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Monopolies Inflict Great Harm on Poor Americans

James A. Schmitz, Jr.
Federal Reserve Bank of Minneapolis

ABSTRACT

Today, monopolies inflict great harm on poor Americans. One particularly pernicious way they harm them is by sabotaging low-cost products that are substitutes for the monopoly products. I'll argue that the U.S. housing crisis, legal crisis, and oral health crisis facing the poor are, in large part, the result of monopolies destroying low-cost alternatives in these industries that the poor would purchase. These results would not surprise those studying monopolies in the first half of the 20th century. During this period extensive evidence was developed showing monopolies engaging in these same activities and many others that harmed the poor. Models of monopoly were constructed by giants in economics and law, such as Henry Simons and Thurman Arnold, to explain these impacts of monopoly. These models are of *sabotaging monopolies*. Unfortunately, in the 1950s, the economics profession turned its back on this evidence, these models and these giants. It embraced the Cournot model of monopoly, that found in textbooks today. In this model the monopolist chooses its price, nothing more. Gone are the decisions on whether to sabotage substitutes or to employ any of the other weapons at the disposal of sabotaging monopolies. I'll call this Cournot monopoly the *toothless monopoly*. Using this model, the economics profession has concluded that the costs of monopoly are small. But the toothless-monopoly model is ill-equipped to study the "costs of monopoly." By relying on it, the economics profession has made major errors in its study of monopoly.

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*The views expressed herein are those of the author and not necessarily those of the Federal Reserve Bank of Minneapolis or the Federal Reserve System.

Monopolies "possess tremendous power for exploiting the community at large and even for sabotaging the system."

Henry Simons[1]
A Positive Program for Laissez Faire, 1934

Monopolies "consolidate their power by destroying existing independent enterprise."

Thurman Arnold[2]
Labor Against Itself, 1943

Monopolies "enter into politics using money and economic coercion to maintain themselves in power, making alliances with other powerful groups against the interests of consumers and independent producers. In short, they will become a sort of independent state within a state, making treaties and alliances, expanding their power by waging industrial war, dealing on equal terms with the executive and legislative branches of the government and defying governmental authority if necessary with the self-righteousness of an independent sovereign."

Thurman Arnold
Labor Against Itself, 1943

[1]Henry Simons was a member of the Department of Economics at the University of Chicago in the 1930s. Simons, along with Frank Knight and Jacob Viner, were widely regarded as the leaders of that great department.

[2]Thurman Arnold was a giant of the legal profession who was appointed by FDR to be Assistant Attorney General for Antitrust in 1938, serving from 1938 to 1943.

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Table of Contents (Essays)

1. Summary of Research Showing Monopolies Inflict Great Harm
2. In the Beginning: Giants in Economics and Law Develop Models of *Sabotaging Monopolies*
3. Evidence that Sabotaging Monopolies Inflict Great Harm: First Half of the 20th Century
4. Triumph of Introspection Over Evidence: In 1950s, Economists Embrace the Cournot Model of Monopoly, the *Toothless Monopoly*
5. Cournot Model Ill-Equipped to Study Costs of Monopoly
6. Forty Years Hence, in 1990s, New Research on Sabotaging Monopolies
7. Most Recent Research Showing Sabotaging Monopolies Inflict Great Harm on Poor Americans
8. Monopolies Inflict Great Harm Throughout Economy
9. Significant Victories Against Monopolies
10. Cost of Monopoly: Summary

Note to Reader

This document is the first essay in a series of essays I am writing on the harm caused by monopolies. The list of essays is given on the previous page. I call them essays because lying behind many of them is a significant amount of ongoing research that is being written up as research papers. The essays are like summaries of ongoing research.

This first essay, "Summary of Research Showing Monopolies Inflict Great Harm on Poor Americans," is a summary of the essays 2 through 10. The first essay, then, is a summary of summaries.

As materials related to these essays are completed, I will post them on my webpage.[1] I will post both individual essays and completed research papers. When I or coauthors present seminars on these papers, I will post the slides from the presentation. There are two sets of slides available now: "How HUD and NAHB Created the U.S. Housing Crisis," joint with Arilton Teixeira and Mark Wright, and "How the U.S. Dental Monopoly Created the U.S. Oral-Health Crisis," joint with Shi Qi.

[1] https://sites.google.com/site/jamesschmitzjr/

1. Summary of Research Showing Monopolies Inflict Great Harm

Today, monopolies inflict great harm on poor Americans. This conclusion comes from the accumulation of studies examining the behavior of monopolies in the United States across a wide range of industries. Summaries of some of these studies can be found in Schmitz (2012, 2016). It also comes from new research discussed in these essays showing how monopolies harm poor Americans in another large collection of industries. The purpose of these essays is to introduce the reader to the wide-ranging and extensive evidence showing monopolies inflict great harm on poor Americans.

One particularly pernicious way monopolies harm poor Americans is by sabotaging low-cost substitutes for the monopoly products, those that would have been purchased by the poor. Monopolies are engaged in *killing low-cost substitutes throughout the economy.* They are doing so in residential construction, oral health, legal services, financial markets (e.g., credit cards), repair services, hearing aids, bail bonds, real estate brokerage, foster care services, pharmaceuticals and many more. When monopolies destroy these substitutes, they often create crises in the lives of low-income Americans.

Though the monopolies are in very disparate industries, all the monopolies, those in the prior studies described in Schmitz (2012, 2016) and those presented below, behave in very similar ways. On the basis of this evidence, we have developed a simple abstraction—a model—that "explains" the behavior of monopolies in these vastly different industries (see Holmes and Schmitz (1995, 2001a, 2010) and Schmitz (2012, 2016) for discussions of the model).

Here is a description of the model, in particular, the assumptions about what monopolies

"are," and what they "do." Monopolies are concentrations of power formed by groups of individuals to enrich themselves. They make significant investments of time and other resources to help build the monopoly. In the words of Wendell Berge (1947), who served as Assistant Attorney General for Antitrust for Franklin Delano Roosevelt (FDR) from 1943-47, monopolies employ "weapons" against their rivals. They employ illegal means. But since many of the monopolies are involved in determining what is legal and what is not, breaking the law cannot be the only criteria used to condemn the actions of monopolies.

In the process of enriching themselves, monopolies destroy what stands in their way. Monopolies destroy institutions. As mentioned one type of institution they destroy is markets, when they sabotage the products of those businesses that offer substitutes to their monopoly product. These are typically the low cost alternatives to the monopoly product, those that would be purchased by the poor. The consequences for the poor are devastating. I'll argue that there are so many monopolies destroying low cost substitutes, and substitutes that are of such importance, that it is fair to say monopolies are keeping many poor people poor.

Not only do monopolies sabotage or destroy substitute products, they also *lower productivity and productivity growth in the monopolized industry.* We showed this in prior studies, mostly in transportation industries (Holmes and Schmitz (2001b)) and manufacturing industries. In manufacturing, we showed this in iron ore manufacturing (Galdon-Sanchez and Schmitz (2002) and Schmitz (2005), in cement (xxxxx), and in sugar manufacturing (xxxxxxx). We find that monopolies reduce productivity and its growth in this new collection of industries, those in services, financial markets and throughout the economy. That monopolies reduce productivity and its growth is a general phenomena.

Let me explain how monopolies reduce productivity and its growth in the monopolized industry. Members of sabotaging-monopolies can often agree to contribute effort and resources to destroy low-cost substitutes. But because members of the monopoly act in their own self interest, this blocking of substitutes, since initially it can lead to very large industry profits, increases the incentives for members to seek a greater share of the monopoly's profits. This often leads to great conflict and competition among members of the monopoly.[1]

This internal competition can lead to the collapse of the monopoly. To avoid this outcome, monopolies strive to limit competition. Monopolies often put restrictions on the actions members can take.[2] These restrictions oftentimes have serious negative consequences for the productivity of the monopoly.

Note that as productivity is destroyed, profits may be decimated as well. Sometimes profits essentially are eliminated. Therefore, we often have situations where a sabotaging monopoly has created great harm by killing substitutes, yet the profits earned by the monopoly are very small. This issue of monopoly reducing productivity is, of course, very important, but I mostly delay discussion of the issue until later in this summary essay.

Briefly, then, this is what monopolies "are" and what they "do."

When Thomas Holmes and myself (1995, 2001a) were developing our ideas about monopoly, we thought the ideas and models were new. As the above quotes from Thurman Arnold and Henry Simons make clear, and as alluded to in the abstract, this idea of sabotaging monopolies is not new. Unfortunately, we only recently learned about this. Given this

[1] One way to say this is: When monopolies block competition from substitutes, from *outsiders*, it emerges *inside* the monopoly.

[2] in unions, xxx. in professional associations, xxx.

prior work, we use the term *sabotaging monopolies* (see Henry Simons' quote) or *destroying monopolies* (see Thurman Arnold's quote) to identify the monopolies we are studying. We call the model we developed the *Arnold-Simons* model of monopoly.

Let me first give a brief overview of the material in the essays. I'll then provide a more in-depth review. Again, the purpose of the essays is to show that, today, monopolies inflict great harm on poor Americans. But in addition to providing evidence on how monopolies are doing this today, I discuss evidence on the history of some of these monopolies, as well as about how economists have thought about monopolies. Knowing this history, as I'll argue below, adds substantial weight to the claim that monopolies inflict great harm today.

This history, about monopolies and how economists have viewed them, is discussed in Essays 2 through 6. The term "monopoly" had a very broad meaning, for economists and for the public in general, in the first half of the 20th century. In his study of monopoly and the New Deal, Hawley (1966) discussed the various uses of the terms "monopoly" and "the monopoly problem" during this period.[3] The monopoly problem was seen as both an economic problem and a political problem.

Here is Hawley, on the economic problems of monopoly: "Some have used it [the term monopoly problem] to describe the classic evils of monopoly, the alleged tendency, in other words, of market controls [by monopoly] to result in economic inefficiency, misallocation of resources, technical stagnation, and the exploitation of unorganized groups." But Hawley argues there was even greater concern about the political problems posed by monopoly: "For the most part, however, those who have used the term [monopoly problem] have been

[3]By "the monopoly problem" I take Hawley to roughly mean the costs of monopoly.

concerned with questions of power, with the development, in particular, of private concentrations of economic power and with the implications of this development for a democratic society." (pp. xx)

Essay 2 discusses some of the giants in economics and law that were deeply concerned about monopoly, both its economic impacts and political impacts. Henry Simons and Jacob Viner, both in the economics department at the University of Chicago, and along with Frank Knight, widely considered the leaders of that great department in the 1930s, shared these concerns.

Here is Simons: "Thus, *the great enemy of the democracy is monopoly, in all its forms:* gigantic corporations, trade associations and other agencies for price control, trade-unions—or, in general, organization and concentration of power within functional classes" (emphasis in original). (Simons 1934, 43-44). Simons continues "Effectively organized functional groups [monopolies] possess tremendous power for exploiting the community at large and even for sabotaging the system."

Viner (1940) also recognized the widespread reach and threat of monopolies: (give his list of monopolies, ppxx). Twenty years later, Viner's (1960) views had not changed: ".... given the prevalence or the danger of substantial intrusion of monopoly into the market, the logic of the laissez faire defense of the market against state-intervention collapses and there is called for instead, by its very logic, state-suppression or state-regulation of monopoly practices, which one may wish to call, as Henry Simons called it, an instance of "positive laissez faire" or, as I prefer, as an instance of deliberate departure from laissez faire." (pp. xx)[4]

Essay 2 also discusses some of the models developed by giants in economics and law. Here

[4]Discuss Frank Knight's view of Bertrand Russell's book, *Power*.

is a model sketched by Thurman Arnold (1943): "Whenever a small group of individuals, uncurbed by legal authority, is permitted to dominate any important part of the production or distribution of the necessities of life, these results will inevitably follow:

(1) They seek to consolidate their power by destroying existing independent enterprise;

(2) They prevent new enterprise from entering the field;

(3) They restrict production and raise prices;

(4) They stop the introduction of new and more efficient methods in industry in order to maintain obsolete ways of production in the continuance of which they have a vested interest;

(5) They set up an arbitrary and despotic control over the industry and exploit members of their own group;

(6) They enter into politics using money and economic coercion to maintain themselves in power, making alliances with other powerful groups against the interests of consumers and independent producers. In short, they will become a sort of independent state within a state,making treaties and alliances,expanding their power by waging industrial war, dealing on equal terms with the executive and legislative branches of the government and defying governmental authority if necessary with the self-righteousness of an independent sovereign."

It is these type of ingredients that I label the Arnold-Simons model of monopoly. We see many of the costs of monopoly I've mentioned, under the numerical tags 1-2 and then 4-6 (give a brief discussion). We also see a new cost, under tag 3, that monopolists restrict production. This cost is sometimes referred to as a *misallocation of resources*. When a

monopolist raises its price, and its quantity falls, then too few resources are devoted to producing the monopolists's goods. There is a *misallocation of resources*. Note that Hawley mentioned misallocation of resources as one of the economic costs of monopoly as well.

Where did these ingredients for a model, under tags 1-6, come from? Why were they chosen? Not from introspection. From evidence. From Arnold's pursuing monopolies. Essay 3 covers this.

Essay 4 discusses how economist's views of monopoly took a dramatic turn in the 1950s. The profession began to embrace the Cournot model. (well known to many readers. in textbook.)

What does the Cournot monopolist do? In the model, a monopoly consists of a single entrepreneur having the sole right to sell a good. The entrepreneur decides what price to charge for the good. It is assumed that the entrepreneur, the monopolist, produces efficiently.[5]

Harberger (1954) asked: What is the cost of monopoly? His answer was that the costs of monopoly were very small, and it quickly became the consensus.

But Harberger mischaracterized his calculation. He was not estimating the cost of monopoly. He was estimating the cost resulting from *misallocation*.

Repeating this is worthwhile: Harberger took his calculation to be an estimate of *all the costs of monopoly*, not just one, misallocation. He ignored that they kill substitutes, lower

[5]The same is true of the Cournot model of duopoly and oligopoly, where the discussion on the misallocation costs extends to these cases in the obvious way.

productivity in the industry and more. The profession never corrected Harberger's mistake. For the profession, the cost of monopoly came to mean the costs associated with the misallocation of resources. That's why the profession has made fundamental errors in the study of monopoly and its costs.[6]

Essays 7 through 10 turn to discuss the great harm being inflicted on poor Americans today. In Essay 7, I discuss some of my research with colleagues showing monopolies have blocked or destroyed low-cost substitutes in residential construction, oral health services, legal services, and hearing aids. These actions by monopolies have created crises for many poor Americans.

In legal services, lawyers have blocked any individual who is not a member of the bar from giving legal advice. Hence, the costs of legal services are beyond the reach of low-income Americans and many in the middle class as well.

In oral health services, the dental monopoly has blocked the practice of low-cost alternatives to dentists. Groups of low-income Americans have rates of untreated caries at four times the rate of higher income. Military recruits have horrible dental health.xxx

Next, consider the residential construction industry. The attack by monopolies in this industry on low cost substitutes is hard to believe. At the end of the 1960s, more than 50% of single family homes were being made in factories (as opposed to on-site). But monopolies in the stick-built industry, xxxx

In Essay 8, I discuss work by others documenting the extent of monopoly harm on the poor. I will begin with industries where monopolies harm *large numbers* of low-income individuals:

[6]sec 5, ill equipped.; sec 6, hs model. no accident, not luck.not just io that needs to reconsider. all fields in economics.

repair, credit cards, and real estate brokerage. Then I will discuss some industries where fewer individuals are harmed, but where the costs to society should be considered just as great. That is because these monopolies attack the most vulnerable in our society. Here I discuss monopolies in the bail industry and the poverty industry.

In the first group consider the independent repair services industry. Some of this industry refurbishes old computer equipment for sale. This is a great service for low-income Americans. But manufacturers of original computer equipment, like Apple, have mounted an aggressive campaign to crush this industry. Apple and Amazon recently reached an agreement where a firm that refurbishes and sells used Apple computers cannot sell through Amazon unless it has 250 million in monthly revenues (Los Angeles Times).

In the second group consider those caught in the current U.S. bail crisis. It is referred to as a crisis since a very large fraction of those in jail have not been convicted and await trial on very low bail amounts, literally hundreds of dollars.

I will report on a study of the bail system in eight upstate NY counties over the period 2010-2014. Of those prisoners held for more than seven days on bail, almost half had bail amounts under $2,500. A prisoner typically must give a bail bondsman 10% of the bond. So, almost half of the prisoners are being held for not having $250 or less.

There are now attempts to reform the bail system. But these are being blocked by monopolies. Trade associations of bail bondsmen are mounting large efforts to crush any reform.

I will also discuss monopolies in the poverty industry. The harm being inflicted on the poor in this industry is almost as unbelievable as in the residential construction industry.

Essays 7 and 8 naturally lead to the question: Who is protecting, or attempting to protect, low-income Americans from these monopolies? U.S. antitrust institutions, by which I mean the FTC and DOJ-Antitrust Division, are not.

There may be many reasons for this. They may not have the jurisdiction. There may be no laws they can use to protect the poor. I've heard such justifications. Unfortunately, there may be another reason: the incentives that have been created at U.S. antitrust institutions favor pursuing cases where large amounts of money can be earned by economists and lawyers. Pursuing cases protecting small independent repair firms, orphaned foster children, or those who cannot pay minimum amounts of bail, will not fill the coffers.

Let me explain. There has been concern about the regulatory capture of U.S. antitrust institutions beginning in at least the 1960s. Posner, Tollison, and others voiced concerns. The industry was shown to be influenced by industry primarily through members of Congress putting pressure on the agency.

But matters have gotten much worse. These problems pointed out by Posner, Tollison and others have significantly worsened over the last 30 or so years. The FTC now has direct dealings with industry, with no Congressional intermediation required. In fact, it has frequent and repeated interactions with a single industry, namely an economic consulting industry. The industry consists of economists at private consulting firms that provide, among other things, advice to corporations that are facing challenges from the FTC. Let me call this the "Antitrust Consulting (from) Economists" industry, and denote it by "ACE." ACE not only interacts repeatedly with the FTC, but also with the DOJ antitrust division.

This direct dealing raises concerns. But matters are much worse, in fact. Over the last several decades, consultants in ACE have held leadership roles at the DOJ. Members of ACE leave their consulting positions, take a leadership position at the DOJ, typically for two years, and then return to consulting. So, ACE members have say in direction of policy.

What are the incentives? They are clear. ACE members have incentives steer the DOJ agenda toward cases that will make money for ACE. Analyzing mergers, where trade-offs must be explored, and where large corporations will spend tremendous money to influence decisions, is a money maker for ACE. Pursuing monopolies that harm the poor are not money makers, as the poor have no money to contribute. This alliance, then, can be added to the lists of monopolies that inflict harm on the poor. Not by what they are doing so much as what they are not doing.[7]

The current state of affairs in U.S. antitrust institutions should give pause to those arguing for stepped up antitrust enforcement. Would increased funding make any difference given the current alliance between ACE and U.S. antitrust institutions? Might it even hurt the fight against monopoly?

While in my view U.S. antitrust institutions are not trying to protect the poor from monopolies, there are groups trying to protect them. That is how I learned about many of the monopolies—from groups trying to publicize and shine light on these activities.

U.S. antitrust institutions, then, are only a part of the totality of monopoly-fighting institutions in the United States. This is an obvious point, but perhaps not celebrated enough.

[7]Economists can claim they are a breed apart. In fact, they should. given current state of incentives, it seems like that would be a welcome statement.

To make this point loudly and clearly, in Essay 9, I present what I see as some of the greatest victories against monopolies. And these victories were won not by U.S. antitrust institutions, but by other monopoly-fighting organizations. One victory is that against organized crime. The other is against monopolies blocking reform of voting rights.

Before next turning to present a more in-depth review of the essays, let me present some of the general lessons we learned about monopolies along the way.

Monopoly Leads to Inequality

Because monopolies kill low-cost substitutes, inflicting significant harm on the poor, they lead to increased inequality.[8] Both Thurman Arnold and Henry Simons strongly argued that monopolies lead to inequality. Arnold opened his book on monopolies, Bottlenecks of Business (2000, [1940]), with a figure depicting the incomes of households in the United States.[9] The figure shows the vast number of households living in extreme poverty. His point was clear: monopolies were responsible for much of this poverty. This is why Arnold's greatest battles against monopoly were directed at monopolies in construction, food manufacturing, and food distribution, monopolies that had the most direct impact on the poor.

In his introduction to Wiprud (1947), Arnold (1947) stated it this way: "The author deals primarily with transportation, but the set of business practices he analyzes is typical of monopoly control over the necessities of life in every industrial field. The same kind of control exercised by private groups in metals, chemicals, drugs, spectacles, housing —indeed,

[8] I have switched from the term poverty to inequality which are, of course, different concepts. I'll discuss this more in the conclusion.

[9] Here, and below, if a book or article is reissued I put the origianl publishing date in brackets, [....].

in every expanding technique of our new industrial age—is responsible for the *picture of want in the midst of plenty* ... " [emphasis added]

Henry Simons (19xx, [1934]) had similar views. "The gains from monopoly organization in general are likely, of course, to accrue predominantly to the strong and to be derived at the expense of the weak." He continues: "Among producers, organization is least expensive and most easily achieved, as well as most effective, within groups whose members are unusually large and prosperous at the outset." (p.49)

Because monopoly leads to increased inequality, and also to lower productivity growth, eliminating these monopolies leads to both less inequality and to greater economic growth. That does not mean there are *no trade-offs*, as the monopolists would be worse off. This is no small point, for this is the reason these monopolies persist and are long-lived.

Monopolies are Long-Lived

Despite a widespread view that monopolies don't survive long, many of the monopolies causing great harm today have been doing so for many decades. One reason for their long-lived "success" is that monopolies, unfortunately, but not surprisingly, are often difficult to detect. They make themselves so.

First, they take many different organizational forms. Monopolies sometimes take the form we expect—gigantic corporations. But monopolies take many other forms. For example, monopolies can be trade association, of small firms or large firms, professional associations, or trade unions.

Monopolies are not only groups in the private sector. *Groups in legislatures* often form concentrations of power in order to help private monopolies — in return for help in retaining their power and future benefits (like lucrative jobs). *Groups in regulatory agencies* often form concentrations of power in order to help private monopolies — again, in return for benefits.

Some monopolies are *informal groupings of individuals*, where it's even difficult to list members.[10] Yet these monopolies are among those causing the greatest harm to the poor. Individuals (or groups) often belong to more than one monopoly at a time.

Second, monopolies use many different weapons to achieve their ends. In the words of Wendell Berge, who served as Assistant Attorney General for Antitrust for Franklin Delano Roosevelt (FDR) from 1943-47: "The weapons of monopoly are as numerous as they are artful and varied. It is for this reason that monopoly conditions have often grown up almost unnoticed by the public until one day it is suddenly realized that an industry is no longer competitive but is governed by an economic oligarchy able to crush all competition" (Berge 1947, 362-3).

Berge's words seem almost unbelievable. But I've seen this phenomenon at work in the residential construction industry (and others). Monopolies have severely damaged the industry making homes in factories for more than 50 years. As I've already mentioned, the public has "not realized that the construction industry is not competitive." Moreover, the hundreds of economists currently studying the housing industry have no idea either. What is even more surprising is that *today's producers of factory homes are unaware of the harm* monopolies

[10] blocking the voting of black americans at polls.

are inflicting on their industry. I'll discuss this case shortly.

The third reason they are difficult to detect is not the work of monopolies. Rather, those trying to detect monopolies employ detection tools that are not up to the task. For example, those attempting to detect monopolies expect them to have large profits. But as already argued, this is often not the case. A monopoly may block competition from the "outside," but be less successful in limiting competition among members. Profits of members may not be great.[11] Economists since the 1930s, such as Henry Simons, have pointed out the futility of using profits as a guide to uncovering monopolies (more on this shortly).

The Weapons of Monopolies: Some Generalizations

While the weapons used by monopolists are artful, numerous and varied, there are some similarities found across monopolies. That is, we can make some abstractions about these weapons.

One weapon is developed from the alliances, alluded to above, the monopolies make with those in state and federal legislatures. From these alliances, the monopolies *promote and help pass laws* that destroy substitutes. These laws simply make low cost alternatives illegal.

One class of these weapons is *tariffs* placed on foreign competition. At least since the early 20th century, economists have recognized that groups, in the process of developing and growing monopolies, have turned to tariffs as a powerful weapon. The phrase "tariffs are the mother of all trusts" dates from these experiences (see, e.g., Holt 1906). Groups not only

[11] Average profits in the industry may differ little from non-monopolized industries. But there may be a small subset of producers in the monopoly that make fabulous profits. They are the reason the monopoly persists.

look to barriers on foreign competitors. They have used many tools to limit the internal trade within the United States as well (see, for example, Taylor, Burtis, and Waugh 1940).

This type of monopoly activity is sometimes called *capture*, as in the private groups capture politicians in legislatures. But the benefits go both ways, and its more accurate, I think, to call them alliances, as Arnold did.

A second weapon is developed from alliances monopolies make with groups in federal and state regulatory agencies. From these alliances, monopolies *design and promulgate regulations* that damage and sabotage low cost substitutes. Again, this is sometimes called capture, though in many cases, alliance is a better term.

A third weapon is for monopolies to press for *subsidies* to be paid to low-income individuals to purchase the *monopoly's good*. After the monopoly sabotages the low cost alternative, many low-income households are not able to afford the monopoly good. At this point, monopolies typically step up as champions of the poor, lobbying governmental and private groups to provide subsidies to the poor so they can purchase the monopoly good. These subsidies increase the demand for the monopoly's product (and further decrease the demand for low-cost alternatives, if they have not already been destroyed).

For the first three cases above, both private and government groups are involved in deploying the weapons that harm the poor. Many other weapons are employed by private groups acting on their own (i.e., government organizations play no role).

Such weapons include *deceit and misinformation* against the producers of low-cost alternatives. Monopolies often argue that low cost alternatives are dangerous (when they are not),

are of poor quality (when often they simply have fewer add-ons and expensive features), and are sold by untrustworthy individuals.

Monopolies Often Directed by Small Cadre at the Top

Monopolies sometimes consist of groups that contain thousands, or tens of thousands, of members. This is the case with trade associations and professional associations, for example. In such cases the actions of the monopoly that harm the poor may be the work of a small percentage of members, the "leaders" of the group. In these monopolies there are, obviously, individuals who have no idea that they "belong" to a monopoly.

Then there are individuals who are aware of the monopoly but abhor the activities of the monopoly, the harm it causes to society. What are the choices of these individuals that abhor the monopoly? The choices are typically very limited. In some industries, though, groups have emerged to challenge the despicable behavior of the monopoly. Audiology is one such industry.

Defining "Competitive Industries" and "Monopolistic Industries"

There has been a recent surge is those seeking to document the extent of monopoly in the United States and how its changed over time. These exercises invariably boil down to presenting statistics on profits, concentration and other such measures. But as we'll argue throughout, these statistics have great limitations. When they were first introduced, by Lerner (1934) and Stigler (1949), they were met with great skepticism by giants in the filed of economics.

There are ways to define a "monopolistic industry." We can say an industry is a "monopolistic industry" if the industry has a monopoly like that described above. If an industry does not have a monopoly like that discussed above, we can call it a competitive industry. Of course, we can distinguish between monopoly industries by comparing the amount of harm inflicted by monopolies in those industries. Going this route is not as easy as pulling data off a xxxx.

Now I'm ready to summarize the material in each essay. I start by discussing some of the material in Essays 7 through 9. I want to show what is happening *today*. At some point I'll "jump" back to discuss the history in Essays 2 through 6, before returning to finishing my discussion of Essays 7 through 9.

Essays 7 through 9: A First Look

I begin my summary of Essays 7 through 9 by discussing monopolies in residential construction, oral health services and legal services. I'll argue, in particular, that the U.S. housing crisis, the U.S. oral health crisis, and the U.S. legal crisis that face the poor are largely the result of monopolies destroying low-cost alternatives that the poor would purchase.

For each industry (residential construction, oral health services, and legal services), the Essays below show: (1) the crisis facing low- and often middle-income Americans; (2) the monopolies that are responsible, in large part, for the crises; (3) the substitutes that have been destroyed; and (4) the weapons used by the monopolies to destroy them.

Residential construction industry.[12]

[12]Much of this material is from Schmitz Teixiera Wright (2018). See slides here.

What monopolies have done in the residential construction sector to crush low cost alternatives, thus greatly harming the poor, is almost beyond belief. So, it will require a significant amount of effort to explain what has happened.

Residential construction industry – The crisis.

Many U.S. households face great difficulties in finding and keeping decent housing. Some experience homelessness. Other households face evictions, so that they must move homes (and schools). Still other families face continual threats of homelessness and evictions. These and other problems facing families have often been called a housing crisis, and rightfully so.[13]

We can look at the crisis through another lens, from the perspective of how well the residential construction industry is performing. One measure of performance is the industry's productivity record. Another measure is the industry's record at adopting new technology. On both counts, for the last several decades, the industry's performance has been dreadful. We call this a crisis at the industry level.

Over the last few decades, the productivity of the residential construction industry has badly lagged nearly all other industries. In Figure 1-A we plot labor productivity in the single family residential construction sector from 1987 through 2016 (from Sveikauskas, et al, 2018, see Figure 3). Looking at Figure 2-A, labor productivity grew roughly 15 percent over the period, an annual rate of growth of less than 0.5 percent.[14] In Figure 1-A we also

[13]Families face other major housing obstacles. For example, because of high housing costs, households cannot pursue better jobs and opportunities in new locations. These obstacles are not of the same order facing homeless families and those undergoing eviction, and while we might not label them as crises, they are serious problems nonetheless.

[14]Sveikauskas, et al report that labor productivity grew at an annual rate of 1.1 percent (e.g., on page 5). They arrive at this number by running a regression of log labor productivity on time and the level of housing

plot BLS labor productivity in durable goods manufacturing. Labor productivity increased roughly 250 percent over the period, an annual compound rate of 3.2 percent. Figure 1-B we plot multi-factor productivity (also known as total factor productivity) for the construction industry and durable goods manufacturing.

Another measure of an industry's performance is the degree to which it adopts new technology. Here the performance is awful as well. The industry employs a technology that has been used for centuries. Homes are built outside, with a highly labor-intensive technology. It also employs a large share of high-skilled workers. It is sometimes called the *stick-built technology* because sticks (two by fours) visually dominate the construction sites.

This dismal technology adoption record has been has been criticized for more than 75 years. A.C. Shire (1937), the chief engineer of the Federal Housing Administration, and engineer of the Housing Division of the Public Works Administration, stated that: "in an age of large-scale financing, power, and mass production, we have the anachronism that the oldest and one of the largest of our industries, concerned with the production of one of the three essentials of life, is highly resistant to progress, follows practices developed in the days of handwork, operates as a large number of picayune businesses, is overloaded with a whole series of overheads and profits, is bogged down by waste and inefficiency, is unable to benefit by advancing productive techniques in other fields" (37-8).

Shire continues: "Unlike other widely used commodities, *shelter is not made in a factory or plant organized for its production*, nor are its design, construction, and sale controlled by a directing head or management. It is fabricated on the site, and is the concern of a

starts (in logs) (see Table 1 for the regression results). This is not the way labor productivity growth is reported. This is not accepted procedure.

number of loosely cooperating individuals, businesses, and professions. Each building or group of buildings is an operation in itself, unrelated to any other operation. Each operation is the occasion for a different combination of the men and organizations which make up the industry and its allied agencies. This lack of a definite productive organization has retarded the development of the product and has prevented its attaining the quality and the low cost which our knowledge and technique would otherwise be capable of producing."[15]

It became obvious that factory production of homes was the only way to achieve affordable, decent housing for a large fraction of the U.S population. Even those who led the way in innovation *within the stick-built technology* acknowledged this. Consider the view of Levitt and Sons, who were pioneers in mass producing homes outside. In the late 1940s, the Levitts built hundreds of houses at the same time in Hempstead, New York. They created an assembly-line-like system where skilled workers would move from house to house. Electricians would wire one house, then move next door. While these methods significantly brought down the cost of producing homes, the Levitts began to realize that the cost reductions were not large enough to produce affordable, decent housing for a large fraction of the U.S population.[16]

That's because the houses were still produced with a stick-built technology. They still

[15]L.A. Knight, in discussing the great difficulty returning Vietnam Veterans were having finding housing, wrote:"It almost seems silly to explain that mass production to standard specifications in a factory is the key to producing any goods including houses at prices far below what hand labor at the customer's site can meet. Housing is about the only common product that has escaped the industrial revolution and still hews to basic procedures that are 400 years old" (Knight 1970, 338-41).

[16]This was clear in other countries too. John Betjeman (1952), an architectural critic and later *poet laureate* in the United Kingdom, recognized the issue: "Architects have been too wrapped up in "style," in bricks and foundations and what not, to devote their attention to the only solution of the housing problem—the production of decent and convenient mass-produced houses. These houses should be pre-fabricated, as was the Crystal palace, they should be and could be well planned, as sound and weather-proof as the best brick-built house."

required very large amounts of skilled labor to make a house. The Levitts concluded, as stated in their congressional testimony, that: "The labor time in a factory-built dwelling unit is only a fraction of what is required to construct a similar unit on-site. That's why we must look at factory-built housing. That's why factory-built housing must succeed, or we will never be able to produce the homes and apartments needed to house our expanding population and our underprivileged citizens in a comfortable, dignified, decent way" (United States Senate 1969, 16).

While the construction industry has been a technology laggard for the last 100 years, there was a brief period when it began to use new methods. Annual production of the most popular type of factory-built home, modular homes made of one or two modules (see definitions shortly), increased from roughly 100,000 units to 600,000 units over the course of the 1960s and early 1970s (see Figure 3). Over the same period, the share of factory production of *single-family* residential homes grew rapidly, rising from about 10 percent of home production (where total home production equals stick-built production plus factory production) to 60 percent of home production (see Figure 4).

These factory-built homes were being purchased by lower- and middle-income Americans—they were a low cost alternative to stick built homes. Prices of these factory-built homes were so much lower than comparable homes built using the stick-technology that these homes provided the first opportunity for many low-income households to become homeowners.

The success was widely celebrated. Future president Gerald Ford, in a speech to factory producers, praised them: "You are entrepreneurs in the best tradition of the free enterprise system. Your industry fulfills a definite need. Statistics show that virtually all of the housing

purchased by the $15,000-and-under income group is supplied by your industry."[17]

The success did not escape Wall Street. There was staggering growth in the stocks of mobile home producers traded on Wall Street. *House and Home* magazine maintained an index for building stocks. They followed the top five stocks in five different building groups. For each group, the value of the index in May 1968 relative to its value in May 1967 was: (1) Builders conventional, 1.84; (2) Land Developers, 1.65; (3) Mortgage Companies, 1.73; (4) S&Ls, 1.21; and (5) Mobile Homes, 4.39 (*House and Home* 1968).

But these achievements did not last long. Production of factory-built homes crashed in the 1970s. Annual production of modular homes made of one or two modules collapsed from 600,000 units to 200,000 units in a few years. Today, the factory-built housing industry is a shell of what it once was. While its share in home production was 60 percent—and rising—in the early 1970s, it stands at roughly 10 percent today.

From an industry perspective, therefore, despite this one decade of progress, there is an industry performance crisis. There is little to no productivity growth in the industry. The industry fails to adopt readily available technologies. The dismal productivity record, of course, follows from the industry's failure to adopt new methods. Productivity is hard to measure but would be surprised if productivity growth in automobile production were dismal if we made cars like homes?[18]

The two crises are therefore highly interconnected. The productivity crisis leads to high-priced houses. There is now widespread recognition that high housing costs are a significant

[17]Ford Congressional Papers: Press Secretary and Speech File (1973: Box D34).
[18]if we built cars in driveways?

contributing factor in both homelessness and evictions. So, the productivity crisis leads to the crisis for families.

Residential construction — Monopolies responsible.

Monopolies are, in large part, driving both crises. The reason the stick-built industry fails to adopt new methods is because monopolies block those attempting to introduce new technology. This, in turn, is responsible for the industry's horrible productivity record.

Who are the monopolies? The majority of these monopolies belong to the sector of residential construction that uses the *stick-built technology*. One needs a scorecard to keep track of the monopolies that have operated in the stick-built residential construction sector. They have overrun the residential construction industry for the last 100 years. Its been like a *perfect storm*. In the first half of the twentieth century monopolies included associations of small contractors, the unions of various skilled workers, building inspectors, producers of specialized building materials, and the local politicians that supported these groups in creating monopolies (and that were, in turn, supported by the private monopolies). There were also various alliances between these monopolies.

Many of these monopolies continue to operate. New, powerful monopolies have also emerged over the last several decades. A large national association of contractors, the National Association of Builders (NAHB), developed over the period. And, in 1965, the Department of Urban Housing and Development (HUD) was created. When we say that HUD is a monopoly, we mean that there are groups in the organization that use the power of that organization to enrich themselves.

Residential construction – Substitutes destroyed.

Monopolies from the stick-built industry have blocked substitutes for the last 100 years. The greatest effort has been against the greatest threat – factory-built homes. Houses produced in factories are a much lower cost alternative, for a given size of home and quality of building materials, then a stick-built one. The blocking of factory homes in the United States began in the late 1910s, if not earlier. We know this was true in Chicago. When Judge Keenesaw Mountain Landis helped broker a truce (of sorts, and short-lived) between warring monopolies in the Chicago construction sector, producers of factory homes in Iowa saw this as a chance to ship factory houses into Chicago. Figure 4 presents an advertisement in the *Chicago Tribune* from 09/21/1921 saying factory-built homes could now be brought into Chicago. It is not clear that this ever came to pass.

When Thurman Arnold was Assistant Attorney General for Antitrust, he and his colleagues sought to protect manufacturers of factory-built homes. Corwin Edwards (1939), Arnold's chief economist, described one such effort: "A first step in the protection of the prefabricator was taken in September 1940 by an indictment which charges a conspiracy to prevent the sale of prefabricated houses in Belleville, Illinois. Local building materials dealers, contractors, officials of the carpenters' and building laborers' union, and the chief of police are charged with a series of efforts to prevent the erection of a prefabricated house by concerted refusals to perform the work and by violence to prevent others from performing it. Before the indictment there had been repeated riots at the construction site; thereafter the work proceeded without further violence"(339).[19]

[19]Edward's quote confirms the "perfect storm" description from above. There is a tremedous number of groups align4ed against the producer of facrty buil thomes.

Arnold did not stop his attack on monopolies in construction after he left DOJ. In "Why We Have a Housing Mess," Arnold (1947) began with a picture of a homeless Pacific War veteran, with his wife and five children, sitting on the street with their belongings (see Figure 5). The caption said: "This Pacific War veteran and his family are homeless because we have let rackets, chiseling and labor feather-bedding block the production of low-cost houses."

Arnold began his text this way: "Why can't we have houses like Fords [i.e., automobiles]? For a long time, we have been hearing about mass production of marvelously efficient post-war dream houses, all manufactured in one place and distributed like Fords. Yet nothing is happening. The low-cost mass production house has bogged down. Why? The answer is this: When Henry Ford went into the automobile business, he had only one organization to fight [an organization with a patent] . . . But when a Henry Ford of housing tries to get into the market with a dream house for the future, he doesn't find just one organization blocking him. Lined up against him are a staggering series of restraints and private protective tariffs."

What happened in 1960s, when the production of factory homes soared, was that producers of factory homes briefly broke through the blocking by monopolies in the stick-built sector. But faced with a threat to their very existence, the monopolies in the "stick-built" industry *regrouped*, developing even more staggering weapons to sabotage the factory-built housing industry.

Before describing the weapons used to sabotage factory-built housing in the 1960s and 1970s (and that continue to this day), I begin with a few definitions concerning factory-built homes.

One type of factory-built home is modular homes. These homes consist of completely as-

sembled modules that are manufactured in factories and then transported to the housing site. The method of transport typically depends on the number of modules. If there is one or two modules, the least expensive shipment method is to attach a *temporary chassis and wheels* to the bottom of the modules, removing them upon arrival. For modular homes with several modules (three or more), the modules are typically shipped on the flatbed of a truck. At the housing site, the modules are lifted off the truck with cranes.

Figures 7 and 8 show two examples of modular homes of one or two modules.

The factory-built home that is the greatest threat to stick-builders is modular homes of one and two modules.

****[Cheapest way to make homes: one piece (in factory) and transport on chassis.]

Modular homes of one and two modules first began to be produced shortly after World War II. From the start, the stick-built industry has attacked these homes. Deceit has played a role since the beginning. Monopolies have given modular homes of one or two modules names that conjure up images of low quality and of owners that are down on their luck. They initially labeled them *trailers*—but they are not trailers.

Trailers were used extensively during the Great Depression by individuals and families that were constantly on the move searching for work. House trailers were primitive forms of shelter that lacked basic amenities. The shelters were placed on a chassis and fitted with wheels so that they could be moved on a daily basis as families searched for work. Because most were not equipped with sanitation facilities, they were often zoned out of localities.

Another term used by monopolies for modular homes of one and two modules was *mobile*

homes. The term mobile home conjures up images of trailers, thus connecting the term trailer with mobile home, again pinning the images of poor quality to modular homes of one or two modules.

Again, these names are part of the program of deceit and misinformation. Another way to create misinformation, and confusion, is having many names for the same object. For monopolies, confusion is a great weapon. The monopolies outdid themselves in the middle 1970s. At this time, another name was given to modular homes of one and two modules—*manufactured homes*. This is the name given in HUD legislation (see below). If one's goal was to create confusion, this new name was a great success. The term "manufactured home" obviously signifies any home made in a factory, that is, manufactured. There is not another name for modular homes of one or two modules that could create as much confusion as manufactured home.

To avoid confusion, I define modular homes to be those of completely assembled modules that are manufactured in factories and assembled on site. I distinguish two types of modular homes (1) modular homes of one or two modules (2) modular homes of several pieces. Note well this is my language. It may be cumbersome but it is an attempt to side-step confusion.

we need to take over the language

Residential Construction — Weapons used.

Let's now turn to the weapons used in the residential construction industry in the late 1960s and early 1970s (and that continue to this day). A major weapon was developed out of the alliance made between HUD and NAHB. From this alliance emerged HUD-sponsored

legislation, the National Manufactured Housing Construction and Safety Standards Act of 1974 (MHSS Act). The MHSS Act led to new, costly *regulations* on modular homes made of one or two modules.[20]

One of the regulations was a *national building code* for modular homes of one or two modules. This national building code had strict requirements on energy efficiency and fire safety. This building code put producers of modular homes of one or two modules at a great disadvantage relative to stick-builders. It devastated the factory-built home industry—it is surprising that it still exists even in its shriveled state.

One reason the building code was devastating is because in the *areas* where producers of modular homes of one or two modules *actually competed* with stick builders, typically small towns and rural areas, there were often *no local building codes*. Factory builders had to meet a strict code; stick builders had no code. This fact alone meant great sabotage, but it was not the only one.[21]

The national building code for modular homes of one or two modules had a requirement that has been called a *permanent chassis requirement*. As indicated above, these homes were typically transported on a chassis that was removed upon arrival. *The national building code required that it not be removed.* Even if the home was to be placed on a permanent foundation, a foundation like any stick-home might be placed on, the chassis could not be removed. And even if the foundation was to have a basement, the chassis had to remain.

Figures 9 and 10 present pictures of chasses that are in the basement of modular homes of

[20]It was the MHSS Act that introduced the term "manufactured home."
[21]having a national building code is thought to be good.

one and two modules. Absurdity evident. Costs more to build. Plus, it reduces the value of the home. There was no reason for this requirement other than to damage the industry.[22]

I'll give three reasons why the permanent chassis rule inflicted great harm. More are below.

1. The permanent chassis immediately increased the costs of production, as now the house had a permanent chassis. Installation costs also increased.

2. The permanent chassis rule meant that the *national building code* acted like a *national zoning ordinance*. The national building code, in effect, was used by monopolies to block the use of modular homes of one and two pieces in certain areas of the country.

Here is how the national building code acted like national zoning ordinance. Trailers had been outlawed in many towns during the Great Depression. Towns had legitimate concerns as trailers would use the town's services (like sanitation) and move on without paying taxes. Local zoning laws were developed to ban trailers. They often had clauses about vehicles or shelters with a chassis being banned.

Monopolies in stick building had used these zoning ordinances since the late 1940s to argue that modular homes of one and two modules should be banned from localities because they were trailers. They were not trailers. Even though their chassis were typically removed upon destination, monopolies often succeeded in using the local statutes to block the factory-built

[22]law is not: if have one module, must have perm chassis. but acts as if.

Readers may ask: Why didn't producers of mobile homes simply bypass the HUD home designation and jump right into the modular home market? Why not sell the house as a modular home? The short answer is that producers of mobile homes had been selling and financing through channels that were very different from those used by producers of modular homes. The markets were segmented. It would take time for the institutions to develop a new channel for selling the mobile homes. A more detailed discussion can be found later in the paper.

homes. The monopolies included local builder and local zoning officials, often one and the same. Local judges would acquiesce.

The permanent chassis rule made this *strategy of using local zoning laws to block modular homes much more effective*. The modular home now had a chassis. It was easier to argue they were trailers, though seldom, if ever, would they be moved.

talk about Connecticut, nyt article.

As I said, zoning officials and judges often blocked modular homes of one and two modules. Here is a judge in Idaho, Justice Bistline, showing his disdain for zoning officials and judges when they outlawed modular homes of one and two modules. In his dissenting opinion from the majority opinion banning modular homes of one and two modules in an Idaho locality, he writes: "It is undoubtedly an easy matter for the nation's elite to decide for the less affluent that they simply should not live in mobile homes. ... The elite see no appreciable difference between the trailer house of yesteryear and the prefabricated homes of today which are, of course, necessarily mobile until they arrive at their destination. Although times have changed, and "mobile homes" can no longer be equated with trailer houses, the elite do not change" (Berry 1985, 157).

3. The presence of a chassis makes the homes more likely to be financed as an automobile rather than real estate. The chassis makes the house like a car (see Wagner testimony below)

A second weapon deployed in the late 1960s was to provide very generous *subsidies* to households that purchased stick-built homes. Households purchasing modular homes of one or two modules were not eligible.

Under Section 235 of the Housing and Urban Development Act of 1968, a household could receive a subsidized mortgage as low as one percent. The program was wildly successful. Almost immediately, housing starts of stick-built homes that were government subsidized soared from roughly 100,000 units to 400,000 units in the early 1970s. This program shifted demand away from factory-built homes.[23]

Recall President Ford quoted above, who called them true entrepreneurs because they get no subsidies.

Housing subsidies have been a feature of U.S. housing markets since at least the 1930s. When they were introduced, giants in economics and law pointed out subsidies for what they were (and continue to be): a way to prop up inefficient methods of production at the expense of efficient ones.

Here is Thurman Arnold: "you cant spend money in a relief market [housing] like that without subsidizing inefficiency and thus raising both prices and taxes." (1940, p. 45) Here is Henry Simons from a lecture on monopoly at the Art Institute of Chicago: "Urban housing conditions become worse and worse, largely because labor costs prohibit new construction; and the widespread demand for governmental housing projects is mainly a demand for government subsidies to offset excessive building costs" (1938: Box 9, Manuscript 148).

sarah larson, nyt article on ct, shoreview

The third major weapon category, one that has already come up a few times, is the misinformation, deceit, and confusion produced by monopolies. Some have even described the

[23]Recall President Ford quoted above, who called them true entrepreneurs because they get no subsidies.

monopolies as spreading poison.[24] I will delay the extensive amount of evidence on misinformation until below.

Reasons given for the permanent chassis

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producers fought like mad against permanent chassis.

Producers of factory-built homes fought this permanent chassis rule, as well as the other efforts to crush their industry. Very early on, producers filed lawsuits against HUD. Producers found supporters in Congress, both the House and the Senate, who proposed legislation to roll back some of this sabotage.[25] A Presidential Commission was established to, among other issues, look into the sabotage. It produced recommendations that would have rolled back the sabotage.[26] But the lawsuits were dismissed; the legislation was not passed; and the recommendations of the commission were ignored.

Regarding the attempts to eliminate the permanent chassis rule, consider some of the congressional testimony in hearings from 1990 on the Manufactured Housing Provisions of H.R. 5157. Maureen Wagner, the Chairman of the National Manufactured Housing Federation, stated in congressional hearing that: "An element of the Hiler amendment that we most support is the provision eliminating the mandate that every manufactured home be built on

[24]"Don't underestimate the ability of housing lobbies to drag their feet and spread poison said an aide to former Speaker (1962-71) John McComack, D-Mass. Especially the home builders who have some real muscle who will see themselves challenged by any pretense of big-time reform" (Lilley III 1971b, 1535).

[25]In House, Hiler was a big supporter. In the Senate, John Heinz.

[26]National Commission on Manufactured Housing (1994)

a permanent chassis. If there is one aspect of our homes that categorizes us as vehicles, it is this requirement."

Wagner continues: "I can assure you that when a homebuyer buys a home from me and wants to finance it for 30 years and have it installed on a permanent foundation, the homebuyer prefers to have the chassis removed. In many cases homebuyers prefer to have their manufactured homes placed over basements. Because of the presence of a chassis, we must dig the basements deeper and erect more costly and unsightly piers. I could save my homebuyer significant costs, both in factory costs and installation costs, if I could order a home designed to have the chassis removed. When I advise a homebuyer that *the chassis cannot be removed because of Federal law, they find it illogical* (United States Senate 1990, 468-9)." (emphasis added)

Gub Mix, the Executive Director of the Nevada Manufactured Housing Association, stated in congressional testimony that: "The Hiler amendments contain a provision to remove the antiquated requirement that all manufactured homes be built on permanent chassis. In our view, Mr. Chairman, this provision has perhaps the most important impact on the availability of affordable housing to Americans today. By requiring a permanent chassis for homes that are permanently sited adds unnecessarily to the construction and installation costs of a manufactured home. And the consumer pays" (285).

berge's words. not noticed.

Recall Berge's experiences with monopolies, that their sabotage of competition often went unnoticed. As I mentioned, the hundreds of economists that work studying the housing in-

dustry are unaware of today's sabotage of factory built homes. For example, there are groups that have recently promoted factory-built homes as a solution to the affordable housing challenge. But the groups are unaware that these homes have been blocked for 100 years. They have no understanding of the history of factory production. Consider a recent McKinsey Global Institute (MGI; 2017) report discussing the global affordable housing challenge. It discusses the many benefits of industrial construction. One benefit of this approach they list is modular homes and complete factory-built homes (see Exhibit 44, 89).

They recognize there is an adoption problem. "For all the clear advantages that industrial approaches have demonstrated, adoption remains challenging for several reasons. These range from the need to upgrade labor skills to supply-chain issues. Most importantly, the industry needs to perfect use of industrial methods on a large scale to realize all the potential benefits" (94).

MGI is unaware that industrialized housing methods were being used on a large scale in the United States in the 1960s, or that the success was sabotaged by monopolies. A similar history is found in England. Large-scale success was being achieved in introducing factory-built residential housing in the 1960s. Monopolies also blocked this success. Industrialized production has been blocked by monopolies in most countries throughout the world. This is the reason for lack of adoption, nothing else.[27]

Still harder to understand is that the current producers of factory-built homes are unaware of this history. They do not realize the great extent to which their industry is damaged by the actions of monopolists. For example, consider the recent call by HUD for comments on

[27]"The Construction Industry's Productivity Problem," *Economist*, August 17, 2017, `https://www.economist.com/leaders/2017/08/17/the-construction-industrys-productivity-problem`

the regulatory review of manufactured housing rules (call number FR-6075-N-01). There were only seven comments (out of 2xx) that mentioned the word "chassis." Of these, only two actually mentioned the problem with the permanent chassis rule.[28]

There are only a handful of people, that I know, who are aware of the sabotage being inflicted on the industry.[29] This ignorance is a testament to the great ability of monopolists to create misinformation, deceit and confusion.

Rise in house prices: What NAHB says

What the Levitts said 50 years ago, that the only way to produce decent, affordable housing for a large share of citizens is to manufacture homes in factories, is even more true today. That's because the productivity of the stick-built sector falls further and further behind the productivity of all other industries as time marches on. The differences today are greater than when the Levitts wrote.

as a result of the stick-built industry's lagging productivity, new house prices will continue to grow relative to other prices. this is simple arithmetic. the stick-built industry must therefore develop narratives to "explain" the rising prices. Smokescreens.

[28] over last couple of years have spoken on phone.

[29] One is Danny Ghorbani. He has been fighting the sabotage for over 40 years. Introduce permanent chassis. In 1980, he and his group, the Association for Regulatory Reform, brought a case demanding HUD drop the permanent chassis requirement. In 1987, he gave testimony before Congress on "A New National Housing Policy: Recommendations of Organizations and Individuals Concerned about Affordable Housing in America." More recently, he has again written about the permanent chassis in his articles in *The Journal: The Magazine for Manufactured and Modular Housing Professional* in February and March 2013. From the February issue, he states: "The industry's competitors know that across-the-board chassis requirement is a major Achilles Heel for manufactured housing, which is why they've done everything in their power—for decades—to maintain it." Another individual who has written about these issues in George Porter. Both have helped me a lot in untangling this mess.

A common explanation is that localities impose excessive regulatory costs on stick-builders, put excessive and large fees on builders which greatly increase the price of a new home.

The NAHB publishes studies purportedly showing that these regulations significantly raise the costs of new housing construction. See, e.g., "Government Regulation in the Price of a New Home," Paul Emrath, Housing Economic.com, May 2016.

The same arithmetic as above implies, of corse, that regulatory costs will have to grow and grow as a percentage of new hosue prices. 54.7%, regulatory costs as a percentage of the price of a finished lot.

While fees must certainly add some extra costs to homes, they are dwarfed by the extra cost of making a home on-site.[30]

Why The Recent Surge in New House Prices?

Something is happening more than the lagging productivity growth. expect differences to grow without large jumps.

There is very likely another factor driving the recent increase in home prices besides the industry's use of an outdated technology. That factor is the increase in income inequality in the United States and in other countries.

Consider what happens to house prices where there is an increase in income inequality of residents in the city.

[30]In a recent extensive study of fees, Quigley finds that they add only a modest amount to home prices. Home prices have been increasing across a wide range of cities in the United States, as well as Canada and Europe. It's hard to imagine that all these cities have been choosing to escalate their fees at the same time.

Next, recognize that the demand for housing in a city comes from citizens around the region, perhaps the country, and for some cities, around the world.

The implications for policy are clear.

Badarinza and Ramadorai (2018), Favilukis and Van Nieuwerburgh (2018), Sa (2017), Cvijanovic and Spaenjers (2018)

Nimby

xxx

Oral health industry.

Oral health industry — The crisis.[31]

Just like residential construction, there is an oral health crisis among low- and even middle-income Americans. The crisis, in large part, is the result of monopolies.

Again, the Essays show: (1) the oral health crisis facing low- and often middle-income Americans; (2) the monopolies that are responsible, in large part, for the oral health crisis; (3) the substitutes that have been destroyed; and (4) the weapons used by the monopolies.

I will establish the existence of an oral health crisis, point (1), in three steps, showing that: (a) there is little access to oral health care, (b) there is a need for access, and (c) there are significant consequences from lack of access.

[31] Material in part from Qi and Schmitz 2018. See slides here.

I'll start with a brief discussion of the need for access (that is, (b) above). Many low-income and middle-income Americans have very poor oral health. One measure of poor health is untreated caries (cavities). Consider data provided by the Centers for Disease Control and Prevention (2017). Over the period between 2011 and 2012, and among those aged 45-64, the fraction of individuals with untreated caries was 51.6% for those at or below the poverty level. For those whose income was four times or greater than the poverty levle, the fraction was 11.7% (Table 60).

Other information comes from the Department of Defense (DoD) which conducts oral health surveys of new recruits at time of entry. Of the 2008 recruits, 72% required a dental restoration ("2008 Department of Defense (DoD) Recruit Oral Health Survey" 2011, 14).[32] Of the 2008 recruits, 54.9% required a tooth extraction (21).

The DoD uses such measures of dental health to give a new recruit a score, or classification, to assess whether the new recruit is ready for a worldwide deployemnt. For the year 2008, 52.5% of new recruits were considered not ready for a worldwide deployment ("2008 Department of Defense (DoD) Recruit Oral Health Survey" 2011, 9). Their oral health was too poor. These are the recruits given dental readiness classification 3, the lowest (worst dental classification)[33].

Poor oral health has severe consequences (which I discuss below). These and other problems facing families have often been called an oral health crisis, and rightfully so.

[32]A dental restoration or dental filling is a treatment to restore the function, integrity, and morphology of missing tooth structure resulting from caries or external trauma. Dental restoration also refers to the replacement of such structure supported by dental implants.

[33]For a discussion of the classifications, see Appendix B in Department of the Army Headquarters (2009, B-1).

Oral health industry — monopolies responsible.

As in residential construction, monopolies in the oral health industry are largely responsible for the crisis. Monopolies consist of professional associations, both at the state and national level. They also include groups in state legislatures which support these monopolies (see below). In addition, we might include state attorneys general's offices, which sit idly by as these monopolies inflict harm on the poor.

Oral health industry — substitutes destroyed.

The substitutes blocked by monopolies include the services provided by non-dentist professionals, those who would disproportionately serve low-income Americans. They block hygienists, therapists, and denturists. *Hygienists* are dental professionals who clean teeth, apply sealants, provide education, and other services. Hygienists are not allowed to practice independently, as dentists argue this would not be safe. Moreover, dentists often limit how many dental hygienists can practice in a state. *Denturists* are professionals who mold and fit dentures. They are barred from all but a few states. *Therapists* are dental professionals who provide a low-cost alternative to dentists for filling cavities. While therapists receive less schooling than dentists (in some places two years of training versus four for dentists), they are well qualified for filling cavities.[34] In the United States, dental therapists have been completely barred from practice except in a couple of locations.

Studies show these professionals are effective for services they provide (Nash et al. 2012).

[34]There is evidence for this from the United States (mostly from studies done at university health centers). There is also evidence from around the world as therapists are permitted to practice in many countries (see Nash et al. 2012).

There have been many attempts to introduce denturists and therapists in the United States, but most have been crushed by monopolies (for a discussion on denturists, see ; for a discussion on therapists, refer to Nash 2012).[35]

Oral health industry — weapons used.

The weapons that dentists employ are similar to those employed by the monopolies in the stick-built construction industry. Dentists have been instrumental in helping passing laws prohibiting these professionals from practicing. There si a difference. outright make them illegal.

diff than constr in that make them illegal

Dentists have also secured subsidies, though not as much as construction monopolies. Because dentists block the practice of non-dentist professionals who would work in lower-income areas, many of the individuals living in these areas have little or no oral health services. Dentists have been instrumental in having *subsidies* paid to them if they move to these areas.

misinformation

Reasons Given to Outlaw substittues

here just like lawyers.

[35]Where allowed, these substitutes often face great obstacles, as laws are designed by dentists.

What is the purported reason for these laws stopping substittues. safety. massuchusetts, alaska quotes.

In July 1949, the Massachusetts legislature passed a bill establishing a program to train dental therapists.[36] The program was to be directed by the Department of Public Health. In the program "young women are to receive two years' training after which they will be permitted to prepare and fill cavities in children's teeth under the supervision of a dentist in a dispensary or in a clinic approved by the Commissioner of Public Health." (p. 363)[37]

The passage of the bill created immediate controversy. Consider this statement by the Council on Dental Education. "The Council, after considering the matter, has expressed its concern over the implication that children's dental needs can be cared for by dental personnel less well trained than those qualified to care for the dental needs of adults. The Council feels that the care of children's teeth requires skill equal or superior to that given to adults and for that reason anyone who attempts to care for the dental needs of children must take the same training required of those expecting to be licensed as dentists." (p. 363)

The ADA sent a letter to the Commissioner of Health in Massachusetts describing resolutions it passed regarding the new program, including: "Resolved, that the American Dental Association deplores the apparent failure of the Massachusetts State Legislature to approach the Massachusetts State Dental Society preparatory to inaugurating this program without

[36]The quotes in this section are from: The Journal of the American Dental Association, Volume 40, Issue 3, March 1950, Pages 363–366, "House of Delegates Action on Dental Nurses Program Questioned by Massachusetts Commissioner of Health." Also, see Nash et al (20xx) provide a very extensive and well written history of the United States experience with therapists.

[37]The Commissioner of Public Health reported on the need for dental nurses: "Recent dental examinations in ten Massachusetts communities confirmed the known lack of adequate dental care. Nearly one hundred per cent of teen-age children show evidence of dental caries; yet less than sixty per cent have received dental care for a single permanent tooth. Moreover, there is irreparable loss of permanent teeth by multiple extractions in over fifty per cent of our teen-age children." (p. 365)

the knowledge and the endorsement of the American Dental Association." And, further, "Resolved, that all such programs concerning the development of sub-level personnel, whether designed for experimental purposes or otherwise, should be planned and developed only with the knowledge, consent and cooperation of the respective state associations and the American Dental Association for the purpose of protecting the public health and welfare" (p. 364)

This, of course, is Arnold's sovereign nation at work.

The sovereign proclaims nothing should be planned before receiving the consent of the sovereign. In his response, the Commissioner of Public Health addressed the absurdity of this, writing: "As an official agency of State Government, the Department cannot seek consent from any private agency. The Department acts on behalf of all the people of the Commonwealth. It, nevertheless, has constantly sought the advice and guidance of the various professions and arts in its efforts to better the health of the people." (p. 365)

Based on ADA resistance, the bill was rescinded. The program was killed. Because of the ADA, these poor children in Massachusetts would not be treated by non-dentists. But,of course, they were not treated by dentists either. They were left to suffer. When Massachusetts dentists said "no child should receive dental care by anyone less trained than a dentist," what they really meant, I believe, was this: "rather than have therapists with two years of training treat poor children, which would involve potential risks to our dental monopoly, we'll kill the program and let the children go untreated." The risk, of course, was significant: the public would soon realize that dental nurses were highly competent at filling

cavities, as was known then, and has been demonstrated many times since.[38]

This behavior is standard fare for the ADA, and not an isolated incident. It recently attempted to block the introduction of dental therapists into the villages of Native Americans in Alaska. These therapists are called Dental Health Aide Therapists (DHATs). Let me briefly quote from a recent history of the Alaska program.[39] As Brooks states: "Since the conception of Alaska's DHATs, the Alaska Dental Society (ADS) and the American Dental Association (ADA) maintained near constant opposition to the plan. ..... The ADS and the ADA's ongoing attempts to halt Alaska's DHAT program led to a series of lawsuits in 2005. The ADA and the ADS were suing the state of Alaska .... and the individual practitioners who had already been certified as dental therapists. The ADA claimed that the scope of practice for the dental therapists was beyond what could legally be performed."

An ADA press release during the fight stated: "We cannot and will not stand by while non-dentists perform irreversible dental surgery on Alaska Natives and others, procedures that other Americans receive only from fully trained, licensed dentists who operate under the safety and accountability standards set by state dental boards."[40]

These ADA statements closely mirror those it made in Massachusetts more than half a century earlier. As I mentioned, the tribes ultimately ignored the ADA.

Widespread benefits of allowing

[38]There were many university studeis during the 1970s showing that dental therapisty were as competent as dentists in filling cavities (forsyth study). Nash

[39]"A Brief History of the Development of Alaska's DHAT Program and the American Dental Association's Strong Opposition," by Ronan Brooks.

[40]This is from "Lawsuit Puts Alaska Native Dental Care at Risk." Cultural Survival. Cultural Survival, Dec. 2005.

Briefly consider the great benefits that would follow if restrictions were lifted on the practice of these non-dentist professionals in the United States. Let's take dental therapists as an example. Allowing dental therapists to practice would likely lead to lower prices for filling cavities in existing markets. But this would only be a small part of the overall gains in oral health. The big gains would come from the creation of new markets for oral health care, and the ability of the poor to access oral health care in these markets.

By a market, we refer to the availability of oral health services at a given *location* and at a given *hour*. If therapists were permitted, markets would expand at existing locations. Dentists have limited hours. They typically have no evening or weekend hours. Therapists could be expected to offer more hours than dentists. They would also be expected to offer services in locations that are not currently served by dentists, such as low-income neighborhoods in urban areas and rural areas.

These non-dentist professionals are permitted to practice in many countries throughout the world. In these countries, we can see the great benefits they bring to the poor. Two countries which provide among the most liberal practice opportunities are Australia and New Zealand. Consider the fraction of therapists making up the combined dentist and therapist workforce in these countries. In Australia, the share is 11.4%; in New Zealand, it is even larger, at 27.5%. If we look at this same share for offices and clinics providing care to the lower-income individuals, which we proxy by the public clinics in the two countries, the therapist share is 40.6% in Australia; in New Zealand, the share is a whopping 84.6%. what are the references?Australia (also for denturists):

Teusner, Dana N., Sergio Chrisopoulos, and David S. Brennan. "Geographic Distribution

of the Australian Dental Labour Force, 2003." Australian Institute of Health and Welfare (2007): p. 48, 83.

New Zealand:

New Zealand Dental Council. "Dental Council Workforce Analysis 2013-2015." (July 2017): p. 46, 100.

Consider denturists next. In Australia, there are three denturists for every 100 dentists in the entire country. In Tasmania, the poorest region, there are 23 denturists per 100 dentists.[41]

Let's be clear before moving on: We do not need more dentists to improve oral health in the United States, we need to be protected from the dental monopoly. Instead of legislators making alliances with monopolies, they should be protecting us. The same is true state attorney generals, who have been sitting still so far.

Legal Services Industry

Legal Services Industry — The crisis.

There is also a legal crisis facing low-income Americans, with monopolies responsible for a large part.

Again, the Essays show: (1) the legal crisis facing low- and often middle-income Americans; (2) the monopolies that are responsible, in large part, for the legal crises; (3) the substitutes that have been destroyed; and (4) the weapons used by the monopolies.

[41] Tasmania is the poorest state in Australia, with a Gross State Product per capita (GSPPC) equal to AU$55,056 (equivalent to $39,390), compared to the Australia Gross Domestic Product per capita (GDPPC) equal to AU$69,402 (equal to $49,653). The ratio of GSPPC to GDPPC for Tasmania is 0.793.

The legal crisis, point (1), will be established by showing (a) there is little access to legal services, (b) there is a need for access, (c) and there are significant consequences from lack of access.

Little access. The vast majority of the poor and many in the middle class have no access to civil legal services. While there are some guarantees of legal representation in criminal cases, there are none in matters of civil law.[42] If a poor American seeks legal advice on a civil matter, the individual has two choices. One option is to hope to access legal advice from some of the institutions that provide free lawyer services (they are described below). To qualify for a lawyer, one's income typically must be at or below 125% of the federal poverty level. If one meets the qualifications, one can attempt to access the very limited funds available.[43] If the individual does not meet the qualifications, or is not lucky enough to receive the very limited free lawyer advice, the person must search the private market for a lawyer. Hourly charges are likely beyond the means of most poor and middle-class Americans.

Consider next the *need for access.* It is more difficult to measure the need for legal services than oral health services. In the case of oral health, we can look at objective measures of oral health to determine need. It is not as easy here. That said, there are projects attempting to move in this direction for legal services. Recently, the Legal Services Corporation (LRC)

[42]In fact, this right to counsel in criminal proceedings is not being met in many misdemeanor cases throughout the country (see discussion below on the Sixth Amendment Center).

[43]The Boston Bar Association (2014) has collected evidence on measuring the "unmet" demand for the very few Civil Legal Aid attorneys (CLAs) in Massachusetts. They write: "In Massachusetts, civil legal aid programs turn away 64% of all eligible cases" though this number does not count "many eligible Massachusetts residents with critical legal needs [that] never even reach the turn-away stage because they give up when faced with long waits for service or fail to seek assistance because they do not know their problems may have a legal solution." The Massachusetts CLA program is, not surprisingly, one of the best in the country.

has contracted with NORC[44] to conduct a survey of the civil legal needs or problems of over 2,000 individuals whose incomes are at or below 125% of the federal poverty line. 71 percent of participants report having had a civil legal need over the past year; 54% report having had two legal needs (LRC 2017, 21). I'll discuss this NORC survey below.

Consider next the *severe consequences of no legal advice*. First, in terms of the consequences of not having access to services, there is a very big difference between oral health and law. If one has untreated cavities, one does not expect others to take advantage of their poor health. This is not true with legal services. In this case, households with no access to legal services are preyed upon. A hundred years ago, Reginald Heber Smith argued: "Denial of justice ... *actively* encourages fraud and dishonesty. Unscrupulous employers, seeing the inability of wage-earners to enforce payments, have deliberately hired men without the slightest intention of paying them" (1919, 9) [emphasis added].[45] One can, of course, add unscrupulous landlords, who, seeing the inability of renters to enforce minimum code requirements, deliberately sign contracts with no intention of honoring them.

For this reason and others, the poor, perhaps paradoxically, need more legal services than the wealthy. Here again is Smith: "Because law is all-embracing, the denial of its protection means the destruction of homes through illegal foreclosures, the loss through trick or chicanery of a lifetime's savings, the taking away of children from their parents by fraudulent

[44]NORC is a non-partisan and objective research organization at the University of Chicago.

[45]Reginald Heber Smith was a lawyer who spurred many Bar's actions in fields of service to the public. From his admission to the Bar in 1914 until 1918, he served as chief counsel of the Boston Legal Aid Society. In 1919, he became managing partner of a private firm in Boston and began a successful career developing sound law firm organization, while serving the American Bar Association in many different ways: as a member of the Board of Editors of the *Journal*, of the Board of Directors of the American Bar Association Endowment, and of the Committee on Legal Aid Work; as the Director of the Survey of the Legal Profession; and as a fellow of the American Bar Foundation. In 1951, he was granted the highest honor of the Bar—the American Bar Association Medal. A nice overview of his service to the profession is given in *A.B.A.J.* (1966).

guardianship proceedings" (9).

A study of the legal needs of low-income New Yorkers points out their great need for legal advice: "Our society has evolved in a way that makes access to legal services increasingly crucial to handling the emergencies which routinely beset poor persons. Whereas people of means can regard the service of a lawyer as an optional convenience to be availed of only in certain relatively well defined circumstances, the poor paradoxically live in circumstances in which they need legal services more but can obtain them less. Typically, their needs for legal services are not in any sense optional but rather deal with access to essentials of life" (Marrero 1991: 771).

Here is a summary of a report by the New York City Bar Association: "Each year more than 2.3 million low-income New Yorkers face the complexities of the State's civil justice system without access to even minimal professional assistance. As a result, they often forfeit essential rights involving basic necessities of life—in stark contrast to the outcomes obtained by litigants who can afford to hire a lawyer or the small minority who receive pro bono assistance. This "justice gap" is a fundamental, long-term crisis in our legal system." (2013, 1).

Let me turn back to the LCS (2017) study. The report states "The civil legal problems these Americans face are most often related to basic needs like getting access to health care, staying in their homes, and securing safe living conditions for their families" (21). Throughout the report are dispersed stories of those who had received services of lawyers from LCS-funded groups to address legal problems. I have gathered these stories, printing them as Figure 11, so that the reader might understand the nature of help being received. Many of the needs

spring from the fact of the individual's poverty. Note also that most of these needs look as if a lawyer was not needed to address the concerns.

These and other problems facing families are called a legal crisis, and rightfully so.

Legal Services Industry – Monopolies responsible.

The U.S legal crisis is caused in large part by monopolies in the industry. Monopolies consist of professional associations, both at the state and national level. They also include groups in state legislatures which support the legislation banning low-cost substitutes (that are described below). In addition, we might include state attorneys general's offices, which sit idly by as these monopolies inflict harm on the poor.[46]

Legal Services Industry – Substitutes destroyed.

It is easy to describe the substitutes that are blocked by lawyers: All of them. This, in any case, is the goal of the monopoly in legal services. First, there are many professionals that are providing services to the poor (in their normal course of work) who could also provide the simplest legal advice. But they are prohibited from doing so. These include social workers and advocates for victims of domestic violence. Second, of course, are paralegals who would be competent to provide a wide range of legal advice on simple legal issues.

Legal Services Industry – Weapons.

Lawyers achieve this goal by helping pass Unauthorized Practice of Law (UPL) statutes. Roughly these laws forbid anyone who is not a member of the state bar from the "practice

[46]Again, the monopoly in legal services is quite different from the one in oral health services, as both legislators and judges are lawyers.

of law." The practice of law typically means giving legal advice of any type, no matter how insignificant, and whether it is paid advice or not.[47]

Here is language from the UPL statute in Illinois prohibiting non-lawyers from offering legal advice: "Our Supreme Court has described the practice of law as: 'The giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill.'"[48]

Many UPL statutes actually argue that it is not possible to define unauthorized practice beforehand and that it is up to the Supreme Court to determine it. Here is text from the Arkansas UPL: "Research of authorities by able counsel and by this court has failed to turn up any clear, comprehensible definition of what really constitutes the practice of law. Courts are not in agreement. We believe it is impossible to frame any comprehensive definition of what constitutes the practice of law. Each case must be decided upon its own particular facts. ... The practice of law is difficult to define. Perhaps it does not admit of exact definition."[49] Indiana's UPL statutes display similar language.[50]

Here is South Carolina:[51] "The biggest problem in determining whether someone is engaged

[47]Need to discuss Deborah Rhode.

[48]Task Force on the Model Definition of the Practice of Law: `http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.authcheckdam.pdf`

[49]Task Force on the Model Definition of the Practice of Law: `http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.authcheckdam.pdf`

[50]Here is UPL language from the Indiana Supreme Court Disciplinary Commission: "Practice of Law Defined (Somewhat). The Indiana Supreme Court has not given a precise definition of the practice of law, citing the ambiguity inherent in the concept: Although the practice of law in one of the oldest and most honored professions, the law itself is by no means an absolute science, the practice of which can be accurately and unequivocally defined. ... There is a twilight zone between the area of activity which is clearly permitted to the layman, and that which is denied him." See more here.

[51]`https://www.scbar.org/public/get-legal-help/problems-your-lawyer/unauthorized-practice-of-law-committee`

in the unauthorized practice of law is determining whether his or her conduct is actually the 'practice of law.' It is up to the South Carolina Supreme Court to decide whether someone is engaged in the practice of law. Code Section 40-5-20 allows the Supreme Court to adopt rules 'defining and regulating the practice of law.'"[52]

These statutes are enforced.

name changes; forms; social workers; advocates for battered woman; xxxx

If a person wishes to change their name, this is a legal matter. UPL laws thus require that a lawyer be involved in filling out the name change documents and so on. Recall the legal aid case number 5 from Figure 11. A woman needed to change her name after a divorce. She was able to secure legal aid attorneys to help her. A similar case is discussed by the Wall Street Journal. Another recent example is discussed in the the *Wall Street Journal*, "Hell Hath No Fury Like a Lawyer Scorned," on Jan. 28, 2015. The story is of a mother hoping to have her daughter's name changed (for reasons described in the article) for a Christmas present. Lawyer fees for the service were as much as $1,000, and this was too expensive. The mother found a store, *Legal Docs By Me*," which offered the service for $249. Subsequent to this, the New York Attorney General sued the company for Unauthorized Practice of Law.

Here is a situation in Virginia where social workers were being considered to give limited

[52]The practice of law is more than just appearing in court on behalf of a client. Though no concise definition of practice of law exists, certain characteristics make it more likely that the Court will view certain conduct as the practice of law. An early South Carolina case, cited by other jurisdictions as well, stated that the practice of law includes "the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law" (*In Re* Duncan 1909). The practice of law "extends to activities in other fields which entail specialized legal knowledge" (South Carolina v. Buyers Serv. Co. 1987).

advice to *pro se* litigants (those representing themselves) in Small Claims Court. The Standing Committee on Unauthorized Practice begins: "You have requested a legal ethics opinion seeking an opinion as to whether Rule 5.5 of the Rules of Professional Conduct, prohibits an attorney training a non-attorney social worker to assist members of the general public in filling out warrants in debt, and other forms necessary for *pro se* representation, in Small Claims Court in Virginia." Here are excerpts from the opinion: "The Committee concludes that the preparation of warrants in debt and other forms necessary for *pro se* representation ('legal instruments of any character') in Small Claims Court by a non-attorney social worker would be the unauthorized practice of law if the non-attorney social worker selects the forms for the litigant or advises the litigant as to which forms are appropriate based on the litigant's particular case; or provide any legal advice to the litigant. The social worker may assist the litigant with completion of the form document using language specifically dictated by the litigant."[53]

Reasons Given for Blocking substitutes

These UPL laws are certainly in the economic interest of lawyers. What is the purported motivation for such UPL laws? The reason cited is protection of the public from incompetence and the like. Note that this is taken as the only public interest to be considered (and not also, say, having greater access to legal advice as another interest to be considered). And lawyers assume they have the ultimate responsibility for making these decisions. (Arnold, sovereign nation.)

Barlow Christensen makes these points in a nice article on unauthorized practice: "From the

[53]Read the full opinion here.

very beginning the effort against lay practitioners has been justified as necessary for the well-being of the public. Suppression of the practice of law by non-lawyers has been proclaimed to be in the public interest, a necessary protection against incompetence, divided loyalties, and other evils. But this interest of the public is one that has been defined, articulated, promulgated, and enforced not by the public but by the legal profession. And nowhere, in all of the literature or in any of the court decisions, is there evidence of a public voice with respect to this supposed public interest. Even more significantly, nowhere, in all of the literature or in any of the court decisions, has there been, until very recently, any serious suggestion that any other interest of the public might be involved" (Christensen 1980, 201).

Denise Johnson, the first woman on the state Supreme court in Vermont, questions this logic: "I am not suggesting that poor people do not deserve competent representation, but rather that not every case that comes to court requires an adviser with the full range of skills possessed by an attorney. A far more useful approach is to think about ways to expand the universe of potential counselors to the poor by reducing or eliminating the lawyer's monopoly in some areas, without compromising important legal rights" (Johnson 1998, 485).

Let's be clear before moving on: Americans do not need a right to counsel, they need to be protected from the lawyer monopoly.[54]

[54]Denise Johnson states: "Critical to any scheme for improving access to justice is a recognition that the monopoly lawyers hold on the justice system has become an unacceptable barrier to change. The increasing use of paralegals has proven that many legal matters, especially those that rely on forms, may be handled quite competently by non-lawyers, with little or no actual supervision by a person admitted to the bar. Lawyers in candid moments will admit this, but the organized bar has kept a firm grip on rules relating to paralegals and the unauthorized practice of law. The consistent rationale is that consumers need protection against their own ignorance, and that only by regulating lawyers will the public be protected from the unscrupulous. But ... it is difficult to sustain the argument that the poor are being protected by not receiving any legal advice at all. ... Thus, it is possible to agree with the premise that consumers need protection without concluding that giving lawyers an exclusive right to provide service is a necessary safeguard" (Johnson 1998, 484-5).

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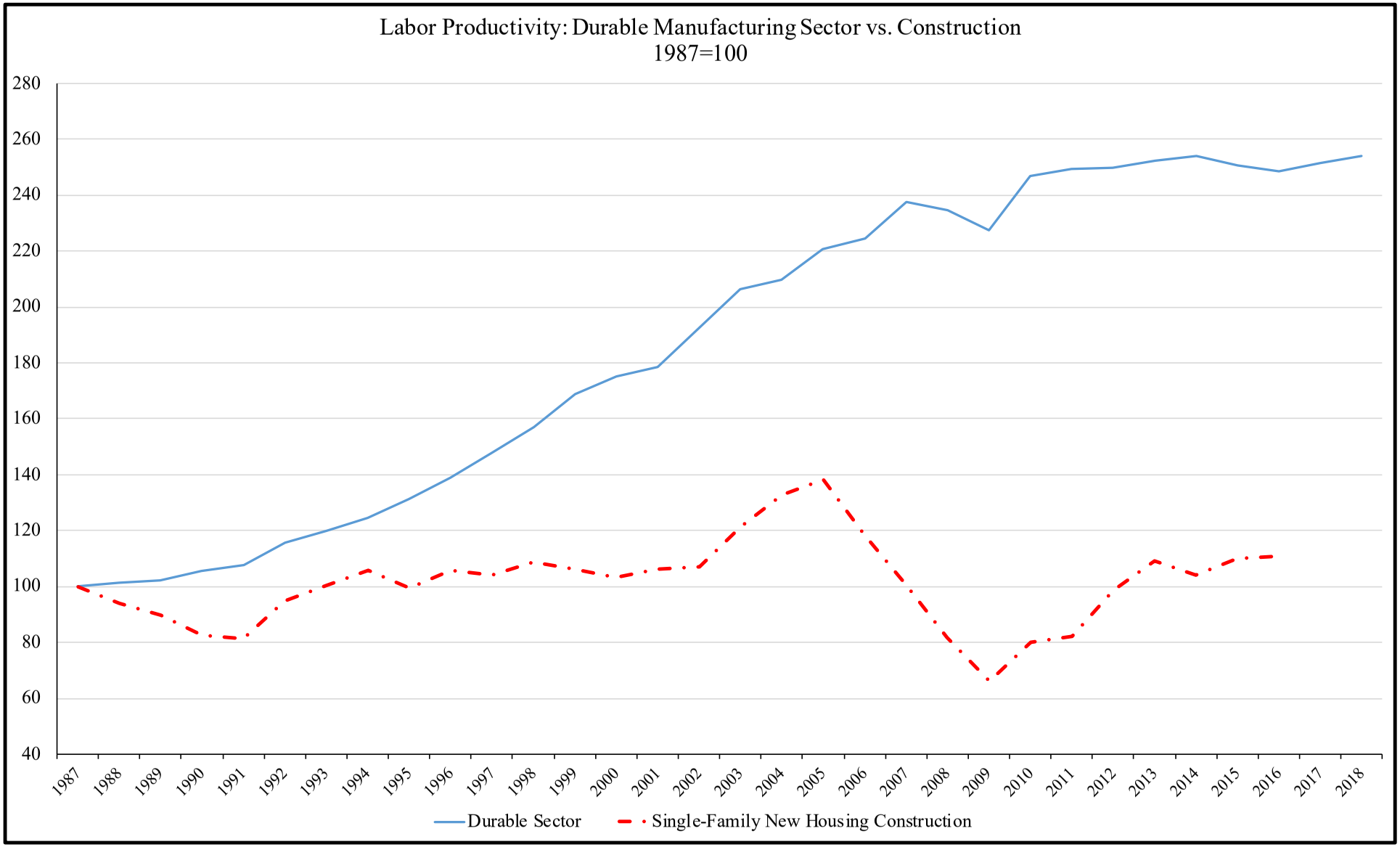
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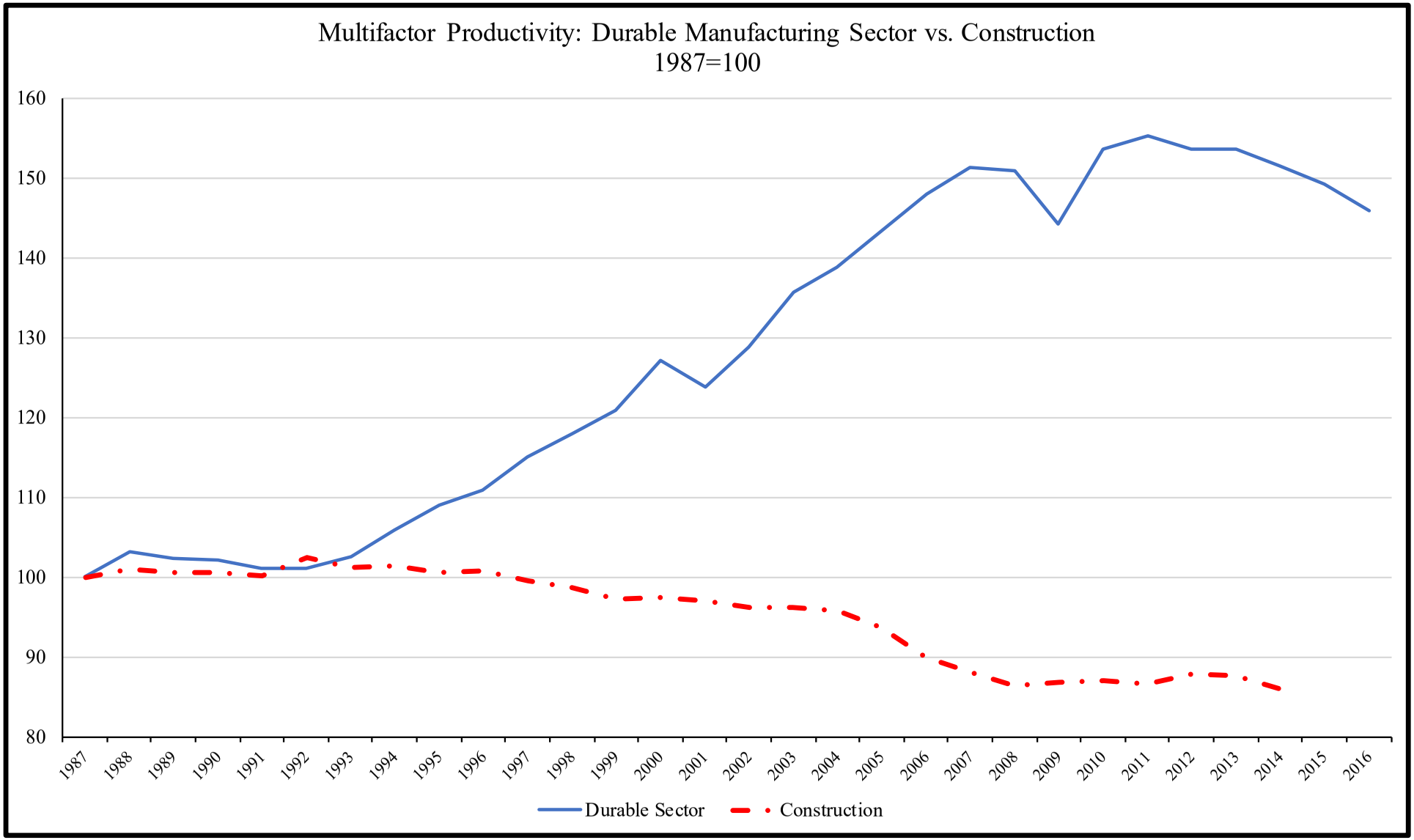
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Figure 1 – A



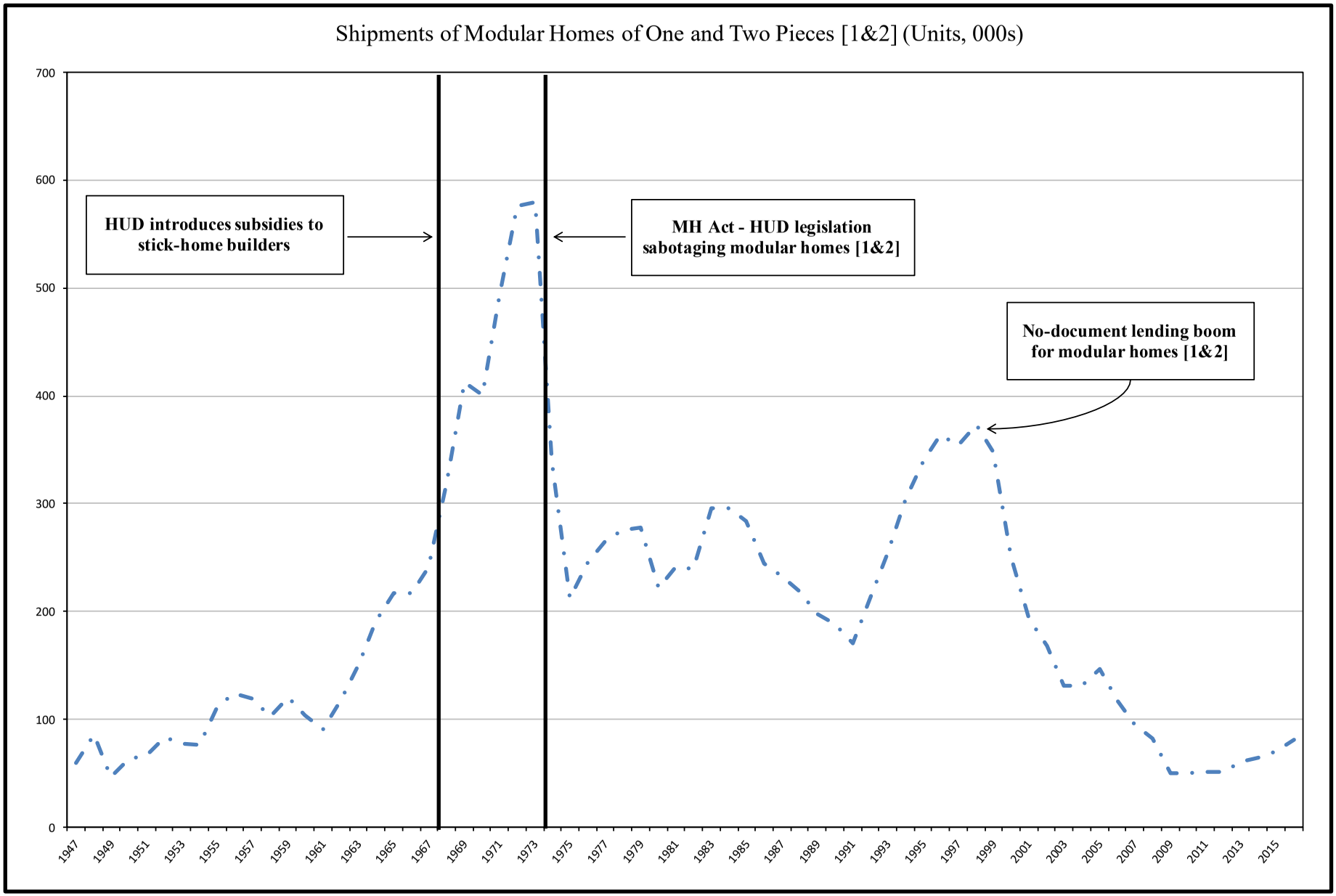
*Data on productivity of the durable sector comes from the Bureau of Labor Statistics. Data on the durable sector refers to NAICS 321 327 331-337 339. Series ID: MPU9920062. Data on productivity of single-family new housing construction is taken from Sveikauskas, Rowe, and Mildenberger (2018) based on Bureau of Labor Statistics data. Data on single-family new housing construction refers to NAICS 236115.

Figure 1 – B



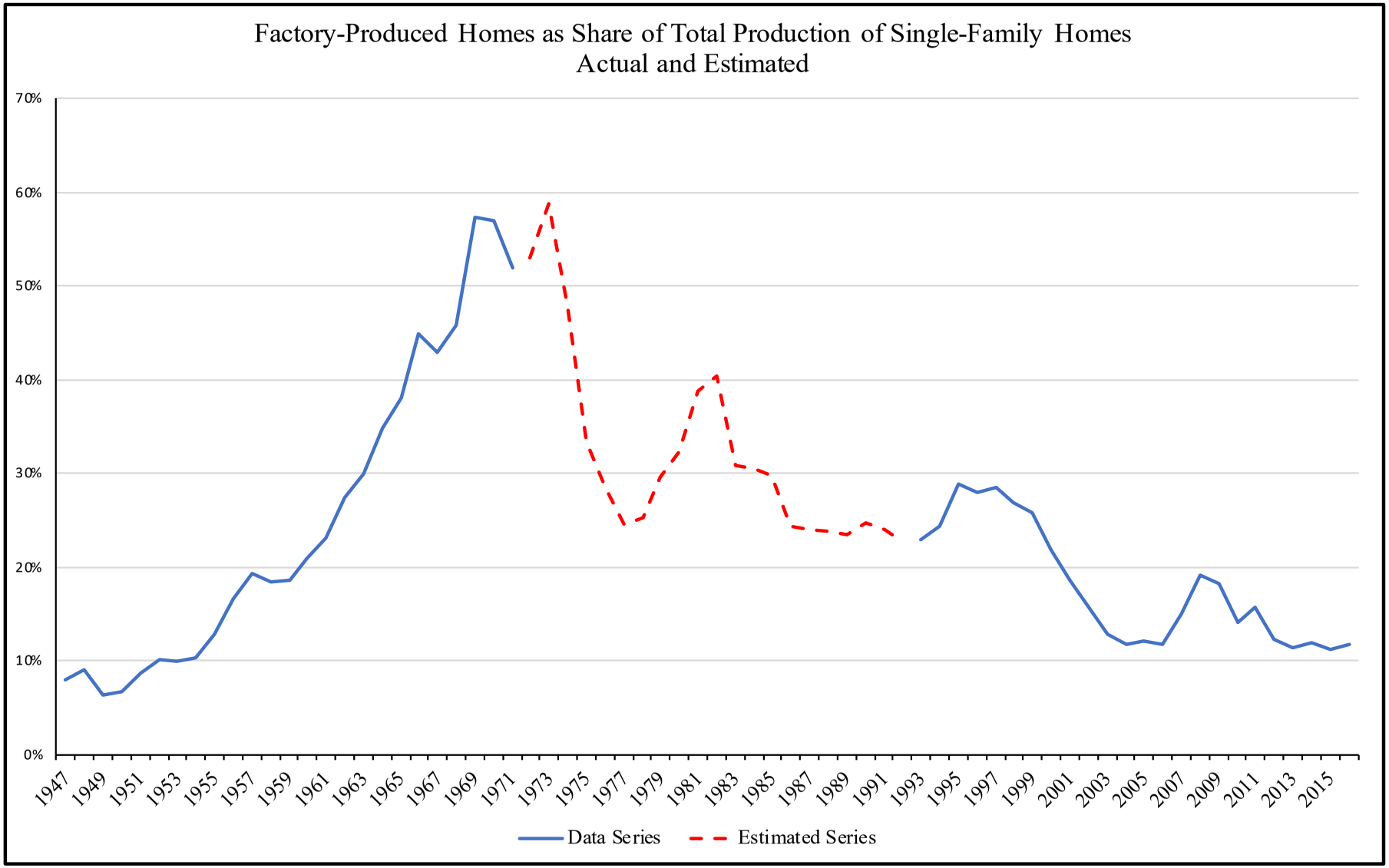
*Data from the Bureau of Labor Statistics. Data on the durable sector refers to NAICS 321 327 331-337 339. Series ID: MPU9920012. Data on the construction sector refers to NAICS 23. Downloadble from: https://www.bls.gov/mfp/special_requests/klemsmfpxg.zip. Note that this measure of productivity is at a more aggregate level, as the construction sector includes both residential and non-residential construction of both single- and multi-family units.

Figure 2



NB: (1) These homes are not in the statistics on housing starts or building permits. (2) Notice lending boom roughly a decade before the real estate lending boom.
*Data from the U.S. Census Bureau – Shipments of New Manufactured Homes, retrievable at https://www.census.gov/data/tables/time- series/econ/mhs/shipments.html. Data prior to 1959 for manufactured homes are available from the Historical Statistics of the United States, Millennial Edition, Part Dc, Series Dc637-652.

Figure 3



*Data from the U.S. Census Bureau – Shipments of New Manufactured Homes. Data prior to 1959 for manufactured homes are available from the Historical Statistics of the United States, Millennial Edition, Part Dc, Series Dc637-652. Single-family (one) unit housing starts (both attached and unattached) following 1959 are available from the U.S. Census Bureau – New Residential Construction. Not seasonally adjusted data are used. Previous data are available from David Saskind, "Housing Starts: Background and Derivation of Estimates 1945-1982", Construction Review, 1982. Data for modular home production up to 1969 are from the National Association of Home Manufacturers based on their own surveys and professional surveys. For the remaining three years, data are from "Modular Housing, 1972: Statistics & Specifics" by John A. Reidelbach (Modco, 1972), Page 127. From 1992 onward, the data are equal to the sum of the "Modular" and "Other" categories from "2016 Characteristics of New Housing." Estimated series supplements manufactured home shipment data with estimated data on the production of other factory-built homes based on shipment variation.

Figure 4



Home Plan No. 704
A charming six-room Dutch Colonial home. Large living-room; fireplace; vestibule; bath; dining-room; kitchen, with built-in kitchen ware; 3 bedrooms; linen closet; porch. All materials complete as specified.
$2389.00

Judge Landis'

Decision Gives You Wholesale Prices on Building Material!

In the agreement between the Unions and Building Contractors before Judge Landis last Saturday, Rule No. 3 says: *"There shall be no restriction in the use of any raw material or manufactured material except prison made."*

People of Chicago—Here is the opportunity for which you have long waited. Do you know that you can now build a new home or repair your old one at a *positive saving of 25% to 50% on materials?* Judge Landis has made this possible. By this agreement, for the first time in years, millwork manufactured outside of Chicago may now be shipped into and used in Chicago. This means that you get the benefit of outside low prices—that you can enjoy, as do 200,000 other of our customers, the benefits of the famous Gordon-Van Tine system of *selling from mill direct to you.*

Because of our tremendous resources and method of selling, we can offer you building materials—either complete homes or lumber, millwork and other requirements called for by your building contractor—*at prices actually at or lower than wholesale.* You can build or repair at *pre-war costs* and get finest quality if you buy of Gordon-Van Tine. Shipments delivered to your nearest freight depot.

Book of 200 Home Plans FREE!

Gordon-Van Tine service and prices furnished just as always for people living outside of Chicago. Write our home office at Davenport for books and information.

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Before going one step further in trying to solve your housing problem, get from our Chicago headquarters our book containing plans for 200 Modern homes—free.

Learn, from this book, what the Gordon-Van Tine system actually is—how it saves you $200 to $2,000 on a finished home; how it guarantees the *finest* materials at *wholesale* prices; offers you the service of the best architects; protects you from unexpected "extras" in the cost of building. Start to build now and move into your new home within 60 days.

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If you have architects' plans, submit them to us and let us prove to you how much money we can save you by our direct-from-factory method of selling. Our line includes everything in lumber and building material, and we are prepared to ship immediately in any quantity. Quality and quantity are absolutely guaranteed. Shipments direct from our Davenport mill—quick service.

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Special millwork orders for any home completed on short notice in one of the best equipped factories in America. Sold to you at Factory Prices. Let us quote you on any millwork, stock or special. Will show you some *real* savings—highest quality guaranteed or your money back.

**The Chicago Tribune* (Sep. 6, 1921): p. 6.

Figure 5



*_Look_ (April 1, 1947): p. 21.

Figure 6 – A



*Next Step: Affordable Housing Done Right, available at: https://nextstepus.org/smartmh/

Figure 6 – B



*Nevada Housing Division-Manufactured Housing, available at: www.mhd.nv.org

Figure 7 – A

Metal Chassis Above Basement



**Manufactured Housing Research Alliance*, 2000.

Figure 7 – B

Metal Chassis Above Basement



**Mobile Home Living,* available at: https://mobilehomeliving.org/basements-under-mobile-homes.

Figure 8

1

[CLIENT STORY]



Ronald | Louisiana | Consumer and Finance | Ronald needed legal help when FEMA filed a claim against him for repayment of disaster funds issued after Hurricane Katrina. He had never even applied for, much less received, any FEMA funds. FEMA seized his income tax refund and told him he had to pay an additional $8,000. With the help of legal aid, Ronald was able to demonstrate that the funds in question had been issued to someone else. FEMA dismissed the claim and returned the money wrongfully seized from Ronald's accounts.

2

[CLIENT STORY]



Mary | Ohio | Health | Mary lives in an assisted-living community. When a health condition required rehabilitation, she entered a skilled nursing facility for what she expected would be a short-term stay. Once therapy was completed, however, the nursing home refused to begin discharge, insisting she required 24-hour care and demanding payment for her continued stay. Mary could not afford to pay for both the nursing home and her assisted living residence. Legal aid attorneys got involved, advocating for her right to make an informed decision about her living situation. They also helped Mary work with her primary care physician to arrange for the necessary home health services she needed to return to her home.

Source: LSC Client Success Stories.

3

[CLIENT STORY]



Misty | Nebraska | Income Maintenance | While giving birth to her third child, Misty, 32, went into cardiac arrest and was left with a serious heart condition that made her eligible for Social Security Disability benefits. She filed for benefits to help make ends meet and take care of her family, but was denied two times. With the help of legal aid attorneys, Misty's third application for disability benefits was expedited and shortly thereafter, she received a favorable decision. The decision, which granted her $700 per month, also granted her Medicaid, which allowed her to secure a Ventricular Assist Device that has allowed her to live a more full life with her family again.

Source: LSC Client Success Stories.

4

[CLIENT STORY]



Jill | Indiana | Housing | Jill, a senior and legal guardian of two young granddaughters, faced possible homelessness. Jill's sole income came from Social Security Disability benefits, which qualified her for Section 8 subsidized housing. When Jill's apartment was cited for not meeting Section 8 standards, the landlord refused to make the repairs, and the housing authority stopped its payments. The landlord filed an eviction notice for failure to pay rent despite Jill's attempts to continue paying her portion of the rent. A legal aid attorney represented Jill in small claims court, and Jill and her two granddaughters were allowed to stay in the apartment while she searched for another suitable place to live. Without an eviction on her record, Jill retained her Section 8 eligibility and found a new, safe home for her granddaughters.

Source: LSC Client Success Stories.

Figure 8, ctd.

[CLIENT STORY]



Michaela | New Jersey | Veterans | Michaela is a lifelong New Jersey resident, always living there except for six years serving in the armed forces in the 1990s. While stationed in Alabama, she divorced, but a name change was not included in the divorce. As a result, when she returned to New Jersey after her service ended, she was compelled to obtain a driver's license using her married name. Michaela used her maiden name in all other matters, causing issues in the various aspects of her life that involve identification (e.g., finances, utilities, leases, etc.). A legal aid attorney represented Michaela in a name change, permitting her to resume use of her maiden name and to once and for all clarify her identification in all aspects of her life.

Source: LSC Client Success Stories.

5

[CLIENT STORY]



Donna | New York | Domestic Violence | Donna, a rural resident of New York State, suffered from severe mental health problems resulting from domestic violence and the sexual abuse of one of her children. She did not feel comfortable speaking about her situation before contacting an LSC grantee, who helped her address various civil legal problems she was facing. Specifically, the legal aid attorney helped Donna avoid a workfare sanction by the local Department of Social Services and won her SSI appeal, permanently removing her from the county welfare rolls. Donna received over $40,000 in retroactive SSI benefits, which has allowed her to establish her own home and provide a college education for her child.

6

[CLIENT STORY]



Bud | West Virginia | Veteran Benefits | Bud is a 68 year-old Vietnam veteran who had been receiving his Marine pension benefits for the past eight years. After a government clerk keyed in the wrong social security number, his benefits were suspended. Moreover, the Department of Veterans Affairs (VA) deemed the money he had been receiving as overpayment and threatened action against him. Bud tried to correct his record, but he was having a difficult time and, meanwhile, his savings were being depleted. An attorney with an LSC grantee's Veteran's Assistance Program worked with the Social Security office, the VA, and the Internal Revenue Service, and was eventually able to establish Bud's identity, win reinstatement of his pension, and resolve the false overpayment issue.

Source: LSC Client Success Stories.

7

[CLIENT STORY]



Frida | Washington | Domestic Violence | Frida, a domestic violence survivor, and her four children, fled abuse at the hands of her husband. The children were sexually molested by their father, confined to the house, and repeatedly threatened with weapons. During the subsequent divorce, the husband was granted unsupervised telephone contact with the children. When one child became suicidal, a legal aid attorney helped Frida secure an order to stop the phone calls. The grantee was able to secure a lifetime protection order and child support. Frida has since started her own business, and her children are doing well in therapy.

Source: LSC Client Success Stories.

8

[CLIENT STORY]



Helen | Pennsylvania | Income Maintenance | Helen is a 68-year-old widow whose only income is a monthly Social Security Administration (SSA) widow's benefit. When she sought help from an LSC grantee, she was scared, vulnerable and overwhelmed. She had just received a letter from the SSA indicating they had overpaid her $47,000 and notifying her that they would stop her monthly benefit payment until the debt was repaid. The legal aid attorney found that the overpayment was caused by fraudulent conduct by Helen's late ex-husband that occurred after their divorce and long after they had separated. The attorney helped Helen resolve the situation, and she continued to receive her SSA widow's benefit.

Source: LSC Client Success Stories.

9

Figure 8, ctd.

10

[CLIENT STORY]



Elinor | New York | Housing | Elinor has a daughter with a disability who had to crawl four flights of stairs each day to their apartment. Her daughter spent about 30 minutes sliding down the steps to reach the wheelchair stashed under the stairwell alcove and more than an hour getting in and out of her building to attend school five days a week. When there was a vacancy on the ground floor, Elinor sought to move there, but the landlord told them "transfers" weren't allowed. Represented by an LSC grantee lawyer, the family was able to acquire the apartment on the ground floor and maintain their $700 rent for their three-bedroom, rent-controlled apartment.

Source: LSC Client Success Stories.

11

[CLIENT STORY]



Charles | California | Housing | Charles and his wife care for their elderly parents and grandchildren in their home in rural California. They first experienced financial problems when Charles's employer reduced his work hours. Then he became ill from a life-threatening disease. He and his wife asked their lending bank for help. When the bank did not respond to their modification request, they sought help from an LSC grantee. The legal aid staff succeeded in obtaining a modification that lowered their monthly mortgage payment and established a fixed payment for principal and interest.

Source: LSC Client Success Stories.

12

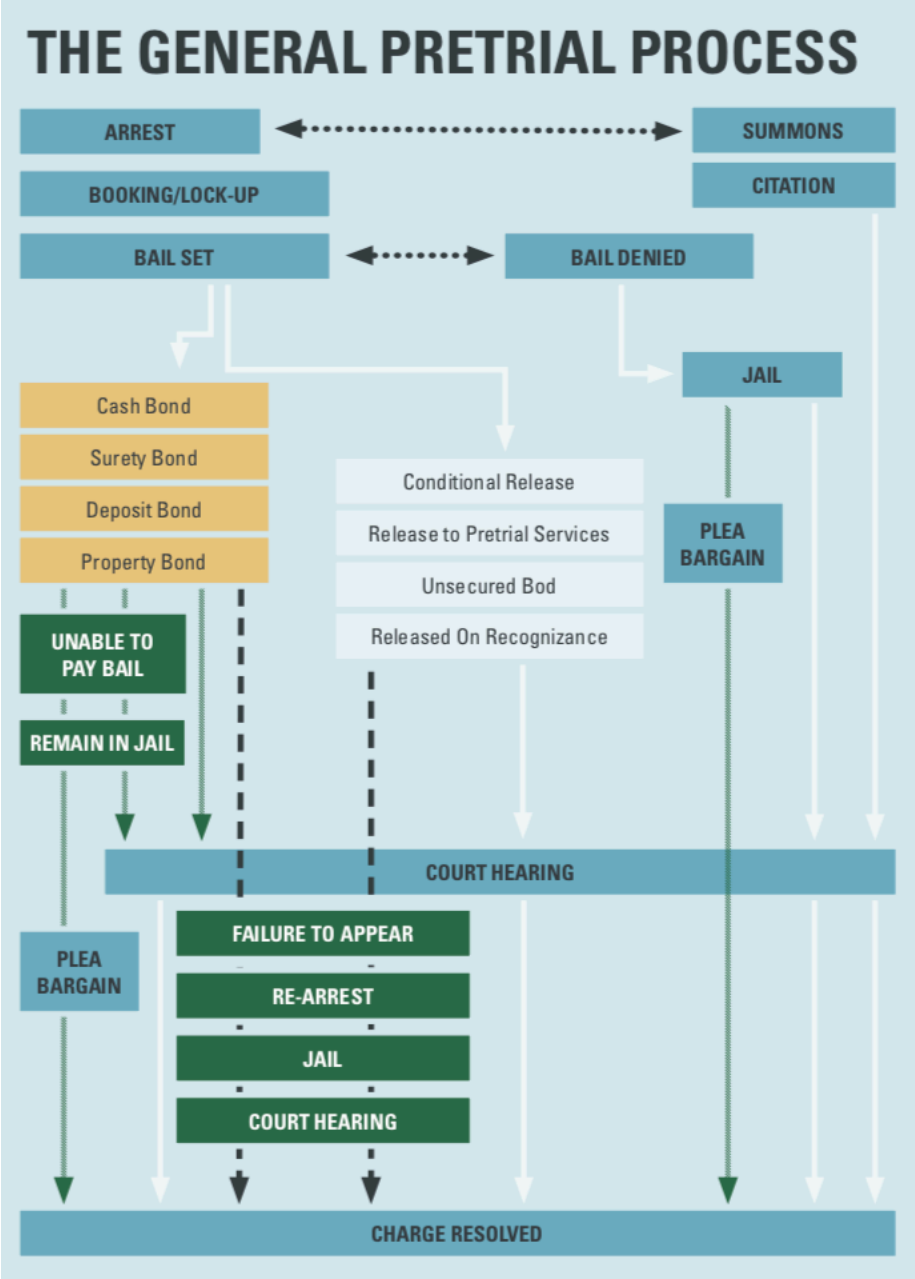
[CLIENT STORY]



Patricia | Georgia | Education | Patricia was worried about her 13-year-old daughter, a middle-schooler diagnosed with leukemia. She was being bullied at school and, because she was often ill or hospitalized, she needed help with academics and extra time to complete assignments. After speaking with school officials, Patricia did not feel her concerns were being heard. LSC grantee lawyers worked with the school to develop a special education plan, bringing in an education specialist from the hospital where her daughter was being treated. An individual education plan (IEP) was developed, giving Patricia's daughter the extra support she needed and permission to wear a hat to cover her bald head. School officials also addressed the bullying, making her time in school safer and more productive.

Source: LSC Client Success Stories.

Figure 9



*Justice Policy Institute (Sept. 2012): 8.