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Tipping the Scales in Housing Court

By MATTHEW DESMOND NOV. 29, 2012

Cambridge, Mass.

IT'S easy to tell who's going to win in eviction court. On one side of the room sit the tenants: men in work uniforms, mothers with children in secondhand coats, confused and crowded together on hard benches. On the other side, often in a set-aside space, are not the landlords but their lawyers: dark suits doing crossword puzzles and joking with the bailiff as they casually wait for their cases to be called.

Millions of Americans face eviction every year. But legal aid to the poor, steadily starved since the Reagan years, has been decimated during the recession. The result? In many housing courts around the country, 90 percent of landlords are represented by attorneys and 90 percent of tenants are not. This imbalance of power is as unfair as the solution is clear.

When tenants have lawyers, their chances of keeping their homes increase dramatically. Establishing publicly funded legal services for low-income families in housing court is a cost-effective social policy that would prevent homelessness and uphold our ideals of fundamental fairness.

Poor people cannot afford lawyers, and in nearly all civil cases they don't have a right to one. In the 1963 landmark case *Gideon v. Wainwright*, the Supreme Court unanimously established the right to counsel for indigent defendants in

criminal cases on the grounds that a fair trial was virtually impossible without a lawyer. Eighteen years later, the court heard the case of Abby Gail Lassiter, a poor black woman from North Carolina who appeared without counsel at a civil trial that resulted in her parental rights being erased. This time, a divided Supreme Court ruled that the right to appointed counsel was reserved for indigent litigants only when the loss of physical liberty was at stake.

Incarceration is a misery, but the outcomes of civil cases, as Ms. Lassiter learned, can be devastating, with stubbornly resilient consequences. Consider eviction's fallout. Families forced from their homes often lose their possessions, too: furniture and clothes piled on the sidewalk or auctioned off by moving companies. Evicted families experience long stretches of homelessness, with kids bouncing between shelters or abandoned houses.

Sociological research affirms what anyone who teaches poor children knows: that residential instability is the enemy of school success. Evicted families end up in bad housing in bad neighborhoods because most landlords turn them away. Months and even years after being evicted, people experience more material hardship and higher levels of depression than peers who avoided eviction. Psychologists have identified eviction as a risk factor for suicide.

Our legal system extends the right to a state-appointed attorney to someone facing months or years of prison but not to someone facing months or years of homelessness. In recent years, the poor have watched their incomes flat-line or drop, while housing costs have soared and federal spending on low-income housing assistance has plummeted. According to the **Center on Budget and Policy Priorities**, only one in four families who qualify for housing assistance get it. The rest devote huge chunks of their income — sometimes 80 or 90 percent — to rent. For these families, missing a rent payment is less the result of irresponsibility than of inevitability.

I've spent the last several years studying eviction. I lived for more than a year in some of Milwaukee's poorest neighborhoods, shadowing evicted families and their landlords. Along the way, I saw hardworking landlords let some tenants slide when they missed payments or reluctantly evict families who had fallen behind. But I also saw landlords carry out retaliatory evictions against tenants who had

reported housing problems, and watched some lie in court about what tenants had paid them. I met one landlord who hired heavies from outside the neighborhood to evict families and another who liked to remove the doors of tenants who hadn't paid up.

Providing lawyers to tenants facing eviction would help curb these abuses and prevent families from being wrongly evicted. And it works. A recent randomized experiment in Quincy, Mass., involving 129 participants showed that two-thirds of tenants offered full representation avoided eviction, compared with one-third who were offered limited assistance like instructional clinics.

Yes, some victories came from raising technical objections, but many others came in cases that were not open and shut but would have been treated that way had tenants been forced to represent themselves.

Are some tenants freeloaders? Sure. But what about when a tenant withholds rent because the toilet hasn't worked in three weeks? Or when a landlord serves you after noticing that you're pregnant? The determining factor in many eviction proceedings — including those involving people who lose their jobs or fall ill — isn't the merits of the case but whether tenants have someone on their side who understands the law.

The right to counsel in civil matters has been established around the world — not just in France and Sweden but also in Azerbaijan, India, Zambia and many other countries we like to think of as less progressive than we are.

And the price tag — a bundle, right? Not really. A program that ran from 2005 to 2008 in the South Bronx provided more than 1,300 families legal assistance and prevented eviction in 86 percent of cases. It cost around \$450,000, but saved New York City more than \$700,000 in estimated shelter costs.

The key point is that when we direct aid upstream in the form of a few hours of legal services we can lower costs downstream. We all pay when the state reacts to the many consequences of eviction by distributing public assistance, subsidizing health care or providing a lawyer to someone who hustled in the drug or sex trade to survive life on the street.

But this policy's worth should not be determined by the amount of money it saves. There are moral costs we incur as a society when our citizens are denied equal protection under the law and wrongfully thrown from their homes by court order. Countless families are living perilously close to eviction and homelessness. The least we can do is give them a fighting chance to stay put.

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