

Poor evicted under nuisance laws by New York City police

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1 March 2016

The New York City Police Department (NYPD) is locking residents out of their homes, some permanently, using secret court orders before residents have a chance to defend themselves and without warning, according to an investigation by *Pro Publica* and the *Daily News* published earlier this month.

Conducted under a “public nuisance abatement” law, the evictions are considered civil actions, not criminal cases, so that tenants have no right to an attorney while the police, using only a judge’s signature, deny them constitutional rights of due process. The result has been to push hundreds of people into homelessness and the resulting devastating short and long-term consequences for them and their families’ lives.

The report analyzed 516 residential “nuisance” actions filed in court from January 1, 2013 to June 30, 2014 and the outcomes of related criminal cases. Most of those targeted were poor and living in mostly minority communities. Of the people forced to give up leases or banned from their homes, 173 were not convicted of a crime, including 44 who did not even face criminal prosecution. In order to regain their residency, another 74 agreed to warrantless searches of their home by the police and others agreed to the forfeiture of their leases if they were accused of future wrongdoing.

One case described in the report is the arrest of Jameelah El-Shabazz and her son, who had had “run-ins” with the police over drugs, in their Bronx apartment. Police found cups of white powder that turned out to be crushed eggshells used in practicing the Ifa religion of Nigeria. It took a week before testing results allowed their release from Rikers Island prison.

Five months later the police locked out the family with a nuisance-law court order based on previously dismissed drug charges. El-Shabazz was coerced into

signing an agreement that her son, whom police claimed had sold drugs from the home to a confidential informant, was barred from the apartment for life. To demand a hearing before a judge to challenge this could have left her still locked out for weeks.

The *Pro Publica/Daily News* report notes that the narcotics officer behind the nuisance abatement case against El-Shabazz, Detective Peter Valentin, was the most-sued officer on the NYPD, and “was put on desk duty in 2014 for allegedly fabricating buys from confidential informants.”

Police request temporary residential closing orders as an “emergency” which does not permit residents a chance to go before a court to defend themselves, even though police filings show alleged offenses that were, on average, six months old. Orders have been granted 70 percent of the time, with eight of the twenty judges giving approval in 100 percent of cases.

The New York public nuisance law was originally enacted in 1977 to eliminate sex shops from the Times Square area in order to promote family-friendly tourism. It was amended to include residences and violations were expanded to include drugs, gambling, illegal social clubs and counterfeit goods operations. A court ruled that the three violations necessary to close a location need not to have resulted in convictions.

The NYPD was authorized in 1994 to file its own nuisance abatement cases independent of the Mayor’s office. In effect, the police became prosecutors as well as an enforcement agency. “Nuisance abatement” went from 25 closings of businesses in 1977 to 1,082 cases in 2013, 44 percent of which were at residences.

With growing homelessness and the lack of affordable housing at socially explosive levels throughout the city, officials moved to cover themselves from the political fallout of the report. Fern

Fisher,

the deputy chief administrative judge for the city's courts, recommended limiting lockout orders before residents had a chance to come to court, especially when based on old allegations by confidential informants.

The Police Commissioner, William Bratton, promised he will take "a fresh look" at the policy. The head of the city Law Department claimed it will ensure that the *ex parte* orders (in which a judge's decision is made without all parties present) are requested only "in cases of appropriate urgency," but did not define how this is specifically interpreted.

New York City's "progressive" Democratic mayor, Bill de Blasio, commented that "there should always be due process," and that he would examine the protocols around such evictions, but a spokesperson added that the Mayor did not mean to imply that he was opposed to the use of secret lockout orders by the NYPD. Various other elected city officials raised the usual diversions of class-action suits and calls for federal investigations. As a social problem, universally they have construed the problem in racial terms, as being chiefly a violation of the civil rights of minorities.

This attack on basic democratic rights in fact converges with the increasingly severe crisis of affordable housing facing the working class throughout the city. There were 28,743 eviction judgements processed in the city's housing courts in 2012, a figure that hides the real number of incidents because formal court-mandated evictions comprise only a minority of forced moves.



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