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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TABLE 5: EVICTIONS IN COUNTIES S AND R

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

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

### *C. Study Conclusions*

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

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

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

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

1. Process-Based Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

223. *Id.* at 684.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 2. Typology-Based Conclusions

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

245. *Id.* at 649.

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

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

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

249. *Id.* at 648–49.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## IV. IMPLICATIONS FOR RECOMMENDATIONS AND REFORM

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

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

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

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

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

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

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

### *A. Legal Assistance*

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

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

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

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

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

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

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

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