



# Racial Discrimination in Eviction Proceedings and Enforcement, an Annotated Bibliography

New York Law School Housing Rights Clinic

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## Introduction

This annotated bibliography was prepared by the students of the 2020-2021 New York Law School Housing Rights Clinic under the supervision of Professor Andrew Scherer during the spring of 2021. It was prepared to assist the New York State Advisory Committee to the U.S. Civil Rights Commission (NYSAC) with its 2021 study of racial discrimination in rental housing eviction policies and enforcement and to supplement the briefing to NYSAC presented by Professor Scherer on Feb. 19, 2021. Thanks and great appreciation go to the following clinic students: **Carly Gartenberg, Lara Giray, Ashley Grater, Kira Lopez, Melissa Marshall, Frank Piña, Joseph Rochman and Madeleine Robinson**, as well as to Housing Rights Clinic Teaching Assistant, **Aida Flores**.\*

The bibliography provides a list with annotations of a wide range of documents, including articles, reports, and case decisions, that provide context for understanding the issue and extent of racial discrimination in eviction proceedings in New York. The bibliography is divided into four parts: 1) Summary Eviction Proceedings History and Timeline; 2) The Consequences of Eviction; 3) Discrimination in the Courts; and 4) The Eviction Process as Structural Racism. Each section has a brief introductory narrative. Each document listed in the bibliography is briefly summarized and the listing includes excerpts and bullet points from the document that are particularly relevant to the central inquiry.

The 2021 inquiry by the New York State Advisory Committee to the U.S. Civil Rights Commission into racial discrimination in eviction proceedings is an opportunity to draw attention to an enormously important issue to which far too little attention has been paid. Together, the dozens of documents included in this bibliography, while hardly the full extent of the available literature, present a broad picture of the eviction system that leads to several disturbing conclusions. First, the historical and present-day approach to evictions has been structured as an exception to normal civil litigation in order to privilege landlords and reinforce and maintain their economic and political power. Second, the system is rife with both explicit and implicit bias. Finally, the eviction system itself – with a respondent population that is primarily people of color who are subject to truncated legal process intended to buttress the power of their landlords, with a demeaning, discriminatory culture and overcrowded courtrooms, and with long-lasting and devastating consequences from eviction and displacement – is a prime example of structural racism.

Andrew Scherer  
June, 2021

\*To the extent that this introduction and the brief narrative exposition in this bibliography express opinions, they are the opinions of Professor Scherer alone and not of New York Law School or the clinic students.

## I. Summary Eviction Proceedings History and Timeline

*Eviction proceedings in New York, as in other states, are governed by summary proceedings statutes. Summary proceedings are truncated civil proceedings that move far more rapidly through court process than other civil litigation because the time frames for each step of the process -- from the initial notice, to the time to answer, to the negotiated resolution or trial, to the judgment and execution of the judgment -- are shorter time frames than apply to other civil litigation, and because there is no right to discovery. The first summary proceedings statute in New York was adopted in 1820 to give landlords a quick court procedure to evict tenants and to discourage them from using "self-help" evictions. This summary process was initiated at a time when landlord-tenant relationships were primarily agrarian and rooted in feudalism, and when tenants had few substantive rights. However, this fundamentally truncated form of process intended to privilege landlords has been retained since 1820, despite the shift to a primarily urban landlord-tenant context, the growth of the modern city and the advent of a large array of tenant-protective legislation, from housing and building codes to warranty of habitability to rent regulation and rent subsidies.*

### Summary Proceedings Timeline

Colonial Era	Forcible entry and detainer proceedings used in landlord-tenant disputes as they had been in England
1820	Enactment of first summary eviction proceedings statute in New York
1842	Summary Proceedings statute amended to give tenants the right of redemption
1924	Summary proceedings statute amended to allow a landlord to obtain a money and possessory judgment for non-payment of rent
1963	Summary proceedings statute placed within Article 7 of RPAPL
1973	New York City Housing Court established

**Spector, Mary B., *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 Wayne L. Rev. 135, Spring 2000**

<https://plus.lexis.com/api/permalink/0bfa12d4-b59a-42d5-a3a6-163fa4d51a83/?context=1530671>



**Summary:** This article covers the expansive history of landlord-tenant law and summary proceedings, from an in-depth discussion of the English feudal system and how social rights were attached to owning land, to how the American colonies and early legislatures copied the British common law legal concepts to today's landlord-tenant proceedings.

- “Two features of the ancient law of real property or “land law” continue to influence the practical application of modern procedures for resolving disputes between landlords and tenants. [...] The first is the role that status played in the determination of possession of real property. The second is the procedural framework that evolved to protect freeholders from conflicting claims of ownership” (p. 139)
- “By the middle of the twelfth century, if a person who claimed ownership – and who thus occupied a high level of status – asserted that he had been wrongfully ousted from “his” land, he could obtain court assistance in restoring immediate possession before questions of title were litigated” (p. 141)
- “By the end of the fifteenth century, a new action of ejectment enabled tenants to assert a possessory remedy in the royal courts that was previously available only to landlords through a ‘real’ action. The availability of a real action also meant that a tenant’s interest was no longer considered ‘only’ contractual, but was considered an ‘estate in land’ entitled to royal protection.” (p. 149)
- Self-help was available to landlords until: “the first limitation came in 1381 from a criminal statute which punished persons who entitled another’s land unlawfully or with force. Enacted prior to the development of the tenant’s action for ejectment, this statute, known as the statute of forcible entry, was believed to have supplemented a tenant’s ability to protect contractual rights to possession. A companion statute, enacted in 1429, provided criminal penalties for persons who refused to leave another’s land after initially entering lawfully. Known as the statute of forcible detainer, it criminalized the conduct of, among others, tenants who remained in possession of the premises after the termination of the lease” (p. 151)
- “Statutes of forcible entry and detainer were among the first laws many American legislatures passed” (p. 152)
- “Although the summary eviction proceedings originally was treated as a convenient alternative to ejectment, during this period it was measured against the self-help eviction” (p. 156)



***Fleming v. Flanagan*, 178 Misc.2d 723 (Rock. Co. 1998)**

**Summary.** This case discusses the 1924 amendment to the summary proceedings statute that allowed a landlord the special remedy of having a money judgment and a possessory judgement in a summary proceeding for the non-payment of rent.

- “In 1924, the Civil Practice Act of 1920 was amended (L 1924, ch. 514) to permit a landlord to obtain a warrant and a money judgment for rent if the notice (precept) demanded the same (Civ. Prac. Act of 1920 § 1425).” (p. 725)

***Hognestad v. Rabideau*, 55 Misc.3d 977 (Albany Co. 2017)**

**Summary.** This case gives a brief discussion of the legislative intent behind the summary proceedings statute. The court finds that the legislature enacted the summary proceedings statute to deter landlords from using self-help evictions.

- “Significantly, delays [in the procedural process of an action for ejection] caused social breakdowns by prompting landlords to short circuit the judicial process by resort to self-help. Therefore, nonpayment summary proceedings provided an important “right of the landlord to the immediate possession of his property” (p. 982)

**Rasch’s New York Landlord Tenant Law Section 29:5. History of Summary Proceedings**

[https://www.westlaw.com/Document/I233540b2fa1511d99332c16a9bb56ab7/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I233540b2fa1511d99332c16a9bb56ab7/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

**Summary.** This section of the Rasch treatise is commonly referenced in history of summary proceedings research. It gives a short but detailed summary of the movement of the summary proceedings statute.

- “Such proceedings to recover the possession of real property were first brought into existence in this state by Chapter 194 of the Laws of 1820. [...] The statute of 1820 was designed to remedy this evil [lengthy and expensive ejection proceedings] by providing the landlord with a simple, expeditious, and inexpensive means of regaining possession of his premises”
- “By Chapter 162 of the Laws of 1840, it was provided that these proceedings could not be maintained when the unexpired part of the leased term exceeded 5 years. This statute was

repealed by Chapter 240 of the Laws of 1842, and in lieu thereof a tenant was given the right of redemption, which still exists." The right of redemption is when the tenant, after a warrant of eviction is issued, can pay the rent arrears in full to retain possession of the premises.

***Zenila Realty Corp. v. Masterandrea*, 123 Misc.2d 1 (N.Y. Civ. 1984)**

**Summary:** This is a case that is frequently cited because of its brief discussion of the history of summary proceedings in New York. It covers the enactment of the summary proceeding statute in 1820 and discusses the statute's transfer into the Civil Procedure laws and finally into Article 7 of the Real Property Actions.

- "In 1820, the legislature devised the statutory scheme of summary proceedings to remedy this situation and provide landlords with a simple, expeditious and inexpensive means of regaining possession of premises" (p. 4)
- "However, creation of summary proceedings to replace ejectment actions eliminated not only archaic, oppressive procedures (like the complexities of a common-law demand); in the intent to be "summary" many procedural rights due a party sued in any other lawsuit are any other lawsuit are also circumscribed. [...] These modifications profoundly restrict procedural remedies available to tenants in summary proceedings; those that remain should be scrupulously honored" (p. 4-5)

**Milton, Dennis E., *Comment: The New York City Housing Part: New Remedy for an Old Dilemma*, 3 Fordham Urb. L.J. 267 (1975), , <https://ir.lawnet.fordham.edu/uj/vol3/iss2/3/>**

**Summary:** This article discusses the operations of court proceedings before the housing court was created in 1973.

- Prior to October 1, 1973, in which New York States Real Property Actions and Proceedings Law was created, New York City's housing standards were dispersed among "criminal court, the landlord-tenant court, and the state's supreme court." After the Housing Part was formed, all landlord-tenant cases were consolidated into one court and the new court system barred non-criminal housing matters from being heard in the criminal court as the matters were previously filling up the criminal court. Page 2-3
- The purpose of the creation of New York State Real Property Actions and Proceedings Law was to address the issue that the "prosecution of owners was totally ineffective in

forcing housing code compliance within the City of New York." Therefore, the housing part with the purpose of enforcing housing standards was a "necessity in the public interest...to prevent continuous deterioration."

**Moshe B. Machum, *Summary of The Landlord Blues: Inequity, Inefficiency, and Untimeliness of Summary Proceedings In New York City*, 61 N.Y.L. Sch. L. Rev. (2016-2017)**

[https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1234&context=nyls\\_law\\_review](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1234&context=nyls_law_review)

**Summary:** This law review article discusses how the summary proceedings worked after the year 1973 and the purpose of summary proceedings being resolving landlord-tenant matters. It discusses different types of summary proceedings including pet laws, and how judges have too much discretion to produce fair results.

- Modern summary proceedings are governed by article 7 of the New York State Real Property Actions and Proceedings Law and were created on October 1, 1973 for the purpose of resolving landlord-tenant matters and improving overall landlord-tenant relationships. Page 5.
- When it comes to a Summary Proceedings judges have too much discretion to produce fair results for all parties. Page 9.

**Nori, Sateesh, *Housing Court Reforms: Back to the Future?*, 46 NYRPLJ 9, 2018**

<https://plus.lexis.com/api/permalink/b4e6196d-cb29-4792-810c-f92e9a069a41/?context=1530671>

**Summary:** This article discusses the major Housing Court reforms in New York City and offers recommendations for the future success of the Housing Court.

- "Housing Court was created by statute in 1972 with the objective of protecting the housing stock of the city. [...] Before Housing Court, landlord-tenant disputes about repairs were heard in Criminal Court and eviction cases in Supreme Court, which provided time-consuming, expensive, and frustrating for all parties involved. The levees broke almost immediately and it became a place flooded by eviction cases" (p. \*9)



- “Judge Kaye made significant reforms to Housing Court in 1997, when the Rent Regulation Reform Act also made significant changes to the rent laws. [...] Part 18 was eliminated and new ‘resolution parts’ and ‘trial parts’ were created. [...] ‘Resolution Parts’ were thought to bring order and efficiency by allowing negotiation before and settlement by court attorneys. In these parts, most cases could be resolved via motion practice or through settlement negotiations. However, without lawyers on both sides, some argued that such a system pushed unrepresented litigants into settlements in the interest of efficiency and economy”. (p. \*9-10)

**Summary Proceedings In New York’s Town and Village Courts: Ideas for Improvements**  
**The Fund for Modern Courts (2012)**

<http://moderncourts.org/wp-content/uploads/2013/10/Summary-Proceedings-in-New-York-Town-and-Village-Justice-Courts-Ideas-for-Improvement.pdf>

**Summary:** This report discusses proposals for new efficient ways of dealing with summary eviction proceedings in the New York Town and Village Courts. It discusses the insufficient representation, inadequate training of justices.

- "Every year, New York Towns and Village courts preside over a large amount of summary 'eviction' proceedings...which are governed by strict statutory guidelines." Currently, there is insufficient representation of litigants in summary proceedings, and inadequate training of justices.." Page 3.
- "A summary proceeding is an expedited process through which a landlord may evict a tenant...are intended to protect the rights of both landlords and tenants. There are two types of summary proceedings: nonpayment proceedings, which concern the alleged nonpayment of rent, and holdover proceedings, which concern an alleged violation of some other aspects of a lease." Page 4.
- "in cities and in areas where District Courts exist, summary proceedings generally take place in City Courts and District Courts." Page 5.

## II. The Consequences of Eviction

*The physical act of eviction is one of the most violent and traumatic consequences to result from a judgment of our Court system. In 1984, an elderly and mentally ill Black woman living in*

*public housing named Eleanor Bumpurs refused to open the door when a city marshal came to evict her pursuant to a court judgment. The marshal called the police and the police busted in the door and shot Ms. Bumpurs with a 12-gauge shotgun and killed her. The killing of Eleanor Bumpurs was a graphic reminder of the potential for violence inherent in the very act of eviction*

*In many cases, particularly in places like New York City where there's such a shortage of alternative affordable housing, eviction leads to homelessness with all its attendant devastating consequences. And, whether or not people who are evicted become homeless, there is an inevitable mental and physical toll from eviction, including adverse effects on physical and mental health, disruption of education, much greater cost burden for a tenant in the next place that they find to live (if they can find the next place), lack of access to nutritious food, increased involvement with the criminal justice system, and loss of community and sense of place.*

**Benfer, Emily , et. al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, J. URBAN HEALTH (Jan. 2021), <https://doi.org/10.1007/s11524-020-00502-1>.**

**Summary:** Recent study by Professor Emily Benfer demonstrating the impact of eviction with the spread COVID-19.

- Finding that eviction and housing displacement force families into transiency, homelessness, and crowded residential environments that increase new contact with others and make compliance with pandemic health guidelines difficult or impossible. Eviction increases the likelihood of “couch surfing,” residing in shelters, sleeping in cars or outdoors, and doubling up with friends and family who may themselves be at risk for COVID-19. (p. 2)

- Below is a figure showing how eviction increases the risk of COVID-19 acquisition and transmission:

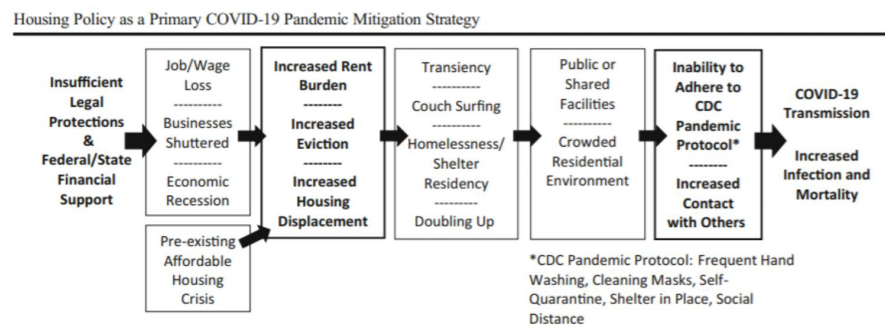


Fig. 1 Eviction increases the risk of COVID-19 acquisition and transmission

- Finding that adding as few as two new members to a household can as much as double the risk of illness. This increased likelihood of transmission for infectious disease generally comports with research on COVID-19, which recognizes that individuals are at particularly high risk of contracting COVID-19 from others in their household. (p. 3)
- Finding overcrowding increases the spread of respiratory infectious diseases, such as tuberculosis and severe cases of influenza among children, which are transmitted similarly to COVID-19. (p. 3)
  - During the 1918 influenza epidemic, the difference between having 45 square feet and 78 square feet of living space per person was associated with a tenfold increase in the rate of illness. Smaller, crowded spaces and shared facilities are commonplace in homeless shelters. In some U.S. cities, homeless shelters are required to provide as little as 25 square feet of space per person. In many cases, people facing homelessness will sleep in cars or outdoors and be forced to use public facilities. (p. 3)
- Finding a disproportionate impact of eviction on people of color associated with disproportionate rates of COVID-19 infection and mortality. (p 5-6)

**Bradford, Ashley C., and Bradford, W. David, *The Effect of Evictions on Accidental Drug and Alcohol Mortality*, 55 Health Serv. Res. 9 (2020).**



**Summary:** Bradford and Bradford demonstrate empirically that eviction rates increase rates of mortality from substance abuse.

- Finding that higher eviction rates were associated with higher rates of mortality across nine substances studied and concluding that risk of eviction led to “deaths of despair” crisis associated with substance abuse. (p. 9)
- A 1 percent increase in eviction was associated with between .114 percent and .596 percent higher substance related deaths per 100,000 population each year: a significant number when compared to the recent data from the Eviction Lab noting just under 900,000 evictions in 2016. (p 16)

**Collinson, Robert and Reed, Davin, *The Effects of Evictions on Low-Income Households* (Dec. 2018),**

[https://www.law.nyu.edu/sites/default/files/upload\\_documents/evictions\\_collinson\\_reed.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf).

**Summary:** Collinson and Reed demonstrate empirically that evictions have substantial effects on the rate of homelessness, health and well-being, and have economic impacts on the earning capacity and employment of those who experience eviction.

- Effects on homelessness: Increase in shelter applications from evictions in 1-2 after filing by about 14 percentage points; eviction increased share of days spent in shelter during first two years by 5 percent or about 36 days. (p. 24-5)
- Effects on health: Increase in probability in emergency room visit in 1-2 years after filing by about 3.5 percentage points; or .38 visits in 1-2 years after filing, 70 percent increase over the mean of non-evicted households. (p. 25-6)
- Mental health: Increased probability of being hospitalized for mental health issues 1-2 years after filing by 9 percentage points, 68 percent increase relative to non-evicted households, showing a statistical jump from pre-eviction to post eviction. (p. 25-6)
- Effects on earnings and employment: Eviction associated with \$3,000 reduction in total earnings 1-2 years after filing, or \$1,720 after adding certain control variables (only formal sector jobs). (p. 27-8)
- Effects on public benefits: Found only a small statistical difference pre and post eviction. (p. 28)

**Desmond, Matthew and Kimbro, Rachel, *Eviction's Fallout: Housing, Hardship, and Health*, 94 Social Forces 295 (2015).**

**Summary:** Widely cited article pre-dating Desmond's *Evicted*, that demonstrates significant long-term consequences of eviction.

- Dramatic increase in cost-burdened households: While median monthly rent rose 70 percent from 1990 to 2006, median income for a household whose members held a ninth-grade education rose by 6 percent, households whose members held a high-school education rose by 7.3 percent, and households whose members held a college education rose by 12 percent. At the same time, housing subsidies significantly dropped. (p. 297)
- Eviction leads to prolonged periods of homelessness, forgoing of basic necessities such as clothing, food, medical care, and. renders families ineligible for federal housing assistance. (p. 299)
- Eviction leads to housing instability by forcing families to move repeatedly. (p. 299)
- Likelihood of being laid off is 11 to 15 percentage points higher for workers who experienced an eviction. (p. 299)
- Impact on low-income women, particularly mothers, is significantly higher: 1 in 11 mothers receiving welfare experienced an eviction and 1.3 million American children whose mothers relied on welfare reported experiencing an eviction over a two year time period in the early 1990s. (p. 298)
- Mothers who experienced eviction are more likely to suffer material hardship, parenting stress, depression, and report their children in poor health. (p. 317)
- Finding two-years after eviction, mothers experienced higher rates of depression and material hardship than their peers. (p. 318)

**Larrimore, Jeff and Schuetz, Jenny, Board of Governors of the Federal Reserve System, *Assessing the Severity of Rent Burden on Low-Income Families* (December 22, 2017), <https://www.federalreserve.gov/econres/notes/feds-notes/assessing-the-severity-of-rent-burden-on-low-income-families-20171222.htm>.**

**Summary:** National study concluding that “[r]ent burdens have increased over the past 15 years, due to both increasing rents and decreasing incomes. Prior research has shown that households who spent large shares of their income on rent or other housing expenditures have lower economic well-being. These rent burdens are a potential source of stress and financial instability to households, particularly for low-income families with children.”

- White families are both a lesser fraction of the rental market and less rent-burdened.
- “Low-income renters with children pay a median of three-fifths of their monthly income on rent, leaving under \$450 in residual income.”

Leifheit, Kathryn M., et. al., *Eviction In Early Childhood And Neighborhood Poverty, Food Security, And Obesity In Later Childhood And Adolescence: Evidence From A Longitudinal Birth Cohort*, 11 SSM - Population Health (2020), <https://reader.elsevier.com/reader/sd/pii/S2352827320300331?token=E2B86D2CA7600B77D748FECE430378A109BC1EA24E4AD38BF541D5D4D5C3A925B359FA751CC2D89AE4EF8BEDBD3C4D6D>.

**Summary:** Long-term study that looked at the impacts of food insecurity and health resulting from eviction.

- Five-year-old children evicted in early childhood had over twice the prevalence of low food security compared to children with no evictions, supporting the author's hypothesis that access to adequate and nutritious food suffers following an eviction. (p. 6)
- Study did not find statistically significant difference in obesity rates and showed that in the population group studied children experienced signs of poor health and vulnerability at birth but argued that programs to expand housing affordability and prevent eviction would lead to stability and better health outcomes. (p. 6-7)

National Health Care for the Homeless Council, *Homelessness & Health: What's the Connection*, (February 2019), <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>.



- Showing increased rates of illness such as diabetes (9% - 18%), hypertension (29% - 50%), heart attack (17% - 35%), depression (8% - 49%), etc. and an average 12 year lower mortality rate. (p. 2)

**National Homelessness Law Center, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (2019), [https://nlchp.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf).**

- Criminalization due in large measure to anti-homeless legislation: showing increase of city ordinances that criminalize life-sustaining behaviors of homeless people including 60 percent increase on ban on camping in public, 35 percent increase ban on loitering laws, 25 percent increase on begging. More than half of cities surveyed banned sitting or lying down in particular places. (p. 17-8)

**National Law Center on Homelessness & Poverty, *Protecting Tenants, Prevent Homelessness*, (2018), <https://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.**

**Summary.** National study following Desmond's *Evicted: Poverty and Profit in the American City* which looked at the lack of affordable housing impact on eviction, economic drivers of eviction, evictions impact on homelessness and long-term consequences on housing, disproportionate impact on people of color, and suggests new laws and policies that could be implemented.

- DC Survey, 90 percent of respondents experiencing homelessness, experienced housing discrimination due to their housing status. (p. 19)
- Landlords commonly deny housing to people with a recent history of eviction. Such policies have a disproportionate impact on women of color. (p. 19)
- Policies that exclude people with criminal records are overbroad and have a disproportionate impact on poor men of color. (p. 19)
- Source of income from housing vouchers or disability income reduced likelihood of locating housing by 12 percent. (p. 19)

- Includes survey of studies showing high percentage of survey respondents seeking shelter citing eviction as the cause, 45% in MA, 14% in Santa Cruz, 25% in NYC, 12% in San Francisco. (p. 16)
- Studies in ND and Milwaukee showing evictions caused 15 percent and 20 percent more likely to lose jobs. (p. 16)

### III. Discrimination in the Courts

*There is woefully little empirical data collected on the demographics of Housing Court and eviction proceedings in New York. However, to the extent that race, income, and other data has been collected, and certainly according to the conventional wisdom of those who have observed Housing Court, at least 80% of the tenants who are respondents faced with eviction are people of color. There needs to be much better record keeping on this. There are also a disproportionate number of defaults taken against people of color as well as a disproportionate number of actual eviction judgments and executed evictions involving people of color, but we don't yet have sufficient empirical data.*

*The Housing Court is a forum in which explicit and implicit bias is rampant. In late 2020, the New York State Supreme Court, Appellate Division, First Department, issued a decision in a case involving a White male landlord's attorney who in open Court called a young Black woman attorney a "bitch," and then repeated the slur five times. This was not unusual. What was unusual was that the young attorney filed a disciplinary complaint. The male attorney's defense was this is the way the Court has always been, and this is not out of the ordinary behavior. Unpersuaded, the Appellate Division suspended him from practice for three months. While this was just a single recent example, it demonstrates the disrespectful and demeaning culture of the court.*

*In 2020, Jeh Johnson, the former U.S. Secretary of Homeland Security, was asked by NY Chief Judge Janet DiFiore to undertake a study of racial disparities and bias in the Courts. In his report, Secretary Johnson found that the Housing Court and the other courts in which poor people of color are the predominant respondents/defendants reflect two systems of justice at work -- one for Whites and a very different one for minorities and the poor. The culture and physical surroundings of the Housing Court are demeaning. The place is woefully overcrowded with no room for private conversations between attorneys and clients. Bathrooms, hallways and courtrooms are filthy. The physical environment does not in the least convey dignity and respect for the Court's litigants.*

*This section is organized into two parts: A) Disparate Treatment and B) Disparate Impact*

### A. Disparate Treatment:

***Report from the Special Advisor on Equal Justice in the New York State Courts, Jeh Johnson, 2020***

<http://www.nycourts.gov/whatsnew/pdf/SpecialAdvisorEqualJusticeReport.pdf>

**Summary:** This report highlights the earlier New York State Judicial Commission's Report on Minorities, Vol. 1 and presents various findings on present-day racial biases in the court system.

- Findings:
  - Describes a number of overtly racist comments from judges in open court across the state.
  - Nearly half of all attorneys surveyed witnessed discriminatory treatment of minority court users, that court personnel were frequently disrespectful to discourteous to minority court users.
  - Many of the judges who made bail determinations lacked the cultural sensitivity to make fair determinations appropriate for the realities faced by minority court users.
  - Minority attorneys were treated with less professional respect and courtesy than their white counterparts
  - Minority judges were underrepresented within the non-judicial workforce
  - The Court Officer Community had especially horrible problems. There were segregated locker rooms for court officers in the Bronx, and graffiti reflecting racial insults in hallways and locker rooms.
  - There was one incident where the court officer assumed the Black attorney was a defendant and placed the attorney in a choke hold, even though the judge had motioned for the attorney to approach the bench.
  - Court system is over-burdened and under-resourced. Some believe that deliberate choices have been made to not address the persistent problems that have an undeniable racially disproportionate effect.



- The facilities themselves are terrible, crowded, poorly ventilated, and poorly suited for the volume of cases funneled in.
- The judges have too high volumes of cases and they only have one clerk. Proceedings are often too rushed when judges are making decisions.
- In this environment, officers, attorneys, and judges, lack empathy and compassion towards litigants of color.

***Matter of Denenberg*, 2020 NY Slip Op 08001 (1st Dep't 2020)**

<https://plus.lexis.com/api/permalink/0e921895-ceb3-4a52-8b59-e338efdd96fb/?context=1530671>

- Relevant takeaways
  - Female attorney opposing counsel to Denenberg testified that Denenberg wanted to have the case called and she wanted to speak to her supervisor. Denenberg said he was going to have the case called regardless, and she told him sternly not to. Den replied with: “Well excuse me Ms. Boss Ma’am.” and “You don’t have to be a bitch about it.” Shocked by this, she asked Denenberg to repeat himself. He then remarked, “I said you are a bitch.” She estimates that he called her a bitch about five times and that she felt as though the comments were racist and/or sexist. Witnesses confirmed her version of events.
  - The court found that Denenberg repeatedly denied the scope of his wrongdoing and attempted to justify his actions. It was also found that Denenberg lied to the Committee and the Referee by saying that the opposing counsel slapped or poked him. Further, the court found that Denenberg never apologized to the complainant. The court concluded by suspending Denenberg from the practice of law for 3 months, and directing him to counseling for a year under supervision of LAP. The counseling must include training in anger management and on diversity, inclusion, and elimination of bias, in addition to that mandated by NY State CLE requirements.

**B. Disparate Impact**

**Greenberg, Gershenson, Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 2016.**

([https://scholar.harvard.edu/files/mdesmond/files/hlc106\\_crop.pdf](https://scholar.harvard.edu/files/mdesmond/files/hlc106_crop.pdf))

- A disproportionate number of evictions take place in the Bronx, the city's poorest borough, which has the highest proportion of low-income tenants.

**Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, 2015**  
(<https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>)

- Renters and Race.
  - Between 1991 and 2013, the percent of renter households in America dedicating under 30 percent of their income to housing costs fell from 54 to 43 percent and during that same period, the percent of renter households paying at least half their income to housing costs rose from 21 to 30 percent. In 2013, 23 percent of Black renting families and 25 percent of Hispanic renting families spent at least half of their household income on housing.
  - Low-income women, especially poor black women are at a high risk of eviction.

**NYC Human Resources Administration, Department of Social Services: NYC Office of Civil Justice Annual Report, 2019**  
([https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_Annual\\_Report\\_2020.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_Annual_Report_2020.pdf))

- Data on eviction petitions and boroughs
  - In the first half of 2020, before COVID-19 closed the courts, almost 40% of tenants facing evictions were represented by attorneys, compared to 30% at the end of 2019 and 1% in 2013.
  - In 2015, 74,833 eviction petitions were filed across all five boroughs in NYC housing court. Approximately 35% of all petitions are filed in the Bronx, followed by Brooklyn who holds almost 30%. Manhattan holds approximately 19%, Queens 17%, and Staten Island only 2%.
  - In 2020, 63,331 warrants of eviction were filed. The same borough pattern is seen as above.

- When comparing this with the data from the 2019 census (below), African American racial composition per borough follows the same pattern as eviction petition and warrant filing per borough. The borough with the highest African American population percentage also has the highest number of evictions, even though they do not have the highest number of total residents.

### Census on Demographics in Boroughs of New York City, 2019

(<https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork,bronxcountybronxboroughnewyork,kingscountybrooklynboroughnewyork,newyorkcountymanhattanboroughnewyork,queenscountyqueensboroughnewyork/PST045219> )

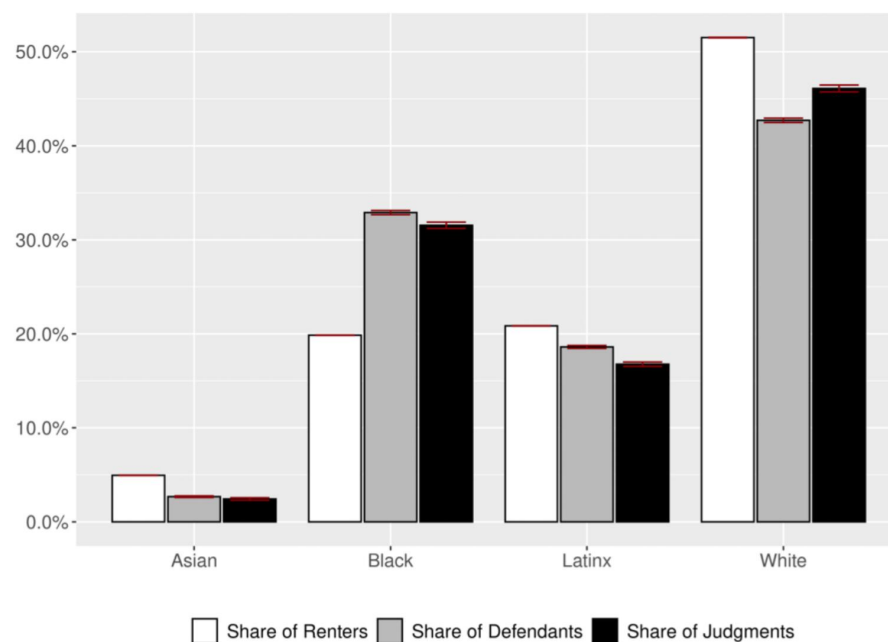
- 2019 census
  - a. Manhattan
    - i. Population
      - a) 1,628,706
    - ii. 64.6% of residents are white alone.
    - iii. 17.8 African American alone
  - b. Bronx
    - i. Population
      - a) 1,418,207
    - ii. 44.7% white alone
    - iii. 43.65 African American alone
  - c. Brooklyn
    - i. Population
      - a) 2,559,903
    - ii. 49.8% white alone
    - iii. 33.8% African American alone
  - d. Queens
    - i. Population
      - a) 2,253,858

- ii. 47.8% white alone
- iii. 20.7 African American alone

**Hepburn, Louis and Desmond, Matthew; *Racial and Gender Disparities among Evicted Americans*: Eviction Lab, 2020**

<https://sociologicalscience.com/articles-v7-27-649/>

- Research background
  - This research took place over 1,195 counties with an average of 1.44 million eviction cases filed in an average year. These filings resulted in about 660,000 eviction judgments.
    - The below graph represents the statistics for 4 races.





- White renters make up 51.5% of all adult renters but only 42.7 eviction filing defendants.
- African American renters make up 19.9 percent of all adult renters but 32.7 percent of all eviction filing defendants.
- $\frac{4}{5}$  African American renters lived in a county in which the share of eviction filings against African American renters was higher than the share of the renting population that was African American.
- The overrepresentation of African American renters within the population of renters against whom an eviction was filed is particularly high in populated counties including the Bronx, where out of all renters, African Americans make up 28.2 percent of renters and 29.6 percent of all filings. The same can be seen in Queens where African American renters make up 14.1 percent of renters and 27.4 percent of filings.
  - A graph illustrating this data is inserted below.

**Table 1:** Ten largest in-sample counties, by total renter population.

County	Renter Population	Black		Latinx		White	
		Renters	Filings	Renters	Filings	Renters	Filings
Harris, TX	1,295,243	25.5% (0.03)	42.1% (0.08)	42.8% (0.04)	24.6% (0.05)	24.0% (0.03)	27.6% (0.07)
Queens, NY	943,600	14.1% (0.03)	27.4% (0.10)	35.8% (0.04)	34.4% (0.10)	23.6% (0.04)	19.1% (0.10)
Dade, FL	881,078	16.8% (0.04)	31.9% (0.20)	71.1% (0.04)	53.7% (0.20)	10.1% (0.04)	11.0% (0.10)
Bronx, NY	801,045	28.2% (0.05)	29.6% (0.10)	60.4% (0.04)	62.4% (0.10)	6.9% (0.03)	4.4% (0.10)
Clark, NV	701,655	14.7% (0.04)	28.6% (0.10)	31.5% (0.05)	24.1% (0.10)	41.0% (0.05)	41.8% (0.10)
King, WA	629,330	9.0% (0.04)	28.2% (0.30)	12.2% (0.04)	14.0% (0.20)	56.4% (0.05)	46.2% (0.30)
Broward, FL	508,009	33.7% (0.06)	42.7% (0.20)	30.7% (0.06)	20.1% (0.20)	30.9% (0.06)	30.9% (0.20)
Philadelphia, PA	504,797	42.5% (0.06)	61.3% (0.20)	14.9% (0.05)	12.4% (0.10)	33.2% (0.06)	19.8% (0.20)
Tarrant, TX	488,471	23.4% (0.06)	31.9% (0.10)	28.6% (0.06)	16.5% (0.10)	41.2% (0.06)	46.0% (0.10)
Middlesex, MA	403,846	8.1% (0.06)	16.6% (0.20)	12.1% (0.09)	18.9% (0.20)	63.2% (0.20)	52.8% (0.30)

- In this study, one in every five renters was African American, yet one in every three eviction filings was served to a African American renter. Additionally, there were less than 40 African American renters for every 100 white renters in the tested counties, yet for every 100 evictions filed, nearly 80 were filed for African American renters.

## IV. The Eviction Process as Structural Racism

*The eviction process in New York, taken as a whole, is a system that is structured to disadvantage the low-income people of color who, as respondents in eviction proceedings, face losing their homes daily. The statutory scheme, established in 1820, that governs the proceedings for eviction provides a streamlined summary process that is an exception to the ordinary rules of civil procedure. The sole purpose of the expedited process is to provide landlords with an advantage when they litigate against tenants. The physical structure and condition of the courthouses and courtrooms where eviction proceedings are heard are disrespectful and demeaning to the low-income litigants of color who face the trauma of eviction. Until recently, most low-income tenants were unable to obtain counsel to defend them in court. And loss of a home, as well as displacement from community and homelessness resulting from evictions fall disproportionately on people of color. The eviction system reflects “public policies, institutional practices, cultural representations and other norms that work in various, often reinforcing ways, to perpetuate racial group inequity” and is thus a classic example of structural racism.*

***Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court, New Settlement’s Community Action for Safe Apartments (CASA),***  
[https://newsettlement.org/wp-content/uploads/2018/01/CDP.WEB\\_.doc\\_Report\\_CASA-TippingScales-full\\_201303.pdf](https://newsettlement.org/wp-content/uploads/2018/01/CDP.WEB_.doc_Report_CASA-TippingScales-full_201303.pdf).

**Summary.** Reports on a study that sought to identify the issues that low-income tenants face in Housing Court, and offers a critique of summary proceedings.

- Study sought to identify the issues tenants, mostly low-income people of color, face in Housing Court and also offers criticism of the way Housing Court expedites cases (summary proceedings).
- Author describes Housing Court as a “revolving door,” an analogy commonly used to describe involvement in the criminal justice system.

- Describes how the goal was to expedite the settlement process in Housing Court but ultimately, how it has been criticized since its inception for:
  - “churning out eviction cases as its primary business. . .” (p.9)
  - Making it easier for LL's to evict: “evictions used to take three to six weeks, but now the process takes only days.”
  - Making tenants more likely to sign stips with terms they know they can't meet
- Points out that technically, all civil cases theoretically could be settled on the first court date, Housing Court cases do so at disproportionate rates despite the inherently high stakes. (p.9)
- 94% if housing cases are LL initiated, with stipulations signed during “unethical, unmonitored hallways negotiations.” (p.11).
- In Bronx Housing Court, 58% tenants are Black, 28% Latinx (p.13); it follows that those populations are disproportionately bearing the pitfalls of this system.

Lawrence, Keith et. al., *Structural Racism and Community Building*, Aspen Institute Roundtable on Community Change. Washington, D.C.: The Aspen Institute, 2004, [https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/rcc/aspen\\_structural\\_racism2.pdf](https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/rcc/aspen_structural_racism2.pdf).

**Summary.** The Aspen Institute Roundtable on Community Change is a group doing important work to help others understand structural racism. This is their definition of structural racism:

- “The term structural racism refers to a system in which public policies, institutional practices, cultural representations and other norms work in various, often reinforcing ways to perpetuate racial group inequity...the structural racism lens allows us to see that, as a society, we more or less take for granted a context of white leadership, dominance, and privilege. This dominant consensus on race is the frame that shapes our attitudes and judgments about social issues. It has come about as a result of the way that historically accumulated white privilege, national values, and contemporary culture have interacted so as to preserve the gaps between white Americans and Americans of color.” (p. 11-12)

**Meyn, Ion, *Constructing Separate and Unequal Courtrooms*, Univ. of Wisconsin Legal Studies Research Paper No. 1600, 63 Ariz. L. Rev 1 (2021), Available at SSRN: <https://ssrn.com/abstract=3657250>.**

- Discusses the ways that the political and social forces of Jim Crow influenced the way SCOTUS drafted novel rules of Criminal Procedure in the 1940's. The new rules essentially wrote race into procedure and contributed to the construction of "separate and unequal courtrooms."
- Author contends that our current federal courtrooms still operate with the remnants of Jim Crow jurisprudence and procedure.

**McCarthy, Nora, *Housed in Housing Court, City Limits*, March 1, 2002, <https://citylimits.org/2002/03/01/hosed-in-housing-court/>.**

**Summary:** A piece that reads like a fictional day in Housing Court.

- Article weaves in nonfiction data to paint a picture of the challenges and limitations of the system and the ways that landlords consistently possess the disproportionate bargaining power

**powell, john (lower case intentional), *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 813, 2008, <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4312&context=nclr>.**

**Summary:** Author breaks down structural racism and introduces to readers why traditional approaches to combating racism are inadequate and proposes his own approaches. Author then applies his approaches to housing policy.

Part I Structural racism and how traditional approaches to combating racism is inadequate.

- Author contends that addressing racism the way we traditionally have - by analyzing individual behaviors or race-neutral institutional policies - will not be enough to rebuild our broken systems. Author instead sets forth a "structural model for conceptualizing racism in its advanced, contemporary form." (p.1-2)



- “Structural racism or racialization emphasizes the interaction of multiple institutions in an ongoing process of producing racialized outcomes. Research in the field of dynamic and complex systems theory teaches that the structures matter. The structure of a system gives rise to its behavior. A systems approach helps illuminate the ways in which individual and institutional behavior interact across domains and over time to produce unintended consequences with clear racialized effects.” (p. 1)
- “Racism exists not simply in individuals, but “[in] our societal organization and cultural understandings.” At the level of societal organization, the structural model helps us analyze how housing, education, employment, transportation, health care, and other systems interact to produce racialized outcomes. Such a model allows us to move beyond a narrow merit-based, individualized understanding of society to show how all groups are interconnected and how structures shape life chances.” (p.4)
- “Racism need not be either intentional or individualist. Institutional practices and cultural patterns can perpetuate racial inequity without relying on racist actors.” (p.6)
- Cites *Griggs v. Duke Power Co.*, where the court explained that practices and procedures may be facially neutral, and neutrally intended, but still discriminatory and thus prohibited.
- A structural analysis of racism recognizes that racism exists on individual, institutional, and interinstitutional levels. (p.5)
- “Systems theory is a model that focuses on relationships and processes and not on singular, linear causation. Experiments in causal attribution show that people tend to assume a single or primary cause for a given effect.” As a consequence, we tend to ignore many of the elements of dynamic complexity. . . In a complex systems model, actions and inactions have multiple effects, and the delayed or distant consequences are often different from the more proximate effects. From a structural perspective, causation is understood as cumulative within and across domains. (p.7)
- Offers the following illustration:
  - We know that one result of housing discrimination is that many Black and Latinx children attend high-poverty schools, are more likely to drop out and less likely to attend college.
  - Employing a structural model to understand then why so many Black and Latinx elderly live at or below the poverty line requires a lifelong examination not just of their employment, but of their relationship to the housing market, the educational and criminal justice systems. (p.8)

- Using a structural model, parties may be implicated in harms they may not have directly caused or intended to cause, but were in many cases foreseeable.
- “The architecture of modern discrimination law induces lawyers to fit their client's story into the narratives available in existing jurisprudence. Because of the individualistic framing of the adversarial context and focus on intent, discrimination litigation requires a villain. (p.9)  
...
- There is overwhelming research in cognitive psychology that demonstrates subconscious stereotyping in humans. This is why legal framework that requires intent to show discrimination is not productive. (p.11)

Part II of this paper delves into the history of housing policy and its segregative impacts.

Part III of this paper seeks to apply the proposed structural racism framework

- Author offers *Thomas v. U.S. Dep't of Housing and Urban Development* (2005), as an “instructive example of how the structural racism framework can inform legal advocacy efforts.” (p. 19)
  - P’s sought discovery of materials going back 75 years to show that D’s had been segregating Baltimore housing developments since the 1930s.
  - Court held that HUD had violated the FHA by failing to affirmatively further Fair Housing.
- Author also offers *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (2007). (p.20)
  - The school voluntarily adopted student assignment plans that relied on race to determine which public schools certain children could attend. In each case, the schools used this system to ensure that the racial balance in any given public school was balanced.
  - This case argued that local school boards should have the power to intervene in segregative processes despite the fact that the root cause of segregation fell beyond their institutional control.

Smith, Chauncey D., *Deconstructing the Pipeline: Evaluating School-to-Prison Pipeline Equal Protection Cases through a Structural Racism Framework*, 36 *Fordham Urb. L.J.* 1009, 2009,

[https://ir.lawnet.fordham.edu/ulj/vol36/iss5/5/?utm\\_source=ir.lawnet.fordham.edu%2Fulj%2Fvol36%2Fiss5%2F5&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://ir.lawnet.fordham.edu/ulj/vol36/iss5/5/?utm_source=ir.lawnet.fordham.edu%2Fulj%2Fvol36%2Fiss5%2F5&utm_medium=PDF&utm_campaign=PDFCoverPages).

**Summary:** This article discusses the correlation between the U.S. educational system and its impacts. Specifically how structural racism in the educational field (lack of funding, lack of experienced teachers, lack of programs) cause higher rates of low income and people of color being incarcerated.

- Today's U.S. education and criminal justice systems arguably coincide with America's history of maintaining "peculiar institutions." Kenneth Stampp originally coined the phrase "peculiar institution" in describing slavery as an oppressive institution. (p. 3; 1010)
- Regarding the meaning of "inter-institutional system," see Powell, *supra* note 31, at 796 ("Structural racism or racialization emphasizes the interaction of multiple institutions in an ongoing process of producing racialized outcomes."). Regarding references to the pipeline as inter-institutional, see Reyes, *supra* note 8, at 104-05. (p. 7; 1014)
- "Structural racism is a socio-legal paradigm that integrates critical race theory and systems science. Critical race theory is a legal doctrine that focuses on "the historical centrality and complicity of law in upholding white supremacy .. " Its proponents cite the Constitution's endorsement of slavery, legalized racial segregation, and neoconservative retrenchment of civil rights as a few, among many, instances of racial bias ingrained within Anglo-American law. Consequently, critical race theory recognizes that legal doctrine is often subjectively contingent rather than fair, objective, and neutral. Critical race theory evaluates "the entire edifice of contemporary legal thought and doctrine from the viewpoint of law's role in the construction and maintenance of social domination and subordination."(p. 16-17; 1023-1024)
- *Gaston County v. United States* illustrates the Supreme Court's use of a structural racism approach to determine whether an antidiscrimination law was violated. In *Gaston*, the Court relied on the presence of education discrimination, via past de jure segregation, in order to strike down a facially race-neutral North Carolina literacy test requirement for voter registration' " as violating the Voting Rights Act of 1965.<sup>112</sup> The Court concluded that Gaston "[C]ounty deprived its black residents of equal educational opportunities, which in turn deprived them of an equal chance to pass the literacy test." Thus, even though Gaston County's literacy test was a facially neutral measure, which in itself did not appear to be racially discriminatory, it resulted in the discriminatory effect of black disenfranchisement through its intersection with past education discrimination. (p.18;1025)

Solow, Sara A., *Racial Justice at Home: The Case for Opportunity-Housing Vouchers*, 28 Yale L. & Pol'y Rev., 2009, <https://digitalcommons.law.yale.edu/ylpr/vol28/iss2/9>.

**Summary:** The frameworks that currently underlie federal housing laws are insufficient to ensure racial justice, ending by proposing her own theory of what might work.

- Posits that the frameworks that currently underlie federal housing laws - antidiscrimination, remediation, mitigation of disparate impact - are insufficient to ensure racial justice. (p.10)
- Antidiscrimination Theory: Concludes that race-neutral treatment in housing is the goal, but fails to consider that even “racial ghettos” if produced through so called fair and nondiscriminatory practices are inherently unjust. Thus any housing claims brought under the FHA turn entirely on racial animus rather than on the existence of the ghettos. (p.17).
- Compensation Theory: only considers racially concentrated ghettos as unjust if they are the product of overtly discriminatory governmental practices. (p.17)
- Anti-disparate impact Theory: “concerned with reducing disproportionate harms for racial groups, but only up to a certain point.” You cannot allege general unfairness, but are req’d to point to a distinct process/practice, which often is not possible. In FHA litigation, D’s only have to show they had a “legitimate” interest to justify the perpetuation of inherently racist practices. (p,18)
- Author suggests “Antighettoization Theory,” of justice, which “would posit the exceptional immorality of racial ghettoization as a substantive injustice deserving an immediate remedy.” (p.19)

Wiecek, William M., *Structural Racism and the Law in America Today: An Introduction*, Kentucky Law Journal: Vol. 100 : Iss. 1 , Article 2, 2011, <https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1160&context=klj>.

**Summary:** This article discusses racism and its different forms, specifically in relation to the legal field. It goes into the history of the term racism and how it has evolved over the years into structural racism.

- “The concept of “racism” - like the word itself- is surprisingly modern, being introduced to social-science scholarship by the anthropologist Ruth Benedict in her path-breaking 1940



study *Race: Science and Politics*. It soon made its way, though abortively, into the discourse of the Justices of the United States Supreme Court. The word "racism" itself first appeared in the United States Reports in a concurring opinion by Justice Frank Murphy in *Steele v. Louisville & Nashville Railroad Company*, which was decided in 1944, and then again on the same day in his dissent in *Korematsu v. United States*. Yet it is both astonishing and symptomatic of the Justices' collective refusal to confront issues of structural racism that, after 1944, the word "racism" appears only infrequently in isolated dissents or concurrences, mostly of Justices William O. Douglas, William J. Brennan, and Thurgood Marshall. Not until 1992 was the word used substantively in a majority opinion of the Court." (p. 2)

- "Structural racism is a complex, dynamic system of conferring social benefits on some groups and imposing burdens on others that results in segregation, poverty, and denial of opportunity for millions of people of color. It comprises cultural beliefs, historical legacies, and institutional policies within and among public and private organizations that interweave to create drastic racial disparities in life outcomes." (p. 5)
- "Take the original exclusion of agricultural and domestic workers from eligibility for Social Security benefits in 1935. Because they could not collect old-age or unemployment benefits, field hands, sharecroppers, maids, and nannies - constituting the bulk of the black labor force in the New Deal South - were shut out from even the most modest opportunity that whites enjoyed for wealth accumulation and survival assistance in economic downturns. In this example, blacks were not explicitly excluded, but the proxy phrase 'agricultural and domestic workers' did the job effectively. Nor was this anomalous: African Americans were excluded implicitly or through administrative fiat from all major New Deal welfare programs, including the National Labor Relations Act, the Fair Labor Standards Act, the National Industrial Recovery Act, and the Agricultural Adjustment Act. This exclusion of African Americans from the opportunities offered by New Deal programs originated in traditional racism: the determination of powerful southern Democrats in the Senate to preserve the racial order of the Jim Crow South. But once set in motion, the structure of exclusion and discrimination operated automatically. Coupled with other examples of mid-century discrimination, such as overtly racist Federal Housing Administration mandates for segregation, New Deal policies stunted Black wealth accumulation at the same time that they created a cornucopia of opportunity for Whites." (p. 5)
- Eight characteristics distinguish structural racism from its traditional Jim Crow predecessor:
  1. Structural racism is to be found in racially-disparate outcomes, not invidious intent.
  2. Structural racism ascribes race as a basis of social organization to groups through a process of "racialization."

3. " White advantage is just as important an outcome as black subordination, if not more so.
4. Structural racism is invisible and operates behind the illusion of colorblindness and neutrality.
5. Structural racism is sustained by a model of society that recognizes only the individual, not the social group, as a victim of racial injustice. This individualist outlook refuses to acknowledge collective harm, group responsibility, or a right to collective redress.
6. The effects of structural racism are interconnected across multiple social domains (housing, education, medical care, nutrition, etc.).
7. Structural racism is dynamic and cumulative. It replicates itself over time and adapts seamlessly to changing social conditions.
8. Structural racism operates automatically and thus is perpetuated simply by doing nothing about it. (p.6-7)

Yearby, Ruqaiijah and Mohapatra, Seema, *Law, Structural Racism, and the COVID-19 Pandemic*, *Law Journal of Law and Bioscience*, Volume 7, Issue 1, 2020, <https://academic.oup.com/jlb/article/7/1/lsaa036/5849058>.

**Summary.** This article discusses the levels of racism and how these disparities affect exposure to COVID-19.

- "There are three different levels of racism: institutional, interpersonal, and structural. Institutional racism operates through 'neutral' organizational practices and policies that limit racial and ethnic minorities equal access to opportunity. Interpersonal racism operates through individual interactions, where an individual's conscious and/or unconscious prejudice limits racial and ethnic minorities' access to resources. Structural racism operates at a societal level and refers to the way laws are written or enforced, which advantages the majority, and disadvantages racial and ethnic minorities in access to opportunity and resources." (p.2-3)
- "Racial and ethnic minorities' disparities in exposure to COVID-19 are due in part to structural racism in employment. During the Jim Crow era (1875–1968), employment laws were enacted that provided protections for white workers and disadvantaged racial and ethnic minorities. For example, many laws that expanded collective bargaining rights either

explicitly excluded racial and ethnic minorities, or allowed unions to discriminate against racial and ethnic minorities. These employment laws benefited whites by providing them access to unions that bargained for paid sick leave. However, it left racial and ethnic minority workers without union representation and paid sick leave, forcing them to go to work even when they were sick and increasing disparities in their exposure to pandemic viruses, like COVID-19. Although the Jim Crow Era ended in 1968, many racial and ethnic minorities still do not have paid sick leave and other employment laws still limit racial and ethnic minorities' access to equal pay, which causes disparities in exposure to COVID-19. The plight of agricultural workers and home healthcare workers are illustrative of this point." ( p.4 - p.5)

- "African American and Latinx households are almost twice as likely to 'lack complete plumbing than white households, and Native American households are 19 times more likely to lack complete plumbing'." (P.8)
- Although the CARES Act created a federal moratorium on evictions for federally assisted housing and federally backed mortgages, it does not address health-related housing violations such as access to clean water, leaving racial and ethnic minorities more susceptible to COVID-19 infection because they are unable to wash their hands. Thus, the lack of federal law addressing housing-related health hazards is an example of structural racism. The lack of law advantages landlords who make money renting these apartments, while disadvantaging racial and ethnic minorities who are forced to live in buildings with health violations. Living in housing with severe health-related housing violations, such as access to water, increases racial and ethnic minorities' susceptibility to COVID-19 because they cannot wash their hands or body to prevent the spread of COVID-19. Racial and ethnic minorities also do not have access to quality healthcare, which increases disparities in treatment for COVID-19. (p. 9 - p.10)