

*JUSTICE AND THE POOR:  
AMERICA'S BROKEN LEGAL SYSTEM  
AND  
ITS IMPACT ON HOUSING STABILITY*

February 28, 2025

John Whitfield  
Blue Ridge Legal Services

# “...with Liberty and Justice for all.”

“Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...**it is fundamental that justice should be the same, in substance and availability, without regard to economic status.**”

-Lewis Powell, Jr., U.S. Supreme Court Justice



# An Alternative View of America's Civil Justice System

“Without equal access to the law, the system not only robs the poor of their only protection, but it places it in the hands of their oppressors the most powerful and ruthless weapon ever created.”

- Reginald Heber Smith,  
*Justice and the Poor*, 1919



# Another View of America's Civil Justice System

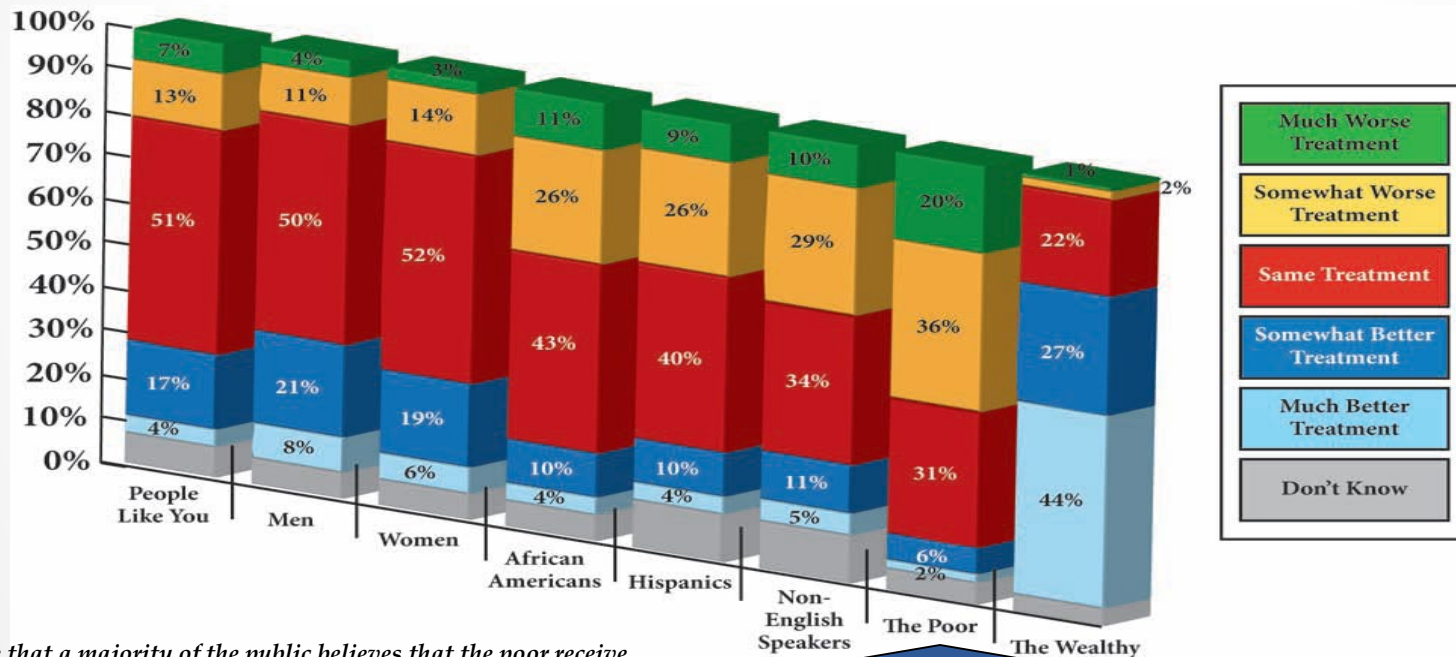
“Poor people have access to the American courts in the same sense that the Christians had access to the lions when they were dragged into a Roman arena.”



- California Court of Appeals  
Justice Earl Johnson Jr.

# The Public's Perceptions about How Different Groups are Treated in Virginia Courts

What sort of treatment do you think the following groups of people receive in Virginia Courts, compared to other groups?



Note that a majority of the public believes that the poor receive worse treatment in Virginia courts, compared to other segments of the population.

Source: 2007 Citizens Survey, Office of the Executive Secretary, Supreme Court of Virginia.

# Equal Justice Under Law:

## The Impact of Counsel in the Courtroom

- Our system of justice relies upon the adversarial model, with each side capably and zealously represented by counsel.
- It is a peerless mechanism for arriving at the truth and applying the law fairly.

# The Flawed Premise of our Court System

- Our court system was designed on the implicit, flawed premise that all litigants will be represented by attorneys.
- The courts' rules of procedure and evidence, requirements of pleadings, even the language of the courts – “Legalese” – presume the presence of an attorney who has graduated from law school and passed a rigorous bar examination for each litigant.
- But there is a serious design flaw in our civil justice system, namely, many users of our court system cannot afford an attorney.

# Access to Justice

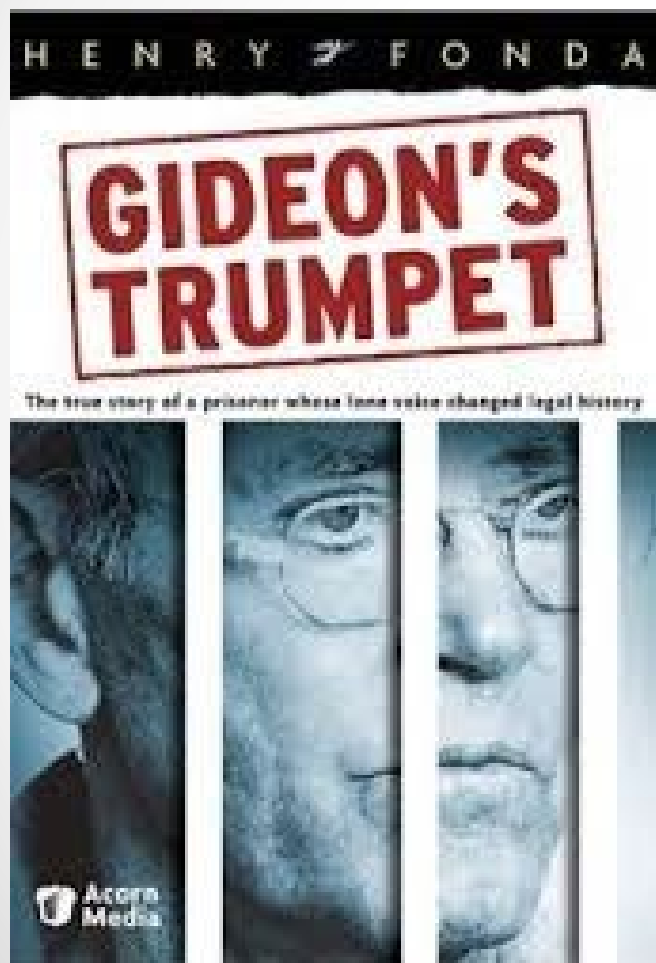
“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”

- United States Supreme Court,  
*Griffin v. Illinois*, 1956



# Access to Justice

-but only if you're accused of a crime...

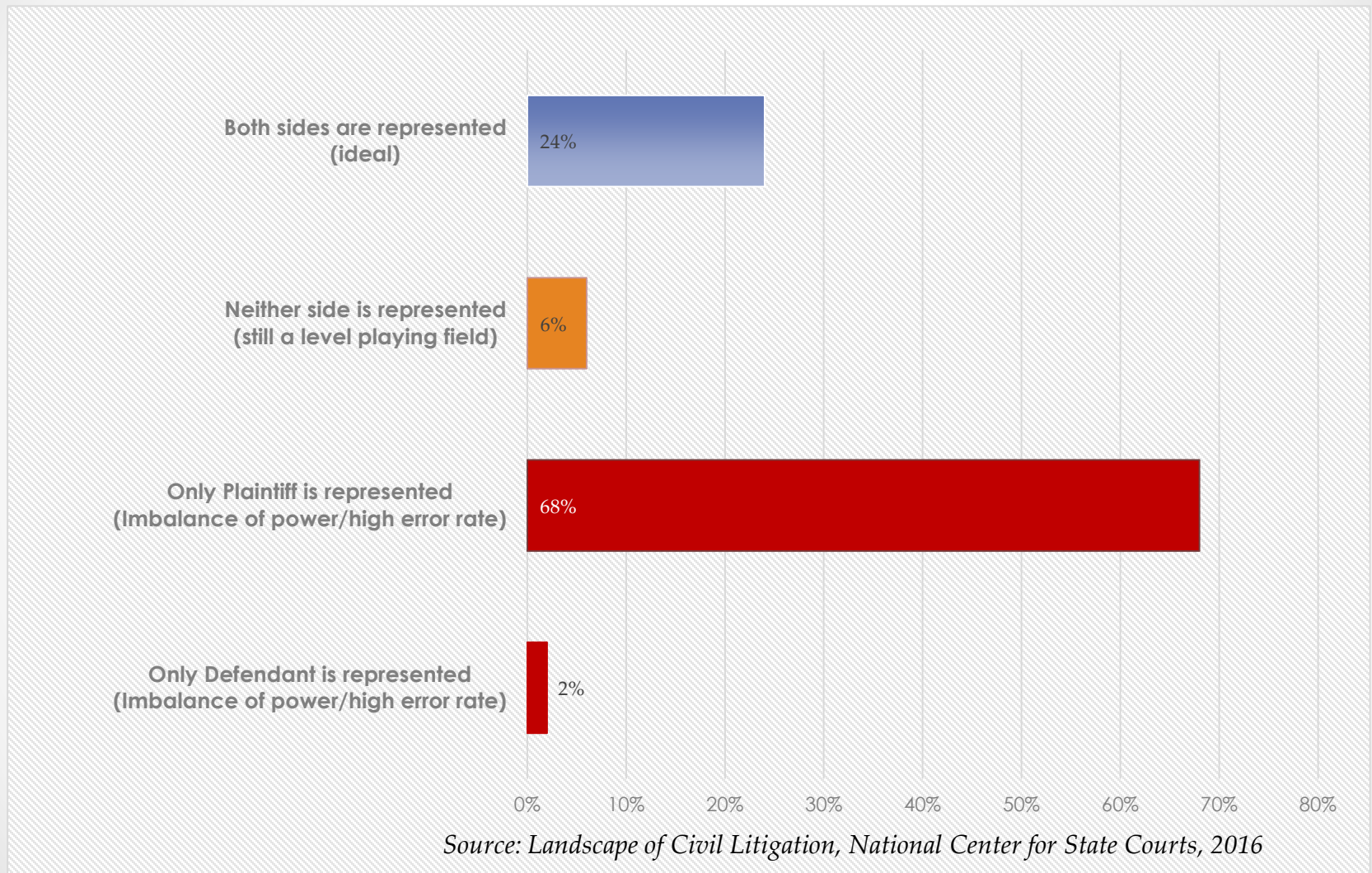


In 1963, in the landmark case of *Gideon v. Wainwright*, the United States Supreme Court found a constitutional right to counsel... *but only in **criminal** cases.*

# Americans' Biggest Misconception about our Civil Justice System

- A Harris poll of over 2,000 Americans in June 2024 revealed that ***more than half of Americans (56%) mistakenly think they have a right to an attorney in civil cases.*** 18% weren't sure.
- When I tell folks that there is no right to a lawyer for low-income people in civil cases, they look at me like I'm lying to them.
- That's why non-profit charities like **Blue Ridge Legal Services** were created – to try to fill that void.

# The Growing Crisis in America's Civil Courts



# But what about in Virginia?

- With funding from the Legal Services Corporation to Blue Ridge Legal Services, in 2017 the National Center for State Courts published ***The Virginia Self-Represented Litigants Study***.
- The results were startling (for those who weren't poor or worked at legal aid).

VIRGINIA SELF-REPRESENTED  
LITIGANT STUDY:

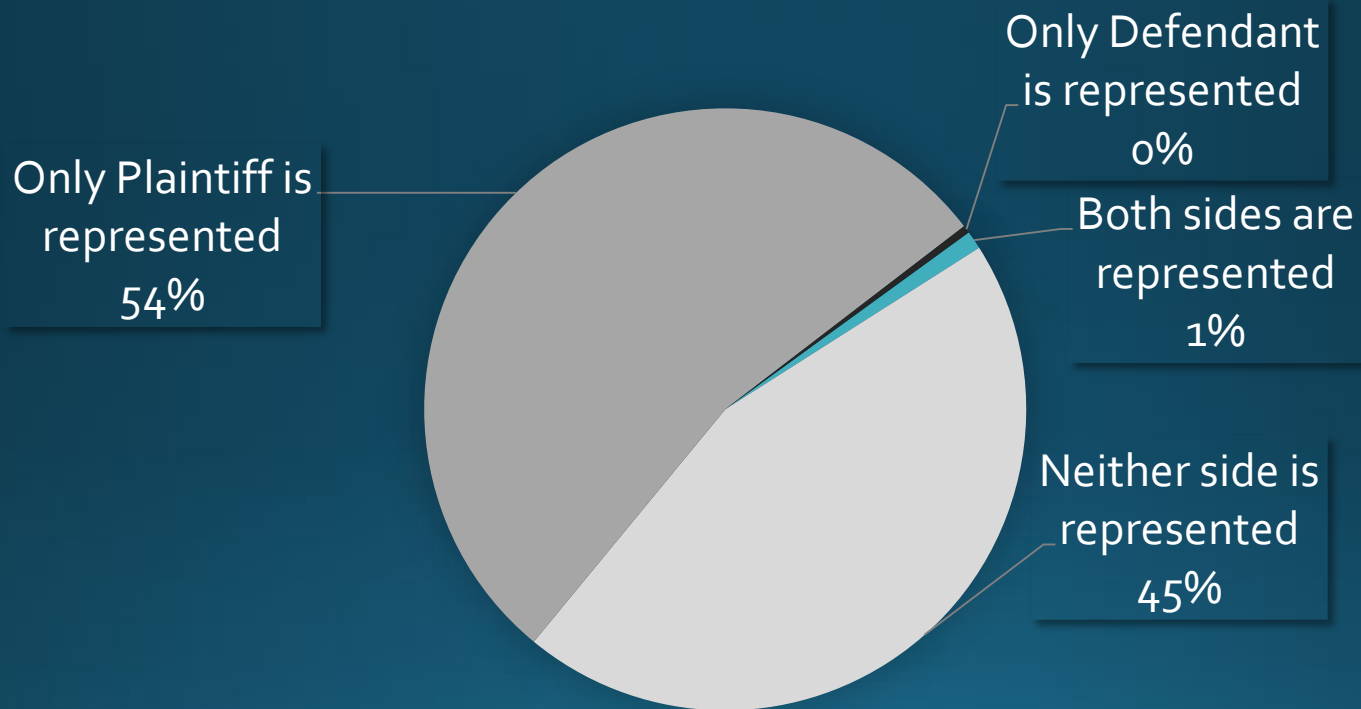
Outcomes of Civil Cases in General District Court,  
Juvenile & Domestic Relations Court, and Circuit Court

The *vast majority* of civil cases include at least one unrepresented party. The traditional adversarial model of the court, in which *both* parties have legal representation, occurs in only

- ❖ 1% of General District Court cases,
- ❖ 6% of Adult Juvenile & Domestic Relations Court cases, and
- ❖ 38% of Circuit Court cases.

# Representation in Virginia's General District Courts

All Civil Cases, 2016



VIRGINIA SELF-REPRESENTED  
LITIGANT STUDY:

Outcomes of Civil Cases in General District Court,  
Juvenile & Domestic Relations Court, and Circuit Court

**Poverty** is associated with not being represented in court by a lawyer. The Study found that the greater the extent of poverty in a locality, the less likely it is that parties will have an attorney.

# No Attorney for Low-income Americans?

- Low-income Americans can't afford to hire an attorney, even for serious civil legal problems that threaten ruinous results.
- This is a common situation for lower income renters in Virginia especially, even as they are threatened with eviction and possible homelessness.

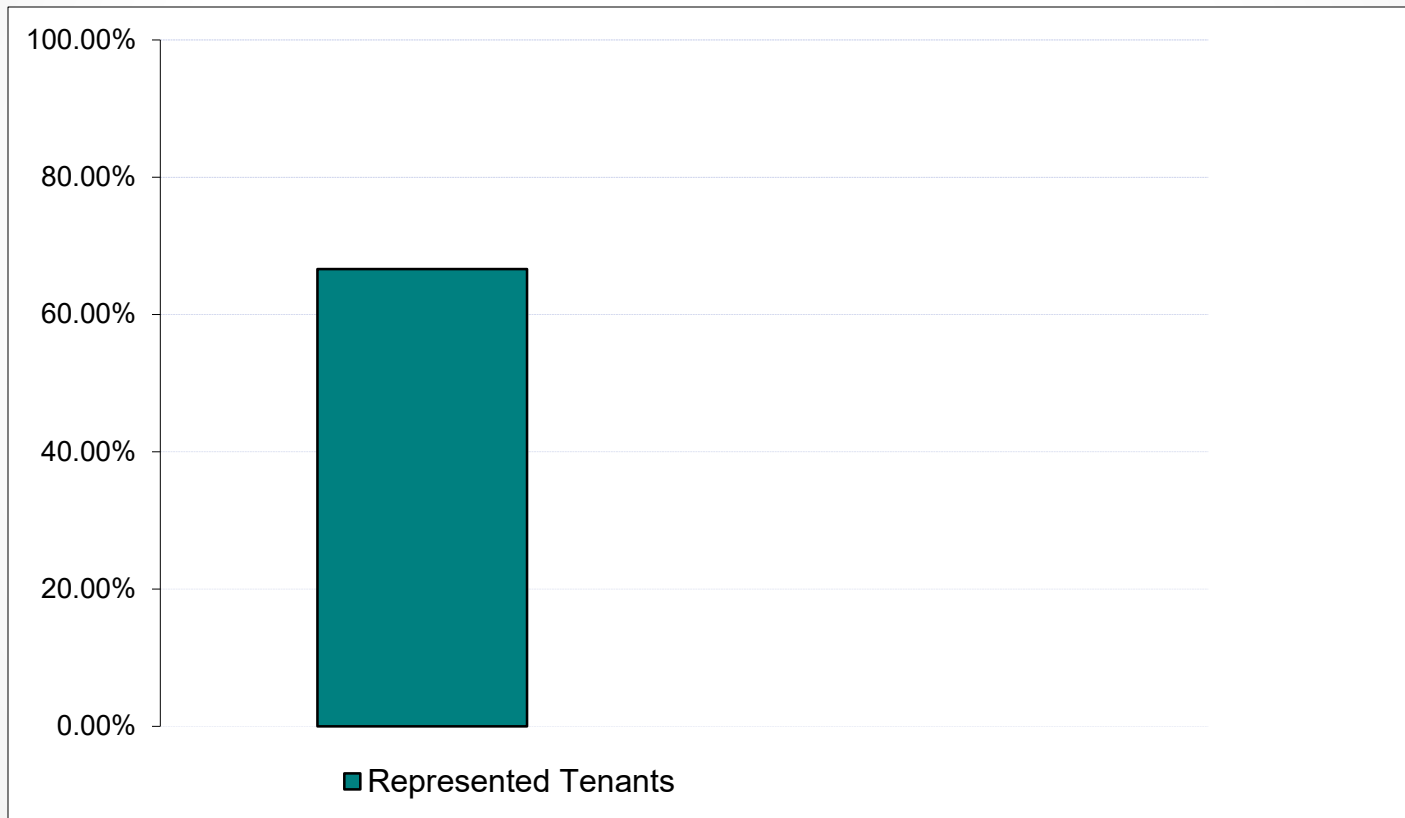


# Unequal Justice Under Law?

- When one party can't afford the services of an attorney, the system no longer functions properly.
- The normal level-playing field is tilted, despite the best efforts of the court.
- The Judge can't be the *pro se* litigant's counsel.
- What is the result?

# Correlation Between Representation and Outcomes in Eviction Cases

Percentage of Tenants Retaining Possession of their Homes in Eviction Cases



Source: *The Importance of Representation in Eviction Cases and Homelessness Prevention*, Boston Bar Association Task Force on the Civil Right to Counsel, March 2012.

# Correlation Between Representation and Outcomes in Eviction Cases

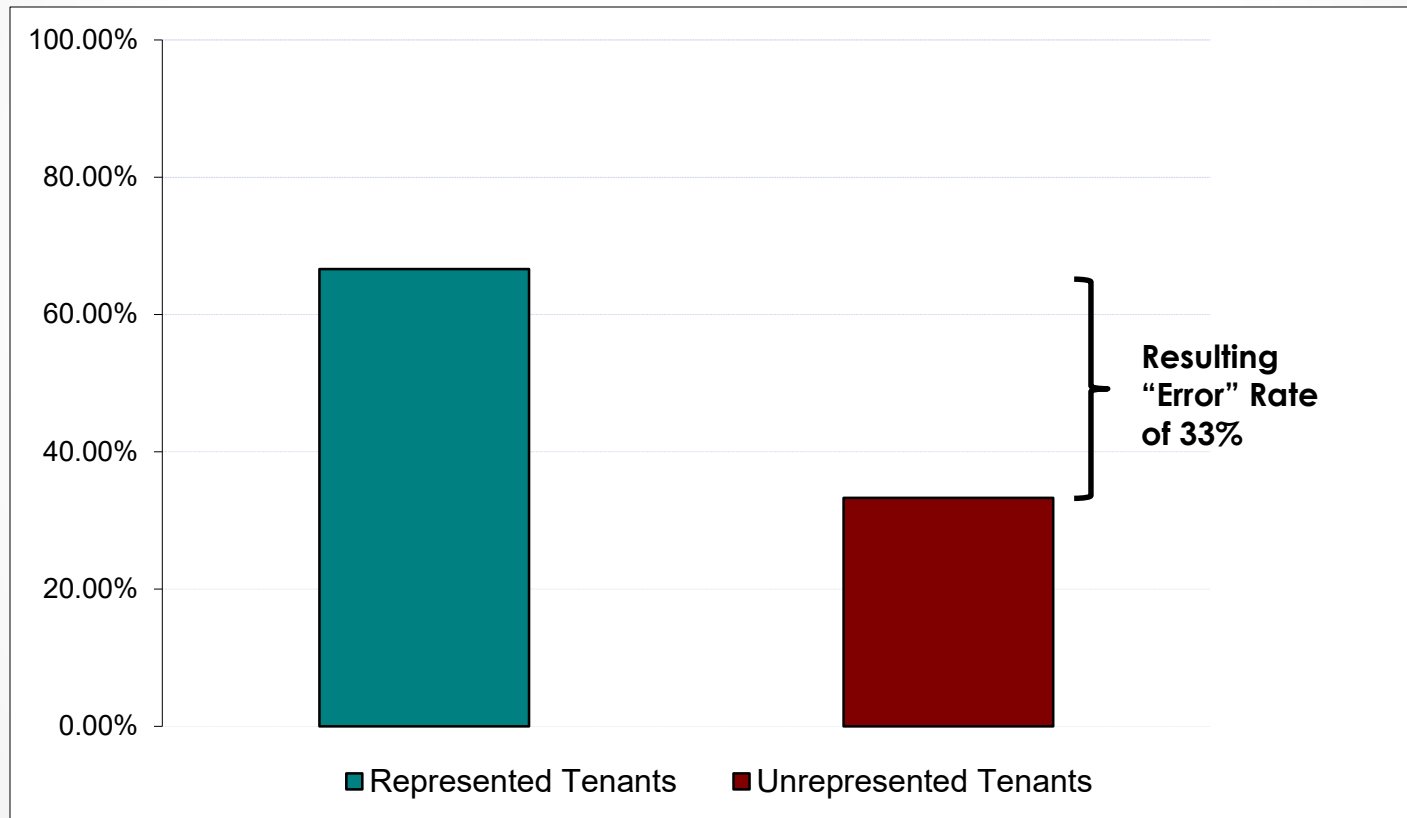
Percentage of Tenants Retaining Possession of their Homes in Eviction Cases



Source: *The Importance of Representation in Eviction Cases and Homelessness Prevention*, Boston Bar Association Task Force on the Civil Right to Counsel, March 2012.

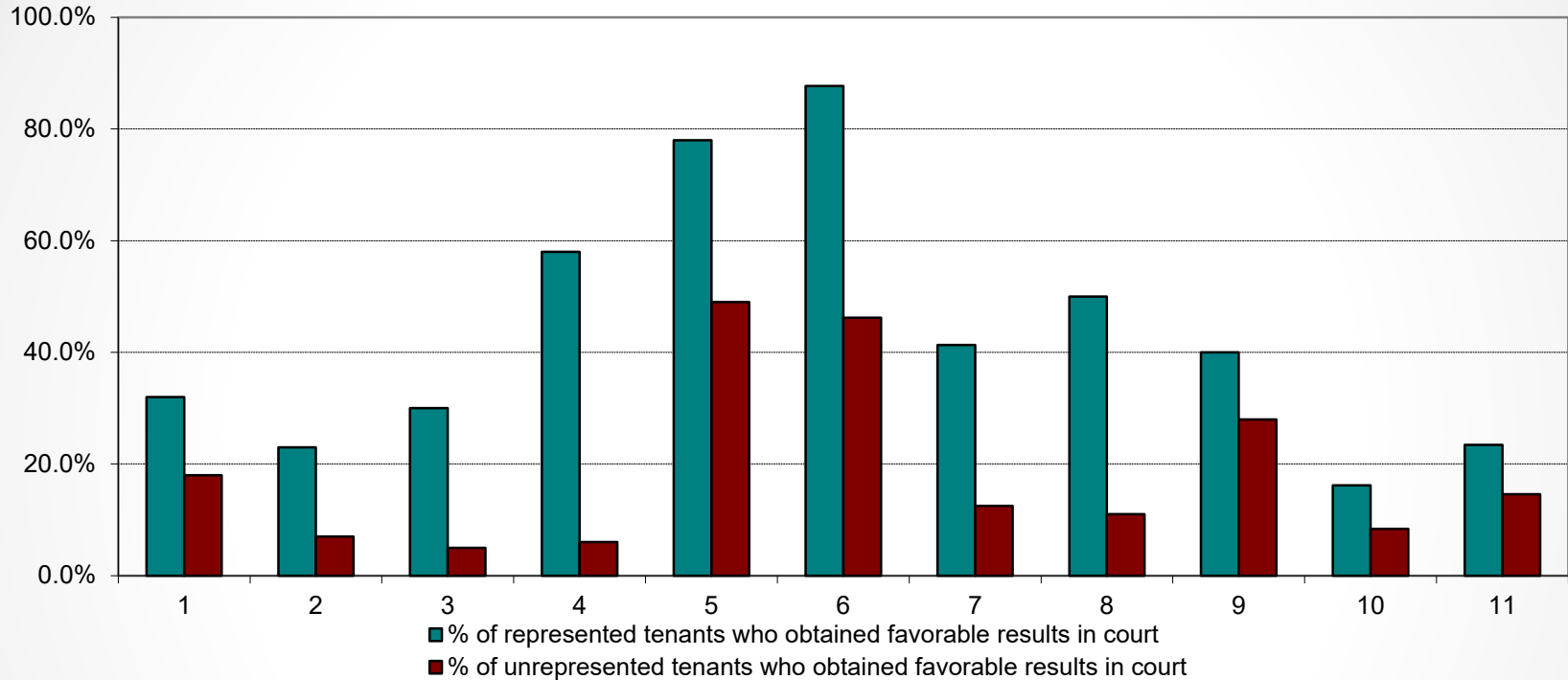
# Correlation Between Representation and Outcomes in Eviction Cases

Percentage of Tenants Retaining Possession of their Homes in Eviction Cases



Source: *The Importance of Representation in Eviction Cases and Homelessness Prevention*, Boston Bar Association Task Force on the Civil Right to Counsel, March 2012.

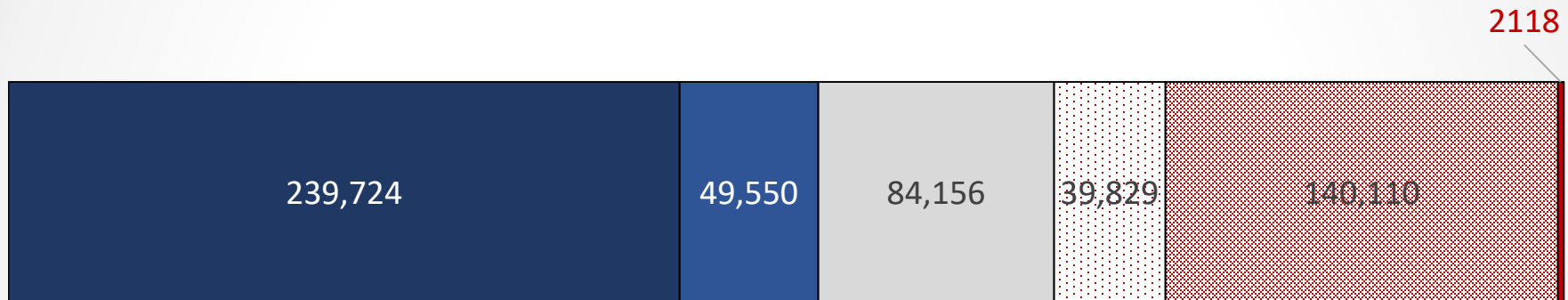
# Correlation Between Representation and Outcomes for Tenants in Landlord -Tenant Cases



Study #1: Court Study Group of the Junior League of Brooklyn, *Report on a Study of the Brooklyn Landlord and Tenant Court* 21 (1973).  
 Study #2: Steven Gunn, Note, *Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?*, 13 YALE L. & POL'Y REV. 385, 411 (1995). Study #3: Chadha, Lisa Parsons. 1996. *Time to Move: The Denial of Tenants' Rights in Chicago Eviction Court*, Chicago: Lawyers Committee for Better Housing, Inc.  
 Study #4: Rebecca Hall, *Eviction Prevention as Homelessness Prevention: The Need for Access to Legal Representation for Low-Income Tenants* (1991).  
 Study #5: Seron, Carroll, Greg Van Ryzin, Martin Frankel, and Jean Kovath. 2001. *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*. Law and Society Review 35(2): 419-34.  
 Study #6: Anthony J. Fusco, Jr. et al., *Chicago's Eviction Court: A Tenant's Court of No Resort*, 17 URB. L. ANN. 93, 114-16 (1979).  
 Study #7: Boston Bar Ass'n Task Force on Unrepresented Litigants, *Report on Pro Se Litigation*, 17 (1998), available at <http://www.bostonbar.org/prs/reports/>  
 Study #8: Mass. Law Reform Inst., *Summary Process Survey*, 14 (2005)  
 Study #9: LSC FY2018 Budget Request, reporting Utah courts study from 2015. Data for Utah District Courts, Calendar Year 2015, provided by Utah Administrative Office of the Courts.  
 Study #10: LSC FY2018 Budget Request, reporting Philadelphia courts data for 2006-2015. Information based on a Philadelphia Legal Assistance analysis of Philadelphia Municipal Court data accessed at <https://fdclaims.phila.gov/pmhuni/login.do>.  
 Study #11: 2017 Seattle Unlawful Detainers, *Losing Home, the Human Cost of Eviction in Seattle*, Seattle Women's Commission and the Housing Justice Project of the King Co. Bar Association.

# Case Outcomes in Virginia's General District Courts

## All Civil Cases, 2016



■ Default Judgment for Plaintiff

■ Judgment for Plaintiff

■ Non-dispositional ("Not found," etc.)

■ Non-Suit

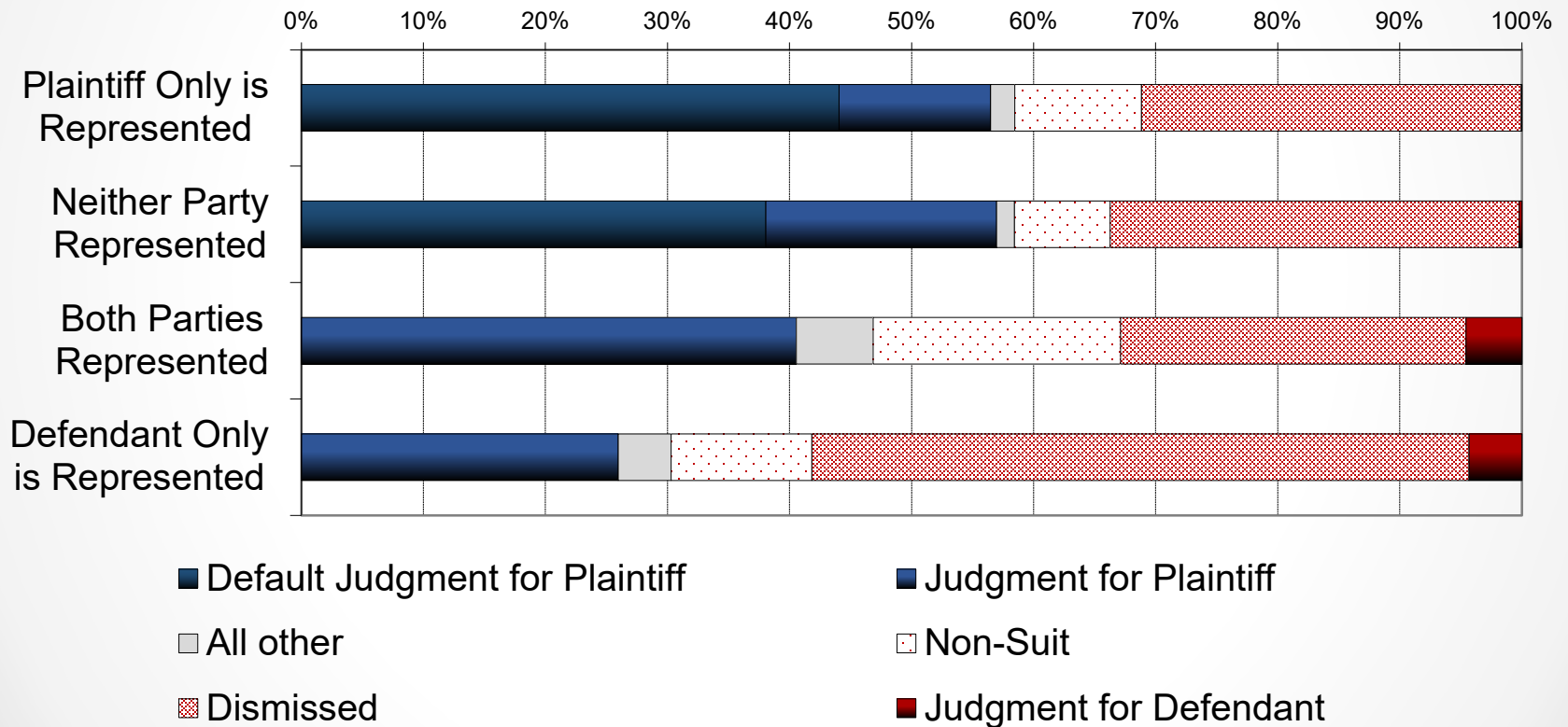
■ Dismissed

■ Judgment for Defendant

Source: *The Virginia Self-Represented Litigant Study*, National Center for State Courts, 2017, see <http://brls.org/the-virginia-self-represented-litigant-study/>.

# Case Outcomes in General District Courts

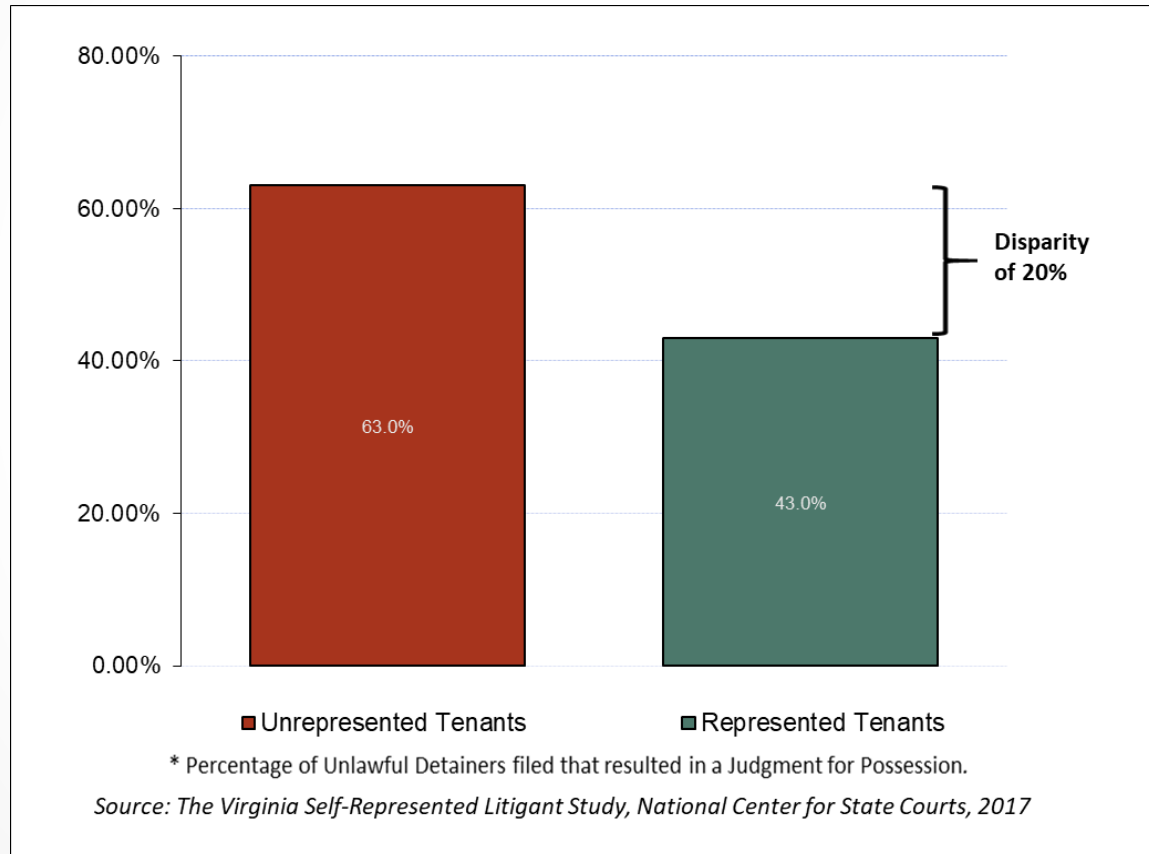
## Unlawful Detainers, 2016, by Representation Status



Source: *The Virginia Self-Represented Litigant Study*, National Center for State Courts, 2017, see <http://brls.org/the-virginia-self-represented-litigant-study/>.

# Impact of Representation on Evictions in Virginia's General District Courts

For 12-month period ending March 31, 2016





# New Data on Evictions in Virginia

In December 2024, the Legal Services Corporation (LSC) released a new study of evictions in Virginia, based on Virginia courts' data for the previous five years.

## **Key findings:**

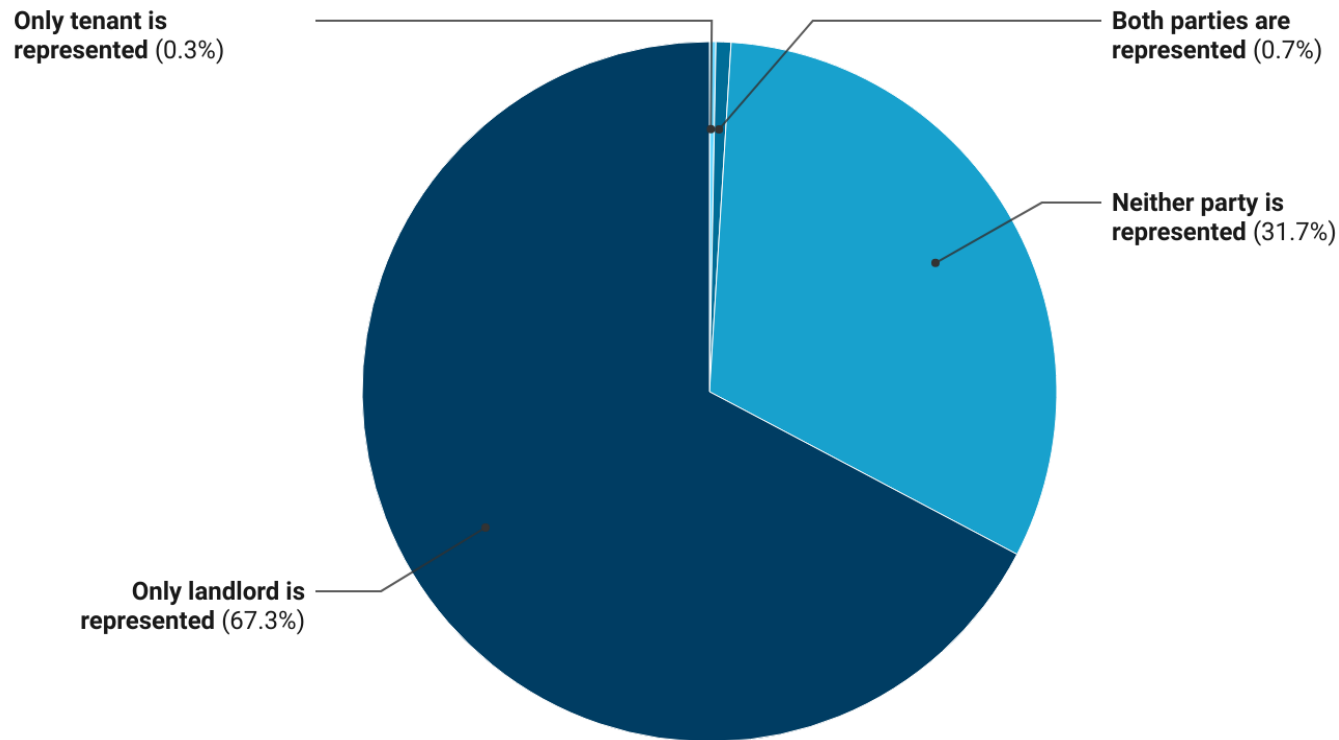
### **#1 Evictions most often involve a corporate entity landlord**

<b>Legal Parties in Debt Cases</b>	<b>Percent (N)</b>
Individual Landlord vs. Individual Tenant	13.7% (92,661)
Entity Landlord vs. Entity Tenant	0.7% (5,185)
Entity Landlord vs. Individual Tenant	85.5% (577,662)
Individual Landlord vs. Entity Tenant	0.1% (439)

*N= 675,947*

# New Data on Evictions in Virginia

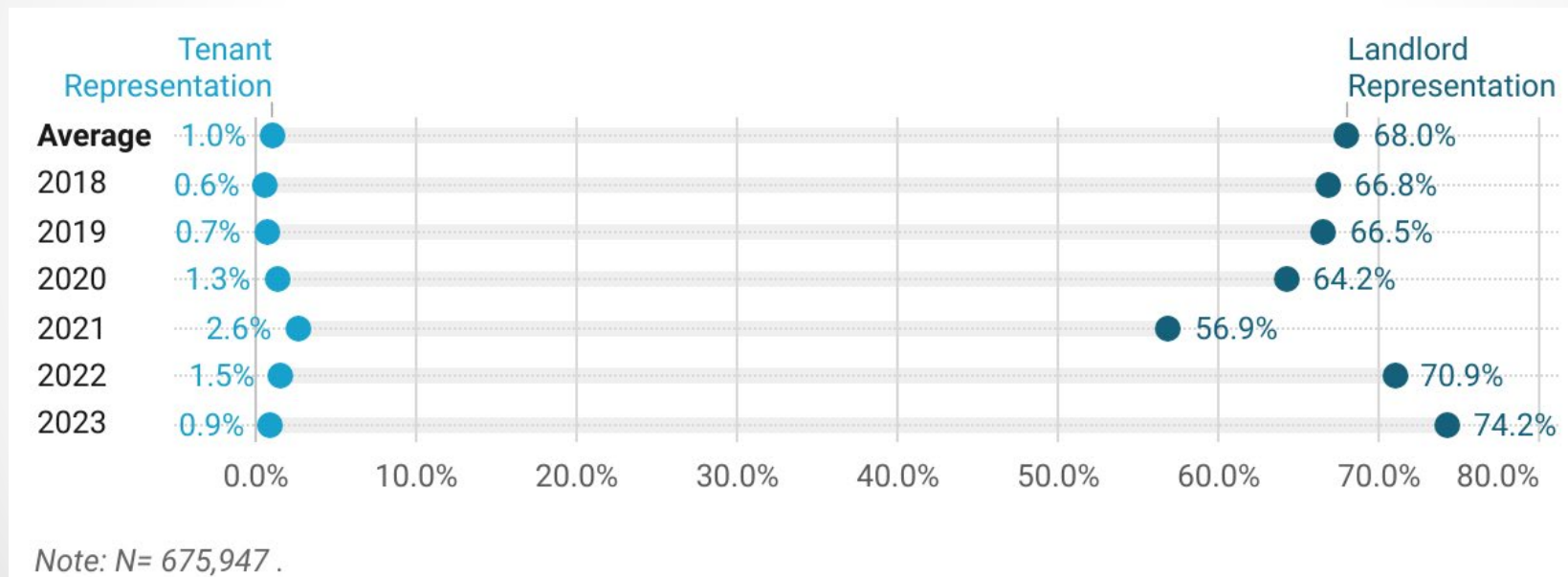
## #2 Tenants rarely have representation in Virginia eviction cases.



N= 675,947

# New Data on Evictions in Virginia

## #3 Tenants are represented in only one percent of Virginia eviction cases.



# New Data on Evictions in Virginia

**#4** Represented tenants were *seven times* more likely to win a judgment in their favor. Legal representation greatly improves the chances of a judgment for the tenant.

**#5** Legal aid attorneys win eviction cases more often than private attorneys. When tenants had legal aid representation, they were almost twice as likely to receive a judgment in their favor compared to tenants represented by other attorneys.

# The Unrepresented Litigant's case: a total loser... or a diamond in the rough?



# Implicit bias against unrepresented litigants?



# The Moral: Lawyers Hold the Keys to the Courthouse, and without a lawyer....

These studies confirm what common sense tells us: you need a lawyer in order to effectively navigate our court system, and if you're poor and can't afford a lawyer, you're effectively locked out of our system of civil justice.

Despite the best intentions of any Judge, it's impossible to have a fair trial on a tilted playing field, when one side lacks representation.

# The Bias against Tenants became Systemically Ingrained in our Court System

What happens in our court system when only one side is represented, and the other is not, perpetuated over the decades?

- How it's supposed to work – a level playing field.
- What happens when it does not?  
(The law as a misshapen plant.)



# Local Examples of Systemic Ingrained Implicit Bias

In my first years as a legal aid lawyer in Staunton, Augusta County, and Waynesboro, I ran into a LOT of implicit bias against low-income tenants that had become ingrained into court procedures and policies. Here are a few of my favorite war stories from the time:

- What law is **THAT**? In Augusta County
- Staunton Levying Practices
- Padlocked Apartments in Waynesboro

# The Impact of this Disparity?

- Thousands of cases heard every year in Virginia with the potential for an unjust outcome, depriving the poor litigant of rights, money, and housing.
- Institutional bias develops over the years – the law becomes deformed.
- Individuals and families are ground into poverty, and their legal problems create almost insurmountable barriers from escaping it.
- Lack of access to legal services results in generational loss of wealth.
- A disrespect for the rule of law because of its unfair impact.

# An Alternative View of America's Civil Justice System

“Nothing rankles more in the human heart than the feeling of injustice. It produces a sense of helplessness, then bitterness. It is brooded over. It leads directly to contempt for law, disloyalty to the government, and plants the seeds of anarchy. The conviction grows that law is not justice and challenges the belief that justice is best secured when administered according to law. The poor come to think of American justice as containing only laws that punish and never laws that help. They are against the law because they consider the law against them.”

- Reginald Heber Smith,  
*Justice and the Poor*, 1919

# It shouldn't be controversial, or unusual, for a low-income tenant to have a lawyer who asserts defenses, right?

- It WAS, 45 years ago.
- Many courts and judges were openly hostile to legal aid lawyers representing tenants and other defendants.
- We were seen as troublemakers and agitators – even though we were simply playing the same role for our clients as other lawyers.
- Over the decades, that perception gradually faded away, and now our legal aid attorneys are respected and welcome in the courtroom as an essential part of our civil justice system.
- Judges now invariably report that our legal aid lawyers are doing excellent work when they appear before them.

# Virginia's Landlord-Tenant Laws' Historic Bias

Virginia's residential landlord-tenant statutes have historically favored landlords over tenants.

- They had dealt almost exclusively with the rights of landlords to evict tenants and collect rents and largely ignored the rights of their tenants.
- Why? Members of the General Assembly were very frequently landlords and never tenants.
- Who can afford to hire lobbyists to influence the passage of legislation? Large Landlords and property owner associations could, but certainly not tenants.

# Gradual Improvements

- In 1972, the National Conference of Commissioners on Uniform State Laws published **Uniform Residential Landlord & Tenant Act**, designed to modernize and make these laws more even-handed between landlords and tenants.
- In 1974, the Virginia General Assembly passed a significantly watered down version of the Act, while exempting single family residences where the owner owned 10 or fewer such homes.
- This created a dichotomy between the “old law” and the “new law”, the case’s outcome could often depend on which law it fell under. Some local judges were hostile to applying the “new law”.
- That dichotomy was gradually closed, and now there is a single set of laws for (almost) all tenants.
- In the last decade, there have been significant protections added for renters in the law. There are now organizations lobbying for tenants’ rights, and legislators who are receptive to providing them.

# There's Still Room for Improvement

- A tenant being evicted for non-payment of rent cannot appeal the General District Court decision without paying an appeal bond equal to the amount allegedly owed – no matter if the judge had made a terrible decision in setting that amount.
- A law requiring a 14- day notice to pay or quit was allowed to expire and has not yet been re-enacted. We've reverted to a 5 day pay or quit notice requirement. Restoring the 14-day notice would allow tenants a better chance to catch up the rent before being threatened with court action.
- Addressing these two issues would go a long way toward providing fairness and increasing housing stability in Virginia.

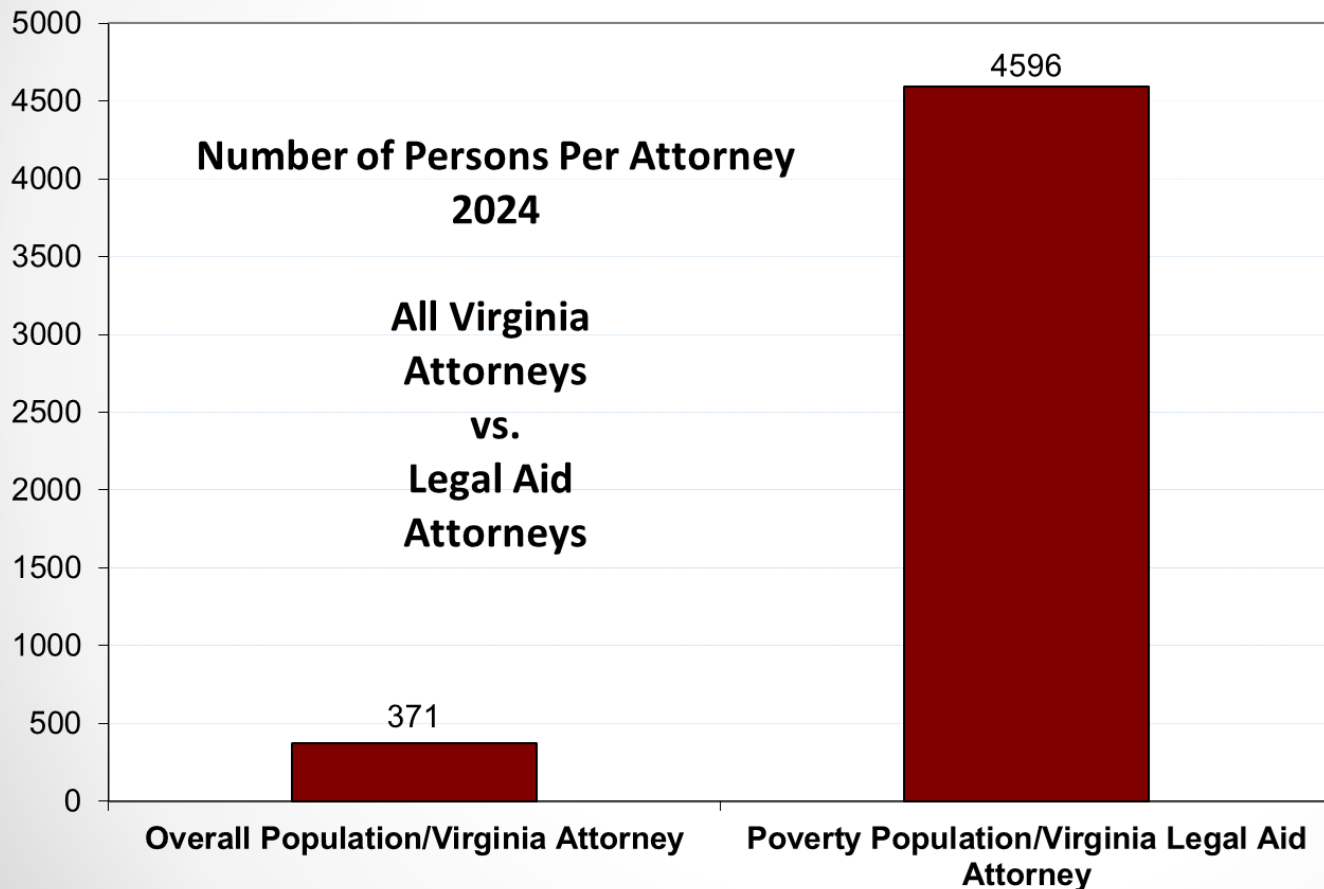
**But we have Legal Aid.**



**Why is there a problem?**



# Why can't Legal Aid help everyone who qualifies for their assistance?



Sources:  
Number of active Virginia Lawyers practicing within the state (23,474), VSB Membership Dept, 8/23/2024.

Number of Virginia Legal Aid Attorneys (201), LSCV, May 2024

Virginia Population figures (overall population (8,715,698) and poverty population (923,865), US Census website, 2023 estimates.

In the past year, **71%** of low-income households **experienced at least one civil legal problem**, including problems with domestic violence, veterans' benefits, disability access, housing conditions, and health care.

**86%** of the civil legal problems reported by low-income Americans in the past year **received inadequate or no legal help.**

# What does it matter?

It involves the most fundamental issues of any society and the most basic of human needs.

- It is about families and family stability. It's about child custody and child support, adoptions and guardianship.
- It is about personal safety, protection against abuse and violence.
- It is about the roof over your head, shelter, protection from evictions and foreclosures.
- It is about health and food and subsistence.

# What does it matter?

- It is about more than just corporal needs.
- It's about respecting human dignity.
- It's about asserting and protecting legal rights for people who can't afford to pay for assistance.

## ***Equal access to justice...***

- Nourishes spirits and souls.
- It gives people faith that our nation's solemn pledge of justice for all is alive and real and not some cruel illusion.
- It gives people hope that they can get a fair shake in our justice system.

# What does this all mean?

If “Justice for All” is going to be more than an empty phrase at the end of the Pledge of Allegiance, we need to recognize that our system of civil justice is broken, and that it is critically important for the health of our democracy that we fix it .

# Doing God's Work

"Speak up for those who cannot speak for themselves,  
for the rights of all who are destitute.  
Speak up and judge fairly;  
defend the rights of the poor and needy."

*-Book of Proverbs, 31:8-9*

# Doing God's Work

*“The righteous care about justice for the poor, but the wicked have no such concern.”*

*- Proverbs 29:7*