ARTICLE

NO RIGHT TO COUNSEL: EVICTIONS, ADMINISTRATIVE BURDEN, AND ACCESS TO CIVIL JUSTICE

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As housing has become increasingly unaffordable for US renters, an access to justice crisis has emerged in local eviction courts. Millions of tenants face eviction without legal counsel each year, typically against landlords who are represented by an attorney. In response to calls from access to justice scholars and legal advocates, 25 jurisdictions have recently authorized right to counsel programs that provide legal assistance to tenants facing an eviction. While extant research has documented the many benefits of legal aid for housing-insecure tenants, less attention has been paid to the experiences of tenants who are unable to access legal counsel when it is offered.

This Article reports the findings of a mixed methods empirical study of the nation's first statewide right to counsel program in Washington State. In doing so, we make three primary contributions. First, we draw on the theoretical framework of administrative burden to elucidate the barriers that evicted tenants face in their pursuit of legal aid. We analyze qualitative data from interviews with tenants who were initially unable to access legal assistance and show that eviction proceedings

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exact learning, compliance, and psychological costs on prospective participants. We further demonstrate that tenants frequently endure traumatic experiences that strain their cognitive resources and may impede their efforts to contact a legal aid provider.

Second, we show that many tenants are still evicted without representation nearly three years after the implementation of Washington's groundbreaking law. We analyze quantitative data from 970 unlawful detainer proceedings in Washington and identify predictors of tenants' legal representation. Our analysis shows that two local rules intended to reduce default judgments against tenants are associated with lower default rates, but have not measurably increased tenant representation rates. Instead, we find that tenants' submission of a written response to the eviction summons is a strong predictor of access to legal representation. We also add to the body of evidence that shows improved case outcomes for represented tenants. Taken together, our findings suggest that interventions focused on marginally increasing compliance burdens for landlords do not meaningfully increase tenants' access to justice.

Finally, we argue that policymakers should apply lessons from research on the criminal legal system to increase tenants' participation in right to counsel programs. While right to counsel programs have dramatically improved rates of legal representation across jurisdictions, additional reforms are needed to ensure more comprehensive provision of legal aid. Right to counsel laws are a promising first step, but policymakers should further consider reforms that reduce the learning, compliance, and psychological costs of accessing legal aid by improving clarity of court communications, mitigating logistical complexity, and creating more flexibility for tenants who intend to participate in the legal process.

TABLE OF CONTENTS

INTRODUCTION 316
I. ADMINISTRATIVE BURDENS AND THE CIVIL LEGAL SYSTEM 318
A. Administrative Burden in Eviction Proceedings 320
B. Administrative Burdens and Right to Counsel 323
II. A NEW FRONTIER: EVICTIONS AND RIGHT TO COUNSEL IN WASHINGTON STATE 327
III. ADMINISTRATIVE BURDENS UNDER RIGHT TO COUNSEL: AN EMPIRICAL STUDY 328
A. Qualitative Data 329
B. Quantitative Data 330
IV. FINDINGS: INSURMOUNTABLE BARRIERS 331
A. Overlapping Crises 332
B. Learning Costs 333
C. Psychological Costs 335
D. Compliance Costs 336
E. Rules, Behavior, and Case Outcomes 337
F. Case Basis 339
G. Local Court Rules and Landlord Behavior 340
H. The importance of tenant behavior: answers and case outcomes 342
V. IMPLICATIONS AND OPPORTUNITIES FOR REFORM 344
A. Bridging the civil-criminal divide 346
CONCLUSION 348

INTRODUCTION

If you are poor in America, you are probably familiar with the threat of losing your home. Housing affordability is increasingly out of reach for many Americans, and the growing gap between incomes and the cost of rent has precipitated an access to justice crisis in eviction courts across the United States. An uneven distribution of procedural knowledge and legal expertise between plaintiffs (landlords) and defendants (tenants) is a defining feature of the 7.6 million eviction proceedings that take place in the US each year.[1] In many jurisdictions, in fact, data suggests landlords are more than twenty times as likely as tenants to have professional legal counsel.[2] Increasing attention to this justice gap among researchers and policymakers has accelerated the movement to provide tenants with access to free legal counsel as they face eviction.[3]

The endeavor to provide tenants with legal representation during eviction proceedings is a part of a broader "access to justice" movement seeking to provide effective assistance for people's civil legal needs.[4] It contends that although courts, legal aid offices, and other institutions designed to guarantee equal access to law are fundamental to the fabric of law and legal policy in the US, the experience of "justice" often remains unachievable for many Americans. The scope and severity of people's unresolved civil justice problems has led some to identify a "crisis" in access to justice as "a deficit of just resolutions to justiciable civil justice problems for everyday people."[5]

Scholarship on access to justice engages a number of ideas on how different kinds of legal problems, institutions, identities, experiences, and social mechanisms combine to create this crisis and shape people's justice trajectories.[6]

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1. Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1267, 1273-74, 1288-89 (2015); Nick Graetz et al., *A Comprehensive Demographic Profile of the US Evicted Population*, 120 PROCS. NAT'L ACAD. SCI., at 1 (2023).

2. *Tenant Right to Counsel*, NAT'L COAL. FOR CIV. RIGHT TO COUNSEL, https://perma.cc/WDH5-N8W8 (archived Aug. 13, 2025) (indicating that approximately four percent of tenants have access to legal counsel in contrast with approximately eighty-three percent of landlords).

3. *Id.*

4. *See, e.g.*, CONF. CHIEF JUSTS. & CONF. STATE CT. ADM'RS., RESOLUTION 5: REAFFIRMING THE COMMITMENT TO MEANINGFUL ACCESS TO JUSTICE FOR ALL (2015), https://perma.cc/9SKX-RYHH. Although terminology varies, terms like "Civil Gideon," "right to counsel," or "appointed counsel" all refer to these initiatives. Throughout the course of this Article, we refer to such programs and policies using the term "right to counsel."

5. Kathryne M. Young, *What the Access to Justice Crisis Means for Legal Education*, 11 U.C. Irvine L. Rev. 811 (2021); Rebecca L. Sandefur & James Teufel, *Assessing America's Access to Civil Justice Crisis*, 11 U.C. Irvine L. Rev. 753, 757 (2021) ("Justiciable events are events or circumstances that have civil legal aspects, raise civil legal issues, and have consequences for people that are shaped by the civil law.").

6. *E.g.*, Hazel Genn, *When Law Is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice*, 72 CURRENT LEGAL PROBLEMS 159, 164-166 (2019); Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, RESEARCHING L., Fall 2014, at 7-9; Kathryne M.

It also explores how people interact with state and federal legal systems in the United States, and why or how they sometimes fail to interact with these systems in ways that could substantively benefit them.[7] A key, but contested,[8] idea is that improving access to attorneys is one route toward improved access to justice.[9] In the context of the modern affordable housing crisis, free legal assistance in eviction courts exemplifies a salient example of increased access to justice. In this Article, we show that providing tenants with legal representation through existing court systems is an insufficient remedy to the access to justice crisis.

Using a theoretical framework from the study of public administration and policy implementation, we argue that the civil legal system presents significant administrative burdens that the provision of a court-appointed attorney falls short of sufficiently addressing. Just as we all incur costs (whether in time, money, or mental bandwidth) to participate in governmental systems and programs from voting to vehicle registration, eviction proceedings impose costs on all participants. We argue that evictions disproportionately impose learning, compliance, and psychological costs (three defining sources of administrative burden) on the people least equipped to navigate consequential legal proceedings on their own, and that these sources of burden are insurmountable for many tenants despite the hypothetical availability of legal aid.[10]

From the perspective of public policy and administration scholars, administrative burdens are a fact of life. While some administrative burdens may be necessary to allocate scarce resources or prevent fraud, others may not only offer little benefit to participants or society, but may actively thwart access to justice in particularly harmful ways. Because the stakes of a legal proceeding are especially high when housing is at risk, improving access to justice by reducing administrative burden is imperative. By grappling with the role of administrative burden and engaging prior scholarship on access to justice, we aim to help build

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Young & Katie R. Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 UTAH L. REV. 487, 490-494, 507 (2023).

7. Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, *in* TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112-115, 123-126 (Pascoe Pleasence, Alexy Buck & Nigel Balmer eds., 2007).

8. *See, e.g.*, Rebecca L. Sandefur, *Access to what?*, 148 DAEDALUS 49 (2019) (arguing that the access to justice crisis is "bigger than law and lawyers" because "it is a crisis of exclusion and inequality").

9. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1, 5-7, 16-18 (2009), https://perma.cc/4FR5-JHAJ (arguing that civil legal aid is in crisis due to demand for legal assistance exceeding the availability of lawyers); *c.f.*

10. *See generally* Donald Moynihan, Pamela Herd & Hope Harvey, *Administrative Burden: Learning, Psychological, and Compliance Costs in Citizen-State Interactions*, 25 J. PUB. ADMIN. RSCH. & THEORY 43, 46, 63 (defining compliance costs as "the burdens of following administrative rules and requirements" and asserting that these "burdens may be more likely to be imposed on politically powerless or unpopular groups, and may have the most dramatic effects on those with lower financial resources and human capital assets") (2014).

a more sophisticated understanding of the legal mechanisms and experiential realities involved in evictions.

Viewing evictions as instances of "unresolved justice problems"[11] stemming from administrative burden opens the door to a deeper understanding of their role as a vector for unequal access to civil legal justice. Specifically, while legal representation is arguably significant to meeting unmet legal needs, the whole endeavor of a legal proceeding is ostensibly to arrive at a just outcome. Our concern is therefore with both aspects of access to justice that Rebecca Sandefur identifies: *expanding* access to justice such that more people achieve lawful resolution to their problems as well as *equalizing* access to justice such that all demographic groups have the same likelihood of achieving said lawful resolution.[12] The question is whether and how legal representation in eviction proceedings can further either.

In this Article, we argue that the administrative burden framework can and should be applied to the study of access to justice issues. By studying administrative burdens in Washington State after the implementation of the state's groundbreaking tenant right to counsel program, we illustrate the persistent access to justice gap and explore the ongoing challenge of realizing equal access to the purported benefits of the civil legal system. This empirical study shows how the civil legal process creates learning, compliance, and psychological costs for landlords and their tenants—and how professional legal counsel can help both parties overcome these burdens.

This Article proceeds as follows. Part I describes the sources of administrative burden in the civil legal system, the eviction process and right to counsel programs. Part II details Washington State's innovative right to counsel program, and Part III presents an empirical study designed to examine administrative burdens in this program. Part IV elaborates the findings of this study, and Part V examines implications of these findings for potential policy reforms that could increase equitable access to justice. In the Conclusion, we briefly share concluding thoughts about the possible benefits of applying the administrative burden framework to the study of access to justice.

I. ADMINISTRATIVE BURDENS AND THE CIVIL LEGAL SYSTEM

Administrative burden scholarship centers individual experiences with government services and explains barriers to participation or use of these services in terms of the costs that governmental processes exact on prospective users. More specifically, public administration scholars describe the learning, compliance, and psychological costs of accessing benefits offered through government services and programs.[13] Although legal scholars do not typically

11. Sandefur, *supra* note 8, at 50.
12. *Id.* at 50-53.
13. Moynihan, Herd, & Harvey, *supra* note 10, at 45-47; PAMELA HERD & DONALD P.

refer to the costs of participating in civil legal processes in these terms, inequitable access to justice is clearly linked to imbalanced administrative burdens in civil court proceedings

Learning costs comprise the time and effort that a person must expend in order to learn about a government program or service, whether they are eligible, and how to avail themselves of its potential benefits.[14] Civil court processes are complex and often require taking specific, court-prescribed actions at multiple stages of the process with little room for failure. Litigants must overcome learning costs by interpreting procedural requirements and court rules at every stage of the legal process. Research at the intersection of behavioral science and administrative burden scholarship has further articulated how these learning costs may be amplified for those who are managing health or psychological challenges, as is likely the case for many people experiencing challenges that precipitate civil legal system involvement.[15]

Civil court litigants must also bear significant compliance costs, defined as the "burdens of following administrative rules and requirements."[16] For those who can afford to do so, the hiring of an attorney represents a compliance cost that can dramatically reduce learning and other compliance costs throughout the course of a case. Having a legal expert in place to submit documents for court records, attend hearings and wait for the appropriate place on a particular docket, track case progress, and participate in negotiations can mitigate the time and cognitive bandwidth required for a particular case. For this reason, imbalanced compliance costs for participants in civil legal processes are indelibly linked to their ability to access legal support.

Civil cases may also subject participants to significant stress and related psychological costs. Indeed, the psychological costs of civil legal proceedings are consequential and cause many participants to avoid civil legal processes entirely.[17] A substantial body of research on tenant experiences in eviction proceedings, for example, has conclusively demonstrated the psychological consequences of an eviction case from the tenant perspective. Qualitative

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MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 22-26 (2019).

14. Moynihan, Herd, & Harvey, *supra* note 10, at 45-46. For an example of learning costs illustrated by empirical data gathered from research, see *id.* at 48-49.

15. Julian Christensen et al., *Human Capital and Administrative Burden: The Role of Cognitive Resources in Citizen-State Interactions*, 80 PUB. ADMIN. REV. 127, 131-32 (2019); Young & Billings, *supra* note 6, at 534-35.

16. Moynihan, Herd, and Harvey, *supra* note 10, at 46.

17. Greene, *supra* note 1, at 1267 ("Taking no action to resolve their [civil justice] problem was more desirable than taking action that would result in similar negative feelings, even if inaction meant more financial and emotional stress."); *see id.* at 1272 & n.48 (citing ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991)); *id.* at 1307 (describing "distrust of courts" and belief of "widespread corruption in court proceedings); *id.* at 1309-12 (detailing case studies that demonstrate the cognitive barrier of "defensive individualism"). Greene also identifies pronounced racial disparities in perceptions of civil justice and other government institutions – in particular, that Black litigants express lower levels of trust in these institutions than White litigants. *Id.* at 1307-12.

evidence further suggests that legal assistance can help mitigate uncertainty and stress under these circumstances.[18]

Although the sources of administrative burden in legal institutions have not been studied systematically as such, a growing body of access to justice scholarship has documented the low rates of participation in various aspects of the civil legal process. Socio-legal studies of the eviction process and other civil proceedings have broadly found that tenants do not understand many of the rules and procedures of civil court proceedings and frequently are unable to participate because of the learning costs they must bear.[19] Like the hiring of an attorney, attendance at hearings often creates an insurmountable compliance cost. Without legal representation, participants in civil legal proceedings face much longer odds of presenting a legally compelling argument or achieving a level playing field in negotiations.

A. Administrative Burden in Eviction Proceedings

The development of local eviction court systems throughout the nineteenth and twentieth centuries was theoretically intended to protect both tenants and landlords from violations of lease contracts by the other party.[20] Although modern eviction proceedings are marked by pronounced inequities in landlords' favor,[21] these courts theoretically provide a service to both sides by upholding provisions which protect against unfair evictions by landlords and lease violations by tenants.

The administrative burden framework offers a tangible explanation for why,

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18. Danya E. Keene, Gabriela Olea Vargas & Annie Harper, *Tenant Right to Counsel and Health: Pathways and Possibilities*, 6 SSM: QUALITATIVE RSCH. HEALTH, at 2, 5-6 (2024) (asserting that "access to legal representation may reduce health harming stress associated with the eviction process" and how surveys showed that clients found "lawyers' legal knowledge and skills as empowering and reassuring"); *see* RACHEL FYALL, KARIN MARTIN & WILL VON GELDERN, UNIV. WASH.: EVANS SCH. PUB. POL'Y & GOVERNANCE, WASHINGTON STATE'S APPOINTED COUNSEL PROGRAM: BASELINE REPORT 15-16 (2023) ("Attorneys gave their clients a sense of security and stability, while helping clarify and navigate the [eviction] process.").

19. Kyle Nelson, *The Microfoundations of Bureaucratic Outcomes: Causes and Consequences of Interpretive Disjuncture in Eviction Cases*, 68 SOC. PROBLEMS 152, 153, 160-63 (2021); Greene, *supra* note 1, at 1267.

20. Vamsi A. Damerla, *The Right to Counsel in Eviction Proceedings: A Fundamental Rights Approach*, 6 COLUM. HUM. RTS. L. REV. ONLINE 355, 396-98 (2021) ("Courts during the nineteenth century began to require more exacting duties from landlords in the course of their relationships with tenants in comparison to the common law approach. The upshot of these changes was an increased concern with landlord actions that improperly displaced tenants, changes in the law to mitigate the adverse effects of abrupt lease termination on tenants, and an increased convergence between the property and contractual aspects of the landlord-tenant relationship.").

21. Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 398-99 (2022) (describing "[o]vert and implicit biases in favor of landlords" and how "the architecture of eviction courts heavily favors landlords and nearly ensures they will obtain swift judgments of possession").

relative to landlords, tenants are at such a disadvantage in a typical eviction proceeding. Insofar as right to counsel programs attempt to ensure that all demographic groups have the same likelihood of achieving lawful resolution in eviction cases, they are aligned with the goal of equalizing access to justice. To achieve this goal, the disparities in administrative burdens between tenants and landlords would have to be reduced. Learning costs, for example, are substantial for both tenants and landlords but can be greatly reduced when attorneys formally initiate or manage the process for their clients. In addition to trying to understand the eviction process and their role in it, unrepresented participants must interpret court requirements written in complex legal language and navigate the adversarial process of an eviction proceeding. Doing so requires an understanding of the laws that govern unlawful detainer proceedings—and for many tenants, the procedural requirements are so unclear that they are unable to participate and lose by default.[22] In most cases, landlords hire professional legal counsel to shoulder these compliance-related burdens, while tenants cannot afford to do so.

Hiring an attorney can be described as a compliance cost in the parlance of administrative burden scholars. Although doing so is not technically required for participating in the eviction process, legal representation significantly impacts an individual's ability to avail themselves of the theorized benefits of the eviction process. Without legal representation, tenants are less likely to maintain their tenancy.[23] Moreover, although most empirical research on this topic has emphasized tenants' perspectives rather than their landlords', it is likely that unrepresented landlords also face more difficulties than those who receive professional legal counsel. Both tenants and their landlords must either bear the compliance costs of eviction by hiring an attorney or by submitting documentation and attending hearings themselves. As long as the experience and outcomes of civil legal proceedings are fundamentally determined by a participant's ability to pay, civil courts will continue to help reproduce societal inequalities.[24]

Evidence also suggests that tenants must bear significant psychological costs in order to participate in the eviction process. Tenants frequently endure

22. *See* WILL VON GELDERN, KARIN MARTIN & RACHEL FYALL, EVICTIONS BY DEFAULT JUDGMENT IN WASHINGTON STATE 1, 4, 9-10 (2024); RYAN BRENNER ET AL., N.Y.U. FURMAN CTR., HALF THE BATTLE IS JUST SHOWING UP: NON-ANSWERS AND DEFAULT JUDGMENTS IN NON-PAYMENT EVICTION CASES ACROSS NEW YORK STATE, 2016-2022, at 2-3 (2023).

23. *See* Mike Cassidy & Janet Currie, *The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program*, 222 J. PUB. ECON., at 18-20 (2023).

24. Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOCIO. 339, 347-48 ("Class differences in how people respond to problems are important not only because they reveal class inequality, but also because they may reproduce it. . . . Studies of another important body of legal gatekeepers, contingent fee lawyers, suggest additional routes through which social class inequalities may be reflected or exacerbated through going to law . . . .") (2008).

traumatic experiences in the weeks and months leading up to their eviction,[25] and receiving an eviction filing has been associated with immediate and long-term psychological consequences.[26] Job loss and the experience of poverty can also trigger internalized and societal stigma which could make circumstances worse.[27] Although research on landlords' psychological experiences of eviction remains scarce, because they tend to have more wealth, it is unlikely that they would bear the same level of psychological costs stemming from poverty.

The inequities in eviction proceedings are closely related to tenants' and landlord unequal ability to weather the learning, compliance, and psychological costs that the civil legal process exacts on participants. For tenants who have recently experienced traumatic events and are living with material scarcity or health problems, these burdens may be particularly overwhelming. As some recent public administration research has observed, the limited cognitive resources of the most disadvantaged tenants may lead to a situation in which the tenants who need support the most are actually the worst equipped to access an attorney.[28] If they are able to navigate the eviction process and access legal assistance, however, a right to counsel program could significantly ameliorate their experience of the civil legal system as burdensome. For most landlords, however, their ability and willingness to overcome the compliance cost of hiring an attorney at the beginning of an eviction proceeding may ease the burdens associated with their participation in the process. While landlords may experience learning, compliance, and psychological costs throughout the eviction process, the timing and nature of these costs is likely to be significantly different from those experienced by their tenants.

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25. *See* Keene, Olea Vargas & Harper, *supra* note 18, at 2 (describing how an "eviction threat was associated with increased prevalence of depression and anxiety" and characterizing "emerging research suggest[ing] that the health impacts of the eviction process may extend . . . to affect families, networks, and entire communities"); FYALL, MARTIN & VON GELDERN, *supra* note 18, at 13-14 (recounting personal recollections of tenants describing their mental and physical health concerns exacerbated by eviction proceedings); *id.* at 16 (summarizing "the inherent stress of eviction proceedings" and explaining "how stress contributed to other challenges including familial conflict, domestic violence, and criminal legal system contact," as well as "stress-related medical conditions" and the "significant material hardship" faced by children in evicted households).

26. Binod Acharya, Dependra Bhatta & Chandra Dhakal, *The Risk of Eviction and the Mental Health Outcomes among the US Adults*, 29 PREVENTIVE MED. REPS., at 5-7 (2022); Jack Tsai et al., *Longitudinal Study of the Housing and Mental Health Outcomes of Tenants Appearing in Eviction Court*, 56 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1679, 1680, 1683-85 (2021).

27. Katherine L. Mott, *"Hurry up and Wait": Stigma, Poverty, and Contractual Citizenship*, 45 QUALITATIVE SOCIO. 271, 275-277 (2022).

28. Christensen et al., *supra* note 15, at 129 (describing how those "who would benefit most from overcoming ordeals fail to do so" and citing research that shows that the "largest effects" of administrative burdens are felt in populations "with moderately severe disabilities, lower education levels, and relatively low income").

B. Administrative Burdens and Right to Counsel

Unlike the criminal legal system, where a right to legal assistance is constitutionally protected, civil courts do not guarantee the right to an attorney for indigent defendants. Since the Supreme Court's opinion in *Lassiter v. Department of Social Services*[29] denied Abby Lassiter the right to court-appointed counsel in a parental termination proceeding,[30] it has been "largely uninterested in revisiting its civil right-to-counsel jurisprudence."[31] Confronted with judicial reluctance to appoint counsel in civil matters, tenant advocates have pursued a legislative strategy focused on creating government-funded right to counsel programs in which legal aid providers offer their services to tenants who qualify on the basis of their income or other indigency-related criteria.[32] These programs—which are typically implemented by government agencies using funds appropriated by a legislative body—improve case outcomes for tenants and have positive health, financial, and psychological effects for households at risk of losing their homes.[33]

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29. 452 U.S. 18 (1981).

30. Cassie Chambers Armstrong, *Gideon Is in the House: Lessons from the Home-Renters' Right-to-Counsel Movement*, 59 HARV. C.R.-C.L. L. REV. 201, 212-17 (2024) (citing and discussing 452 U.S. 18).

31. *Id.* at 216 ("In the four decades since it issued its opinion, the Supreme Court has cited *Lassiter* just eleven times.") (citing Turner v. Rogers, 564 U.S. 431 (2011); M.L.B. v. S.L.J., 519 U.S. 102 (1996); Santosky v. Kramer, 455 U.S. 745 (1982); Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305 (1985); Little v. Streater, 452 U.S. 1 (1981); Alabama v. Shelton, 535 U.S. 654 (2002); Lewis v. Casey, 518 U.S. 343 (1996); Ford v. Wainwright, 477 U.S. 399 (1986); Lehr v. Robertson, 463 U.S. 248 (1983); Landon v. Plasencia, 459 U.S. 21 (1982); Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991)); *cf. id.* at 216 n.119 ("[I]t is worth noting that some federal district courts have been more active in litigation regarding the bounds and scope of the rights laid out in *Lassiter*. For example, federal district courts in the state of California have collectively cited *Lassiter* 718 times as of January 24, 2023 . . . . This is likely because the Court's decision in *Lassiter* required lower courts to conduct a case-by-case due process inquiry, resulting in a multitude of opinions addressing this issue."); *but see id.* at 218-221 & nn.129-62 (describing state judicial precedent and legislative efforts to strengthen the right-to-counsel in civil cases).

32. *Id.* at 228-30 (detailing efforts of advocates in New York City); NAT'L COAL. FOR CIV. RIGHT TO COUNSEL, *supra* note 2.

33. Armstrong's study shows how right-to-counsel programs have materially improved outcomes for tenants facing eviction proceedings. Armstrong, *supra* note 30, at 208-09 (collecting data showing that "93% of [tenants] with attorneys" provided by right-to-counsel programs "were able to avoid disruptive displacement" and "83% were given more time to move"); *id.* at 209 ("[P]arties with attorneys in civil cases were, on average, 540% more likely to receive a positive case outcome than an unrepresented person.") (citing Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, 80 Am. Sociol. Rev. 909 (2015)). Other research shows how attorneys and their impact on tenants' chances of success in eviction proceedings can have a material benefit in alleviating the stress associated with eviction proceedings, thus removing a source of these adverse health effects. *See* Keene, Olea Vargas & Harper, *supra* note 18, at 6 ("Given the well-documented health risks of stress exposure, the health benefits of the emotional and logistical support provided by lawyers may be significant."); *supra* notes 18, 25, and accompanying text.

If legal inequities are responsible for unfair case outcomes or unnecessary evictions, then offering legal counsel could improve tenants' perceptions and experiences of the civil legal system and lead to improved case outcomes for tenants. The universal availability of legal aid might also influence the supply side of eviction cases by discouraging landlords from filing frivolous suits. By improving tenants' perceptions of fairness or the perceived benefits of their participation, legal representation could increase the likelihood that they submit a response or attend their hearing.[34] In the courtroom, attorneys can help tenants better understand the eviction process and mount a vigorous defense in their case. On the logistical side, attorneys may be better equipped to attend multiple hearings and otherwise manage case participation requirements on behalf of their clients.[35]

As right to counsel programs have proliferated, however, they have largely been unable to address the fact that approximately half of all tenants do not participate in eviction proceedings at all.[36] Even when legal aid is offered in court, tenants who do not attend a preliminary hearing in court or contact a legal aid provider are unable to access professional legal help. This justice gap has been largely ignored in prior research on right to counsel programs, but in this Article we explore the issue in depth using theoretical tools from the study of policy implementation. By framing civil courts as providing a governmental service designed to offer both landlords and tenants the opportunity to pursue a fair, impartial resolution to their dispute, we can better understand how and why the eviction process creates systemic inequities even when a right to counsel program is technically available.

Most means-tested government programs in the United States are not accessed by everyone who is eligible. Although programs vary substantially in the context in which they are offered, the terms of their eligibility criteria, and the perceived value of the services that they offer, prior studies have reported "take-up" rates of as low as forty percent for some common programs.[37] This discrepancy between eligibility and take-up can be attributed to the onerous nature of accessing public services[38]—in other words, the experience of

34. John Pollock, *Right to Counsel for Tenants Facing Eviction: Justification, History, and Future*, 51 FORDHAM URB. L.J. 1439,1464-65 (2024).

35. *See also* Keene, Olea Vargas & Harper, *supra* note 18, at 4 (describing how "40 % of CT eviction cases were decided by default in the landlord's favor, because the tenant failed to appear in court," but countering such narratives with stories of how lawyers are able to help tenants make "emergency appearance[s] in court and . . . get the case dismissed" as well as "ensure [that legal] complexities are resolved according to the law, rather than automatically in the landlord's favor").]

36. VON GELDERN, MARTIN & FYALL, *supra* note 22, at 9.

37. *E.g.*, Pamela Herd & Donald Moynihan, *Fewer Burdens but Greater Inequality? Reevaluating the Safety Net through the Lens of Administrative Burden*, 706 ANNALS AM. ACAD. POL. & SOC. SCI. 94, 98 (2023) (listing a take-up rate of "about 40 percent for" the Temporary Assistance for Needy Families program).

38. *See* Moynihan, Herd, and Harvey, *supra* note 10, at 48 (describing how "take-up

administrative burden—and likely applies to right to counsel programs as well because of its formulation as a means-tested program. Insofar as legal aid programs, including right to counsel, are intended to help more people achieve lawful resolutions of conflicts and legal issues, proponents of access to justice initiatives should deeply consider the administrative burdens that prevent individuals from accessing their benefits. These burdens could have important implications for both expanding and equalizing access to justice.

Like many programs that increase access to justice, right to counsel programs are typically embedded in established civil court processes. Therefore, tenants must typically overcome the learning costs of the eviction process up front in order to access legal assistance. In most cases, tenants must take several proactive steps before they receive any help from an attorney.

First—assuming that the landlord or a third party ensures the tenants' receipt of eviction-related documentation—tenants must read and correctly interpret the documentation that they receive. Eviction summonses, which often contain legal jargon related to the civil court process, may require tenants to mail or fax multiple documents within a week of receipt in order to "appear" in their case. Then, tenants may also be required to attend a virtual or in-person hearing in order to contest their eviction. While the theoretical availability of legal assistance could act as an incentive for tenants to overcome these learning-related costs, they may not be aware of their right to counsel—particularly in jurisdictions with relatively new programs. Indeed, some research has found that new programs that expanded rapidly during the COVID-19 pandemic (such as rental assistance) may have had particularly high learning costs because of the frequent, rapid changes that many Americans experienced with government services during that time.[39] To our knowledge, no prior studies have thoroughly assessed low-income tenants' awareness of right to counsel programs in jurisdictions where they exist.

Although the learning costs of accessing a right to counsel in the first place may be substantial, legal assistance may help reduce learning costs thereafter. Paralegals from legal aid providers or court administrators can determine eligibility and clarify what steps a tenant must take in order to formally receive legal assistance. During case proceedings, attorneys can help their clients meet evidentiary standards, adhere to court timelines, and understand the available

rates by eligible beneficiaries of means-tested programs are much lower" when "[c]ompared to the near 100% take-up for universal programs," and attributing this difference to the fact that means-tested programs "must do more to distinguish between the eligible and ineligible," thereby "impos[ing] higher levels of burdens"); *id.* at 59 (outlining anecdotal evidence by agency staff observing that "[m]any potentially eligible people have misperceptions about the eligibility requirements" and "may choose not to apply because of incorrect assumptions," as well as their belief that "the application process would involve too much time and effort").

39. Claudia Aiken, Ingrid Gould Ellen & Vincent Reina, *Administrative Burdens in Emergency Rental Assistance Programs*, 9 RSF: RUSSELL SAGE FOUND. J. SOC. SCIS. 100, 108 (2023) (describing limited public awareness of new programs to eligible recipients as a contributing factor to increased learning costs).

options for submitting motions or conducting negotiations. The learning costs of right to counsel may exceed those of eviction proceedings if tenants face additional information barriers to determining their eligibility or to submitting an application after they have already engaged with the formal eviction proceeding. It is more likely, however, that right to counsel programs reduce administrative burdens on tenants overall.

Similarly, the compliance costs of right to counsel programs are likely to pale in comparison to the compliance costs of the eviction process itself. Existing research has documented the significant logistical difficulties that tenants face when trying to contest an eviction, including inflexible work schedules[40] and transportation barriers.[41] Once tenants receive legal representation, however, attorneys can reduce the compliance costs of civil court proceedings for tenants by attending hearings, filing documents, and negotiating with the plaintiff on behalf of their clients. Essentially, right to counsel programs directly target the compliance costs of eviction from a tenant perspective by providing them with free legal support to guide them throughout the stressful, confusing process.

Emerging research on right to counsel programs has also documented how attorneys can help mitigate the psychological costs of an eviction. Tenants may be averse to participation in the eviction process because of a sense of shame or internalized stigma, but qualitative data from interviews with recipients of legal assistance in their eviction proceedings shows how an attorney can confer a sense of empowerment and reduce tenants' sense of uncertainty throughout the case.[42] In theory, government assistance in the form of legal assistance could contribute to the psychological costs of an eviction when free legal counsel is available, but existing empirical research has not supported this hypothesis.

Right to counsel programs may also increase the learning, compliance, or psychological costs of the eviction process for landlords. Although these costs would typically manifest as increased compliance costs associated with the expense of hiring an attorney in the event of longer case timelines or additional procedural requirements, right to counsel programs could also hypothetically influence landlords' propensity to file evictions or otherwise affect their behavior before and during eviction proceedings. Although existing research has not thoroughly investigated these dynamics, recent data suggests that right to counsel

40. *E.g.*, Nelson, *supra* note 19, at 159; *see also id.* at 163 ("Tenants in Los Angeles have limited opportunities (not to mention time) to troubleshoot in settings that will help them navigate the interpretive disjuncture that is part and parcel of the legal eviction process.").

41. David A. Hoffman & Anton Strezhnev, *Longer Trips to Court Cause Evictions*, 120 PROCS. NATL' ACAD. SCIS., at 2 (2023) ("We estimate that for every 10 min in additional transit commuting time, tenants are between .65% and 1.4% points more likely to default . . . . In our sample, had tenants been afforded an equally short trip of a maximum of 10 min to the courthouse, Philadelphians would have suffered between 4,125 and 9,246 fewer default evictions. In our supplementary analysis of data from Harris County, Texas, the effect of a 10-min increase in driving commute time is estimated to be about three times as large.") (citation omitted).

42. *See supra* note 18 and accompanying text.

programs have not significantly slowed eviction filings in at least some of jurisdictions where they have been implemented.[43]

Right to counsel programs, like eviction procedures themselves, may impose additional costs on both tenants and landlords. Landlords may face steeper compliance-related costs if increased legal work is required to move eviction cases forward. As in all evictions, tenants must understand and fulfill response requirements and then endure significant learning, compliance, and psychological costs before they are typically able to access legal counsel. While right to counsel programs can help reduce the learning, compliance, and psychological costs of eviction which disproportionately fall on low-income tenants, the benefits of right to counsel programs may be obscured if they are embedded in a civil legal process that is overly burdensome for tenants.

II. A NEW FRONTIER: EVICTIONS AND RIGHT TO COUNSEL IN WASHINGTON STATE

Using an administrative burden framework, this Article examines tenants' experiences with the first statewide right to counsel program in the United States. In 2021, the Washington State legislature broke new ground when it authorized a right to counsel program through the passage of Senate Bill 5160. Like other programs, the Washington right to counsel program does not create a statutory right to legal assistance—rather, it creates a means-tested program that funds a network of third-party civil legal aid providers who provide assistance to tenants that are able to access their services. Rather than reforming existing eviction procedures, this program is inextricably linked to the eviction process and typically requires tenants to overcome meaningful administrative burdens in order to access legal services.

Although county eviction courts process cases differently in each of Washington's 39 counties, most counties have procedures that result in a similar appointment process for attorneys funded by the right to counsel program. The state's Forcible Entry and Forcible and Unlawful Detainer statute outlines a process by which plaintiffs issue a summons and complaint against defendants, and tenants must appear or respond by the date set out in those documents. In most counties, summonses can be served after case filing or via "pocket service," a practice that entails service of an unfiled summons with a legally binding response deadline.[44] If the tenant does not appear or respond by that deadline, the statute authorizes landlords to seek a default judgment against their tenants. Some issues—such as whether a landlord can obtain a default judgment on the

43. Laura Demkovich, *Eviction Filings around Washington Soar to Record High Levels*, WASH. STATE STANDARD (Dec. 16, 2024, at 14:40 PDT), https://perma.cc/QK9X-B968.

44. Study Advisory Group members indicated that their clients regularly expressed confusion about this process. *See infra* Part IV. In some cases, they explained that tenants perceived summonses with no case number (i.e., those not yet filed in court) as less concerning or serious. *Id.*

basis of tenants' non-response prior to a hearing—are decided by local judicial officers and court administrators.

In theory, tenants can access an attorney at any point after they receive a summons, regardless of whether the case has been filed in court. Because of capacity constraints, however, legal aid providers are regularly unable to conduct client intake on an ongoing basis. When this is the case, the Office of Civil Legal Aid (OCLA) has advised legal aid providers to support tenants with filing a response *pro se* and encourage them to attend the show cause hearing that is scheduled upon their submission of a Notice of Appearance.[45] In this instance, a lack of legal aid providers' staff capacity creates an additional compliance cost for the tenant. Instead of simply submitting a response or contacting a legal aid provider directly, they are responsible for interpreting an "Order to Show Cause" document mailed to them by their landlord and attending a hearing either virtually or in person. Although the process of accessing legal assistance from a court-appointed attorney may vary according to legal aid providers' capacity and local court requirements at a given place and time, show cause hearings reliably offer tenants the opportunity to be screened for indigency and access legal help.

While a baseline report on the program from 2023 identifies several significant benefits and broadly positive case outcomes for tenants who receive legal counsel, the report omits analysis of cases in which tenants are not represented.[46] A later analysis found that nearly forty percent of cases from January and February 2024 result in default judgments.[47] Because cases that result in default judgments against tenants typically do not allow tenants to access the right to counsel program, this finding suggests that many tenants are still evicted without representation. These prior studies, however, did not measure the percentage of cases in which tenants received help from an attorney. Using multiple sources of data, this study begins to answer this question and explores the many reasons why tenants do not receive legal counsel in Washington nearly three years after the authorization of Senate Bill 5160.

III. ADMINISTRATIVE BURDENS UNDER RIGHT TO COUNSEL: AN EMPIRICAL STUDY

We employed a sequential exploratory study design[48] including analysis of qualitative data from tenant interviews and subsequent quantitative analysis of data derived from manual coding of case documents. Qualitative data were used to inform the selection of quantitative variables which were subsequently

45. E-mail from Bonnie Rosinbum, Eviction Def. Program Couns., Wash. State Off. Civ. Legal Aid, to Will von Geldern, U. Wash. (October 30, 2024 at 09:44 PT) (on file with author).

46. FYALL, MARTIN & VON GELDERN, *supra* note 18, at 17.

47. VON GELDERN, MARTIN & FYALL, *supra* note 22, at 9.

48. JOHN W. CRESWELL & VICKI L. PLANO CLARK, DESIGNING AND CONDUCTING MIXED METHODS RESEARCH 391-93 (3d ed. 2017).

collected from publicly available case documents. This study was completed in consultation with a volunteer Study Advisory Group of civil legal aid attorneys whose employers provided legal aid to evicted tenants during the study period. The Study Advisory Group provided guidance on study design and data collection, assisted with recruitment of qualitative study participants, and advised on the availability of relevant case data. Their contributions helped ensure a combination of theoretical and practical relevance throughout data collection and analysis.

A. Qualitative Data

Qualitative data collection consisted of semi-structured, in-depth interviews with 23 tenants who had experienced default judgments in their cases. Interview participants were recruited by Study Advisory Group members, who sent a short description of the qualitative study to prospective participants alongside a request to share their contact information with a University of Washington researcher. The inclusion of the perspectives and narratives of defaulted tenants represents a novel contribution to the study of eviction cases. Interview participant characteristics are described in Table 1. All names used for the reporting of results are pseudonyms.

Gender	
Male	10
Female	13
Race / Ethnicity[49]	
Asian	0
Black	6
Hispanic or Latino/a/x	7
Native American	2
White	10
Prefer Not to Answer	1
Basis for default judgment	
Non-response	14
Hearing absence	7
Default on stipulated agreement	2

Table 1: Interview participant characteristics (n = 23)

49. Race and ethnicity interview questions allowed for multiple selections; as such, the total does not equal twenty-three.

When tenants receive a default judgment in their case, they typically receive notice that a writ of restitution has been issued and notice of a deadline by which the local sheriff's office will ensure their physical removal. In Washington, tenants are able to contact the county clerk's office and submit a pro se request to stay the writ of restitution and vacate the default judgment. If they successfully avail themselves of this process, they can then contact a legal aid provider to request a court-appointed attorney as a part of Washington's appointed counsel program. Legal aid providers recruited tenants from among these cases, colloquially known as "post-writ" or "stay-and-vacate" cases.

Because of the nature of these cases, interviewed tenants represent the perspectives of those who were defaulted but ultimately elected to contact a legal aid provider. As a result, their perspectives may not be representative of all defaulted tenants but likely reflect the experiences of individuals who were initially unable to access legal assistance despite their intent to do so. Interview participants' narratives of their case proceedings and default judgments provide a meaningful and unique source of data to understand the challenges that potential appointed counsel clients face during the time period in which they face an eviction filing.

Because of unforeseen capacity constraints within legal aid organizations and the appointed counsel program, all prospective interview participants were recruited by one legal aid provider and study respondents predominantly experienced eviction in one county (Pierce) characterized by high default rates. All participants were compensated with a digital gift card to express appreciation for their participation in the study.[50] We conducted interviews using an interview protocol that had been reviewed in advance by Study Advisory Group members. The protocol was intended to help study participants revisit the factors and circumstances that contributed to their default judgments through open-ended, narrative answers. While the interview protocol included topics which had been previously theorized as causes of default judgments, the semi-structured nature of these conversations also allowed the lead author to inductively probe additional topics such as tenants' experiences of administrative burden.

B. Quantitative Data

We also collected case-level data from six counties of Washington State representing all filed cases in six counties in January 2024. These counties represented approximately half of all eviction filings statewide during this period.[51] Because administrative data available from the state do not contain accurate measures of default judgments, a manual data collection procedure was

50. This qualitative study was approved by the University of Washington Institutional Review Board.

51. As shown in authors' tabulations of data from Washington State Administrative Office of the Courts.

required. The six counties were selected purposively in partnership with OCLA and the Study Advisory Group to encompass a variety of county-level eviction rates, informal court and landlord practices, geographic and demographic characteristics, as well as formal and informal court procedures governing the eviction process. Prior research has found that the availability of rental assistance—such as was widely available during the midst of the COVID-19 pandemic—can meaningfully alter case outcomes for represented tenants in eviction proceedings.[52] As such, we selected cases from January 2024 after the vast majority of pandemic-era rental assistance funds were no longer available.

For each case, we documented 10 case characteristics which prior literature has linked to default judgments or which were deemed potentially relevant after preliminary inductive analysis of interview data. Dichotomous indicators of monetary (i.e., non-payment of rent) and non-monetary (e.g., unallowable behavior) bases for the eviction were collected from complaint documents.[53] In each case, the summons was reviewed to determine whether it was served via pocket service or after the case had been filed in court. Case documentation was reviewed for evidence of a tenants' response, as well as whether it was filed by the defense or by the plaintiff on their behalf. If a tenant did not respond, a dichotomous measure of whether the non-response resulted in a default judgment was recorded. Hearing minutes were reviewed to determine whether a tenant was present, absent, or represented by an attorney. Landlord representation was also documented from these minutes and other available evidence. Finally, these other documents were reviewed to determine whether an Order for Limited Dissemination (OLD) was issued[54] and whether the case resulted in a writ of restitution for the unlawfully detained property, an agreement, a dismissal, some combination of these outcomes, or whether no resolution was recorded (e.g., a final hearing was stricken and no further action was taken).

IV. FINDINGS: INSURMOUNTABLE BARRIERS

During interviews, defaulted tenants described the experiences they endured before and during the eviction process as traumatic and psychologically harmful. In combination with a confusing, complex legal process, these experiences resulted in a mismatch between tenants' experiences and the legal expectations of the court. Tenants described significant learning costs associated with the

52. Aviv Caspi and Charlie Rafkin, Legal Assistance for Evictions: Impacts, Mechanisms, and Demand 2-3, 17-20 (Nov. 3, 2023) (unpublished manuscript) (on file with author).

53. Cases were deemed to have a monetary basis if the complaint document quantified a specific level of monetary damages associated with non-payment of rent. Any basis for eviction or default of lease with a non-monetary dimension was counted as a non-monetary basis, including accusations about unknown damages to be elaborated during case proceedings.

54. WASH. REV. CODE § 59.18.367 (2016).

eviction process, primarily related to their inability to access the information they needed and difficulties interpreting court documents when they did receive them. Most tenants were also not aware of Washington's right to counsel program prior to their eviction. While these learning costs were the most salient in tenants' descriptions of the eviction process, the experience of eviction also exacted psychological costs on tenants stemming from stress and the stigmas associated with poverty and eviction. Finally, compliance burdens were less common in tenants' narratives than learning or psychological costs, but they were often insurmountable when they arose.

Some scholarship has detailed how material scarcity, health issues, and other destabilizing experiences can create a deficit of cognitive resources that magnifies the perceived significance of administrative burdens.[55] The results of this empirical study largely align with that perspective. The perceived learning, compliance, and psychological costs of eviction proceedings for tenants were compounded by challenges related to health, work, and personal relationships. For the tenants interviewed as a part of this study, these burdens prevented them from participating in their eviction proceedings until they had received notice of a judgment against them. Although personal circumstances varied, a significant majority of study participants described challenges which would exacerbate the difficulties of overcoming administrative burdens for anyone.

A. Overlapping Crises

In many cases, tenants were facing multiple overlapping crises as they became aware of the eviction case against them. Brenda, a Black mother of two children who was going through a separation at the time of her eviction, faced the intersecting challenges of a car accident, income instability, relationship stress, and childcare when she began falling behind on rent. Her description of this time period demonstrates how multiple crises came to occupy her mental bandwidth:

> I've been going through a lot with my health as far as me being a diabetic. So I've been pretty sick lately, and just going through stress . . . I was in a very stressful relationship. With three children of ours, well, we have four with his three children . . . when I got into the car accident, I didn't get any help at all. So I was not able to do what I needed to do as far as rest. And so I started getting really sick and I wasn't able to fully perform the way that I needed to. I'm a medical assistant, so I'm up 24/7, not really sitting down. I'm checking in patients all the time, or I'm going to go give vitals, or I'm going to go do blood draws or give vaccinations. And . . . trying to do that while having been in a car accident, I kind of failed. So I had to take some time off and I took a few weeks off, just to try to get my body back healthy. But in the midst of that, I was still not getting any help. I still had to take care of children, and I was just alone by myself. So it caused me to downfall because I don't have paid time off at my

55. Christensen et al., *supra* note 15 at 131-32.

> job. And so with me not having paid time off at my job, I did try to go through the state, I got approved, but only for a certain amount of time. And then with those hours, they don't pay fully. And so with that money, I had to catch up with things at our house that we were behind in. So with me doing all that alone, being a parent and trying to work and then doing everything by myself, it was pretty hard.

During this period, Brenda did not respond to her eviction summons. She only decided to reach out for legal assistance when she was notified of her physical eviction via a notice from the sheriff. By that point, however, the court had already issued a default judgment against her. After submitting a motion to vacate the judgment against her, however, Brenda was able to access legal support, obtain a neutral reference from her landlord, and have her eviction record sealed. While the legal help was not enough to maintain her tenancy, it did give Brenda and her family more time to move and the ability to maintain a clean rental record.

Health challenges commonly contributed to tenants' difficulties with the administrative burdens of the eviction process. Yesenia, an undocumented immigrant who worked in the informal economy, lost her ability to work because of illness stemming from unaddressed water contamination in her unit. During the course of her eviction, she faced major health-related impediments to daily functioning. Her description of the hearing notice documentation that she received is instructive in understanding her absence at a hearing:

> I read the paper, but I'm sick, I cannot see good. My son was working alone. I didn't work for three months, I cannot walk, I feel bad . . . I had a stroke, I cannot even swallow my own saliva. I cannot even talk. I lost my voice . . . and they sent me a paper and the paper said March 3rd or something like that, but we missed it. So a few days later I was doing something in the house and the police came and they put a paper in the door and say, if you don't get out of here by Monday at six . . . capture everything or you are just going to lose all your things.

Ultimately, Yesenia learned about her right to an attorney in an unexpected way. After visiting a pharmacy to find medicine to deal with the rash arising from unrelenting water contamination, an employee at the pharmacy asked her about her symptoms and referred her to a local civil legal aid provider when Yesenia explained her situation. Without this stroke of luck, she would have been unable to access her right to counsel.[56]

B. Learning Costs

Nearly every interview respondent described facing significant informational barriers to participating in eviction proceedings and ultimately

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56. This is the type of connection championed by advocates of "medical-legal partnerships." *See generally, e.g.*, Omar Martinez et al., *Bridging Health Disparity Gaps through the Use of Medical Legal Partnerships in Patient Care: A Systematic Review*, 45 J.L. MED. & ETHICS 260 (2017).

accessing legal assistance. Some tenants described not receiving the appropriate documentation at all, while others received and read the relevant documents but did not understand the messages contained within them. Tenants also broadly expressed a lack of understanding about the processes of an eviction proceeding, and the actions required of them at each step of the legal process.

Many participant narratives suggest that physical mail may be an unreliable or insufficient means of communication. Several tenants reported that they did not receive any notice of their eviction and surmised that the landlord removed a notice from their door or otherwise interfered with their mail at properties where landlords had access to the mail facilities. The delivery of eviction summonses and hearing notices by mail also created problems for several tenants. One tenant described how the landlord had filed an eviction against them after they requested upgrades to their residence, and subsequently sent the hearing notice to the building's mailing address despite forwarding all other mail to the tenant's PO Box at his request.

In each of these cases, learning costs arose primarily from the eviction process rather than the right to counsel program itself. Mariana, a Latina single mother of two children who had been evicted from the same apartment several times, recalled experiencing a default judgment despite having experience and awareness of the steps in the eviction process:

> My sister showed me to go online, look it up, and she's like, you missed your court date. And I'm like, I never got anything! I responded when they said they were going to take me to court again. I responded with the response letter. I had the facts and everything from it, and I'm like, I did not get no kind of court date . . . the first time when they did it, I got a court date and I was aware of my court date and I was present. This time, I didn't know it. They didn't seem to put it on my door or in the mail. So I missed the court date, and then the eviction went on my record the second time around.

Jamila, a survivor of domestic violence who was living with her abuser at the time of the eviction, also explained why she was unable to receive her mail. In response to a question about why she did not submit an answer to an eviction summons, she explained how domestic violence prevented her from contacting an attorney:

> I was going through a domestic violence situation, so I wasn't home a lot because I didn't want to be home. My ex was kicking my door in and doing all kinds of crazy stuff, messing up my car, and I was stuck because my car broke down because he had sabotaged it. So I didn't get the notices, I didn't know. And he was checking my mail, taking my mail out of the mailbox. He took the notices off the door.

These stories demonstrate one unique aspect of learning costs embedded in the eviction process: they may be amplified by the behavior of an adversarial party. While some landlords might file a response that they received directly even if the tenant did not follow court procedure and submit an additional copy of their response for court records, this was not always the case. Several participants explained the lengths that they went to in order to respond to the landlord and

their attorneys, but in these cases no answer was filed with the court. Hector, who had worked for decades as a property manager in multiple counties and expressed significant familiarity with the eviction process as a plaintiff, did not understand the response requirements for a tenant in the county where he lived at the time of his eviction. Rather than submit a response to the court and to his landlord's attorney, he simply contacted his property manager and received a default judgment shortly thereafter. Hector described the experience from his perspective by saying: "I responded to the property management company that was supposed to be taking care of this place, and said that it was just an oversight on my part. I gave them the letter . . . and they said that I never gave them anything."

Many others simply did not understand the legal process. Even if they intended to present an affirmative defense, defaulted tenants were almost universally unaware of Washington's appointed counsel program. In fact, the initial learning costs of the eviction process were so significant that many respondents did not know where to begin. Jeanelle, who was being evicted from a family property by her stepmother after her father's passing, explained her confusion and the logistical barriers she perceived:

> I didn't really understand what I was supposed to be doing in order to fight the eviction. I had no clue. I'm a fairly intelligent person, but when it comes to the legal aspect of things, I had no clue where I was supposed to go, what I was supposed to do. And on top of that, I'm also disabled, so being able to go into the courthouse and file anything is something that's extremely hard for me to do.

Some defaulted tenants never saw their eviction summonses or hearing notices, often because of circumstances outside of their control. Responses like Jeanelle's further demonstrate that even tenants who do receive a summons or other documentation in an appropriate timeframe may not be able to interpret court response requirements. Participants' detailed narratives of the time period leading up to the eviction process also highlight how traumatic and stressful experiences exacerbated the learning costs that they faced.

C. Psychological Costs

Tenants' decision-making processes were also altered by feelings of shame and internalized stigma. Facing the eviction process was a daunting proposition that triggered feelings of embarrassment and discouraged tenants from responding and therefore from accessing legal services. Like learning costs, these psychological costs were also heightened by tenants' physical and mental health challenges and the many stressors that preceded their evictions. For Drew, a forty-five-year-old White man, health and psychological challenges converged when his self-employment income of approximately $120,000 per year dissipated after he developed brain cancer. The effects of Drew's illness on his mental capacity were magnified by internalized stigma after he was unable to

pay his rent. When asked to describe his non-response to the summons he received, Drew brought up his sense of shame without provocation:

> I think that just the shamefulness of all of it . . . I've never been evicted before. Up until I got sick, I had a perfect rental history. I paid on time. I even did things to beautify the apartment that I had at my cost. And when I got sick, it affected . . . my memory and it affected my whole life in general. And so I became very avoidant to everything in my life . . . they had to go through the process because I wasn't communicating.

Another tenant, a thirty-two-year-old White man named Tom, was aware of the right to counsel program because of a prior eviction but did not attend the scheduled hearing in his case because of this embarrassment. An ongoing struggle with substance abuse contributed to his avoidance of the situation:

> Interviewer: "[D]id you know that if you attended the hearing you would have access to an attorney? Were you aware of that program at all?"
>
> Tom: "Yeah, it was just my mindset at the time. I didn't want to have anything to do with law people."
>
> Interviewer: "Can you tell me more about that?"
>
> Tom: "I was on drugs. I don't like talking to cops when I'm like that. I don't like to talk to judges, I think because I'm embarrassed . . . but it is what it is."

These stories show how shame and internalized stigma can prevent tenants from accessing legal aid. While most tenants' descriptions of psychological costs emphasized the eviction process in general, prior evidence of the psychological costs of receiving governmental assistance[57] suggests a need for further exploration of this dynamic as well.

D. Compliance Costs

Logistical obstacles and compliance costs such as transportation challenges, inflexible work schedules, and technological barriers have been frequently mentioned in prior literature on tenants' access to the eviction process.[58] Analysis of qualitative data from this study revealed that compliance costs were less salient than information gaps or psychological issues in tenants' descriptions of the circumstances surrounding their default judgments. When logistical barriers arose, however, they often completely prevented tenants from accessing the information that they needed or participating in the process.

Several study participants also described the logistical barriers that prevented them from attending a hearing. Although a large-scale study of evictions in Pennsylvania and Texas found a statistically significant reduction in

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57. *See generally* Carolyn Barnes, Jamila Michener & Emily Rains, *"It's Like Night and Day": How Bureaucratic Encounters Vary across WIC, SNAP, and Medicaid*, 97 SOC. SERV. REV. 3 (2023). For example, Barnes, Michener, and Rains outline the "psychological costs—the stress and stigma—clients experience in means-tested programs" and suggest that prior research "points to bureaucrats as an important source of these costs." *Id.* at 6.

58. *Supra* notes 40-41 and accompanying text.

default judgments when virtual attendance is allowed,[59] two tenants' stories highlighted the potential limitations of the increased accessibility which might result from virtual hearings. Simone, a 37-year old single mother who became unable to work after being diagnosed with cancer, was able to successfully navigate the eviction process and attend her hearing with the expectation of having an attorney appointed. Despite her best efforts, however, she was not let into the virtual hearing room and was defaulted on the basis of her absence. Her description of the events further demonstrate the lengths that she went to in order to eventually submit a petition to stay the default judgment against her:

> I went to the court date. I was on time, everything, but they had me waiting in the queue, and I was there literally for hours. And the judge ended up granting them the eviction because of a no-show, but literally something told me to screenshot every few minutes that I was in queue, just for evidence that I was there. And I did that. And I ended up needing it . . . I was there, I was just waiting. I just wasn't granted access into the court.

Another tenant who was defaulted on the basis of her absence at a hearing explained that she was unable to attend virtually because she was unable to pay for phone or internet after her abusive partner moved out. Although these cases were the exception among interviewees, both stories demonstrate the sometimes-limited benefits of virtual attendance for tenants who intend to participate in the eviction process.

Several of the previous stories demonstrate how compliance costs may ultimately stem from information gaps. In Jamila's story, for example, she was not able to access information because of her romantic partner's removal of notices and her mail, which could be viewed as either a compliance cost (checking the mail and submitting response) or a learning cost (inability to access the right information). Another tenant who was a victim of domestic violence was not aware that her household was behind on rent because her abusive partner did not tell her that he had stopped paying rent. Although the qualitative data do not enable precise disentanglement of the different administrative burdens facing tenants, tenant responses clearly demonstrate the multiple costs of participating in the process and the cognitive stressors that accompany these burdens.

E. Rules, Behavior, and Case Outcomes

The qualitative data from our study allow us to describe the learning, psychological, and compliance costs experienced by tenants during the eviction process. We also analyzed quantitative data from case documents, in order to assess the factors that precipitate tenants' access to justice. Like the qualitative data, case documents do not allow us to empirically disentangle the different administrative burdens facing tenants. Rather, quantitative analysis demonstrates the associations between case variables and subsequent outcomes including

59. Hoffman and Strezhnev, *supra* note 41, at 1, 10.

tenants' legal representation. Each of the variables measured from case documents could relate to learning, compliance, or psychological costs and could measure case characteristics which influence tenants' behavior. Although it is unlikely to directly affect administrative burdens, the legal basis for an eviction could affect tenants' propensity to defend themselves in court by altering the perceived benefit of their participation.[60]

Pocket service could have a similar effect if tenants perceive unfiled summonses as less threatening or serious than cases that have been filed with the court.[61] Although that viewpoint was not apparent in our qualitative data, it is a potential source of confusion and illustrates the level of learning costs that tenants are required to overcome when interpreting the documents that they are served. Indeed, a prior study using data from the same Washington counties studied here found that pocket service was associated with increased rates of default judgments stemming from tenants' non-response.[62] Like the legal basis listed in the complaint, it is most likely that pocket service would influence tenant response rates by reducing the perceived benefit of participating in the legal process.

We also explored the possibility that rules and procedures implemented by local courts could alter tenants and landlords behaviors by affecting the administrative burdens they face at each stage of the eviction process. As described below, two counties in this study had previously implemented rules that reduce the upfront learning or compliance costs facing tenants and increased the compliance costs facing landlords who requested a default judgment.[63] Prior research found that these rules were associated with reduced default judgment rates,[64] and the quantitative data in this study allowed us to examine their relation to other case outcomes.

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60. Larson, *supra* note 22, at 135-36.

61. This hypothesis emerged from our discussions with the Study Advisory Group on the basis of their conversations with their clients.

62. VON GELDERN, MARTIN & FYALL, *supra* note 22, at 2-3 (analyzing data which demonstrates how "[u]nfiled summonses . . . were responsible for a disproportionate share of *ex parte* defaults"); *id.* at 5 (analyzing data from Kitsap County showing that "74.6% of summonses . . . were served without being filed . . . represent[ing] 93.3% of *ex parte* default judgments"); *id.* at 6 (analyzing data from Pierce County showing that "[n]early ninety percent of eviction summonses were served without being filed . . . resulted in a disproportionate share of *ex parte* defaults" at nearly 95%); *id.* at 7 (analyzing data from Snohomish County showing that a "high rate of unfiled summonses and *ex parte* defaults led to the highest overall county-wide default rate" at "48.0%"); *id.* at 8 (analyzing data from Spokane County showing that "*ex parte* default judgments are much more common in cases with unfiled summons," occurring at a rate of "34.0% compared to 5.3% of cases where summonses were served after filing").

63. *Infra* note 69 and accompanying text.

64. VON GELDERN, MARTIN & FYALL, *supra* note 22, at 9 (asserting that the two counties with "particularly strong policies in place which essentially eliminated *ex parte* default judgments" would "therefore" experience an "overall rate . . . likely to be lower than the statewide rate of default judgments").

Using chi-square analysis, we tested whether these variables were associated with tenants' submission of written responses after the receipt of initial summons. This measure is intended to capture tenants' ability to overcome the first set of administrative burdens in the eviction process. We also documented whether legal bases, the use of pocket service, and local rules intended to reduce defaults were associated with statistically different rates of legal representation and other subsequent outcomes.

F. Case Basis

Our analysis does not indicate that the legal basis for eviction is associated with tenants' submission of a response, rate of legal representation, or the rate of default judgments against tenants. This is in contrast to findings from a prior socio-legal study, which found that tenants were less likely to default in cases where nonpayment of rent was not alleged.[65] We tested this hypothesis based on the assumption that purely non-monetary evictions could be "more disputable."[66] As seen in Table 2, however, non-monetary case bases were not significantly associated with tenant answers, representation, or default judgments. While only 10.2% of the cases had an exclusively non monetary basis overall, this finding at the very least suggests that case basis is not a strong driver of future case outcomes within our dataset.

	Monetary basis or both monetary and non-monetary bases (n = 871)	**Non-monetary basis only** (n = 99)
Answer filed	327 (37.5%)	40 (40.4%)
Answer default	170 (19.5%)	20 (20.2%)
Hearing default	136 (15.6%)	23 (23.2%)
Any default judgment	306 (35.1%)	43 (43.4%)
Tenant representation	395 (43.4%)	41 (41.4%)

Table 2: Case Basis[67]

65. Larson, *supra* note 22, at 136 ("[C]ases that do not include an allegation of nonpayment of rent are associated with decreased propensity for tenant default.").

66. *See id.* at 125 (citing studies which demonstrate how "attorneys were more likely to take on cases when the eviction complaints raised issues of behavioral problems rather than those that simply alleged nonpayment of rent" to affirm the "more disputable nature" of "behavioral complaints").

67. In the right column, an asterisk indicates statistically significant difference in proportions based on chi-square analysis using a threshold of p = .05.

G. Local Court Rules and Landlord Behavior

Legal scholars and sociologists have noted significant variation in the way that local courts manage eviction dockets through the use of formal rules and informal norms or procedures.[68] Court rules and procedures may affect landlords' decision-making processes, tenants' ability to respond, or otherwise construct or dismantle barriers to accessing legal assistance. Among the six study counties, two local courts had previously implemented policies which were intended to reduce default judgments against tenants.[69] Although these rules were designed and implemented in different ways, previous analysis of case outcomes found that these counties had lower rates of default judgments stemming from tenant non-response.[70]

In Clark County, the presiding judge initiated a change in response to an ongoing pattern of landlords' attorneys submitting motions for answer-related defaults after a hearing date had been set. The judge issued a statement via email saying that beginning in January 2023, "motions for default judgment will not be granted ex parte if a Show Cause date is currently set on the Unlawful Detainer docket."[71] Although this does not legally prevent the issuance of default judgments on the basis of tenants' non-response, plaintiff attorneys in Clark County typically request a show cause hearing regardless of a response as a matter of practice. As such, this rule effectively removed the threat of default

68. *See, e.g.*, Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 VAND. L. REV. 1365, 1366 (2021) ("[W]hile one set of laws may govern throughout the state, the process for applying and enforcing those laws is highly localized, dependent on the nature of place and the attitudes of the stakeholders involved."); *id.* at 1372 ("One of the reasons for variation among local courts is the mix of local rules, practices, and culture that affects how they hear and process disputes. . . . Formal procedures provided for by statute or policy on a statewide level may operate differently from jurisdiction to jurisdiction."); *id.* at 1372-73 (providing a sketch of differences in informal local legal cultures as catalogued in prior research) (citing HERBERT JACOB, DEBTORS IN COURT 87-96 (1969); Bernard Trujillo, *Self-Organizing Legal Systems: Precedent and Variation in Bankruptcy*, 2004 UTAH L. REV. 483, 513 (2004); THOMAS CHURCH, JR., ALAN CARLSON, JO-LYNNE LEE & TERESA TAN, JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 54 (1978)).

69. VON GELDERN, MARTIN & FYALL, *supra* note 22, at 4 ("Clark County has the lowest default rate among study counties. . . . [T]he court announced that *ex parte* default judgments would not be granted in cases where a show cause hearing had been scheduled. This change was implemented in order to reduce confusion among tenants about the summons response deadline. . . . Another noteworthy practice in Clark County is the lack of eviction summonses served with previously unfiled summonses."); *id.* at 7 ("Skagit County Local Rule 8(a)(2) states that landlords must schedule a show cause hearing prior to obtaining a writ of restitution (eviction judgment) against a tenant. With this rule in place, our analysis indicates that Skagit County Superior Court did not issue any ex parte defaults prior to a show cause hearing being set.") (footnote omitted).

70. *Id.* at 4, 7, 9; *supra* notes 62-64 and accompanying text.

71. E-mail from Benjamin Moody, Hous. Programs Managing Att'y, Clark Cnty. Volunteer Laws. Program, to Will von Geldern, U. Wash. (June 26, 2024, at 13:54 PT) (on file with author).

judgments stemming from non-response but left the hearing attendance requirement associated with the right to counsel program intact. In doing so, it increased compliance costs for landlords and their attorneys who sought default judgments without altering the learning, compliance, or psychological costs facing tenants.

In Skagit County, the court issued a formal change to local court rules rather than initiating an informal procedural change. The updated rule requires the court to hold a show cause hearing prior to issuing a default judgment, and further stipulates that a request for default must contain a "certification that the plaintiff notified Skagit Legal Aid and the approved dispute resolution center prior to the filing of this action in the form of Attachment B which is attached to this rule."[72] In addition to increasing the requirements for default judgments, this rule creates a process to ensure proactive outreach to a local legal aid provider. This could meaningfully reduce learning costs of the right to counsel program if the legal aid provider were to proactively initiate contact with tenants prior to their hearings. Like the procedural change described above, this rule would also likely increase compliance costs for landlords.

Table 3 shows these local court rules to be strongly associated with the use of pocket service and answer-related default judgments. Although hearing defaults appear to be more common in Clark and Skagit counties, overall default rates are meaningfully lower. As Table 2 shows, however, Clark and Skagit counties are similar to the remaining counties in their rates of legal representation.

	Local rule or procedure in place (n = 239)	**No local rule or procedure** (n = 731)
Summons served via pocket service	1 (0.4%)	542 (74.1%) *
Answer filed	63 (26.4%)	304 (41.6%) *
Answer default	3 (1.3%)	187 (25.6%) *
Hearing default	50 (20.9%)	109 (14.9%) *
Any default judgment	53 (22.2%)	296 (40.5%) *
Tenant representation	104 (43.5%)	332 (45.4%)

Table 3: Local rules[73]

Despite halving the default judgment rate, local rules in Clark and Skagit counties appear to have had a minimal effect on rates of legal representation.

72. SKAGIT CNTY. LOC. CT. R. 8(a)(1)(viii) (2021), https://perma.cc/2SJD-SGUR.

73. In the right column, an asterisk indicates statistically significant difference in proportions based on chi-square analysis using a threshold of p = .05.

Instead, these rules appear to have primarily altered the rate of default judgments issued after a summons was delivered via pocket service. Local court administrators were successful in discouraging summary judgments against unrepresented tenants after summonses were delivered via pocket service, but our analysis shows that these rules counterintuitively discouraged tenant responses and had a negligible impact on tenants' ability to access legal representation. Rather, these rules appear to primarily influence landlords' behavior, specifically the use of pocket service. Table 4 demonstrates how pocket service was similarly predictive of answers and defaults, but not of tenant legal representation.

	Summons served via pocket service (n = 543)	**Summons served after filing** (n = 427)
Answer filed	236 (43.5%)	131 (30.7%) *
Answer default	171 (31.5%)	19 (4.4%) *
Hearing default	68 (12.5%)	91 (21.3%) *
Any default judgment	239 (44.0%)	110 (25.8%) *
Tenant representation	242 (44.6%)	194 (45.4%)

Table 4: Pocket service[74]

H. The importance of tenant behavior: answers and case outcomes

By far the most significant predictor of case outcomes and tenants' access to legal representation is their submission of a written response prior to the deadline listed on the eviction summons. In order to submit an answer, whether to their landlord, the court, or both (as required by law),[75] tenants have to overcome at least some of the learning, compliance, and psychological costs of the eviction process. This indicator can therefore be viewed as an (admittedly imprecise) indicator of a tenants' capacity to overcome the initial administrative burdens of the eviction process. Table 5 displays the differences in rates of tenant representation and default judgments based on whether a tenant submitted a response. While nearly two-thirds of tenants with an answer on file received legal representation, less than one-quarter of those who did not respond were represented.

74. In the right column, an asterisk indicates statistically significant difference in proportions based on chi-square analysis using a threshold of p = .05.

75. WASH. REV. CODE § 59.18.365 (2021).

	Answer submitted (n = 367)	**No answer submitted** (n = 603)
Answer default	0 (0.0%)	190 (31.5%) *
Hearing default	45 (12.3%)	114 (18.9%) *
Any default judgment	45 (12.3%)	304 (50.4%) *
Tenant representation	273 (74.4%)	163 (27.0%) *

Table 5: Answers[76]

The results in Table 5 demonstrate a meaningful departure from the results of similar analyses in courts where tenants have no access to legal representation. Sudeall and Pascuiti, for example, demonstrate a comparable answer rate in their study of three Georgia eviction courts but find that answers are associated with unchanged or worse outcomes on average.[77] Another study from Bernal and Yuan suggests that a self-help mailer that encouraged tenants to participate in the eviction process without legal representation led to worse case outcomes for Hispanic tenants and tenants who were being evicted by corporate landlords.[78] In Washington, however, submission of an answer appears to be strongly associated with several positive outcomes for tenants.

This study was also intended to measure how case outcomes differ for represented and unrepresented tenants. Table 6 displays how case outcomes differ by tenants' representation status. While 97.4% of all cases in the sample included plaintiffs represented by legal counsel, tenants were only represented in 44.9% of cases. Representation appears to be strongly correlated with writs of restitution, dismissals, cases with no judgment against the tenant, and cases in which Orders of Limited Dissemination (OLDs) were granted. Unlike in states where eviction records are sealed, OLDs prevent third party screening companies from including eviction filings on background reports and may thereby improve tenants' future housing prospects.[79] While direct comparison of these two groups is likely to omit endogenous distinctions between them, the differences between the proportions in Table 6 highlight some of the potential benefits that attorneys can offer to their clients. Our qualitative analysis suggests that these results are in part the result of attorneys' ability to help their clients manage the administrative burdens of the eviction process. The dramatic difference in percentages of cases resulting in an Order for Limited Dissemination also

76. In the right column, an asterisk indicates statistically significant difference in proportions based on chi-square analysis using a threshold of p = .05.

77. Sudeall & Pasciuti, *supra* note 68, at 1396; *id.* at 1413 ("Although filing an answer did lead to more time, our data point to the counterintuitive suggestion that, under the current system, pro se litigants are not always well served by filing an answer.").

78. Daniel Bernal & Andy Yuan, *The Limits of Self Help: A Field Experiment in an Arizona Housing Court*, 26 AM. L. & ECON. REV. (forthcoming 2024) (manuscript at 21-32).

79. WASH. REV. CODE § 59.18.367 (2016).

suggests that attorneys introduce their clients to one of the lesser-known benefits of defending oneself during an eviction.

	Represented (n = 436)	**Unrepresented** (n = 534)
Writ of restitution	208 (47.7%)	339 (63.4%)*
Order for Limited Dissemination	253 (58.0%)	21 (3.9%)*
Dismissal	148 (33.9%)	130 (24.3%)*

Table 6: Representation[80]

This quantitative analysis suggests the presence of three important patterns. First, the nation's inaugural statewide right to counsel program is not reaching more than half of evicted tenants in many jurisdictions. Second, the strongest statistical predictor of tenants' legal representation is not the legal basis for eviction, local court rules that appear to reduce default judgment rates against tenants, or landlords' use of pocket service—it is our measure of tenants' ability to overcome the administrative burdens of the eviction process and submit a written response to an eviction summons. Finally, our analysis also supports other findings that show meaningful benefits for tenants who receive legal representation.

Together, these findings suggest that participating in an eviction proceeding is administratively burdensome for tenants. As is the case with most landlords, legal counsel helps alleviate some of the learning and compliance costs inherent in the civil legal process for tenants—and can mitigate some of the psychological costs, which may be less salient for landlords. Policies and procedures which increase compliance costs for landlords do not appear to meaningfully reduce the burdens of the eviction process for tenants, at least not to the extent that they increase these households' access to civil justice during eviction proceedings.

V. IMPLICATIONS AND OPPORTUNITIES FOR REFORM

Administrative burdens create formidable obstacles to access to justice in eviction proceedings. They hinder people's ability to secure legal representation and frustrate efforts to successfully represent themselves. As a result, insofar as substantive participation by all parties is required for the resolution of a legal problem to be just, the disproportionate costs facing tenants in comparison to their landlords restrict access to justice by reducing the frequency of just resolutions. Moreover, the learning, compliance, and psychological costs of the

80. In the right column, an asterisk indicates statistically significant difference in proportions based on chi-square analysis using a threshold of p = .05.

eviction process do not appear to be unique to Washington State. They therefore merit serious consideration as the right to counsel movement continues to advance nationwide. Although our quantitative analysis is limited to a relatively narrow cross-section of cases, this study reveals several patterns that advocates and scholars should consider more deeply moving forward.

Contrary to the findings of one prior study,[81] the legal basis for eviction does not appear to have a strong impact on the case outcomes that follow. Although only 99 legal complaints in our sample of 970 cases did not allege nonpayment of rent, this finding raises the possibility that access to legal aid meaningfully impacts tenants' response decisions. Without legal help, tenants may not be willing to endure the administrative burdens of the eviction process in an effort to contest their cases—but with the offer of legal assistance, the motivation to overcome the substantial learning, compliance, and psychological costs may be strong enough for some tenants who are behind on rent. This hypothesis requires significant scrutiny, however, because it is predicated on the assumption that tenants are aware of their right to counsel and its potential benefits upon receipt of an eviction summons. Yet, our qualitative data does not suggest that this is the case for most tenants. Either way, the status quo inhibits access to justice by preventing just resolutions to a civil legal problem.

The results of our quantitative analysis of local court rules are more straightforward and bear directly on the notion of equalizing access to justice. Local rules appear strongly associated with a lower likelihood of landlords' use of pocket service. These rules, which are designed to eliminate defaults at the response phase of the eviction process, are also associated with a lower response rate. These findings suggest that such rules increase compliance burdens for landlords seeking default judgments. For tenants, however, the unchanged rate of legal representation demonstrates that the rules do not appear to have increased response rates or hearing attendance. Our quantitative analysis shows that the rules are not associated with increased participation in eviction proceedings among tenants. In order to address the administrative burdens of the eviction process more comprehensively, future reforms should consider reducing the learning costs facing tenants by providing clearer, more simple instructions about accessing free legal assistance. Doing so would improve access to justice by increasing the probability of just outcomes for more people, regardless of their demographic characteristics.

Our analysis was also intended to explore the significance of landlords' and (their attorneys') behavior as measured by the use of pocket service. Although our quantitative findings show that pocket service is associated with more defaults and a higher answer rate, the use of pocket service was closely correlated with local rules that increased administrative burdens for landlords seeking default evictions. This fact, in addition to the contradictory perspective shared by the Study Advisory Group about the increased learning costs associated with

81. Larson, *supra* note 22, at 136.

service of unfiled summonses, suggests a need for further research on the relationships between landlords' use of pocket service, tenants' perceptions of the eviction process, and case outcomes.

Finally, our results show that tenants who overcome the initial burdens of the eviction process and who are able to access legal representation are more likely to experience beneficial case outcomes such as dismissals and the sealing of their eviction records. While our results do not control for tenant characteristics that may make them more likely to pursue legal aid, they nonetheless add to the growing body of literature that broadly demonstrates some of the potential benefits of professional legal counsel for tenants during eviction proceedings. In doing so, the results of this study underscore the role of attorneys in improving access to justice by meeting previously unmet legal needs.

These results highlight the manifold administrative burdens of the eviction process for tenants and suggest that these burdens meaningfully prevent some tenants from accessing the legal support for which they are technically eligible. In order to increase access to justice after the implementation of a right to counsel program, our findings suggest that policymakers should explore avenues to reduce the administrative burdens facing tenants. Our quantitative analysis of several local reforms suggests that reducing response requirements is not sufficient. Building on these findings, we theorize potential adjustments that court administrators and legislators can take to increase legal representation rates after the creation of a right to counsel program. Prior research from administrative burden scholars may be broadly applicable to the exploration of potential reforms to increase tenants' legal representation rates.

A. Bridging the civil-criminal divide

Prior socio-legal research has shown how the distinction between civil and criminal legal systems may be blurred or altogether absent in the minds of defendants.[82] This finding was validated in several of our conversations with tenants, some of whom referred to plaintiff attorneys as prosecutors or civil legal aid attorneys as public defenders (and in one case as "public pretenders"). While facing eviction is different from facing conviction in terms of the preceding

82. Greene, *supra* note 1, at 1289 (cataloguing interviews where though the "questions focused almost entirely on civil justice, respondents answered with examples from criminal justice experiences and perceptions" and attributing this by arguing that "most respondents did not know the difference between the criminal and civil justice systems, or even about the existence of two different systems with different players and processes"); *id.* at 1295 ("Indeed, some respondents thought that public benefit hearings were in fact experiences with the criminal justice system."); *see* Lauren Sudeall, *Rethinking the Civil-Criminal Distinction*, *in* TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM 268, 268 (Jon B. Gould & Pamela R. Metzger eds., 2022) (illustrating how the "lived experiences" of individuals in the legal system "do not always fall cleanly along" the civil-criminal divide, "resulting [in] frustration and the inability to find the help they need"). For more research and discussion on the subject, see generally Sudeall, *supra*.

circumstances and potential consequences, eviction proceedings and criminal court hearings in Washington both typically include the offer of court-appointed counsel. There are also other parallels: both hearings require physical or virtual appearance in hearing rooms, facing a judge or judicial officer, and being labeled as a "defendant" in the parlance of the court. Each of these can be viewed as a source of administrative burden.

Although evictions and criminal court proceedings are materially different, policymakers could learn from research that has been conducted in the criminal legal context. In particular, behavioral science research from the last five years has highlighted a series of best practices to encourage defendants' participation in the criminal legal process.[83] This research, which does not typically define barriers to appearance in terms of learning, compliance, or psychological costs, has nonetheless identified promising reforms that may be applicable in eviction courts. Our interview results suggest potential benefits stemming from analogous reforms.

First, eviction courts can dramatically improve the clarity and accessibility of the information that is delivered to tenants. In doing so, court administrators can reduce learning costs for tenants. Most information is delivered by mail in unformatted documentation with complex language, and this may not be the most effective means of communicating with tenants who are undergoing the traumatic and confusing process of an eviction. As a counterpoint, for example, plaintiffs could be required to share tenants' contact information directly with local civil legal aid providers, and eviction documents could be redesigned to present the most critical information in the clearest possible way. Similar strategies have been found to significantly improve court appearance rates in an increasingly broad set of criminal court settings.[84] In the context of jurisdictions where a right to counsel is offered, policymakers could also improve outreach funding for legal aid providers in order to provide these organizations with sufficient staff capacity to reach more tenants.

Court administrators should also review tenant appearance requirements in order to reduce logistical challenges. Some research has found that allowing virtual attendance in eviction proceedings—which remains the norm in Washington State—is a critical first step which can reduce default judgments against tenants.[85] While virtual attendance creates flexibility for tenants and can reduce compliance costs, however, our interview findings demonstrate the limitations of virtual attendance. One tenant described having her internet and

83. *E.g.*, SHANNON MCAULIFFE ET AL., IDEAS42, NATIONAL GUIDE TO IMPROVING COURT APPEARANCES 9-20 (2023), https://perma.cc/AJF2-X6UA (arguing that courts should "make information clear, timely, and accessible"); *id.* at 21-30 (advocating for courts to "reduce logistical challenges"); *id.* at 31-36 (asserting that courts should "add flexibility"); *id.* at 37-48 (proposing that courts "provide useful resources for those who need them"); *id.* at 49 (listing practices for "beyond the court").

84. *Id.* at 9-20, 41-42; *see also id.* at 43-46.

85. Hoffman and Strezhnev, *supra* note 41, at 2, 6, 10.

phone shut off after her abusive partner stopped paying rent and required in-person hearings, while another was defaulted as she waited to be let into the virtual hearing room.

As long as the eviction process is coordinated and managed by human beings, mistakes will occur. While reducing the compliance costs of participating in an eviction proceeding may help some tenants, court administrators could also consider reforms which increase the flexibility of the eviction process. In the criminal legal system, grace periods for nonappearance and "walk-in" dockets with no threat of re-arrest have shown promising results[86]—and while the consequences of eviction judgments are different than those of nonappearance in criminal court, the eviction process and access to legal representation could certainly be made more flexible. For example, while many legal aid providers are not currently able to offer legal assistance outside of the courtroom because of capacity constraints, a "walk-in" legal aid clinic or docket with the offer of full representation could help make the court process more welcoming and desirable.

CONCLUSION

Despite the many victories of the civil right to counsel movement in recent years, this Article shows how the enduring administrative burdens of the eviction process continue to thwart access to justice by preventing many tenants from accessing legal assistance after the passage of the nation's first statewide right to counsel program. Facing financial instability, health issues, and major disruptions to their personal relationships, many tenants are unable to overcome the administrative hurdles required to access a court-appointed attorney. In the sample of cases analyzed for this article, more than half of tenants still faced eviction without legal assistance. This represents a significant amount of both unmet legal need and a lack of just resolutions in the domain of housing. While Washington law now creates a process that helps thousands of low-income tenants access legal assistance from a court-appointed attorney each year, the results of this empirical study suggest that access to justice remains out of reach for many.

The administrative burden framework can help policymakers and legal scholars better understand this issue as a policy implementation challenge. Senate Bill 5160 represented an unprecedented step forward for the tenant right to counsel movement, but the program's embeddedness within the existing eviction process creates substantial costs for potential beneficiaries. By conceptualizing these costs in terms of learning, compliance, and psychological burdens, and by examining how these costs thwart access to justice, this study can help policymakers and advocates identify promising opportunities for systemic reform.

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86. MCAULIFFE ET AL., *supra* note 83, at 31-36.