Saturday Night Live skit in which a tenant writes a poem about killing his landlord); 2 LANGSTON HUGHES, *Ballad of the Landlord*, in THE COLLECTED WORKS OF LANGSTON HUGHES 89, 89–90 (2001).

²⁸⁷ Welfeld, *supra* note 201, at 374; LANGSTON HUGHES, *supra* note 286, at 89–90. See also Hevesi, *supra* note 201 (“Many people . . . consider even the small owner ‘a land baron—greedy, uncaring, with money to burn—when the reality is he’s just another Joe Schmoe or an Abdul trying to make a living.’”).

²⁸⁸ See *supra* note 199 and accompanying text.

²⁸⁹ See SUMMARY PROCESS EXECUTIONS, *supra* note 69.

tenants are borne by a population that is largely poor and vulnerable in a variety of ways. On the other hand, the aforementioned costs inflicted on landlords are not always, as one might expect, borne by affluent parties who can afford to take a big financial hit.

V. LESSONS LEARNED

The above account of removals adds to our understanding of the current value tradeoffs involved in an eviction process that moves toward the final stage quickly. In addition, it yields insight into how a speedy system might make these tradeoffs even more effectively. These lessons apply most directly to New Haven, but might easily be extended.

A. *What Works Well*

In many respects, our fast eviction procedure works fine when a landlord-tenant relationship breaks down entirely. At the scheduling phase, fairly strict service requirements effectively alert tenants of their removal. This scheduling phase moves fairly quickly for the landlord, even if the system imposes some delays (which mitigate the tenants' losses to some extent).²⁹⁰ During removal, granting the state a monopoly of power and excluding the landlord from the removal effectively limit the amount of violence at the end of this high-stakes process.²⁹¹ The marshals' practice of inventorying all possessions ensures transparency, which both limits the amount of litigation following removal day, and ensures that nobody handling the tenant's possessions steals from the tenant.²⁹² The fact that the marshals and DPW coordinate their eviction schedules means that tenants' possessions do not at any point sit on the curb.²⁹³ This eliminates opportunities for tenants' belongings to be stolen. Perhaps more importantly, it does not humiliate the tenants by putting on display all their personal possessions. Then once the goods leave the property, the systemic delays between a removal and an auction gives tenants extra opportunity to retrieve their goods without significantly increasing the cost of storage.²⁹⁴ Taken as a whole, these practices make the removal process effective for the landlord and somewhat more humane for the tenant than might be assumed. Indeed, actors on all sides of the process—a legal aid lawyer representing tenants,²⁹⁵ a landlord,²⁹⁶ and a marshal²⁹⁷—reported general

²⁹⁰ See *supra* Part III.A.

²⁹¹ See *supra* Part III.C.4.

²⁹² See *supra* Part III.C.2.

²⁹³ See *supra* Part III.A.3.

²⁹⁴ See *supra* Part III.D.3.a.

²⁹⁵ Interview with Shelly White, *supra* note 77.

²⁹⁶ Interview with Ardelle Cowie, *supra* note 216.

²⁹⁷ Interview with Robert Miller, *supra* note 97.

satisfaction with the system and no desire for major changes.

B. Where the System Could Improve

Although many parts of this process work well and some “customers” from all sides of the removal report satisfaction, parts could still be improved. Removals create substantial losses for both the landlord and the tenant beyond the costs associated with the first phase of evictions.²⁹⁸ Reforms should aim to mitigate these costs to both sides and should be guided by three concerns common to legal reform: efficiency, process, and equity. The first generally benefits the landlord, while the latter two generally benefit the tenant. Balancing the tension between these ensures that the tradeoffs resulting from reforms will be fairly even-handed.

1. Efficiency Improvements

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

First, preventing a removal altogether would decrease administrative costs by saving the landlord from paying the incremental cost of approximately \$3000²⁹⁹ to remove a tenant, and saving the municipality the time and expense of picking up the tenant’s belongings.³⁰⁰ One way to prevent removals is to create disincentives to get removed. As currently structured, removals in both New Haven and New York City provide moving and storage services to tenants. Although providing moving and storage services creates an incentive to remain until removal, differences in removal rates between New Haven and New York City suggest this is not the sole factor influencing a tenant’s decision. In New York City, tenants wanting to retrieve their goods must pay landlords the cost of moving and storage.³⁰¹ Whereas half of all New Haven tenants receiving an Execution remain in their property until removal, in New York four out of five tenants receiving Executions move out.³⁰² Given that New Haven’s rental unit vacancy rate is more than double New York City’s—7.7%³⁰³ versus

²⁹⁸ See *supra* Parts III.C.3 & III.D.

²⁹⁹ See *supra* Figure 3.

³⁰⁰ See *supra* Parts III.A.3 & III.C.1.

³⁰¹ See NEW YORK CITY HOUSING COURT, NEW YORK CITY CIVIL COURT HOUSING PART - EVICTION, <http://www.nycourts.gov/courts/nyc/housing/eviction.shtml> (last visited Feb. 20, 2009).

³⁰² Rebecca Webber, *Issue of the Week: Evictions*, GOTHAM GAZETTE, Nov. 12, 2001, available at <http://www.gothamgazette.com/iotw/affordhousing/doc1.shtml>.

³⁰³ U.S. CENSUS BUR., 2006 AMERICAN COMMUNITY SURVEY: SELECTED HOUSING CHARACTERISTICS (NEW HAVEN CITY, CONNECTICUT (2006)), <http://factfinder.census.gov> (search “Fast Access to Information” for “New Haven City, Connecticut”; then select “Housing Characteristics—Show More”).

3.7%³⁰⁴—ease of finding another apartment does not explain the difference in tenants' behavior. Although incentives linked to the storage policy don't appear to be a controlling factor in removals, changes to storage policies are likely to affect tenants' calculations. A new system could create a cost-sharing scheme: Most simply, the tenants and the DPW could each be responsible for half of expenses; or perhaps the tenant's relative wealth might be taken into account by indexing his share of costs to his monthly rent burden. Such a scheme would decrease the tenant's incentives to get to the end of a removal, because it would eliminate free moves. Therefore, this reform would likely achieve the efficiency goal of decreasing the total number of removals. But this system also takes into account equity concerns as it would still place fewer burdens on poor tenants than do most jurisdictions.

Second, speeding up removals would decrease the amount of rent landlords lose in a given eviction and would decrease the moral hazard of tenants living rent-free. Indeed, the immediate-past president of the New Haven Landlord Association reports that most complaints he received about the removal system during his tenure related to how slow marshals and the DPW were to remove a tenant who had been served with an Execution.³⁰⁵ One simple, albeit expensive, way to speed up all removals would be for the DPW to buy a new truck and hire more employees.

If the City cannot speed up all removals but instead institutes a "fast track" program to speed up selected removals, it should not base priority on payment of an expedition fee. This would contravene equity concerns as those landlords who have the slimmest margins and, therefore, need the fastest removals in order to keep up with their mortgage payments are precisely the landlords who would least likely be able to pay to participate in this priority system (although, the details would matter here, because if the DPW can afford to set a fee smaller than the additional rent a landlord would lose in a non-expedited removal, small landlords may find it cheaper, overall, to pay the expedition fee than not to pay that fee). Instead, the City might consider giving "fast track" privileges on the basis of how few apartment units a landlord owns. Small landlords cannot prevent evictions as well as can large landlords, because they often do not have the know-how or the resources to screen tenants.³⁰⁶ And, judging by the fact

³⁰⁴ U.S. CENSUS BUR., 2006 AMERICAN COMMUNITY SURVEY: SELECTED HOUSING CHARACTERISTICS (NEW YORK CITY, NEW YORK (2006)), <http://factfinder.census.gov> (search "Fast Access to Information" for "New York City, New York"; then select "Housing Characteristics—Show More").

³⁰⁵ Telephone Interview with Ron Candelora, Immediate-Past President, New Haven Landlord Ass'n (Dec. 18, 2006).

³⁰⁶ See Interview with Anthony Lauria, *supra* note 198; see Stephanie O'Neill, *Tenants from Hell*, L.A. TIMES, Aug. 8, 1993, at K1.

that the majority of “mom and pop” operations do not hire attorneys,³⁰⁷ they do not have the resources to absorb the financial losses of a removal. How to define small landlords could be debated, but one proposal would be to say all landlords who own five units and fewer get scheduling priority over landlords owning more than five properties. Critics might argue that this would unfairly burden large landlords. But data suggest that large landlords have a higher tolerance for delays at this point in the process.³⁰⁸ Creating laws that treat small landlords differently from large ones would certainly create transaction costs, but it is possible and has been done before, namely in the federal Fair Housing Act of 1968.³⁰⁹ Decreasing the losses on small landlords might encourage more individuals to enter the rental market as landlords, which might increase the total housing available.

2. *Process Improvement*

Although the proposed system might sound harsh on tenants with its higher storage costs and its speedier removals, the system should still aim to limit dignitary harms³¹⁰ to tenants. The best way to do this would be to help tenants relocate before the removal and save them the humiliation of being kicked out of their home.

Community agencies could focus more resources on assisting tenants in the removal phase. A number of agencies try to prevent evictions, or to resolve them before the removal phase, but none specifically assist tenants once they have received an Execution.³¹¹ Tenants might be more likely to seek or accept assistance at this point because it has become clear that they lost the legal battle for possession. An agency would be able to target its clients fairly easily, by contacting the housing court each week and checking where Executions have been served. The agency could then visit the tenant’s home and if the tenant does not appear to understand what is happening—because they do not speak English, suffer from mental health issues, or lack information on evictions—the agency could demystify the process. Then the agency could assist these tenants by helping them locate affordable housing. Not only would this preserve the tenant’s dignity, but also it would benefit landlords and municipalities by saving them removal costs. The Community Mediation Executive Director is optimistic about such an organization, saying it would both fill a gap in services and would

³⁰⁷ See Figure 6.

³⁰⁸ See *supra* Part IV.B.

³⁰⁹ 42 U.S.C. § 3603(b) (2000) (exempting small landlords from statutes outlawing discriminatory rental and sales practices).

³¹⁰ See Interview with Bob, *supra* note 190.

³¹¹ Telephone Interview with Cristina Urrutia, Hous. Case Manager, Cmty. Mediation (Dec. 5, 2006).

provide a benefit to a wide range of constituents.³¹² Surely not all tenants at this stage are able to or want to move immediately to another property for which they must pay rent, but some portion of tenants would likely accept this assistance and would succeed at avoiding removal.³¹³

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

3. *Equity Improvement*

A process so closely associated with poverty as is the removal process should evince some concern for the poor. Perhaps the most explicit way the City could do this is in how it distributes unclaimed goods. As it stands, the auction benefits few parties other than Russ. It neither effectively redistributes goods to those in need, nor recoups much money for the DPW. Rather than auctioning goods, the DPW should unpack the boxes, separate out valuable items and give these items away. It could either do this itself or it could donate the belongings to an organization with experience in similar activities—perhaps the Salvation Army. Doing this would require the DPW to forego only a negligible amount of revenue. And it would allow the City to build the good-will that comes with gift-giving amongst those who are likely to be marginalized.

This program has a precedent. In the recent past, before sending the contents of unsold bins to the landfill DPW employees would extract valuable items—coffee tables, fans, chairs, bicycles. Then Blee would display these items in the eviction warehouse and give them to anyone who inquired.³¹⁴ Between 2001 and 2005, Blee gave goods away to 1046 individuals,³¹⁵ primarily single mothers, former inmates reentering society, and the temporarily jobless.³¹⁶ And it was not rare for the recipients of these giveaways to be removed at some point -- Blee marked all items he gave away, and occasionally saw these markings when he collected items at a later removal.³¹⁷ Through this initiative, then, the City was mitigating the cruelty of the removal process, albeit somewhat indirectly. The City

³¹² Interview with Charlie Pillsbury, Exec. Dir., Cmty. Mediation, in New Haven, Conn. (Dec. 12, 2006).

³¹³ For example, Roxanne was a tenant who wanted to move but could not find a new apartment in the limited time she had to search after work hours. Interview with Roxanne, *supra* note 150.

³¹⁴ Interview with Frank Blee, *supra* note 88.

³¹⁵ DPW Performance Indicators (Fiscal Year Performance Indicators, July 2000 through June 2006) (on file with author).

³¹⁶ Interview with Frank Blee, *supra* note 88.

³¹⁷ *Id.*

ceased this post-auction giveaway program, because it wanted to avoid liability for items it gave away,³¹⁸ but it would do well to replace the auction with some reincarnation of it—perhaps by allowing students to establish a volunteer agency to distribute these goods.³¹⁹

VI. CONCLUSION

Eviction laws must balance significant interests against one another: on the one hand, the landlord's property interest in his apartment and his financial interest in reclaiming it in a speedy manner; on the other hand, the tenant's "personhood"³²⁰ and possessory interests in retaining his home. These interests sharpen at the end of an eviction action. Different systems have attempted to balance these interests in various ways. The common law, for example, placed its thumb on the side of the landlord, due to his superiority of estate.³²¹ During the revolution of landlord-tenant law in this country in the mid-twentieth century, laws began to make a more sincere effort to strike a balance between the two sides of the equation, and even to favor the tenants' interests in some cases.³²² Compared to other countries, though, summary process laws in the United States still appear to be quite harsh on tenants. But laws do not tell the full story.³²³ To truly understand how our current legal system treats parties involved in evictions, we must examine how the process unfolds in practice, whom it affects and how it affects them.

By studying these questions empirically, this Note reveals that the value tradeoffs a fast eviction process in the United States are not quite as lopsided or dramatic as one might expect from simply looking at the laws on the books. On one side of the process, this Note has challenged the assumptions both that landlords bear few costs and that landlords can afford to bear the associated costs. This Note's findings suggest that opting for a slower process could seriously injure some landlords—this injury that would likely affect tenants in the form of fewer landlords wanting to rent to tenants, or more landlords charging higher rents for their properties.³²⁴ On the other side of the process, this Note has confirmed that the process disproportionately affects poor, relatively vulnerable tenants.³²⁵ But it has

³¹⁸ Telephone Interview with Frank Blee, Eviction Warehouse Manager, New Haven Dep't of Pub. Works (Dec. 13, 2006).

³¹⁹ Interview with Robert Solomon, *supra* note 279.

³²⁰ Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 993–96 (1982).

³²¹ Karl Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 WIS. L. REV. 925, 927–28 (1989).

³²² *Id.*

³²³ See, e.g., ROBERT C. ELICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991).

³²⁴ See THE LAW REFORM COMMISSION, *supra* note 25.

³²⁵ See discussion *infra* Part IV.A.

also revealed that norms and practices have been introduced—sometimes inadvertently, sometimes purposefully—into the system at its joints to mitigate the harshness of the legal rules.³²⁶

How to manage the total breakdown of a landlord-tenant relationship is a hard question. Politicians, academics and lawyers will continue to tinker with our system in order to arrive at the optimal tradeoff and allocation of losses—in Connecticut, for example, which losses can be avoided and where inevitable losses should lie are regular topics of debate in the state legislature.³²⁷ This study provides a starting point for such debates by elucidating how removals currently work, what losses they entail, and how the system might improve.

³²⁶ See discussion *infra* Parts III.A, III.C.1, III.D.3.

³²⁷ Raised S.B. 232, 2004 Leg., Reg. Sess. (Conn. 2004) (proposing to allow the landlord to take immediate possession of and dispute of any belongings tenants leave behind); Raised S.B. 361, 2006 Leg., Reg. Sess. (Conn. 2006) (proposing to allow the landlord to take immediate possession of and dispute of any belongings tenants leave behind); Academics, advocates and interest groups on both sides of the issue weighed in on the proposals. *Hearing on Raised S.B. 361 Before the S. Comm. on the Judiciary*, 2006 Leg., Reg. Sess. (Conn. 2006), available at <http://www.cga.gov/2006/JUDdata/chr/2006JUD00303-R001300-CHR.htm>.

APPENDIX 1: METHODOLOGY

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

Eviction Documents

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

Executions: I gleaned from Executions served on removed tenants the names of parties (including landlords' attorneys), date of issuance, and address of the premises. Using this information, I gathered further data about the legal process that lead to eviction through the Online Housing Court Database. This database details the names of parties, presence of attorneys on both sides, and procedural history such as whether the landlord won a default judgment. Furthermore, this database catalogues previous eviction actions against any given tenant.

Eviction Goods Inventories: I relied on the marshals' inventories of tenants belongings to learn the date of the removal, whether the tenant was present at the removal and a list of all items left behind by tenants.

Auction records: I used auction records to determine who attended the auction, which bins were sold, who bought those bins, and for how much.

Personal Observations:

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

Removals: I observed thirteen residential removals. These were arranged on random dates—either I would call a marshal or Frank Blee, the manager of the DPW's eviction warehouse, to arrange this, or they would call me when they scheduled removals—so there is no reason to believe that this sample was subject to selection bias. During every removal, I was granted full access and was able to observe what happened inside and outside the premises: the marshal's interaction with the tenant, the state of the apartment before being packed, the movers' conduct in packing the belongings, the tenants' reactions to the removal, and the transfer of belongings to the DPW truck. Commercial removals are outside the scope of this paper, but for comparative purposes, I observed one such removal.

Property Pick-ups: Pick-ups are often scheduled just minutes in advance, so I could not arrange to observe many of these. Nonetheless, I

observed two tenants reclaim their belongings at various points when I was at the eviction warehouse.

Auctions: I observed three monthly auctions, two in the spring and one in the fall. Blee confirms that these months were not particularly skewed in any way.

Interviews:

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

Tenants and Their Attorneys: I interviewed fifteen tenants, whom I found in a variety of ways. I approached some tenants at their removals, found others at shelters, sent interview requests to removed tenants at their last known addresses, posted advertisements in the New Haven Advocate and on Craigslist.org. Overall, this sample may present a selection bias, as my methods likely excluded the most desperate tenants who end up living on the streets after being evicted, those who are not able to be reached by postal mail or advertisements and do not check in to a shelter. In addition to speaking directly to tenants, I also spoke to five legal services or legal aid attorneys who represent tenants in evictions.

Landlords and Their Attorneys: I interviewed four landlords, including the immediate past president of the New Haven Landlord Association. When landlords secure representation, they often deputize the attorney to handle the entire eviction, so the attorneys often know more about the experience of handling an eviction than do the landlords. With this in mind, I interviewed three landlords' attorneys. This total sample includes both individual and corporate landlords owning from two to over 200 apartments. I located these landlords primarily by cold calling names from Executions.

State Marshals: I interviewed five of the eleven state marshals based in the City of New Haven. Collectively, these marshals have over a century of experience with removals. I was referred to these marshals by landlords' and tenants' lawyers, or by other marshals. Often these interviews took place while the marshal was supervising a removal.

Department of Public Works: I conducted a number of interviews with the manager of the eviction warehouse and the City of New Haven DPW staff who pick up tenants' belongings from evictions. In addition, I spoke with staff at departments of public works or their counterparts in eight other municipalities to gather comparative data.

Housing Court: I interviewed the New Haven Housing Court Clerk a number of times, and also interviewed an assistant clerk, and a housing specialist.

Community Agencies: I spoke to employees of a number of agencies

that might play a role in tenants' experiences, including the Executive Director and caseworkers at Community Mediation (administrators of the Rent Bank), the Executive director and caseworkers at the three largest shelters in the City of New Haven, and staff members at the Housing Authority of New Haven, Connecticut Department of Children and Families, Connecticut Department of Social Services, and National Student Partnerships.

Other Sources of Data

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

Mental Health Client Listings: In order to understand the link between mental health and removals, I relied on client listings in the databases of the Connecticut Mental Health Center, the Connecticut Department of Mental Health and Addiction Services, and Criminal Justice Solutions. For privacy reasons, others accessed this data, compared it to a list of removed tenants I generated, and reported findings to me.

Shelter Intake Records: In order to understand the link between removals and homelessness, I secured shelter intake data, including the name of the client and the date of check-in. Again, for privacy reasons, others accessed this data, compared it to my list of removed tenants, and reported findings to me.

New Haven Police Department Incident Logs: In order to understand how often removals became violent or required police assistance, I secured a copy of the New Haven Police Department's incident log for landlord-tenant disputes in 2005.

Marshal Income Statements: In order to understand the state actors responsible for carrying out removals, I made a FOIA request to secure 2005 income statements for all state marshals based in New Haven County.

**APPENDIX II:
Illustrative Comparison of Eviction Laws in New Haven to Eviction
Laws to Other Jurisdictions**

Step of Removal Phase	New Haven	Examples of Differences in Other Jurisdictions
Service of Process	<ul style="list-style-type: none"> - Method: In-hand or abode - Server: Marshal 	<ul style="list-style-type: none"> - Method: Substituted³²⁸ - Server: Anyone over 18, other than landlord³²⁹
Waiting period between Execution and removal	<ul style="list-style-type: none"> - 24 hours 	<ul style="list-style-type: none"> - 72 hours³³⁰
Who moves tenant's goods	<ul style="list-style-type: none"> - Marshal hires private movers and bills landlord 	<ul style="list-style-type: none"> - Landlord moves goods or hires private movers, and stores possessions³³¹ - Landlord can choose to take possession and store goods in apartment³³² - Landlord may dispose of tenant's property³³³

³²⁸ See, e.g., New York City Court Housing Part: Eviction, <http://www.nycourts.gov/courts/nyc/housing/eviction.shtml> (last visited Oct. 12, 2008).

³²⁹ New York City Court Housing Part, <http://www.nycourts.gov/courts/nyc/housing/servicenoticeofpetition.shtml> (last visited Oct. 12, 2008).

³³⁰ New York City Court Housing Part: Eviction, <http://www.nycourts.gov/courts/nyc/housing/eviction.shtml> (last visited Oct. 12, 2008).

³³¹ See ARIZ. REV. STAT. § 33-1368 (2007); see WASH. REV. CODE § 59.18.312 (2004).

³³² See, e.g., New York City Court Housing Part: Eviction, <http://www.nycourts.gov/courts/nyc/housing/eviction.shtml> (last visited Oct. 12, 2008); MINN. STAT. § 504B.365 (2002). For an explanation of Minnesota removal laws, see LAWRENCE R. MCDONOUGH, RESIDENTIAL UNLAWFUL DETAINER AND EVICTION DEFENSE (10th ed. 2008), <http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html>.

³³³ N.C. GEN. STAT. § 42-25.9 (2001); WYO. STAT. § 1-21-1210 (2007).

Length of time goods must be held before being auctioned	- 15 days	- 30 days ³³⁴ - 6 months ³³⁵
How tenants may retrieve goods	- May retrieve belongings free of charge	- May retrieve belongings of personal value for free ³³⁶ - Must pay appropriate parties for moving and storage fees ³³⁷

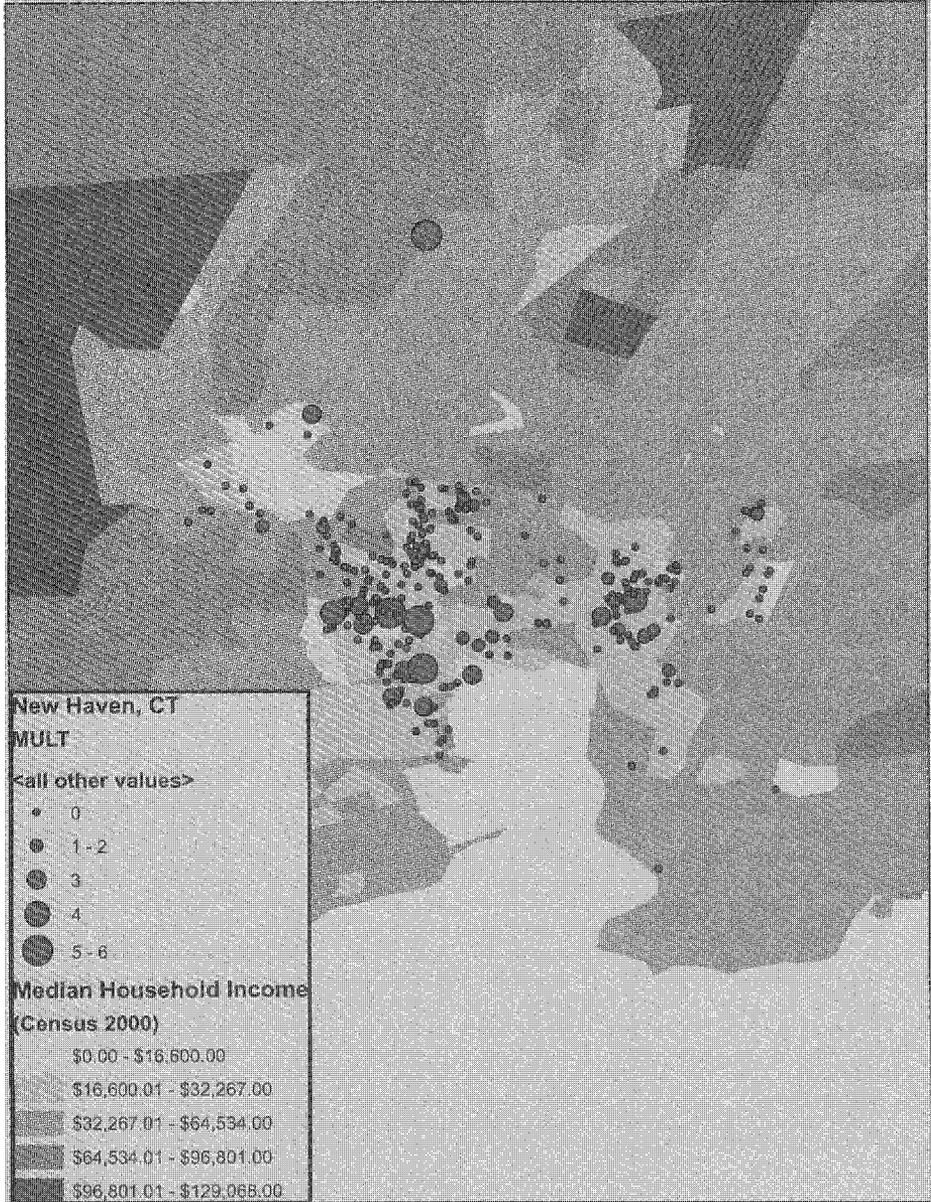
³³⁴ See, e.g., DEL. CODE tit. 25, § 5715 (1989); For an explanation of Delaware removal laws, see *Summary of the Delaware Residential Landlord Tenant Code* (Legis. Print Shop), http://www.lscd.com/Home/PublicWeb/Content/Housing/summary_of_the_landlord_tenant_code.htm (last visited Oct. 12, 2008).

³³⁵ MASS. GEN. LAWS ch. 239, § 4 (2004).

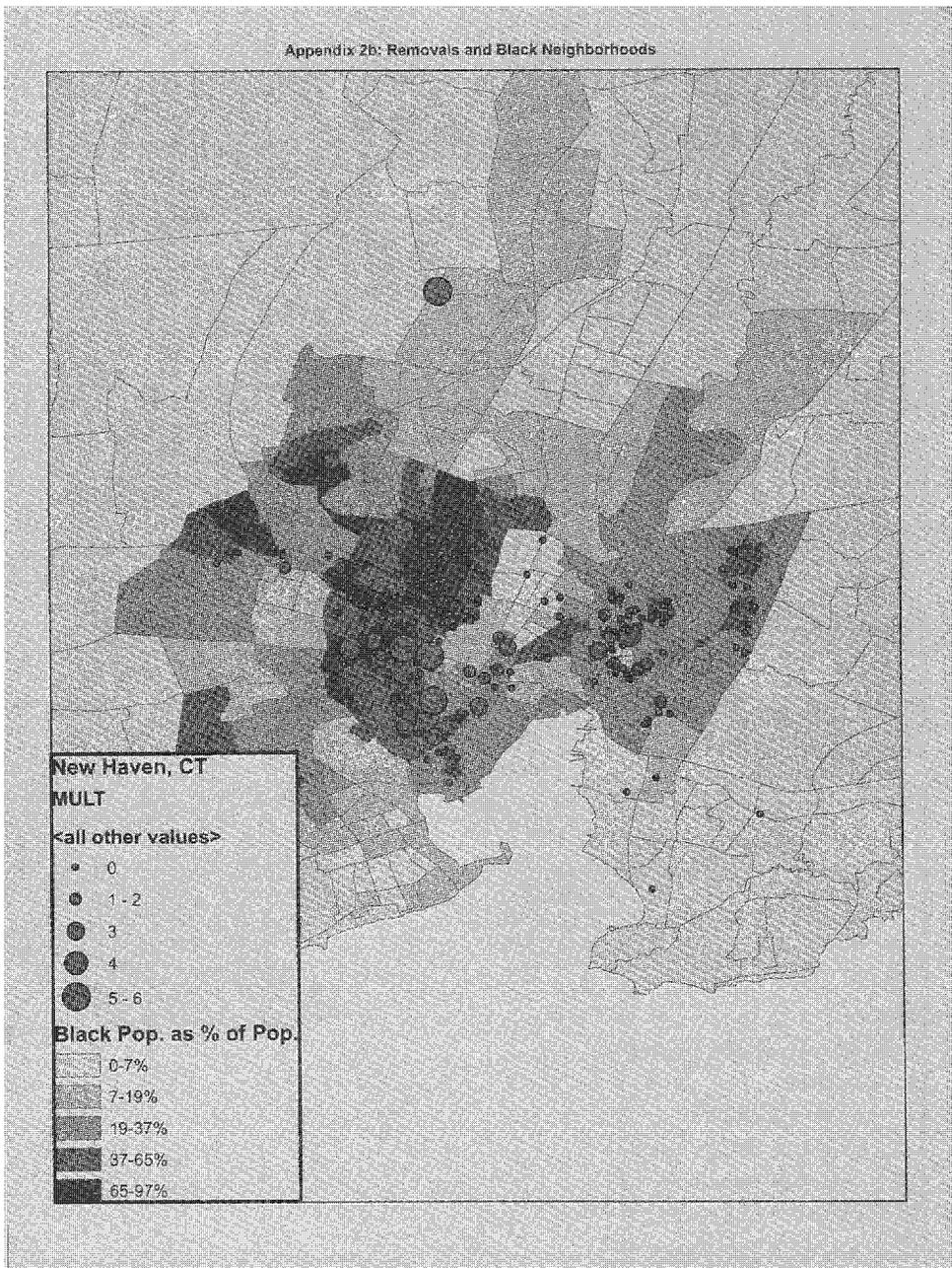
³³⁶ *Id.*

³³⁷ DEL. CODE. tit. 25, § 5715 (1989); OKLA. STAT. tit. 41, § 133 (1999); MINN. STAT. § 504B.365 (2002).

Appendix 2a: Removals and Low-income neighborhoods



Appendix 2b: Removals and Black Neighborhoods



Appendix 2c: Removals and Hispanic Neighborhoods

