Joel Strauss, 62, right, places a blanket around his husband Mark Strauss, 60, left, as their dog Max a Cairn Terrier stands near them outside their room at the Desert Moon Motel Oct. 13, 2021 in Las Vegas, CA. The couple has been here a few days. They had been living in their car. (Photo: Francine Orr / Los Angeles Times via Getty Images)

Lessons From Eviction Court

Elected officials need to spend some time in eviction courts, witnessing first-hand the real tragedies that happen there every day. If they sat where we do, I think they would seize the opportunity to embrace housing as a fully realized human right.

FRAN QUIGLEY

December 2, 2021

Carmen Jones nudged me in the arm, then pointed down at her cell phone screen. A text had just come in from a company that manages several rental properties on the far east side of

Indianapolis.

"Your rental application has unfortunately been denied for one or more of the following reasons: Court filing from landlord on tenancy screening report."

As it happened, we were at that very moment in front of a judge who was conducting a hearing on that court filing: her landlord's demand for eviction. Shortly after the constable delivered court papers to her door, Ms. Jones and her two children (I am not using clients' real names here) had voluntarily left the apartment. But that did not stop the **"Scarlet E"** of the eviction filing from following her. She and the kids were sleeping at an extended-stay motel, with Ms. Jones leaving the room every morning to go to work. The cost of $85 a night was clearly unsustainable. But motels don't check tenant reports, and the landlords she applied to were rejecting her left and right.

Three of four families who are eligible for federally subsidized housing—including Carmen Jones and her kids—don't receive it.

After the hearing ended, a law student and I walked out in the hallway to talk for a few minutes with Ms. Jones. But the court bailiff soon followed, summoning us back into the court room for Natasha Green.

The police had recently arrested Ms. Green's abuser. That protected her from his drunken beatings, but also left her without his income to help support their five kids. So, she took a job 35 miles away from home, working in a warehouse on the 6PM to 4AM shift. She has a rickety car and tenuous nighttime childcare arrangements. She is struggling with lack of sleep—she does not have much help watching the kids during the day. But the hope is that she might be able to keep all this going long enough to pull in some paychecks that will allow her to catch up on rent.

Tanya Lyons sits in court watching all this, waiting for her turn. Ms.

Lyons' four-year-old son Amari nestled into the crook of her arm, drawing with a highlighter on some paper the court reporter has given him. A few days ago, one of our law school clinic students had successfully argued that Ms. Lyons and Amari be allowed to stay in their home an extra month before eviction. But, at 10PM the night after the hearing, the home's power was mysteriously cut off, presumably by the angry landlord.

So goes about twenty minutes in eviction court.

When we started our student practice program at Indiana University McKinney School of Law ten years ago, we called it the Health and Human Rights Clinic. The plan was for law students on the verge of graduation to gain experience by advocating for low-income clients who were seeking access to healthcare. At first, that was a lot of what we did. But what experts call **the social determinants of health** kept poking up in our clients' lives. Red-tape cut-offs of food stamps for hungry households, shady employers not paying hard-working roofers and restaurant servers, unemployment benefits blocked by a system seemingly designed to prevent laid-off workers from getting stop-gap help.

And, of course, housing.

There may be no more critical social determinant of health than whether a person is living in a safe, secure home. With the **massive work income loss during the Covid pandemic** and rent taking up a **huge chunk of the financial obligations of low-income families**, one thing became increasingly clear as 2021 progressed: a tsunami of evictions was coming, even as the U.S. Centers for Disease Control moratorium was holding it back temporarily. Now, as the year comes to a close, **nearly six million U.S. households** are behind on their rent.

Law students and lawyers can't fix all this. But we can sometimes slow down the eviction process for tenants, buying them time to look for a temporary influx of cash to make rent or find a safe place to move to. And we can push for fairness in a process that is notoriously **dismissive of renters' rights**. Like firefighters arriving at a home already engulfed in flames, we arrive too late to prevent any damage from happening. But we do have the tools to mitigate it, at least some of the time.

So, last spring, the Health and Human Rights Clinic became a housing clinic. Here are a few things we learned:

One: It's all about affordable housing. Sylvia is a severely disabled woman faced with rent costs that exceed the entirety of her monthly disability check. Jasmine is the new mother of an 11-day old baby and herself still recovering from a difficult pregnancy and birth. For clients like Sylvia and Jasmine, we often find ourselves without any legal tricks that can magically engineer their families into a safe, secure home. As **our clinic and others have called for**, we need a right to counsel for tenants, an eviction process that stops fast-tracking people out of their homes, and sealing of eviction court records. But making the eviction system more fair is not the end game. If Sylvia and Jasmine could simply afford the cost of a stable home, they would never have to come to court in the first place.

But, for them and tens of millions of other Americans, the math just does not work. Here in Indiana, even modest rental units charge a monthly amount that takes up an unsustainable percentage of many workers' wages. The fair market rent for a two-bedroom apartment in Indiana **is about $850**. For our clients working in home care, retail, and food service, where they **struggle to make living wages** and get assigned steady hours, rent claims a huge chunk of their paychecks. And these workers are relatively well-off compared to our clients who are living off a disability check.

The term experts use for renters paying a high percentage of their income for rent is **"cost-burdened."** They estimate that **over 37 million Americans** fall into that category. Here is how "cost-burdened' translates in real life: our clients are somehow able to juggle paying sixty, seventy, even eighty percent of their monthly income on rent—until they can't. A health crisis happens, a car relied upon to get to work breaks down, a school orders a child to stay home because of illness or Covid exposure. The paychecks get reduced or stop altogether. The rent comes due. And then we see them in court.

Two: For-profit corporations gonna for-profit. James is 82 years-old and he has lived in his apartment for 30 years. A corporation bought his building earlier this year, then promptly filed an eviction case against him. The case was bogus: the allegation that James was behind on his rent was easily refuted by James' carefully organized receipts. They were dated, which showed the company's other argument claiming unpaid late fees was also completely unjustified. When we confronted the corporation's lawyer with this evidence, he shrugged his shoulders. "Well, his lease is up next month anyway, and the company doesn't want to renew him."

That was that. It didn't matter that James had been paying rent and renewing leases at his home for decades. His neighborhood was gentrifying around him, and the corporation was determined to reap the benefits. They threw James out along with other fixed-income seniors. They repainted and rebranded, then started pulling in younger, wealthier tenants.

It was about money, and there was zero hesitation about rousting an old man from his third-of-a-century home. But could we expect anything different? In our cases, it is common for a landlord or their attorney to tell us some variation of, "I am sorry your client will not have a place to live, but it's not my responsibility." And they are right. If we really consider housing to be a human right, and **polls show most Americans do**, it is madness to entrust a money-seeking enterprise, **usually a for-profit business**, with ensuring that right.

But, for more than **three in every four Americans** who live on an income low enough to qualify them for federally-subsidized housing, James included, there is no help available. Public housing agencies go for years on end without even opening their wait lists for vouchers or subsidized units. Here in Indianapolis, an eligible family waits an average of **more than four years** for a voucher. In some cities, the wait time is **eight years**. For almost all of our clients, their only option is to scrape together enough rent to ensure a corporation feels it is in their interests to keep the transaction rolling. As James learned, the minute the landlord feels the arrangement is not profitable enough, they tell our clients to hit the streets.

Three: Mom and Pop landlords are mythological creatures. Well, almost. Every example I have mentioned here involves a corporate landlord with a high-priced private attorney hired to evict the tenant. That is not a coincidence. Virtually every case we see involves a corporation throwing out a low-income renter.

You wouldn't know that from the public handwringing about the pandemic struggles of Mom and Pop landlords. Consider **the National Apartment Association**'s lament ("The small owners —their income is the rental properties they have. They are the folks who are taking the most pain and suffering from the brunt of this experience"), or **Time magazine** highlighting a landlord's complaint ("Here I am expected to absorb everybody else's heartaches, and nobody's there to resolve my heartache") and even the **U.S. Supreme Court** when it struck down the eviction moratorium ("Despite the CDC's determination that landlords should bear a significant financial cost of the pandemic, many landlords have modest means.")

Those feeble landlords barely making ends meet are hard to find in eviction court. Or, as it turns out, anywhere in the rental market. A Brookings Institution **report issued in September** aimed to lift up the plight of the small landlord. But even its analysis showed that nearly 9 in 10 units are owned either by businesses or by individuals living in households making more than $90,000 per year. A **recent report** by our state's largest newspaper, the Indianapolis Star, uncovered that 88% of the evictions filed in our local courts this year were brought by corporate landlords.

Four: Landlords are doing just fine, thank you. We can save our tears for the allegedly put-upon landlord industry. A remarkable **October report by JP Morgan Chase** showed that landlords during the Covid pandemic have actually come out ahead: "Our data show that landlords were able to cut their expenses by more than their rental revenues fell, which resulted in landlords' cash balances growing during the pandemic."

We see the impact of landlords' comfortable financial status played out in court. Many are so flush with cash that they issue a blanket refusal to accept the government's checks for emergency rental assistance to pay tenants' back rent. Landlords say no because accepting the government's money would prevent them from immediately kicking out our clients. With a cash surplus in hand and **a high-demand housing market**, most landlords prefer to replace current tenants with others who can pay much higher rents. Others have plans to sell the building to one of the many speculators buying up **an alarming amount of residential housing** across the country.

For example, one elderly Indianapolis couple came to court with approval in hand for all the rental assistance needed to catch up on back rent. The landlord refused it. When we spoke with the couple, they were four days away from a forced move-out. Their post-eviction plan was to spend nights sleeping in the bed of their pickup truck.

Five: Bad housing is expensive housing. Ida is a grandmother living in a home where the breaker box caught fire—twice. The front door won't lock, and standing water in the basement and an aggressive roof leak has caused black mold to grow throughout the house. In Aaron's home, the bathtub and sink drains belch up raw sewage. The rodents that roam Shawn's apartment complex seem to be the only creatures unperturbed by the electrical fires that happen every few weeks.

Believe it or not, all these tenants are paying market rate and above for their homes. Because they have past eviction filings on their record, they are forced to accept substandard living conditions. As Carmen Jones learned in court, prospective landlords routinely **check court records** and automatically **reject applicants with a previous eviction filing**. Tenants with a past eviction case often become homeless. Others, like Ms. Jones, rely for as long as they can on **expensive extensive-stay motels**. The motels accept "bad credit" tenants, in return for far higher housing costs and no lease protections. Eventually, our clients usually find their way to landlords who know the new tenants have no choice but to live with electrical fires, standing water, and doors that won't lock.

Six: Federal intervention works. Six months ago, all our current eviction court clients were safely housed. Most were using stimulus checks and/or extended unemployment benefits to make ends meet. The CDC eviction moratorium was protecting the roof over their heads. As a result, **poverty rates actually dropped** during the pandemic.

By the first week of September, everything had changed. First the Supreme Court struck down moratorium at the end of August. Two weeks later, the extended unemployment benefits ran out. The safety net that had so effectively protected our clients and millions of others was abruptly pulled away. Their landings have been rough: Our client Patricia was evicted, and is now living in a friend's garden shed. Elise is sleeping in her storage unit. Kenneth and his young sons are living out of their car.

Seven: Don't expect states to fix this. Anyone paying attention to recent history should not be surprised by this lesson. **A dozen states** have still refused to accept near-full federal subsidies to expand Medicaid under the Affordable Care Act. These governors and legislators have been content to allow **millions of their citizens** to suffer without medicines and care. Why would we expect anything different when it comes to housing? Yet the distribution of **$46 billion in emergency rental assistance** provided by the federal government has been outsourced in significant part to those same state governments. Predictably, red states in particular are dropping the ball, including here in Indiana.

Our state government let hundreds of millions of dollars in **emergency rental assistance sit undistributed**, all while families here were being evicted by the thousands. For our governor, coming to the aid of struggling low-income families is simply not a priority. Our General Assembly, under the sway of **landlord lobbyists and campaign donors**, is actively hostile to renters. This year, legislators repeatedly **voted to pre-empt** mild City of Indianapolis ordinances protecting tenants from retaliation when they reported unsafe conditions.

Our courts are no better. Indiana has **one of the nation's highest eviction rates** in large part because we make evictions remarkably cheap (as little as $107 to file), fast (as quick as three days from filing until a family is thrown out) and easy (most judges block tenants from even bringing up unsafe conditions before they are evicted). Our state Supreme Court recently issued **a**

grand announcement: it was responding to the crisis by rolling out an eviction diversion program. At first glance, the program seems to do the right things—delaying evictions while the rental assistance process is ongoing and sealing tenants' eviction records in the meantime. But the catch is that the program only kicks in if both parties agree to it. With our state's housing laws and procedures dramatically skewed in their favor, landlords and their attorneys have publicly laughed at the idea that they would agree to block their own sure path to a quick eviction.

"Doomed to fail ... no one will participate," one **prominent landlord attorney predicted** when the diversion program was rolled out. He was right. At a recent court session in Indianapolis, 68 separate landlords were asked if they would participate in the program. All 68 refused.

Eight: Evictions are often the business end of U.S. racism and sexism. After our law students spent a couple of months representing tenants, I asked for their guesses on the racial breakdown for the population of the township where we do most of our work. Their responses ranged from 70% to 90% Black. The right answer **is 35%.**

But that is not what they see on eviction court days. The tenants who sign in and take their seats on gray metal folding chairs are overwhelmingly Black. Most often they are young mothers.

That lines up with the **national** and **state data** showing that Black tenants are far more likely to face losing their homes. Black women with children are **particularly at risk of being evicted**.

In court, landlords are usually represented by attorneys and sometimes by property managers. Since last spring, I have witnessed thousands of hearings, and I have never seen a Black landlord attorney. A Black property manager is a rarity. Day after day, the same scene replays in court: one or two White people with property and/or professional status evicting a Black family, often a mother with a baby on her hip.

Nine: The social determinants of health are real. One day, as we conducted our case rounds in class, the students and I were struck by something: everybody was sick. Every single client was either themselves struggling with illness or disability or caring for someone else in the household with similar health issues. Oftentimes both.

Sometimes the stories are shocking. One mother checked herself out of the hospital after 37 days of Covid treatment to come to court to try to prevent her paralyzed son from being evicted. Other examples are more subtle. One common chain reaction starts with a school-aged child forced to quarantine for Covid exposure. Parents without childcare options miss work to be at home. Paychecks shrink; rent becomes past due.

The causation arrow for the health-housing crisis points in both directions. Illness and disability create problems making rent. And the housing itself—the mold, the rodents, the lead exposure, the sanitation issues— make our clients sick, particularly the children. Then there is the well-documented negative health **impacts of the eviction process itself**, up to and including hospitalizations and suicide.

Ten: We don't practice what we preach. If you find these scenes from eviction court appalling, the good news is that most Americans agree with you. A majority of Americans believe **housing is a human right**. We think the government, acting on our behalf, **needs to ensure that right is honored**. This should not be a surprise, since **every faith and moral tradition** prioritizes a clear obligation to ensure shelter for all. The Gospels message of Christianity and the zakat mandate of Islam are unequivocal on this point. It is the unmistakable message of the Jewish commandments to shelter the stranger in the spirit of tzedakah and tikkun olam and the core Buddhist concept of interdependence.

The bad news is that we don't live up to those principles.

But we can. I started this article with the story of Carmen Jones learning her rental application was rejected even as she sat in court being evicted from her current home. After the judge concluded that hearing, we had just a few minutes before I had to return to the front of the court with another tenant. Ms. Jones looked at me and shook her head. "Isn't there anything we can do about this?" she asked.

The answer is yes. Remember that three of four families who are eligible for federally subsidized housing—including Carmen Jones and her kids—don't receive it. Well, that failing is not because our government does not invest in housing. We do. We dedicate a huge amount of resources for housing, we just don't direct those resources toward those who need it.

Consider the mortgage interest tax deduction, which awards the **vast majority of its benefits** to individuals whose already enjoy top 20% incomes. The mortgage interest deduction costs **$70 billion per year**, more than the price to provide subsidized housing vouchers to **every single eligible person** in the nation. Consider also the **tens of billions of dollars a year** in tax benefits we shower on corporate landlords. We provide them with generous loopholes to avoid capital gains taxes and give preferential tax treatment for their limited liability corporations and Real Estate Investment Trusts.

Other nations use their housing resources differently. Instead of looking at housing mostly as a tool for the rich to get richer, their top priority is to **guarantee housing for all** who need it. Their example proves that we can get vouchers or subsidized homes or apartments for Ms. Jones, her kids, and everyone else who qualifies.

But we have to want that to happen. I think one path to that political will is for elected officials to spend some time in eviction courts, witnessing first-hand the real tragedies that happen there every day. If they sat where we do, I think they would seize the opportunity to embrace housing as a fully realized human right. I think they would give Ms. Jones the answer she deserves.

FRAN QUIGLEY

Fran Quigley directs the Health and Human Rights Clinic at Indiana University McKinney School of Law.