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UNIVERSITY OF CALIFORNIA,
IRVINE

Honest Work, Unfair Pay: Wage Theft and Disputing Among Low-Wage Workers in the District
of Columbia

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law and Society

by

Matthew Fritz-Mauer

Dissertation Committee:
Professor Carroll Seron, Chair
Professor Valerie Jenness
Professor Kaaryn Gustafson
Dean Mario Barnes

2019

DEDICATION

To Chelsea, of course. My wife, my best friend, and my inspiration.

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Financial support was provided by the Department of Criminology, Law and Society at the University of California, Irvine.

CURRICULUM VITAE

Education

University of California, Irvine, Irvine, California 2010 – 2019

J.D. December 2015

GPA: 4.074

Ph.D. Criminology, Law and Society, May 2019

GPA: 3.985

University of Delaware, Newark, Delaware 2005 – 2009

Honors Bachelor of Arts degree in Criminal Justice conferred May 2009.

Honors and Awards

University of California, Irvine School of Law

Graduated *summa cum laude*

Pro Bono Achievement Award (2013 – 14)

Best Presentation in the School of Law, UC Irvine Associated Graduate Students Symposium (2014)

UC Irvine Law Review (Staff Editor, 2014 – 15)

Faculty Awards (awarded to the highest performing student in a course) received in Common Law Analysis: Contracts, Common Law Analysis: Torts, Ethics for Prosecutors & Defenders, National Security Law, Law & Access to Higher Education, and Labor Law

Dean's Awards (awarded to the second-highest performing student in a course) received in Procedural Analysis (Civil Procedure), Criminal Procedure, Federal Courts, and Immigrant Rights Clinic

University of California, Irvine, School of Social Ecology

Newkirk Fellowship – Fall 2010

Graduate Student Mentoring Award – Spring 2013, Winter 2014

Peterson/Center in Law, Society, & Culture Fellowship – 2014 – 15

MAS Fellowship – Winter 2018

SE Dean's Dissertation Writing Fellowship – Winter 2019

University of Delaware

Honors degree in Criminal Justice

Nominated for the Len Perfetti Memorial Award, given annually to the most outstanding Criminal Justice Senior

Professional Experience

Law Clerk to the honorable Harry T. Edwards, D.C. Circuit Court of Appeals (August 2016 – July 2017)

Synthesized and evaluated parties' legal arguments, relevant judicial decisions, and trial court and agency records to assist in judicial decision-making. Prepared succinct, thorough bench memoranda to aid Judge Edwards in evaluating appellate cases. Drafted, revised, and carefully edited legal opinions.

Coordinator of the University of California, Irvine School of Law Wage Theft Clinic (March 2015 – May 2016)

Built support for the clinic among students, coordinated outreach to day laborers, and organized meetings. Interacted with clients, conducted intakes, and calculated unpaid wages and applicable penalties. Drafted demand letters and legal complaints, and filed mechanic's liens. Helped to plan a forum to educate the community about wage theft and to build stronger coalitions.

Summer Associate at Bredhoff & Kaiser, PLLC, Washington, D.C. (May – July 2015)

Researched and wrote memoranda on a broad variety of legal issues, including ERISA preemption, common law assault and battery in the context of labor protests, the duty of fair representation, the weighing of evidence in labor arbitrations, and the constitutionality of school voucher programs.

Pro Bono Legal Researcher for the United Farm Workers, La Paz, California (March 2014 – August 2014)

Researched and wrote on a variety of legal issues, including drafting an opposition to a motion to dismiss, and writing a memorandum on the use of statistical evidence in large class action lawsuits.

Judicial Extern for the honorable Richard M. Aronson, California Court of Appeals, Santa Ana, California (May – August 2012)

Synthesized and evaluated parties' legal arguments, relevant judicial decisions, and trial court and agency records to assist in judicial decision-making. Prepared succinct, thorough bench memoranda to aid Justice Aronson in evaluating appellate cases. Drafted, revised, and carefully edited legal opinions.

Research Experience

Visiting Research Fellow, Georgetown University Law Center (March 2016 – July 2016)

Assisted in the evaluation of GULC's new "low bono" law firm. Represented GULC at a conference in order to collect information, network, and build partnerships. Created a qualitative, semi-structured interview schedule, and conducted interviews with lawyers in the firm.

Research Assistant, Professor Mario Barnes (March 2013 – October 2014)

Assisted Professor Barnes with a research project examining the circumstances surrounding increased "self-help" (especially "Stand Your Ground") laws.

Research Assistant, Professor Donna Schuele (May 2013 –October 2013)

Assisted Professor Schuele in updating an article on community property law in California by reading and outlining California Supreme Court cases, legal briefs, and by updating legal citations.

Graduate Student Researcher, Program Learning Outcomes Evaluation Project, Dr. Susan Coutin (Winter Quarter 2013)

Assisted Drs. Susan Coutin, Geoff Ward, and Terry Dalton in their assessment of the quality of faculty mentorship in the department of Criminology, Law and Society, and how well the program prepares these students to write for publications and grants.

Research Assistant, Anaheim Family Justice Center Research Project, Drs. Raymond Novaco and Valerie Jenness

Created a 32-question survey designed to measure citizens' perceptions of the police and the courts; oversaw pilot testing of this survey. Assisted in design of the research project in general.

Research Assistant, Dr. Chrysanthi Leon (September 2009 – December 2009)

Read sex crimes cases from various years, coded for different types of language used in the discussion of such crimes. Read relevant literature, assisted Professor Leon with her own work.

Teaching Experience

Introduction to Criminology, Law and Society Teaching Assistant (Spring Quarter 2011)

Graded, interacted with students, and led eighteen total discussion sections during the quarter.

Hate Crimes Teaching Assistant (Winter 2011)

Helped students with their work, assisted Professor Jenness with teaching, graded assignments and exams, proctored exams, and occasionally taught.

Legal Institutions and Society Teaching Assistant (Fall Quarter 2012, Fall Quarter 2013)

Monitored online forum, graded papers, interacted with students over phone and e-mail, generally assisted Professor Thompson.

Criminal Law Teaching Assistant (Winter Quarter 2013, Winter Quarter 2016)

Helped students with material, led a weekly discussion, assigned and graded homework, graded exams, interacted with students through e-mail and in person.

Naturalistic Field Research Teaching Assistant (Summer 2013, Summer 2014)

Helped students design and execute research projects designed with qualitative methods in mind. Read, revised, and graded papers on these projects. Led two weekly discussion sections to help students understand the material and improve their writing.

Morality and Legal Reform Teaching Assistant (Winter Quarter 2014)

Helped students understand material, led exam review sessions, graded and advised on final papers, interacted with students through e-mail and in person.

American Law Teaching Assistant (Spring Quarter 2014, Spring Quarter 2016)

Assisted students in learning and working with course materials, focusing on American tort law, contract law, and property law. Led weekly discussion sections, graded exams and papers, interacted with students through e-mail and in person.

Preventing Errors of Justice Teaching Assistant (Fall Quarter 2017)

Assisted students in learning and working with course materials focusing on errors in the criminal justice system. Graded discussion forum responses, papers, and generally aided the professor in teaching.

Research Methods Teaching Assistant (Spring Quarter 2018)

Assisted students in learning and working with course materials focusing on qualitative and quantitative research methods. Grading discussion forum responses, papers, and generally aiding the professor in teaching.

Applied Statistics Teaching Assistant (Fall Quarter 2018)

Assisting student in learning and working with course materials focusing on quantitative statistical analysis. Grading and helping students with homework assignments, answering questions about the course, and assisting the professor on other tasks as requested.

Publications

Lofty Laws, Broken Promises: Wage Theft and the Degradation of Low-Wage Workers, 20 *Emp. Rts. & Emp. Pol'y J.* 71 (2016).

Professional Presentations

Public Defenders: Zealous Advocacy in a Judgmental Environment, UC Irvine Associated Graduate Students Symposium, April 2014 (Awarded “Best Presentation in the School of Law”).

Public Defenders: Zealous Advocacy in a Judgmental Environment, Law and Society Association, Minneapolis, MN, May 2014.

Lofty Laws, Broken Promises: Wage Theft and the Degradation of Low-Wage Workers, Class Crits, Davis, CA, November 2014

Lofty Laws, Broken Promises: Wage Theft and the Degradation of Low-Wage Workers, Law and Society Association, New Orleans, LA, June 2016

Workers' Rights and Wage Theft: Rights Consciousness and Disputing Among Low-Wage Workers in Washington, D.C., Law and Society Association, Toronto, Canada, June 2018

Professional Memberships

American Association of University Professors
Law and Society Association

ABSTRACT OF THE DISSERTATION

Honest Work, Unfair Pay: Wage Theft and Disputing Among Low-Wage Workers in the District of Columbia

By

Matthew Fritz-Mauer

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2019

Professor Carroll Seron, Chair

Wage theft occurs whenever a worker is denied the wages or benefits to which they are legally entitled. Violations of low-wage workers' basic workplace rights is common, and these violations collectively cost working people and various levels of government tens of billions of dollars per year. Due to growing awareness over this problem, some states and cities have recently passed new laws designed to better remedy and deter wage theft. The District of Columbia is one such city, and has among the strongest anti-wage theft laws in the country. Through approximately sixty semi-structured, qualitative interviews with low-wage workers, employment lawyers, workers' rights activists, and a small number of employers, this research explores the personal and social consequences of wage theft among low-wage workers in Washington, DC.

Low-wage workers report significant harm as a result of wage theft, which extends far beyond the immediate economic consequence of being underpaid. Wage theft often causes a variety of cascading economic harms, as low-wage workers struggle to pay for the basics of life,

including rent, food, and utilities. Many victims of wage theft also report feeling angry, depressed, powerless, and frustrated, and some report stress-related health problems.

Despite the powerful effect that wage theft has on its victims, low-wage workers are highly unlikely to attempt legal action, either by filing a lawsuit or seeking help from the government. Many are afraid of retaliation by their employers, and cannot afford to leave their jobs. Many also lack knowledge of their substantive and procedural rights, and either do not know that their workplace rights have been violated, or do not know where to go for help. Workers also report that they lack faith in the government's ability and willingness to help them.

These findings have significant implications for labor standards enforcement. While the District's legal reforms have helped to address the problem of wage theft in some limited ways, the city primarily utilizes a complaint-based system for finding and remedying wage theft. However, given that wage theft is common and that those who experience it are extremely unlikely to notify the government, this passive approach is a deeply inadequate response to the problem. To effectively find, remediate, and deter wage theft, enforcement agencies must adopt more proactive strategies. At a minimum, this must include improving working relationships with community organizations, expanding the frequency and scope of agency-directed workplace investigations, and streamlining government processes.

Introduction

In May of 1937, President Franklin Delano Roosevelt sent to Congress legislation that would eventually become the Fair Labor Standards Act. This request came at a key moment in American history. The nation was mired in the throes of the Great Depression, with a steadily increasing double-digit unemployment rate, and Roosevelt had just won re-election after running a campaign focused on progressive reforms and economic relief (Waiwood, 2013; Grossman, 1978). Roosevelt's vision for the country stood in stark contrast to the status quo, which preached limited government involvement in private industry, and he won by a landslide (Grossman, 1978). The nation, in other words, had signaled that it was ready for substantial change. The Fair Labor Standards Act would help ensure basic rights and protections for American workers, abolishing child labor, and establishing minimum wage and overtime laws (Grossman, 1978). These policies, though modest by today's standards, were revolutionary at the time, and reflected both decades of activism and the dire straits of the Great Depression-era American economy. The Act's proposal and eventual passage was the culmination of a longstanding battle between the progressives who believed that the government must regulate the workplace for the good of the country, and conservatives who argued that to do so would be economically catastrophic and profoundly un-American (see Grossman, 1978; Stathis, 2008; Cole, 2016).

Until the 1930s, the Supreme Court had been a bulwark against government intrusion into private affairs, invalidating minimum wage and other laws designed to guarantee a degree of protection for America's workers (Grossman, 1978). Most famously, in the 1905 case of *Lochner v. New York*, the Supreme Court declared unlawful a New York law that regulated hours and working conditions in bakeries, holding that it law unconstitutionally interfered with the right of

employers and employees to freely enter into contracts of their choosing. During the so-called “*Lochner* era,” which lasted until 1937, the Supreme Court regularly struck down economic regulations, including laws protecting union rights and establishing a minimum wage, based on its belief that such laws went beyond the power of Congress and the states to impose limitations on the free market (see, e.g., *Adair v. United States*, 1908; *Adkins v. Children’s Hospital*, 1923; *Morehead v. New York ex rel. Tipaldo*, 1936). The tension between the rising tide of progressivism and conservative legal ideology reached its height in the mid-1930s, during which the Supreme Court ruled that a series of popular New Deal laws were unconstitutional, including the “major-depression fighting weapon of the New Deal,” the National Industrial Recovery Act (Grossman, 1978).

The resistance to laws regulating workplace standards was not limited to the Supreme Court, however, which has sometimes been known to be out of sync with mainstream America (Flemming & Wood, 1997; Epstein & Martin, 2010). For years Roosevelt’s predecessor, Herbert Hoover, had declined to meaningfully wield the power of the federal government to regulate the economy. Hoover feared that doing so would do more harm than good by crushing American individuality and entrepreneurship. To that end, while he imposed some measures to stimulate the economy, they were limited in their scope and effect, and Hoover even vetoed bills that would have provided direct relief to Americans suffering the effects of the Depression (Macmahon, 1931). “Prosperity,” he explained, “cannot be restored by raids upon the public Treasury” (Schlesinger, 2003, p. 232).

Roosevelt’s policies were thus a marked divergence from Hoover’s *laissez-faire* approach to economic governance, and reflected a nation undergoing a profound shift in thinking. By the mid-1930s, it was clear that progressive policies were gaining ground. In addition to Roosevelt’s

landslide presidential victory in 1936, the Supreme Court overruled its *Lochner* decision in the 1937 decision *West Coast Hotel v. Parrish* (1937). While the *Lochner* Court had focused its attention on the ostensible “freedom” of both employers and employees to negotiate the terms and conditions of work, the Court in *Parrish* noted the clear inequality in bargaining power between workers and owners, and held that the Constitution grants government the authority to instate reasonable regulations on the workplace (*Parrish*, 1937). With this decision, the Court cleared the way for Congress to pass the Fair Labor Standards Act.

But despite these shifts, Roosevelt’s efforts to regulate industry and enshrine workers’ rights in federal law met significant opposition from conservatives and business organizations. Opponents asserted that the Fair Labor Standards Act would usher in a “tyrannical industrial dictatorship” that would crush the “genius” of American business under “everlastingly multiplying governmental mandates” (Grossman, 1978). The National Association of Manufacturers, armed with hyperbole and fervor, asserted that the proposal “constitutes a step in the direction of communism, bolshevism, fascism, and Nazism.” (Cole, 2016). The spokesman for the National Publishers Association agreed, claiming that “Rome, 2,000 years ago, fell because the government began fixing the prices of services and commodities,” and that government restrictions of the freedom of contract have “always [resulted in] distress, misery, and despair” (Rolf, 2016, p. 196). Most flamboyant of all was Democratic Representative Edward Cox of Georgia, who likewise portrayed the Act as sacrilegiously un-American, claiming that its ideas were “the product of those whose thinking is rooted in an alien philosophy and who are bent upon the destruction of our whole constitutional system and the setting-up of a red-labor communistic despotism upon the ruins of our Christian civilization” (Stathis, 2008, p. 323).

Roosevelt was undeterred. In his first address to Congress about the FLSA, he sought to cast the Act as representative of the best of America's ideals, arguing:

Our nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours (Roosevelt, 1937).

Congress heeded Roosevelt's call and passed the Fair Labor Standards Act in 1938. The final version of the Act, though somewhat different from what Roosevelt originally proposed, achieved his overall goals. The Act outlawed child labor, set a national minimum wage of twenty-five cents per hour, and mandated overtime pay for those employees who worked more than forty-four hours in a week (Grossman 1978). In a radio broadcast the night before signing the Act, Roosevelt described this law proudly, calling it "perhaps . . . the most far-reaching, far-sighted program for the benefit of workers ever adopted here or in any other country" (Pederson, 2009, p. 375).

Today, the Fair Labor Standards Act is the cornerstone of American labor policy. It governs many aspects of the relationship between employer and employee, and applies to more than 130 million workers. The federal minimum wage is now \$7.25 per hour, and employees are entitled to overtime pay of 1.5 times their normal rate of pay when they work more than forty hours in a week (29 U.S.C. § 206(a), 207(a)). Importantly, the Act sets a *floor* on workplace requirements, rather than a ceiling, allowing local jurisdictions the power to craft their own, more generous labor standards (29 U.S.C. § 218). Many have done so. As of January 2019, 29 states and a number of cities have higher-than-federal minimum wages (Dept. of Labor, 2019). Some cities and states also grant to workers a collection of benefits and protections that are not available under federal law, including daily overtime, paid meal and rest breaks, paid sick and

family leave, and expansive anti-discrimination protections. While punishments vary statute by statute, the penalties for noncompliance with these various legal requirements can be steep, with employers facing stiff fines and, in some cases, criminal charges (see, e.g., DC Code § 32-1306(a)(1)).

In hindsight, the Depression-era critiques leveled at the Act – and more broadly, at the idea of government regulation of the workplace – are best viewed as hyperbolic and absurd. The Act did not destroy our democracy, nor sound the death knell of American capitalism. Rather, it enshrined in law standards that we now consider to be modest, and which today enjoy broad support throughout the country and across political lines. In fact, clear majorities of people believe that Congress should *expand* the Act’s protections beyond their current levels: Three-quarters of Americans support raising the federal minimum wage, and nearly eighty percent wish to expand the reach of federal overtime laws (Kull et al., 2017; Rasmussen, 2016). These numbers help explain why so many states and cities have passed their own labor laws providing for more generous minimum wage and overtime standards, and greater workplace protections in general. The principle that American workers should enjoy some basic measure of workplace benefits and protections, long deemed fundamentally incompatible with our country’s core values, has become a part of the American creed.

* * *

This is not, of course, the entire story of workers’ rights in America. It is nowhere close. In spite of the Fair Labor Standards Act and other protective laws, today’s low-wage workers lead precarious, difficult lives. They earn little, have few job protections, and lack access to benefits like sick leave and health care (Gleeson, 2016; Weil, 2014; Hacker & Pierson, 2010). More than 100 million people live at or below 200% of the federal poverty line, 12 million of

whom work full time, and all of whom suffer significant economic insecurity (Langston, 2018). Many are only one accident away from ruin. Even life's mundane aggravations, like a broken car or a bout of sickness, can quickly cascade into disaster. And interspersed throughout this precarious economic story, making worse the trials and tribulations of the working poor, are violations of these people's basic workplace rights – what has popularly come to be known as “wage theft” (see, e.g., Bobo, 2011).

The Fair Labor Standards Act remains the cornerstone of American labor policy, but the last eighty years have not been kind to it. The economy has changed dramatically, with a shift from long-term work relationships to much more contingent arrangements, weakening the practical application of the Act to the modern workplace (Weil, 2018). Beyond that, Congress has allowed key provisions of the Act to stagnate. The federal minimum wage has not kept pace with inflation, and in real dollar amounts workers today earn almost 30% less per hour than they did fifty years ago (Cooper, 2017). At the same time, productivity has drastically increased (Hacker & Pierson, 2010). Average people today are working harder and producing more, but making much less.

Federal overtime protections have also atrophied. Employees are exempt from the protections of the FLSA so long as they work certain types of jobs – such as “professional” or “executive” jobs – and are paid a salary of at least \$23,660 per year, or \$455 per week (see 29 U.S.C. § 213; 5 C.F.R. § 551.203). Initially, overtime protections were designed to ensure that no one but those upper-tier employees with true discretion and autonomy would be required to work more than 40 hours a week without fair compensation (Eisenbrey & Kimball, 2016). But the salary threshold, which has not been increased since 2004, is grossly outdated, and it no longer adequately protects the interests of working people. This low threshold, combined with employer

willingness to push the boundaries of these exemptions, has resulted in millions of employees being denied the right to overtime pay (Bernhardt et al., 2009; Eisenbrey & Kimball, 2016). Front-line managers at fast food restaurants, for example, have been classified as exempt, earning no more working sixty hours a week than they do working forty. These are hardly the higher level employees for whom the exemptions were written.

The gradual weakening of these labor protections would be bad enough for low-wage workers. But to make matters worse, Congress has also allowed to erode the practical ability of the Department of Labor to enforce the law. That agency's Wage and Hour Division (WHD) is responsible for investigating violations of the law, but while the magnitude of its mission has grown dramatically in the last 70 years, its access to resources has not. In 1948, WHD employed about 1,000 investigators to cover a workforce of about 22.6 million people (Galvin, 2016). In 2017, WHD employed *fewer* than 1,000 investigators, but the workforce has burgeoned to about 135 million people (Fine, 2017) – a six-fold increase from the late 1940s. This growing disparity has had significant consequences on the Department of Labor's ability to investigate violations and remediate violations of the Act. Between 1980 and 2015, the number of alleged violations investigated by the agency decreased by 63% (Cooper & Kroeger, 2017), and a 2008 government audit found significant issues with WHD's investigatory processes (Kutz & Meyer, 2009). “The falling number of investigations and investigators means even well-known employers (to say nothing of the ‘garden-variety’ workplace) face little chance of seeing an investigator,” writes Dr. David Weil, the former administrator of the WHD under Barack Obama. “For example, the likelihood that one of the top twenty fast food restaurants (e.g., McDonald's, Burger King, Subway) receives an investigation is about .008 in a given year” (Weil 2010, p. 6).

This brief discussion underscores a basic sociolegal fact about the law. It is not enough to simply create a legal requirement, to tell employers “You must not pay less than \$7.25 an hour,” or “You shall pay your employees when they are sick.” Decades of research has shown that there is always a disparity between how laws are written and how they are enacted and applied (see, e.g., Calavita, 2016). Legal mandates for how things *should be* are never guarantees of how things *will be*. No set of laws can ever be perfect in their application and enforcement, both because of the possibility of human error and uncontrollable circumstance, and because those responsible for following and administering the law have their own agendas, mandates, and influences. The takeaway is this: There will always be a gap between a law’s written intent and its practical effect.

This fact is especially true for America’s low-wage workers. Each year, millions of Americans experience violations of their basic rights, rights that we as a society have determined are core to the American promise of dignity through work. Minimum wage violations are shockingly common, existing in every state and in every sector of low-wage work (Bernhardt et al., 2009; Cooper & Kroeger, 2017). Millions of workers are misclassified, either as independent contractors or as exempt from the protections of the FLSA (e.g., Carre, 2015; Eisenbrey & Mishel, 2015; Cooper & Kroeger, 2017). Managers steal tips, or forget to pay bonuses, or require their employees to clock out before starting their end-of-shift duties (Bernhardt et al., 2009; Bobo, 2011). People who get sick are not allowed to take time off. If they are, they do not get paid for it. Paychecks are issued late, and when they do come, there are sometimes irregularities. Hours are missing, sometimes moved. Or maybe they are all there, but the business did not calculate overtime. Again.

These are just some of the things that count as wage theft. Standing alone, they might seem small. In the grand scheme of things, being denied five hours of overtime, or a paid sick day, or guaranteed medical leave might not seem like a big deal. But for those who earn the least, who often work difficult jobs and long hours, every benefit and protection that they are entitled to counts. And taken together, these acts are extremely costly. Minimum wage violations *alone* cost low-wage workers \$15 billion per year, more than the total annual cost of property crime in this country (Cooper & Kroeger, 2017). There is a crisis in America, and its name is wage theft.

America's low-wage workers form the economic and social backbone of the nation. Regardless of one's position in society, we all encounter these people and benefit from the fruits of their labor. More than any other class of workers, America's working poor ensure the smooth running of our day-to-day lives. We are surrounded and aided by them when we go to work, travel, buy groceries, go out to dinner, or do any number of other daily tasks. They are our chauffeurs, janitors, security guards, cashiers, and salespeople. We owe them thanks for our fashionable clothes, our vibrant Valentine's Day bouquets, our manicured lawns. And while their jobs yield little reward, we trust them with enormously important tasks. We invite them into our homes to care for our sick, our elderly, and our disabled. They keep our children safe at daycare, in school, and at swimming pools and recreation centers. Perhaps most importantly, they grow, harvest, prepare, and serve us our food.

Low-wage work is ubiquitous. But despite its importance, it is grueling and thankless. Rarely do we stop to appreciate the jobs that these workers perform, much less thank them for all that they do. Only seldom do we consider the difficulties that they face as part and parcel of their daily lives. But life for those on the bottom rung of the economic ladder is characterized by an anxious present and an uncertain future, by the creeping fear that the next run of bad luck will

bring everything crashing down. Poverty, after all, is not just one thing. It is not *only* poor housing and high rent, food insecurity, low wages, no health care, or an incomplete education (Shipler, 2005; see also Sharkey, 2013; Desmond, 2016). Poverty is all of these things and more. It is a constellation of hardships, and the essence of being poor lies in how these burdens coalesce, interact, and build upon one another. In this context, every dollar counts, and every dollar denied is the cruelest form of theft.

A full telling of the story of the legal rights and workplace experiences of the American low-wage worker, then, requires addressing not only what our nation's labor and employment laws promise on paper, but how they play out in practice. In order to actually examine the experiences of working people, scholars and commentators must move beyond a formal recitation and discussion of the laws as they are written. *Real* analysis requires a close look at the law-in-action, an examination of whether, from the perspectives of low-wage workers themselves, basic employment laws are meaningfully followed, invoked, and enforced to the benefit of the people they are meant to protect, and whether those people feel well-served by the system that is supposed to protect their economic rights. This project aims to do just that, with a focus on low-wage workers in Washington, DC and their experiences with violations of their most basic workplace rights.

* * *

I became interested in these issues in early 2013, when my girlfriend (now wife) Chelsea had a run-in with a bad employer. Chelsea had recently moved to Southern California to be with me. When she got an interview with a small hydroponic vegetable farm in Orange County, we were thrilled. She has a background in agriculture and dreams of owning her own farm someday,

so the job seemed like it could be a perfect fit. The owners, Arthur and Kim¹, were charming, confident, and enthusiastic about Chelsea, and they quickly made her an offer: \$600 for the first month of work, with a real salary to come once the farm became profitable. It would be very soon, they said. These wages came out to \$20 a day, which was well below minimum wage. Chelsea accepted the deal, though, because she was eager for the opportunity. Neither of us ever considered whether the setup was lawful. In hindsight, we were extremely naïve.

Chelsea's job tasks were what you would expect: she planted, monitored, harvested, and delivered produce. She kept the farm clean, trained an intern that the farm hired, and generally aided in all aspects of the business. The hours were long. She only worked six or seven hours a day, but she was at work seven days a week. But all in all, the job was not as advertised, and the working environment was a bad fit. Among other issues, the owner's casual racism grated on Chelsea. But in particular, she became aware that her employers' promises of profit and predictions of expansion were hopeful at best. So after three weeks she quit, and sent Arthur an e-mail requesting her earned wages: \$420, the prorated amount of the \$600 that she had been promised for the first month of work.

Arthur's response was upsetting. "You were never hired," he began, adding that she had agreed to complete a "one-month introductory training course," and if she did not then she would not receive any money at all for her three weeks of work. "You are an independent contractor at best, so if you quit early that is your choice and your choice alone," he continued, writing that the \$600 was only a "gift," and that she was therefore not entitled to it. In other words, Arthur's refusal to pay Chelsea was her own doing, and if she wanted any money she would have to put in additional, sub-minimum wage labor in an environment that she found to be deeply unpleasant.

¹ These are not their real names.

Chelsea's attempts to obtain her wages from the farm's bookkeeper were equally fruitless, with the accountant also denying that Chelsea had ever been employed. Later, Arthur's story changed again, and he claimed that Chelsea had always been a willing participant to an unpaid internship.

Ultimately, this story has a happy ending. We filed a wage complaint with the California Division of Labor Standards Enforcement (DLSE), asserting that Chelsea was entitled to unpaid minimum wage and overtime, as well as various damages and penalties. Six months later, Chelsea argued her case before an administrative law judge, and won a judgment for \$3,400. Arthur appealed, and four months after that the case went to trial in Orange County Superior Court. After the first day of trial, and after being subjected to a devastating direct examination, Arthur settled. He agreed to pay Chelsea the full amount of the labor commissioner's judgment, as well as her attorneys' fees. Fourteen months after requesting her wages, Chelsea finally received a check for \$5,400 – almost \$5,000 more than she initially asked for.

Chelsea obtained justice. This should not be surprising. Her case was not a difficult one. Under longstanding California and federal law, a for-profit business cannot simply refuse to pay its employees for their labor. There was no real argument to be made that Chelsea was not entitled to wages, either because she was an independent contractor or was completing an unpaid "training course." And because we live in the digital age and Chelsea is tech-savvy, she was able to bring to bear a great deal of documentary evidence – emails, phone records, and the original Craigslist ad that she responded to – to definitively prove her case. Most damningly, when Arthur wrote to respond to the allegations, he also confirmed a number of important facts: dates Chelsea had worked, tasks she had completed, and the fact that he had promised her money in return for labor. In many ways, the adjudication of this dispute was a waste of time for those involved, including the attorneys on both sides and the people at the DLSE and Superior Court.

This experience has stuck with me. It spurred my interest in labor and employment law, raised questions in my mind about notions of economic and social justice, and made me wonder about all of the other low-wage workers in this country who experience rights violations. Because throughout the process, I was strongly aware of all of the relative advantages that Chelsea had compared to the average low-wage worker (to say nothing about low-wage *farmworkers*, many of whom are undocumented and speak little, if any, English). We were living in California, which is a more employee-friendly state than most. I was in law school at the time, and it was easy for me to do the necessary legal research and to figure out how to navigate the administrative process. We received high-quality, free legal advice from my law professors, who offered not only their take on the situation, but their sympathy, encouragement, and support. When the time came, my cousin Adam – who normally billed himself out at more than \$400 an hour and is still the best lawyer I have ever met – happily represented Chelsea without any discussion of payment. Since we did not need Chelsea’s wages to survive, we were able to turn down Arthur’s pre-trial settlement offer of \$1000, which barely covered Chelsea’s unpaid wages and did nothing to compensate her for the time and energy she had spent up to that point, much less the damages she was entitled to.

And Chelsea was in many ways an ideal complainant. She had both the confidence and the practical ability to assert her rights. She is an American citizen, highly educated, from a middle-class background. More than just a native English speaker, she is eloquent, capable of articulating a crisp, convincing, chronological story. She was able to support her claims with detailed documentary evidence, and clearly tied this evidence to specific provisions of the California Labor Code. And she is attractive in an all-American sort of way: slim, a slight Southern lilt to her voice, with white skin, green eyes, light hair, and an easy smile. These things

matter, and Chelsea cut a sympathetic, earnest, and believable figure. Morally, legally, and strategically, we were in a strong position.

So of course Chelsea won. How could she not have? With the benefit of hindsight and experience, her victory now seems like a foregone conclusion. But at the time, it did not. This ordeal was stressful, unpleasant, and incredibly time-consuming. We spent days preparing for the administrative hearing. We researched for hours on end to make sure we understood both the legal process and the arguments that we would need to make. We practiced her testimony over, and over, and over. The experience took a toll. I was constantly angry, for months in a row – angry at her employers’ brazen callousness, at the slow pace of the system that was supposed to help us, at the sheer injustice of a situation where somebody could work for three weeks and be sent off with nothing to show for it. This anger had an impact on my life. Chelsea and I fought more than we otherwise would have. We slept worse. We felt like we were constantly on edge.

So despite my sharp awareness of all of the relative advantages that Chelsea and I had, it always felt like we were walking a tightrope towards the goal of justice. The path felt unsteady, precarious, and I understood there was a good chance we would never make it to a happy ending. There was, obviously, a chance that we would lose in the DLSE’s administrative hearing or in court. But a bigger concern was that Chelsea would win, but she would never get her money. Given how difficult it can be to collect civil judgments, even in a state as progressive as California, we might have never succeeded had Chelsea’s employers only been more strategic.

After we won, questions began to loom large in my mind: What about other low-wage workers who suffer violations of their basic workplace rights, but who do not have the same combination of qualities and circumstance that made it possible – and in retrospect, easy – for Chelsea to obtain workplace justice? How do they experience wage theft? What hardships, what

trauma, what emotional impact does this cause, if any? How do low-wage workers respond to violations of their basic rights, and why?

And, perhaps most importantly: Do they feel like the system gives force and meaning to the protections that they have on paper?

With this project, I have set out to answer these questions by focusing on the workplace experiences of low-wage workers in Washington, DC. I chose the District of Columbia for three reasons. First, it is my home, and I care deeply about the city and its inhabitants. It is a world-class city, a rich tapestry of diversity, and I can imagine few places where I would rather do my research. Second, as our nation's capital, the District of Columbia has a great deal of social and symbolic importance. We are told that the United States is the greatest country in the world, a beacon of freedom, equality, and democracy. If the working poor of America are being treated fairly anywhere, one would hope that it would be in the capital of that country. And finally, this is an exciting and important time to study wage theft in the District of Columbia. The District has a well-earned reputation for being very progressive, and over the course of the last ten years the local government has passed a number of laws designed to improve the lives of working people. These laws have been the result of sustained advocacy campaigns by DC's vibrant and motivated workers' rights community, and include significant raises to the minimum wage, the implementation of a universal paid sick days policy, and a complex statutory overhaul designed specifically to combat wage theft.

Over the course of seven months in 2018, I conducted detailed interviews with thirty-three low-wage workers. I asked them about their experiences with mistreatment at work, how they responded to that mistreatment and why, and the extent to which they felt well-served by the government and the laws that are designed to protect them. These interviews made up the

core of my project, but I supplemented them by talking to employment lawyers, employers and managers of low-wage workers, activists and organizers in the workers' rights community, and government agents. These different groups all engage with the concept of wage theft, but for obvious reasons have different viewpoints regarding the issue. My goal was to use these diverse interviews in order to both obtain a fuller understanding of the social and policy regime surrounding wage theft in DC, but also to obtain a balanced perspective, and to keep my own thoughts and biases in check. In total, I conducted approximately sixty interviews.

Chapter 1 of this dissertation more fully discusses the problem of wage theft. I define the problem, clarify its scope, and discuss existing research findings on its frequency, harms, and impact. In Chapter 2 I introduce the District of Columbia as a site for my field research, and detail the social, legal, and regulatory environment of the city. Chapter 3 discusses my methods for collecting and analyzing data. In Chapter 4, I describe the group of low-wage workers with whom I spoke for this project. I discuss their demographic characteristics, and discuss the types of wage theft that they reported experiencing. In Chapter 5, I analyze the full range of harms that workers report experiencing as a result of wage theft. These harms include immediate economic loss, of course, but I show how that loss often cascades into a range of other money-related hardships. I also move beyond a purely economic analysis of wage theft, and explain in detail the emotional and mental cost of pay-based rights violations. Chapter 6 explores why workers report such strong emotional reactions to wage theft. Chapter 7 includes a detailed discussion of how workers think about and respond to their own wage theft, drawing heavily on sociolegal research in the area of disputing. Why do most workers stay silent in the face of rights violations, while others choose to come forward? When workers do attempt to assert their rights, what are the formal and informal ways that they do so? Finally, Chapter 8 analyzes what happens when low-

wage workers do attempt to enforce their rights through the formal legal system. In the Conclusion, I lay out a blueprint for change, explaining what policies would be effective at better remedying this problem in the District of Columbia.

Chapter 1: Introduction to Wage Theft

For eighteen months, Cora did all the grunt work at Eclectic Coiff,² a men's hair salon that charges \$70 for a haircut. She cleaned the bathrooms, washed and folded the laundry, swept the floors, made the coffee, and shampooed the heads of as many as eighty clients a day. It wasn't glamorous work. Sometimes it was downright disgusting, actually, like when the basement flooded from a backed up sewage line and she had to clean it up. But Cora's a marine. She'd made it through boot camp. She prides herself on her toughness, her willingness to go the extra mile in order to accomplish the mission. The work might have been undignified, but Cora's not a quitter. Besides, she needed the money.

It wasn't much money. Ten dollars an hour, plus tips. A far cry from where Cora had been a few years earlier, working as a word processor at one of the city's largest law firms. That had been a good life. The hours were long, but she had been making \$56,000 a year, plus benefits. Not bad for a single mom without a college degree. Not bad for a woman who, when I met her, was \$10,000 behind on her rent, struggling to find a job. It is easy to imagine Cora in a corporate law firm, because it's easy to imagine her fitting in in a lot of places. She is likeable and easy to talk to, with a quick wit and a bubbling laugh. It's an infectious laugh, the kind that you cannot help but join in on.

What happened to Cora during the Great Recession of 2008 is what happened to a lot of people who worked in law firms: her employer downsized. Her entire department moved to another state, and she wasn't invited along. Things took a turn after that. Cora saw her lifestyle

² Throughout this dissertation, I have protected the identities of the low-wage workers who participated in this research by changing their names, the names of their employers, and the names of their coworkers. The attorneys, workers' rights activists, employers, and government agents who participated had the option to be either anonymous or identified for any given statement that they made. Where I use a person's first name only, it is a pseudonym; where I use a first and last name, it is not. I explain my approach and rationale in more detail in Chapter 3, which discusses my research methods.

and friends change over time, and her old career wasn't calling her back. So, she moved from the corporate legal world into the jobs she could find, which is how she wound up at Eclectic Coiff, working for ten bucks an hour plus tips.

There was just one problem: hardly anybody tipped her. In a given ten-hour shift, Cora washed fifty to eighty heads of hair. Maybe three or four of those clients would tip, usually a couple of bucks, occasionally five. Sometimes, an entire workday would go by without a single tip. Most of the time, Cora was earning less than the minimum wage.

This isn't how tipped jobs are supposed to work, especially at an upscale hair salon like Eclectic Coiff. Businesses are allowed to pay their tipped employees below the regular minimum wage, as long as over the course of a workweek those employees earn, on average, at least the minimum wage for every hour that they work. When tips don't come in, the employer is required to cut the worker a check for the difference between her actual hourly rate, and what the minimum wage requires.

Eclectic Coiff never did this. Cora tried talking to Charlotte, the salon's business manager, but it was a dead end. Charlotte told Cora they were aware of the minimum wage law, but refused to pay Cora more money. "The tips will come," Charlotte assured her. "Just keep doing the job." This was no solace, to say the least, and the tips never did come.

This wage theft took a toll on the former marine. "It was just so frustrating," says Cora. Charlotte's response made her feel worthless, dismissed. "I couldn't pay my rent. Every two weeks I'd get paid, that check would go right to my landlord. So then my tips, my little bitty tips, were what I needed to eat, to literally go into the grocery store. I would have to get on the train and go out to Maryland and shop because the prices were lower." But transportation costs money. Everything costs money. Cora was working full time, supporting only herself, and every

week she struggled to get food in her house. The minimum wage violations were constant, but there were some other ones too. Cora never got paid overtime, and she sometimes got paid late. One time when her wages were late, she asked Charlotte where her money was. Charlotte threatened to fire her.

Cora was 45. She had had a career, she had raised a child, and she couldn't even make minimum wage. But what could she do? "I knew that I wasn't making enough and it wasn't fair," she says, "but I didn't have the knowledge or the strength to go after [my wages], to fight for myself." Depression settled in, and then got worse over time. "One day it was really bad. It was like suicidal thoughts, you know? And when I felt that cold from the knife on my wrist, I was like, 'Whoa! That's a little too far . . . you really gotta get some help.'" Finally, she went to a local community center and began to see a therapist.

But after a year and a half of wage theft, Cora's work ethic finally cracked. "I think I basically just got myself fired because I had given up, you know? They weren't tipping me and they weren't paying me." Her work slipped. She stopped putting forth her Marine-best. When Charlotte eventually terminated her, Cora felt a sense of relief, like she'd been set free.

* * *

Ameen is a dual citizen, belonging to both the United States and to his home country in Africa. He's thin, dark-skinned, and somber. Nevertheless, he speaks with great optimism despite the hardships he's endured, and carries himself with a firm, quiet dignity. He's motivated by his family, which is large: a wife, two kids, two sisters, and some nieces and nephews. He works as hard as he needs to in order to support them.

A few years ago, Ameen became a chauffeur for his home country's embassy. It seemed like the ideal job for him. He was able to live and work in America, but was also surrounded by

his countrymen every day. And at a salary of \$4250 per month, Ameen was also making good money, especially for an immigrant without a college degree.

At first, things were fine. He worked a lot, seven days a week, and he never got paid overtime, but he took pride in the work. He drove the ambassador and other dignitaries to meetings around the city. He never got into any accidents, and was able to support his extended family. Gradually, however, the embassy stopped paying its employees. Initially, it stopped paying them on time. This situation was manageable for a while. Two or three months would go by without a paycheck, but then the embassy would pay some back wages. Things were hard, but Ameen survived by driving for Uber. On a typical day, he'd wake up around 3:30 AM, drive for Uber until 8:30 AM, and then go to work at the embassy. He'd finish work at the embassy at 5:00, drive for Uber until 9:00 or 10:00 PM, and then get a few hours of sleep before waking up at 3:30 again.

This wasn't sustainable, though, especially as the embassy's debt to Ameen grew. By the time we met, the embassy owed Ameen just under \$50,000, almost a year's worth of wages. He hadn't been able to make ends meet just by driving for Uber in his spare time, and things had begun to spiral out of control. He had a \$1500 emergency room bill. He hadn't been able to afford to pay property taxes on his car, and the dealer had reclaimed it. He'd borrowed several thousand dollars from family members in order to get a second car so he could keep driving for Uber, but he wasn't making enough to cover necessities. His landlord had begun the eviction process, and he was facing homelessness.

In the midst of these troubles, Ameen wrote to his employer and demanded his wages. He explained that he was in debt, that he'd lost his car, and that he couldn't pay his rent. He didn't get an answer. He wrote another letter requesting his wages, or at least a conversation about

them. Two days later, the embassy fired him. Ameen contacted the ambassador directly to ask for his money, but the ambassador refused, telling him, “You need your money, take us to court, and we will see you in court.” Ameen later heard through friends that the ambassador said that even if Ameen could afford a lawyer, diplomatic immunity would stop any lawsuit.

Ameen is a stoic man, but this experience had clearly taken a toll on him. “That made me feel like they neglect me, or they did not consider me as a human, or they did not think about my family,” he told me. “Although I’m capable here to do some stuff for myself, they should think for my kids, and they know how people suffer back home. And not only my kids, not only my family depend[s] on me. I have some other relatives that depend on me, and I’m the only person from my family who is here in America.” The last time we spoke, Ameen was still searching for an attorney willing to take his case. I gave him the contact information of someone who I thought might be able to help, and then he left to drive for Uber.

What is wage theft?

What happened to Ameen and Cora was wage theft. I chose to present these two stories because they differ in some significant ways. In Cora’s case, the theft was relatively small – over the course of a year and a half, she was probably underpaid by two or three thousand dollars. Her employer was not especially nasty about the situation, and may have even believed that it was not a big deal. In Ameen’s case, the theft was enormous, and his employer’s behavior was downright cruel. Despite these differences, though, Ameen and Cora have much in common. Work became unpleasant, the injustice of the situation loomed large in their minds, and their well-being took a hit. They suffered financially, of course, but also experienced cascading emotional and physical harms. Cora became depressed, contemplated suicide, and told me that

her mental anguish manifested itself as bodily pain. Ameen felt deep shame over his inability to provide for his family, and sometimes got only one or two hours of sleep a night because he was so busy working a second job in an effort to make ends meet.

To the extent that Ameen and Cora’s particular experiences caused them individual hardship, their stories are unique. But in other ways, there is nothing much special here. Over the last ten years, researchers have studied the low-wage workforce in order to examine and understand the gap between requirement and reality in our nation’s wage and hour laws. Despite the long history and broad application of laws regulating the workplace – including federal laws like the Fair Labor Standards Act, but also including state-level laws – this research uniformly paints a stark picture of their efficacy. The unfortunate fact is that employers often violate the basic workplace rights of their low-wage workers, and do so with impunity. This research has drawn attention to the problem, spurred policymakers to action, and given rise to a new term: wage theft.

“Wage theft” occurs whenever a worker is denied the wages or benefits that he or she is lawfully entitled to. Put another way, it involves employers taking or withholding money or valuable benefits that, by law, belongs to their workers. But while wage theft has a simple definition, the problem itself is anything but. It is varied, multifaceted, and widespread. “In many low-wage industries, wage theft . . . is pervasive and endemic,” writes Daniel Galvin (2015), a professor of political science at Northwestern University. A wide variety of commentators, including economists, social scientists, activists, and labor unions have described it as a problem of “epidemic” proportions. These same people and organizations have also observed that, adding insult to injury, many workers are unable to find relief even when they attempt to stand up for themselves (Meixell & Eisenbrey, 2014; Cho et al., 2013; Fritz-Mauer, 2016). These assertions

are strongly supported by a wealth of quantitative research, which shows that wage theft takes many forms and affects millions of people, who together lose billions of dollars per year in wages and benefits (Bernhardt et al., 2009; Cooper & Kroeger, 2017). The harms of wage theft reverberate beyond individual workers, or even workers as a group, however. Legitimate employers struggle to compete with businesses that unlawfully trim their labor costs and evade their tax burdens, while governments are unable to collect taxes on billions of dollars of revenue that are hidden from the eyes of society (Ruckelshaus & Gao, 2017).

What constitutes wage theft, exactly? As the broad definition suggests, the term refers not to one offense in particular, but to a slate of labor and employment law violations. Common forms of wage theft include employers:

- Violating minimum wage and overtime laws;
- Withholding tips;
- Refusing to pay workers what they promised;
- Denying guaranteed sick, safe, or family leave;
- Misclassifying employees as independent contractors or interns, or as exempt from minimum wage and overtime protections;
- Denying workers' compensation to injured employees;
- Denying unemployment insurance to deserving employees; and
- Taking unlawful deductions from a worker's paycheck, or requiring workers to pay for certain work supplies (see Bernhardt et al., 2009; Bobo, 2011; Fritz-Mauer, 2016).

Throughout this dissertation, I have conceived of wage theft more broadly than many other researchers, who tend to define it as simply the denial of wages to which a worker is legally entitled (see, e.g., Cooper & Kroeger, 2017; Galvin, 2016). There is good reason for this narrower definition. It is straightforward, provides clear boundaries around the issue, and leads to

a more manageable conversation about the size and scope of the problem. It is easy to understand wage theft based on this definition, which allows us to focus on violations that are apparent and obvious, such as when a worker is paid less than the minimum wage or does not get overtime. In these situations, it is clear that an employer reaps a financial benefit at a direct cost to the victim of the theft.

I define wage theft, however, as encompassing unlawful denials of both a person's earned wages and the benefits with monetary value to which they are entitled to under law. It is important to keep in mind the range of entitlements that people earn just by virtue of working a job. There are many situations in which employers are able to avoid their important legal responsibilities, saving money while causing financial harm to their workers. People who are injured at work have a legal right to workers' compensation payments. Those who are terminated from their jobs without engaging in serious misconduct may receive unemployment insurance. Sick people are entitled to take leave, even if unpaid, and their employer is required to hold their job for them. These are valuable, crucially important programs that we as a society have deemed necessary and important, despite the fact that they increase the costs of doing business. Employers have a financial incentive to skirt these guarantees, and when an employer denies their workers access to these earned benefits, there is a real cost imposed on that person. Most people – and all poor people – lack significant savings. Programs like workers' compensation and unemployment can be the only thing that keeps a person on the right side of hunger, homelessness, and despair.

Some of the violations that constitute wage theft cause direct and obvious harm. When a worker like Cora earns less than the minimum wage and is not paid overtime, she clearly has less money in her pockets than she would have had her employer followed the law. But other forms

of wage theft are more pernicious, and therefore more difficult to track. For example, whether a worker has been misclassified can be a tricky question without a clear and easy answer.

Wage theft is not a crime that is limited to the working poor, of course. It can occur in any industry and affect workers of all income levels. But as the next section will discuss, recent scholarly research has largely focused on wage theft among low-wage workers who, for a variety of reasons, are particularly susceptible to rights violations. This research uniformly shows that the problem of employer noncompliance with basic wage and hour laws is widespread, costly, and inadequately addressed by existing enforcement mechanisms. Moreover, wage theft does more than just harm individual workers. It makes it difficult for legitimate employers to compete, since unscrupulous businesses obtain a competitive advantage by cutting their labor costs. It also weakens society, not just because it represents a casual disregard of our nation's basic legal requirements, but because it denies needed resources in the form of tax dollars and disposable income.

Research on wage theft

At this point, wage theft's frequency and economic harms have been well-documented by a number of quantitative studies. Wage theft is not a new issue, of course, but rather a clever and effective rebranding of a longstanding problem. Researchers have long been aware of employer noncompliance with basic employment laws like the minimum wage (see, e.g., Ashenfelter & Smith, 1979; Summers, 1988; Chang, 1992). The past ten years, however, have seen increased attention paid to this issue, with a particular emphasis on the struggles of low-wage workers and the ways in which wage theft, in its myriad forms, causes economic harm to individuals, families, and communities.

In what has become the seminal empirical study of wage theft, in 2008 Annette Bernhardt and a large team of researchers conducted a wide-ranging study of wage theft among low-wage workers. The project surveyed almost 4,400 low-wage workers in Los Angeles, New York, and Chicago. Utilizing a “cutting-edge sampling methodology,” the researchers were able to interview a population of people – low-wage workers – who are known to be difficult to survey, and did so with an extensive and detailed questionnaire that allowed them to evaluate, without relying on a given participant’s knowledge of the law, whether that person had experienced wage theft (Bernhardt et al., 2009, p. 11).

The findings were striking. More than two-thirds of workers reported having suffered at least one pay-based violation in the prior week. Twenty-six percent of workers had been paid less than the minimum wage, with sixty percent of these reporting that they had been underpaid by more than a dollar per hour. These costs quickly added up. The study estimated that each year workers lost, on average, about \$2,600 out of total earnings of about \$17,600. In other words, Bernhardt and her team determined that low-wage workers have about 15% of their overall earnings stolen by their employers. In Los Angeles alone, low-wage workers as a group were estimated to lose about \$26.2 million per week.

There has been no study replicating Bernhardt et al.’s methodology. In general, measuring wage theft is difficult. It takes many forms and often goes unreported and unrecognized by those who experience it. The analysis to determine whether wage theft has occurred may also be very fact dependent, as with misclassification cases, and may ultimately yield no clear answer. And, finally, there is a lack of public data suitable for analysis (Cooper & Kroeger, 2017; Galvin, 2016). In other words, the amount of time, effort, and money required to replicate the three-city study is prohibitive, at least for now. But in recent years, researchers have

attempted to more systematically analyze particular types of wage theft, especially minimum wage violations and independent contractor misclassification. These researchers have corroborated Bernhardt et al.'s finding of widespread, highly impactful violations of our country's most basic employment laws.

Minimum wage violations

In recent years, a number of studies have estimated minimum wage violation rates. Much of the debate over the minimum wage during the last decade, however, has been about whether to raise it at the national level above the current rate of \$7.25. Generally speaking, Democrats, unions, and workers' rights groups support raising the minimum wage substantially, with serious proposals ranging from increasing it to \$10.10 and, more recently, \$15 per hour (see Cooper, 2013; Reich et al., 2016). Republicans and business organizations steadfastly disagree, asserting that raising the minimum wage will destroy jobs and harm the economy. In the heat of this debate, little attention has been paid to the twin issues of compliance with and enforcement of the law. But of course, these are crucially important matters that must be a part of the conversation. Having a minimum wage law, by itself, has never guaranteed that workers would actually earn that much per hour. In fact, researchers credibly estimate that somewhere between 17% and 26% of low-wage workers are paid less than the minimum wage each year (Bernhardt et al., 2009; Galvin, 2016; Cooper & Kroeger, 2017).

The best projects estimating the overall prevalence of minimum wage violation rates use data from the Current Population Survey (CPS) Merged Outgoing Rotation Groups. The CPS "data has many advantages: it is gathered via extensive interviews with around 60,000 households per month[,] it is representative at the state and national levels . . . and its individual-

level responses permit [researchers] to estimate earnings and minimum wage violations relatively easily” (Galvin, 2016, p. 330). This data set has been “the top choice for every economist who has sought to develop . . . estimates of [Fair Labor Standards Act] noncompliance since the 1970s” (Galvin, 2016, p. 330). It is useful in large part because it does not rely on worker knowledge of the law in order to determine whether their rights have been violated. Participants provide information about their jobs, including their pay and hours worked. From there, researchers can compare this information to state and federal minimum wage rates in order to estimate violation rates.

In a report commissioned by the Department of Labor, the Eastern Research Group (ERG) used CPS data from California and New York to estimate noncompliance rates for fiscal year 2011. The ERG estimated 372,000 weekly (state-level) minimum wage violations per week in California, representing about 3.8% of jobs covered by the minimum wage law, and 188,000 weekly violations in New York, representing about 3.5% of covered jobs (2014, pp. ES-2, ES-3). All things considered, these violation rates might seem quite low. But these estimates reflect violations as a percentage of *all* covered jobs, sweeping into the analysis many workers who earn well above the minimum wage. Practically speaking, such people are not likely to suffer minimum wage violations. Even if the estimated violation rates seem low, however, the estimated costs were not: Among those people who were affected, the ERG estimated that these violations caused average income losses of 49% in California and 37% percent in New York.

Using the same methodology, Daniel Galvin (2016) used national CPS data to estimate violation rates among low-wage workers, whom he defined as those who earned less than 1.5 times the federal minimum wage (\$7.25 per hour). Because Galvin excluded those higher-paid workers who are not “plausible ‘candidates’ for minimum wage violations,” his findings more

closely reflect the experiences of low-wage workers as a group (2016, p. 330). He estimates that 16.9% of low-wage workers were paid less than the minimum wage at some point in 2013. These people “worked on average 32 hours per week and earned an average hourly wage of \$5.92. Had they earned their state’s minimum wage, they would have earned, on average, an hourly wage of \$7.68, which means they lost 23 percent of their income (\$1.76 per hour)” (Galvin 2016 at p. 331).

David Cooper and Teresa Kroeger (2017) of the Economic Policy Institute built upon the work of the ERG and Galvin by using CPS data to evaluate minimum wage violations in the country’s ten most populous states: California, Florida, Georgia, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Texas. This work is useful in a few ways. First, by focusing on only ten states, Cooper and Kroeger were able to take account of state-specific minimum wage laws. This is key to estimating violation rates, since employers are required to pay their workers either the state or the federal minimum wage, whichever is higher (29 U.S.C. § 218). And since the federal government has proven itself unwilling to raise the federal minimum wage in recent years, the fight over wage and hour laws has moved out of the United States Congress and into state legislatures. The end result is a patchwork system of wage and hour laws that vary widely based on location. For example, a McDonald’s worker in Arlington, Virginia, must be paid at least \$7.25 an hour, because the state’s minimum wage matches the federal minimum wage. But somebody performing the exact same job a mile away in the District of Columbia is entitled to \$13.25 an hour because the District has passed legislation increasing its minimum wage. Second, the ten states Cooper and Kroeger analyzed account for half of the entire US workforce, casting new light on the nationwide scope of wage theft. And finally, the data for these states provided large enough sample sizes to enable the authors to “describe the

severity of minimum wage violations and the affected populations within each state” (Cooper & Kroeger, 2017 at p. 2).

Cooper and Kroeger found that each year, 2.4 million workers in these ten states reported being paid less than the applicable minimum wage. This represented approximately 17% of the low-wage workforce, matching Galvin’s findings. Affected workers were underpaid, on average, by \$64 per week, about a quarter of their earnings. This means that a full-time worker had about \$3,300 per year stolen from them, with take-home earnings of only \$10,500.

These same high violation rates exist in the District of Columbia itself, too. The DC Department of Employment Services hired a research firm called IMPAQ International to study the impact of the District’s recent minimum wage increases. As part of this report, IMPAQ also used CPS data and data from the American Community Survey to estimate minimum wage violation rates among the District’s low-wage workers. The authors concluded “that there is significant noncompliance with minimum wage laws among the private for-profit sector” in the District, estimating that 4.83% of all jobs in DC during the time period studied involved minimum wage violations (Zhang et al. 2017a, p. 3). As with the findings reported by ERG (2014), this percentage might seem small, but that’s because it includes all jobs in the District. In terms of raw numbers, IMPAQ estimated that nearly 40,000 workers reported being paid less than the minimum wage. Taking into account just the “plausible ‘candidates’” (Galvin, 2016) for minimum wage violations, the percentage of affected workers increases sharply. Based on those workers in the District who were earning minimum wage (or less), 35% reported being paid less than the minimum during the reference year; based on those workers who were making \$15 per hour or less, 26% reported being paid less than the minimum. In light of prior research (e.g., Cooper & Kroeger, 2017), these numbers are not surprising.

Certain industries are rife with employers who fail to pay their workers the minimum wage. The leisure and hospitality industry, which includes restaurants and bars, has historically had the highest rates of minimum wage violations (Bernhardt et al. 2009; ERG 2014; Cooper & Kroeger 2017; see also Minkler et al. 2014). This is largely because many of the people who work in hospitality earn tips, which presents special problems for minimum wage compliance. In most places, employers are allowed to pay their tipped workers far below the minimum wage, based on the assumption that tips will make up the difference. Federal law, for example, has a tipped minimum wage of only \$2.13 (29 C.F.R. § 531.59). The District's tipped minimum wage is scarcely higher at \$3.89 (DC Code § 32-1003(f)(1)(C)). When tipped workers do not make at least the standard minimum wage on average over the course of a workweek, their employer is supposed to make up the difference. Often, however, this does not happen, largely because policing this law falls on tipped workers themselves, who must calculate each week how much they made per hour on average. If they find they have been underpaid, they must then go to their employer and request their unpaid wages. As Cora found out, this can be a dead end.

Cooper and Kroeger (2017) found that more than 14% of workers in food and drink service reported being paid less than minimum wage. Other industries with high violation rates include agriculture, forest, and fishing (9.1% of workers); leisure and hospitality other than food and drink service (6.8%); and retail (4.7%). Researchers have also found high rates of minimum wage violations among sewing, garment, and other factory workers; in domestic occupations (e.g., child care, maids, and housekeepers); in building services and groundskeeping (Bernhardt et al., 2009); and in car washes (Bernhardt et al., 2009; Weil & Pyles, 2005). These trends generally hold in the District, as well. IMPAQ International's analysis determined that DC's high-risk industries include construction, retail, and restaurant and other food services. Together,

retail and restaurant workers “combine to cover 34% of the [minimum wage] wage theft population” (Zhang et al. 2017a, p. 42).

As a group, these workers are losing more than \$8 *billion* dollars annually. “If the findings for these states are representative for the rest of the country,” Cooper and Kroeger conclude, “the total wages stolen from workers due to minimum wage violations exceeds \$15 billion each year” (2017, p. 2). To put this in perspective, the FBI estimates the total yearly cost of *all* property crimes to be only \$12.7 billion (Cooper & Kroeger, 2017), while the yearly costs of shoplifting are estimated to be \$14.7 billion (Traub, 2017). As Cooper and Kroeger point out, governments spend a great deal of time, effort, and money combatting property crime, but “lawmakers in much of the country allocate little, if any, resources to fighting wage theft” (Cooper & Kroeger, 2017, p. 28).

Independent contractor misclassification

Nearly all workers in the United States fall into two categories: employees and independent contractors. Generally speaking, employees spend a significant amount of their time laboring for a single employer who exercises control over their job tasks, and they fill out a W-2 tax form rather than a 1099-MISC form. The true independent contractor, on the other hand, is someone with a particular skill who runs their own business, enjoys considerable autonomy in their work, and has a variety of clients. Independent contractors do not depend on one particular entity for their wages, nor are they closely directed and controlled by the people with whom they do business. As an example, servers at a restaurant are employees. But when that restaurant hires a plumber to fix a leaky pipe, that plumber is operating as an independent contractor. The restaurant does not have a day-to-day interaction with the plumber, direct their work, or provide

them with the materials necessary to fix the pipe. The plumber instead provides his or her own supplies, and chooses the best course of action for completing the job.

Because of the way the American legal system treats employees versus independent contractors, it is almost always more beneficial for workers to be classified as employees. Employees are protected by wage and hour laws, have the right to form unions, enjoy access to workers' compensation and unemployment insurance, and pay fewer taxes on their earnings. Businesses, in turn, are required to pay a variety of taxes for each of their employees, including payroll (FICA), Social Security, and Medicare (Carre, 2015). They also must pay into their state's unemployment insurance fund based on the number of employees they have (Carre, 2015). Additionally, many protective laws only apply to businesses with a minimum number of employees – Title VII, for instance, only applies to entities with at least 15 (42 U.S.C. § 2000e(b)).

But all too often, businesses wrongly label the workers whom they do direct and control as independent contractors rather than employees in order to save money on labor costs. When an employee is misclassified as an independent contractor, they lose out on important legal protections and benefits and bring home a smaller paycheck. Beyond that, their employers do not inject money into important social safety net programs, and the business is less likely to fall under the purview of laws with minimum-employee threshold requirements.

Independent contractor misclassification is one of the most common and damaging kinds of wage theft. This form of wage theft happens in almost every sector of the economy (Carre, 2015). But, it is particularly flagrant in industries where misclassification will be most profitable, such as the construction industry, which has high workers' compensation premiums. One study of residential construction found that by misclassifying workers and not paying into worker

compensation funds, contractors are able to reduce their building costs by as much as 30% (Juravich et al., 2015). Misclassification is also highly prevalent in industries where the work is done in relative isolation, such as home health care, trucking, real estate, and janitorial jobs (Carre, 2015; Leberstein, 2012).

In 2000, a study commissioned by the Department of Labor found that between 10 and 30% of businesses in nine states misclassified at least some of their employees (de Silva et al. 2000). These findings are supported by “[n]umerous state-level studies show[ing] that between 10 and 20 percent of employers misclassify at least one worker as an independent contractor,” writes Françoise Carré, Research Director of the Center for Social Policy at the University of Massachusetts Boston (2015, p. 1). Other scholars put the number even higher. Catherine Ruckelshaus and Ceilidh Gao report that “state reports show that 10 to 30% of employers, or even more, misclassify their employees as ‘independent contractors,’ which indicates that several million workers nationally may be misclassified” (2017, p. 2).

State-level studies examining worker misclassification vary in both form and focus. Some look at the entire workforce, whereas others focus on particular industries. They also utilize a variety of methods. Most use data from employer audits, but others rely on government agency records, and a small number use worker interviews (Leberstein 2012; Ruckelshaus & Gao 2017). All of these studies, however, conclude that misclassification is a widespread and serious problem. Some even report rates well above the estimates given by Carre (2015) and Ruckelshaus and Gao (2017). Between 2009 and 2010, for instance, Colorado’s Unemployment Insurance Audit unit performed 406 targeted audits and 1,725 random audits. It found that 43% of employers misclassified at least one worker. Even among the randomly-audited employers, a

diverse group that included businesses outside of high-risk industries, about 37% engaged in misclassification (Colorado Dep't of Labor and Employment, 2011).

People who are wrongly classified as independent contractors rather than employees are not likely to understand why that is a problem. Consequently, they are not likely to do anything about it. This is not because these workers are uneducated, stupid, or ignorant. It is because the differences between independent contractors and employees are not intuitive and obvious, and even sophisticated people are unlikely to understand all of the implications of being classified as one over the other. My wife, for instance, filled out a 1099-MISC rather than a W-2 form when she began working on the farm that ultimately refused to pay her. At the time, her employers' desire to hire her as an independent contractor felt strange to us, but we could not articulate why. In hindsight, it was a red flag that forecasted our later problems.

This anecdote highlights an important point: many businesses do not just pick a single aspect of employment law to disregard. When an employer misclassifies its workers in order to save money on labor costs, it is very likely engaged in other kinds of wage theft as well. In some of these industries, this is simply the accepted way of doing business. "Most of my competitors lack valid businesses licenses, do not pay sales tax, and misclassify workers as 1099s," says Aaron Seyedian, the owner of Well-Paid Maids, a cleaning service in Washington, DC. Well-Paid Maids is an anomaly among home cleaning businesses. Aaron's cleaners are W-2 employees, earn \$17 an hour, and enjoy significant benefits, including health care, 22 paid days off per year, and paid short-term disability leave. Not surprisingly, based on what research tell us about the cleaning industry, many of his employees report bad experiences with his competitors. When Aaron asks job applicants why they left their last job, "it's very common for people to say

‘Oh, the math wasn’t adding up.’ And I dig a little deeper into that, and [they say], ‘Oh, my last employer was stealing from me.’”

Misclassification pays. “Typical [profit] margins for a 1099 company in the cleaning industry [are] 40, 45%,” Aaron told me. “Our profit margin, it oscillates month-to-month. Basically, on paper it’s 20%. After emergencies and crises are added in it’s around 16 or 17%.” Naturally, Aaron charges higher prices, banking on the idea that in a city as progressive as DC, there will be a critical mass of idealistic clients willing to pay a premium in order to support a living wage cleaning service. He’s right, but his prices do undercut his ability to compete. “[A] week doesn’t go by that I have someone e-mailing me telling me that our prices are insane,” says Aaron. “If you book a weekly cleaning with some other service in DC, you can very easily get your one bedroom, one bathroom clean for like \$89 each time. Whereas from us it’s going to cost \$149 or \$139, depending on what time you book. So people see that and they balk. Not all people, but a substantial contingent of people, and it’s because they’re used to prices that are set by illegal practices.”

Where unscrupulous employers benefit from misclassification, the rest of us pay the cost. Not only do misclassified workers lose out on important legal rights and protections, but legitimate employers like Aaron Seyedian are undercut by their competitors’ illegal and unethical business practices. There is one other big loser, though: society. Misclassification costs federal, state, and local governments a great deal of tax revenue, much of which would go to support important social programs, like unemployment insurance, Medicare, and Social Security.

National estimates of the costs of misclassification are limited. There have not been very many of them, and they use years-old data. But they are still useful for getting an idea of the revenue losses from misclassification, especially when paired with state-level studies. A 2006

report by the Government Accountability Office estimated that in 1984, misclassification cost the federal government \$2.72 billion in inflation-adjusted 2006 dollars (Tax Administration, 2009). Almost 60% of these losses came from workers failing to report and pay taxes in all of their income. Employers' failure to taxes for Social Security, Medicaid, and unemployment insurance accounted for the remaining 40% of losses. The costs to these important programs can be huge – the Department of Labor's 2000 study estimated that misclassifying even 1% of workers cost unemployment insurance trust funds almost \$200 million (de Silva et al., 2000).

This type of wage theft is also called payroll fraud, because often the intent is to lie to the government in order to avoid paying taxes. Every year, billions of dollars of payroll are never reported to state governments, as workers are paid off the books or are wrongly classified as contractors (Ruckelshaus & Gao, 2017). As I noted above, payroll taxes include employer contributions to Social Security, Medicare, and unemployment insurance. This practice leaves these crucial programs strapped for cash. And when wrongly classified workers do attempt to take advantage of these entitlements – as many eventually do – they are denied, or else society is forced to pick up the tab that should have been paid by employers.

Other forms of wage theft

Unfortunately, research on other kinds of wage theft has been much more limited. I know of no studies evaluating the rates at which employers unlawfully deny their employees access to workers' compensation, unemployment, and guaranteed sick leave. Nor have there been studies examining how often employers take unlawful deductions from their employees' paychecks or misclassify them as exempt from minimum wage and overtime laws. For many kinds of wage theft, the landmark survey of low-wage workers conducted by Annette Bernhardt and the

National Employment Law Project provides the best – and only – information we have on violation rates. The findings are reproduced in Table 1.1.

Table 1.1: Findings on other forms of wage theft

Form of Wage Theft	Violation Rate (among eligible workers in the week prior to being surveyed)
Failure to pay overtime	76%
Unpaid off-the-clock work	70%
Illegal deductions	41%
Tip stealing	12%

The victims of wage theft

Wage theft is pervasive, and affects workers of all backgrounds and in all industries. Certain kinds of workers, however, are more susceptible to abuse than others. Certainly low-wage workers, who often are not aware of their rights and do not know how to go about enforcing them, are more likely than their higher-paid counterparts to suffer violations of their basic workplace rights. But within this group of people, the literature overwhelmingly finds that wage theft disproportionately affects the most vulnerable members of society. People are more likely to experience wage theft if they are women, noncitizens, nonwhite or Hispanic, undocumented, and have little formal education (Ashenfelter & Smith, 1979; Sellekaerts & Welch, 1984; Bernhardt et al., 2009; ERG, 2014; Galvin, 2016; Cooper & Kroeger, 2017). This disparity in victimization is partly explained by the fact that these groups of people are disproportionately represented in low-wage jobs (see Cooper & Kroeger, 2017), but not entirely.

Wage theft is a crime that yields financial rewards. But it is also a means by which traditional race, gender, and class-based power dynamics are played out and reproduced. Different kinds of people experience wage theft differently, and many employers are adept at exploiting points of vulnerability in order to successfully violate their workers' rights. In

particular, researchers have paid a great deal of attention to the issues faced by Latino workers, who are at a high-risk of victimization because they are assumed to be unauthorized immigrants. This situation constitutes what Professor Elizabeth Fussell has dubbed the “deportation threat dynamic.” As Fussell wrote in her study of exploitation in post-Katrina New Orleans, Latino migrant workers are “visually identifiable by unscrupulous employers and criminals who assumed they were unauthorized and therefore felt confident that the migrants would not report them to law enforcement authorities” (2011, p. 1).

In *Wage Theft in America*, which has become an indispensable piece for those who want to understand wage theft, author and activist Kim Bobo (2011) explains why immigrants are particularly vulnerable:

Because our nation has no rational immigration system providing a path to citizenship and no strong worker protections for immigrants, many immigrants find themselves in vulnerable situations. They are desperate to work to support themselves and their families; at the same time, they face enormous backlash from communities that are scapegoating the nation’s economic woes on immigrants (hardly a new approach in U.S. history), and they are terrified of being deported. This creates a context that makes it easy for employers to exploit undocumented workers.

For an unscrupulous employer, the cheapest labor comes without papers. Undocumented immigrants can be paid less than the minimum wage, or nothing at all, because employers understand very well that many of these people live in both fear and ignorance, and are at such a significant power disadvantage that exploitation is relatively easy. They fear immigration authorities, and adopt contrite, submissive personas in order to avoid detection and deportation (Fussell, 2011). Many immigrants are also ignorant of their rights, and either do not know them at all or believe – wrongly – that wage and hour laws apply only to those people who are legally authorized to work in the United States. This situation creates a tremendous power imbalance beyond that which normally exists between a low-wage worker and his employer. “I think that’s

the bottom line,” says Jaime Cruz, a board member of Trabajadores Unidos de Washington DC, an organization that seeks to educate and mobilize low-wage workers. “[Employers] know the circumstances and they play with it. And then they don’t pay them and they know that generally speaking that [those] laborers whose wages they stole is not going to raise any issue with it, is not going to go to the [government].”

Scholars have largely focused on the particular difficulties of immigrant workers. But some have argued that other groups of people also have their own unique experiences with wage theft, and that these groups have been given too little attention. Llezlie Green Coleman, for example, has suggested that African-American workers are likely to experience wage theft in different ways than white and Latino workers, although this issue has not yet been studied. Professor Coleman specifically points to the high rate of criminal convictions among African-American men as one possible point of exploitation unique to this group (Coleman, 2016). Women, too, are more vulnerable than their counterparts, which probably colors how they experience wage theft. Many female workers – especially those who work for tips – report being sexually harassed, behavior that is sometimes paired with wage theft (Restaurant Opportunities Center, 2014). If they refuse their employer’s advances, they may have their tips withheld or suffer some other form of retaliation. Low-wage women who have children to support may also be more willing to put up with wage theft, fearing the consequences of job loss.

In short, while wage theft is often discussed in general terms and broad strokes, it is important to keep in mind that the crime itself plays out in context. The jobs we work reflect who we are and where we have come from. Our backgrounds and our careers also help to determine whether and how we are going to have our rights violated. In that same vein, how people experience, think about, and respond to wage theft is a function of who they are, where they

come from, and what their experiences have been. If we really want to understand the problem, and if we really want to work to craft meaningful solutions, then it is crucially important to understand the ways in which people identify, confront, and react to violations of their basic workplace rights, and why.

What happens when workers fight back?

Much wage theft goes unrecognized. Many people do not have a clear understanding of their basic rights, including what the minimum wage is, when overtime applies, and how much they should be paid for overtime. Ashna, for example, told me that she never had issues getting paid all of her earned wages at the daycare center where she had worked – her problem was that she had been terminated unfairly. Sabbir, a sandwich shop worker, also told me he had always been paid fairly. But as we talked, it became clear that both of them had experienced wage theft on a regular basis. Ashna’s employer regularly shaved time off of her paycheck, and neither her employer nor Sabbir’s ever paid them overtime. The employers of both also tried to or succeeded in denying them paid sick days. Neither of them knew that these actions were illegal – they simply thought these practices were company policy, and that was it.

When people are aware that their employers are violating their rights, they are still not likely to take action. There are many reasons for this. For one, legal disputes are not fun. They are time consuming, stressful, and carry many risks, especially for a group of people who live paycheck to paycheck and cannot afford periods of no income. Retaliation is a significant concern for workers who speak up, even if all they do is talk to their employers rather than a government agency. Camila, for instance, says that after she complained about her immediate supervisor, he began to deny her requests for time off, give her bad shifts at work, and assign her

extra tasks without any support. One day, a friend of Camila's came into the restaurant to pay her back for some bus money she had lent him. Her supervisor witnessed this and, without asking her about it, told upper management that he had seen her selling drugs at work. She was terminated. When she and I spoke, she was preparing to move out of her apartment, which she could no longer afford.

Even if a person does wish to take action, the process of filing a lawsuit is out of the question for most people of modest means, limited education, and no legal experience. Lawyers are expensive, and many low-wage workers cannot afford legal representation. Small claims court is an option for people in the District who have claims of less than \$10,000, but there are issues with that process as well. For most, the prospect of representing oneself in court is extremely daunting. Beyond that, the small claims process is not well set up to handle wage theft claims. In that context, workers typically have to bring their claim as a contractual dispute. This does not really capture what is going on, because many wage theft claims (such as those involving the minimum wage and overtime) are not contractual disputes, exactly, but allegations that an employer failed to follow the workplace mandates that supersede contractual agreements. In other words, in these cases it does not matter whether the worker "agreed" to work for less than the minimum wage or to forego overtime pay, because by law that kind of agreement is unenforceable. This situation can be confusing for judges and litigants both.

There are, of course, government agencies available to help people who believe their workplace rights are being violated. The Wage and Hour Division (WHD) of the U.S. Department of Labor is responsible for investigating complaints and punishing violations of the Fair Labor Standards Act, and most states and large cities have their own agencies that do the same for local laws. Many people have no idea how to begin the process of filing a complaint

with one of these agencies, though (Alexander & Prasad, 2014). When I ask Cora, who earned less than minimum wage working at an upscale hair salon, whether she had considered filing a wage claim, she says no. “I wouldn’t know how to do it,” she tells me. “I didn’t even know what to Google. It was like, you’ve got to Google, but what is it you put in Google? I don’t know.”

There is yet another problem: these agencies tend to be overworked and underfunded. Six states have no wage and hour investigators of their own, while twenty-six more have fewer than ten (Levine, 2018). As of 2012, Iowa had only one (Gordon et al., 2012). The federal government is not necessarily better. As discussed in the Introduction, the WHD has about as many investigators now as it did in 1948, but today that agency is responsible for a workforce that is six times larger. These weaknesses show – a 2009 audit by the Government Accountability Office found significant flaws in WHD’s complaint intake process, including “delays in investigating complaints, complaints not recorded in the WHD database, failure to use all available enforcement tools because of a lack of resources, failure to follow up on employers who agreed to pay, and a poor complaint intake process” (Kutz & Meyer, 2009, p. 4).

And finally, for most workers the journey only begins once they get a judgment in their favor. Winning a case is one thing; actually collecting damages is another. The collections process can be slow, confusing, and expensive, and workers are typically left to their own devices. Trying to use the legal system to get money from a recalcitrant employer can be exceedingly difficult, especially for people who have to learn how to navigate the process from scratch. Even if a person’s wage judgment is large enough to justify hiring an attorney or collections agency, those services can be expensive, leading to a significantly smaller payoff in the end.

Beyond that, many of those who commit wage theft are shady, fly-by-night employers who are simply unwilling or unable to pay. If there is no money to collect, then a wage claimant is out of luck. It is not uncommon for these companies to shut down and then immediately reopen in the same location, performing the same services, but under a different name (Cho et al., 2013). This has disastrous consequences for the possibility of collecting what is due. Wage theft judgments are usually against a business, which is its own legal entity. When for all intents and purposes that legal entity no longer exists, it becomes impossible for an aggrieved worker to collect what they are owed. These issues help explain the fact that between 2008 and 2011, only 17% of Californians who won a wage judgment from that state's labor agency were able to collect any money at all from their former employers (Cho et al., 2013).

Wage theft in context

As the research I have discussed shows, wage theft is a significant and widespread social problem. It is neither an individualized harm nor something that we should consider sweeping under the rug. It causes great economic harm to workers, increases poverty rates, undercuts the ability of good employers to fairly compete, and greatly reduces how much money flows into important and longstanding social safety net programs.

But bad though wage theft is in the abstract, it is even worse when considered in the context of the modern American economy. The last forty years have not been kind to American workers in general, and have been harder still for those who earn a low wage. Landmark legal protections have weakened (Hacker & Pierson, 2010), the structure of the workplace has changed dramatically (Weil, 2014), private-sector unionism has declined significantly (Hacker & Pierson, 2010; Weil & Pyles, 2005), good manufacturing jobs have left the country (Pierce &

Schott, 2016), pro-corporate policies have ascended to dominance (Hacker & Pierson, 2010), and long-term employment relationships have dwindled in frequency and quality (Weil, 2014). The result is a tipping of the scales against American workers as work itself has become increasingly precarious and uncertain. As political scientists Jacob Hacker and Paul Pierson (2010) explain in their book *Winner-Take-All Politics*, over the last forty years the rules of the economy have been systematically rewritten to benefit those at the very top of the economic ladder at the expense of everybody else. These disadvantages have fallen most harshly on low-wage workers, both by design, and because they have always had the least to spare.

The weakening of federal laws

As I have briefly discussed, federal laws and policies designed to protect the basic economic rights of workers have been allowed to weaken over time. Federal minimum wage and overtime laws have not been tied to inflation or regularly updated. Rather than modify legislation to reduce growing economic inequality and improve the financial prospects of low-wage workers, Congress has instead made the deliberate choice to allow these bedrock employment laws to drift into stagnation (Hacker & Pierson, 2010; Frymer, 2008). Today, the Fair Labor Standards Act is perhaps less applicable to the needs of America's low-wage workers than it has ever been.

The FLSA is, in some ways, just fundamentally outdated. It was written and enacted during a time when the American economy was characterized by local production and long-term work relationships. The quintessential American workplaces of the 1930s were farms, factories, construction sites, and mines. But agriculture, mining, and manufacturing have been on a decades-long decline (Fisk, 2001). Today's economy is defined by a robust financial sector, by

complex corporate structures, and by short-term and contingent work relationships (Weil, 2014). In particular, in the last decade or so we have seen the rise of the “gig economy,” characterized by services like Uber and Lyft, which involves people working in looser, less formal relationships with a company. “On the continuum of a traditional employee who goes to an office for forty hours a week and somebody who is running an independent business, [gig economy relationships are] in the middle,” says Paul DeCamp, a management-side attorney and the former administrator of the WHD during President George W. Bush’s administration. Gig workers do not fit neatly into either the “employee” or the “independent contractor” box, but the FLSA (and many other employment laws, including state laws) are very binary in their approach to regulating the workplace.

The FLSA’s problems do not start and end with how the nature of work has changed over the last few decades, however. In the Introduction, I noted that significant majorities of Americans support raising the minimum wage and expanding federal overtime policy to cover more workers. As these results suggest, Congress has allowed the key provisions of the FLSA to stagnate to the point that they are woefully inadequate. First, Congress’ unwillingness to raise the minimum wage or tie it to inflation has caused its purchasing power to decline drastically. The minimum wage peaked in value in 1968, when it was worth \$9.90 in 2017 dollars (Cooper, 2017). Today’s minimum wage workers are paid about 27% less per hour than their counterparts of the late 60s (Cooper, 2017). Today’s low-wage workers have to work longer hours just to make the same income.

Comparing the minimum wage based on effective purchasing power is only one way to analyze whether it should be higher. It is important to keep in mind that the United States economy has enjoyed drastic increases in productivity since the 1960s. “Given growth in the

economy and improvements in labor productivity over the past half century,” writes David Cooper (2017) of the Economic Policy Institute in Washington, DC, “the minimum wage could have been raised to a point considerably higher than its 1968 inflation-adjusted value.” Had 1968’s minimum wage kept pace with productivity, it would today be more than \$19 (Cooper, 2017).

And because the federal minimum wage is not indexed to inflation, it continues to lose its purchasing power. According to the Drew Desilver, an analyst with the Pew Research Center, as of January 2017 “the federal minimum [of \$7.25] has lost about 9.6% of its purchasing power to inflation.” (Desilver, 2017). This decline continues as costs increase but wages stay the same.

The FLSA overtime provisions have also been allowed to atrophy. Workers are exempt from the minimum wage and overtime requirements of the Act so long as they meet two requirements. First, they must perform certain specific job duties in order to qualify for various exemptions. The “executive” exemption, for instance, requires workers to act primarily as managers, regularly supervise at least two other employees, and be able to genuinely influence the job status of other workers (29 C.F.R. § 541.100 *et seq.*). The “professional” exemption, which applies to people like lawyers and doctors, requires workers with specialized education to perform work that is mainly intellectual and involves the exercise of discretion and judgment (29 C.F.R. § 541.300 *et seq.*).

Second, to be exempt an employee must be paid on a salary basis at least \$23,660 per year, or \$455 per week. As discussed in the Introduction, this salary threshold has not been updated since 2004 (see 80 F.R. 38516), nor is it indexed to inflation. The Department of Labor under the Obama administration adopted a rule doubling the threshold to \$47,476 per year (or \$913 per week), but it never went into effect. Shortly before it was to be enforced, a federal

judge enjoined it, and the Trump administration's Department of Labor signaled that it would not defend the rule on appeal. In late August of 2017, the same federal judge went further, striking down the rule on the grounds that it exceeded the statutory authority of the Department of Labor (Wiessner, 2017). Had it been implemented, this rule change would have benefited more than 12 million workers (Eisenbrey & Kimball, 2016).

In short, the Fair Labor Standards Act is no longer a statute that applies well to the modern American economy. Although its core terms have not changed, it has been effectively weakened by both a changing economy and congressional inaction.

The “fissuring” of the workplace

The nature of employment has also changed to the detriment of low-wage workers in ways that move beyond – but are related to – the rise of the gig economy. As former WHD Administrator Dr. David Weil (2014a) explains, the last few decades have seen a vast restructuring of workplaces – what he calls “fissuring.” In brief, companies have shrunk in size and scope. They have shifted from a model of employing many people to one in which the company is smaller, leaner, and directly employs fewer people. Companies have “shed” many of these jobs, and now subcontract out much of the work that used to be done by employees.

Fissuring began in the 1970s when companies, under pressure by investors, began to cut down on the size and scope of their workforces. Prior to this happening, “lead firms” generally employed more people to complete a broader variety of tasks. But in the 70s, these firms began to focus on “core competencies,” which are those activities that provide the greatest value to the business (and by extension, its investors). To save money, firms now hire subcontractors to bring in their own workforces to complete those tasks which are not central to a firm's profit model,

but must still be done. This system of subcontracting is extremely prevalent in construction, for instance, where job sites typically have a general contractor who oversees the entire project, but who hires many subcontractors to perform certain job tasks, such as plumbing installation. The practice of fissuring, however, has spread to many industries and organizational forms. Many businesses now outsource necessary and commonplace activities including janitorial services, human resources, and payroll (Weil, 2014a).

This fissuring has had a significant and negative impact on low-wage workers in several ways. It has played an enormous role in reducing stable, long-term employment. Many of the kinds of people who used to have lasting employment relationships with large, well-known businesses now have precarious, short-term employment through subcontractors. For example, whereas sixty years ago most hotel employees worked for the hotel itself, today more than 80% of them are employed and supervised by independent companies (Weil, 2014b, p. 108). This process has contributed to wage stagnation and a deterioration in the nature of work, as “[g]ains once shared between lead businesses and their workforce have shifted increasingly to investors and in some cases consumers” (Weil, 2014a, p. 109).

Fissuring also creates an environment that is ripe for wage theft. Lead firms’ overall emphasis on reducing costs and increasing profits exerts downward pressure on wages, creating incentives for subcontractors to cut corners in order to obtain a competitive advantage as they bid for contracts. Often, they do so by skirting employment laws, which allows them to lower operating costs, decrease taxes, and pitch a cheaper contract to potential clients. Subcontractors in the construction industry that misclassify employees, for instance, are more likely to win contracts because they are not paying taxes, overtime, or sometimes even the minimum wage. “Many of the industries we associate with low wages, precarious employment, high rates of

violation of basic labor standards, and dangerous working conditions are also the industries in which fissuring is most advanced,” explains Weil. “These include eating and drinking businesses, janitorial services, many sectors of manufacturing, residential construction, and services” (Weil, 2014b, p. 109).

To make matters worse, fissuring has resulted in blurred lines of responsibility, making it harder for workers to meaningfully assert their rights. Employees may only bring lawsuits or file wage claims against the entity that employs them. Generally speaking, an entity is a worker’s employer if that entity exerts control over that worker’s job. Subcontracted workers typically do not have a formal employment relationship with lead firms, but only with the subcontractor that directly hired them and oversees their work. This is a problem because many of these subcontractors are shady, fly-by-night operators who are judgment-proof, either because they have no money or because they are willing to shed their legal identity and adopt a new one (see Cho et al., 2013). As a result, the best bet for a subcontracted worker who has had her wages stolen is to go after a lead firm, which is likely to be legitimate and to have money available to pay back wages.

But this is usually impossible. The fissured setup allows lead firms to claim ignorance in the event that a subcontractor commits wage theft or some other violation of law (Weil, 2014a). After all, the lead firm did not hire the worker, nor oversee her daily tasks. There is some heft to this argument, to be sure, and it often passes legal muster. But the problem with this excuse is that lead firms create and control the contracts that define the business relationship. When a subcontractor accepts a job, it agrees to complete a set of tasks for a certain amount of money and according to certain, sometimes highly-specific standards (see Weil 2014a, pp. 123-25). These dictates, set by lead firms, have the effect of structuring the terms and conditions of

employment for the very people – subcontracted workers – with whom the lead firms claim to have no employment relationship, and thus no responsibility over. Whether lead firms are actually aware of the rights violations committed by their subcontractors or not, they often *should* be. Simply put, choosing the least expensive option raises the distinct possibility that costs are low because of illegal practices, and lead firms incentivize illegal practices by insisting that costs be low. But in many cases, the fissuring of the workplace effectively immunizes lead firms from liability for workers’ rights violations. The mere fact of this workplace structuring weakens the practical strength of workers’ legal rights, as these subcontractors – much more so than the larger firms that hire them – are notoriously difficult to hold accountable for their violations of law (Cho et al., 2013; Weil 2014).

The decline of unions

Finally, one other large-scale change in the past several decades has significantly harmed the economic interests and workplace status of America’s low-wage workforce: the decline of unions. This overall decline has been well-documented, as has its disastrous effects on the lives of working people and the functioning of our political system (see Hacker & Pierson, 2010; Frymer, 2008). Private-sector union membership peaked in the mid-1950s, when about 35% of the workforce was unionized. By 2015, that number had dropped to just 6.7% (Dunn & Walker, 2016). Public-sector unionism has held steady at around 35% (Dunn & Walker, 2016), but these institutions have come under sharp attack recently, and the Supreme Court’s recent decision in *Janus v. AFSCME* (2018) promises to further erode public-sector unions by limiting their ability to collect fees from non-members who nevertheless enjoy union representation. As unions have grown weaker, wages have stagnated, inequality has increased, benefits have dwindled, and

workers have become less and less able to effectively assert their workplace rights (Hacker & Pierson, 2010; Frymer, 2008; Weil & Pyles, 2005).³

Unions bring great benefits, both to their members and to lower and middle-class people generally. They serve as a countervailing power to concentrated wealth, balancing the scales between the rich and the poor. Unionized workers make more money and enjoy better working conditions. In 2017, union members on average made \$212 more per week than non-union members, including \$164 more for African-American and \$268 more for Hispanics/Latinos (Bureau of Labor Statistics, 2018). Union members are also far more likely to enjoy benefits like health care, job security, and pensions (Frymer, 2008, p. 8).

A large body of research shows that unionized workplaces are significantly more likely to follow government regulations and laws that are designed to protect workers. Not only are unionized workers less likely to have their rights violated, but they're in a much stronger position to assert those rights than nonunion workers. Much of this research has examined unions in the context of the Occupational Health and Safety Act (OSHA), the federal law that sets minimum standards for workplace safety across the United States. This research largely shows that unions reduce workplace safety hazards, at least with regard to the risk of severe and deadly injuries, although the effect varies by industry (Morantz, 2017; but see Weil, 1991 (finding a negative relationship between unions and OSHA compliance in US manufacturing)). Unions have also been found to reduce gender and race-based pay disparities (Rosenfeld & Kleykamp, 2012; Whitehouse, 1992).

³ As Jacob Hacker and Paul Pierson (2010) carefully explain in their book *Winner-Take-All-Politics*, the decline of organized labor has also resulted in a decline of political power for working and middle class people. Unions have, historically, been *the* key force advocating for the economic interests of average Americans, and as they have declined in relevance, so too has the ability of average Americans to effectively participate in the political process.

Most relevant to this study, unionized workers are far less likely to experience wage theft. Nonunion employees are almost twice as likely as workers who are represented by a union to experience minimum wage violations (Cooper & Kroeger 2017, pp. 26-27). Other studies have found that unionized employers are more likely to properly pay their workers for overtime (Ehrenberg & Schuman, 1982; Trejo, 1991, 1993), and that unionization increases the odds of an injured worker receiving workers' compensation benefits (Worrall & Butler, 1983; Hirsch et al., 1997; Morse et al., 2003). When workers do have their basic rights violated, they are well-equipped to stand up for themselves, since union contracts often have dispute resolution processes built in, and because unions provide protections against retaliatory firings and punishments (Weil, 2004).

Strong unions also benefit nonunion workers, though. They reduce income inequality, in part because their members directly enjoy higher wages and better benefits. But the perks of unionism spill over into non-unionized workplaces, both because unions "contribute to a moral economy that institutionalizes norms for fair pay, even for nonunion workers," and because employers may raise wages in an effort to stave off unionization (Western & Rosenfeld, 2011, p. 514, 516-17). Beyond that, organized labor has traditionally supported legislation and causes that directly benefit average people. Unions strongly supported the Fair Labor Standards Act (Grossman, 1978), and have fought over the years for civil rights, welfare rights, and minimum wage increases (although, as Paul Frymer (2008) points out, some unions have also had a long history of racially discriminatory practices, and their failure to address this problem helped contribute to their downfall). In recent years, unions have provided financial support for pro-worker social movements, including by funding and mobilizing efforts to pass living wage ordinances and increase the minimum wage to \$15 per hour (Luce, 2017). They have also funded

non-union groups that organize and advocate for low-wage workers, such as the Restaurant Opportunities Center and the National Day Laborer Organizing Network (Galvin, 2016).

Unions, in short, have been a huge boon for the well-being of American workers. But the power of American organized labor has significantly declined in the last 70 years, and workers have suffered as a result. Wealth and income inequality have sharply increased in the past four decades, with an ever-increasing share of wealth and income going to the richest 1% of Americans, and especially the richest .1% and .01% (Hacker & Pierson, 2010). The best data show that the share of wealth held by the richest 1% increased from about 30% in 1989 to almost 49% in 2016, while the share held by the bottom 90% fell from about 33% to just under 23% (Stone et al., 2018). There are multiple overlapping explanations for this trend, but one large reason is that unions have been on the back foot: Sociologists Bruce Western and Jake Rosenfeld estimate that between one-fifth and one-third of this growth in wage inequality is due to the decline of the American labor movement (Western & Rosenfeld, 2011).

These changes have not been the natural result of a shifting economy, of globalization, or of any other large-scale, inevitable adjustments (Hacker & Pierson, 2010). Rather, the decline of the prevalence and power of organized labor reflects deliberate policy choices that have been made by the federal government. The National Labor Relations Act and the agency that enforces it, the National Labor Relations Board, have been weakened through policy drift, while court decisions have repeatedly harmed the ability of unions to organize, advocate, and raise money (Hacker & Pierson, 2010; Bivens & Shierholz, 2018; see, e.g., *Janus*, 2018). The ultimate effect has been to harm poor people and to weaken the working class.

As moneyed conservatives have increasingly become more politically organized (see Teles, 2012), and as unions have been placed on the back foot, the collective ability of average

people to push for policies that reflect their interests have declined greatly. This reality, in turn, has led to a social and political environment where workers are outgunned by business (Hacker & Pierson, 2010). This helps to explain stagnation of workers' rights, increased fissuring, and the creation of a low-wage work environment where wage theft is rampant and enforcement is anemic.

Final thoughts on wage theft

I want to wrap up this chapter with a few closing thoughts on wage theft. As I have written, the term “wage theft” is a re-branding of an age-old problem. This re-branding is political in nature, and is intended to elicit a visceral reaction in people. Theft, after all, is a crime! The ultimate purpose of this campaign has been to draw increased attention to employer noncompliance with basic wage and hour laws, and to build a social movement around the idea that society and governments should do more to aggressively advocate for and protect the economic rights of the working poor. In these goals, this re-branding has been extremely successful.

While we usually talk about wage theft as it applies to low-wage workers, it is important to keep in mind that the crime is not unique to the lower classes. Any employee may have their rights violated and their wages or benefits stolen, and there are good examples of this happening to even large numbers of sophisticated workers. Recently, for example, 64,000 tech workers in Silicon Valley filed a class action lawsuit against a number of prominent tech companies, including Apple, Google, and Adobe (*In re: High-Tech Employee Antitrust Litigation*, 2011). The suit accused these companies of violating state and federal antitrust law, which generally prohibits businesses from working in concert in order to artificially fix prices. According to the

plaintiffs, these companies agreed not to recruit each other's workers. This agreement artificially created a noncompetitive environment, suppressing wages and saving the companies billions of dollars on labor costs. The case settled in 2015 when the defendants agreed to pay class members \$415 million dollars (Levine, 2015).

But what makes wage theft so offensive in the context of low-wage work is that poor people are unlikely to be aware of their rights and to be able to take meaningful action to enforce them. This is not to say that low-wage workers are not capable people. But, the deck is stacked against them. They have limited access to resources and knowledge, while their opponents do not – at least, not relatively speaking. Beyond that, many low-wage workers *feel* that they do not have the power to meaningfully assert their rights, and this feeling becomes a self-fulfilling prophecy.

Finally, it is important to clarify what wage theft is not. Wage theft is not *only* an action taken by unscrupulous employers who deliberately seek to cut corners and save money by cheating their workers out of their earned wages and benefits. It is this, of course. But wage theft, as defined, does not require malicious intent. It also occurs when employers accidentally fail to follow the law, even when they have put forth a good faith effort to do so. In many such cases, employers are frustrated and upset once they discover their error.

At one point, I discussed this project with a friend who employs low-wage workers. She explained to me that she does not pay her workers overtime pay because they are exempt under the Fair Labor Standards Act. “What about DC law?” I asked. She was confused. I told her that when there are multiple overlapping laws, like when a state has set a different minimum wage than the federal government, employers are required to follow those laws that provide the most

benefits and protections to employees. We checked, and discovered that her workers are entitled to overtime under DC law.

My friend is a wonderful person, a high-road employer who prides herself on taking care to treat her workers with fairness and respect. She's savvy, college-educated, but she did not know that she had to check to see whether the District has different overtime requirements than federal law. We sat down and went through her company's payroll records, and determined that two employees had been underpaid: one by about \$40, but the other by about \$600. My friend was horrified at what she'd done, and also angry with herself. Having had bad employers herself, she takes great pride in treating her workers fairly, making sure that they report every minute that they work, and insisting that they take rest breaks, vacations, and sick days. She gave her employees checks for their backpay as soon as she was able.

This anecdote provides an important insight into the problem. My friend committed wage theft, to be sure, but she is not a "wage thief." Most of the time when we discuss this issue, we think and talk about employers who are undoubtedly bad actors, and who need to be brought to heel with strict enforcement of strong laws. But we should keep in mind that "employers" are not, as a class, bad people. Many of them want to follow the law, and wish to do right by their workers. The system fails when government agencies fail to enforce workers' rights, but it also fails when the government does not adequately educate employers about what those rights are.

I do not write this because I think that the problem of wage theft has been widely misrepresented, and that employers have been unfairly castigated by scholars and other commentators. Rather, I wish to drive home the point that wage theft is a complex social problem, and dealing with it requires navigating the different viewpoints held by various members of society, including both workers and employers. I have tried to keep this perspective

in mind throughout this project, and it is a large part of the reason why I did not just interview low-wage workers, but also attorneys, members of the workers' rights community, and a small number of employers.

The next chapter discusses this project and the city of Washington, DC in more detail. I detail what this research adds to what we know about wage theft, and also discuss the social, legal, and regulatory background of the District. As I explain, when discussing and analyzing wage theft, it is crucially important to pay close attention to the larger context of a place.

Chapter 2: Welcome to the District

What does it mean to a person when their employer denies them fair pay for honest work? How do low-wage workers think about and respond to violations of their basic rights, and why do they choose particular courses of action? And finally, how do the working poor think and feel about the laws, agencies, and institutions that are supposed to protect them by enforcing their basic workplace rights? These are the key questions that I set out to answer with this project. My goal was to expand upon what we know about wage theft by qualitatively researching the issue with a particular emphasis on how wage theft plays out in the social, legal, and political context of Washington, DC.

In this chapter, I first explain what it is that my project contributes to our understanding of wage theft. I then discuss in detail the social environment of the District of Columbia. I explain why it was important for me to pay close attention to the specific context of DC, and I set out to introduce that environment.

What this project contributes: Worker voices and the importance of context

My project differs from prior research on wage theft in some significant ways. As I discussed in Chapter 1, research has, so far, mapped the breadth and depth of wage theft. Scholars have conducted surveys or analyzed large-scale secondary data sets to estimate how frequently various forms of wage theft occur among different kinds of workers, and how much money these violations cost workers, both as individuals and as a group (e.g., Bernhardt et al., 2009; Galvin, 2016; Cooper & Kroeger, 2017). This work has been incredibly useful for understanding the widespread economic harms of wage theft, and some of the ways in which

current systems of enforcement are inadequate. It has also been very useful at identifying what kinds of laws and policies can reduce the problem.

What is missing from this body of research is a strong representation of the viewpoints and experiences of low-wage workers themselves. To be sure, some studies do incorporate worker testimony. In their analysis of wage theft case outcomes in California's Division of Labor Standards Enforcement, Eunice Cho and her colleagues (2013) interspersed personal stories with their quantitative analysis. Shannon Gleeson (2009, 2015, 2016), whose work discusses but does not intensely focus on wage theft, has done much to engage with worker experiences through the interviews that she conducted while volunteering at a legal clinic in Northern California and while working in Houston, Texas. But by and large, workers' experiences with and responses to wage theft have not been systematically and qualitatively examined. To some extent, we can intuitively understand how people must feel about having their basic rights violated – after all, any one of us would be angry and upset if we were aware that our wages were being stolen. But only by delving deep into this issue through semi-structured, qualitative interviews can we attempt to fully comprehend what wage theft means to those who experience it.

While other research has quantitatively analyzed the economic harms associated with wage theft, my project builds upon what we know about this social problem by exploring its personal and social consequences, with a heavy emphasis on and reliance upon worker voices. It is also important to stress that this study of wage theft is not generalized to America, to all low-wage workers, or even large cities. Instead, it is situated within the specific social, political, and regulatory context of the District of Columbia.

When I say that my project is located in Washington, DC, this is not just a descriptive statement. The project focuses on DC, meaning I interviewed people about their experiences

with and related to wage theft that occurred in the city itself. But more broadly, my research is firmly situated within the legal and social context of the District of Columbia. The questions I asked, the people I chose to talk to, and the legal and factual analysis that I have engaged in are all inextricably tied to the environment of the District itself – to its policies, procedures, key actors, political environment, and statutory and regulatory scheme.

There are very good reasons for this approach. In 2016, Charles Epp (2016, p. 41) called for Law and Society scholars who study inequality to “tak[e] policy seriously” by adopting a “richer conception of the state and its policies,” as some recent policy studies scholars have done (see, e.g., Hacker & Pierson, 2010; Frymer, 2008). These “new policy studies” and the analytical approach they have adopted contain a number of insights that are relevant to this project.

First, it is crucial to understand that much policy – from its overall arc to specific rules and regulations – has been shaped by race-framed conflict (Epp, 2016; Munger & Seron, 2017). This is true in all arenas, but this fact is especially salient when discussing poverty and work. One of the most striking illustrations of the effect of racism on prosperity and earnings comes from Ira Katznelson’s *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (2005). Katznelson analyzes the history of New Deal and Fair Deal policies and programs, such as the Fair Labor Standards Act, National Labor Relations Act, and G.I. Bill, and shows the myriad ways in which these programs were secured by and for the benefit of whites, and to the exclusion of racial minorities, especially African Americans. According to Katznelson (2005, p. 22), Southern Democrats “built ramparts within the policy initiatives of the New Deal and Fair Deal to safeguard their region’s social organization,” and to maintain traditional racial hierarchies. These racist Southern Democrats used three mechanisms to achieve this goal:

1. First, they sought to exclude as many racial minorities as possible by categorically barring from participation in these programs those jobs that were performed primarily by racial minorities, such as agricultural and domestic work. While this exclusion was not explicitly based on race, that was the intended and actual effect. In the 1930s, for example, more than 60% of all employed African-Americans worked as maids or farmworkers; in the American South, nearly 75% of African-Americans had such jobs;
2. Second, they insisted that these laws be administered locally, rather than by the federal government. This decentralization of authority placed power in the hands of local officials who, like many in the South, were deeply hostile to the idea of black economic success and equality. As a result, eligible blacks were excluded from access to these programs at a higher rate than eligible whites, and those who did qualify received fewer benefits.
3. And finally, Southern Democrats prevented Congress from attaching any sort of anti-discrimination provisions to a wide array of social welfare programs, such as community health services and school lunch programs, which distributed money.

The federal programs created as part of the New Deal and Fair Deal are often credited with forging a robust and vibrant middle class (e.g., Kirsch, 2014; Hacker & Pierson, 2010; Katznelson, 2005). These laws guaranteed minimum wages and the right to organize unions, fed millions of people, sent millions more to college, and helped generations of Americans create wealth and secure an economic place for themselves in society (see Katznelson 2005). The fact that racial minorities, and especially African-Americans, were excluded from participation in these programs is significant, and continues to shape society today. While Congress eventually amended many of these exclusions, they did not fix all of them – the FLSA and NLRA, for example, still exclude farmworkers, most of whom are racial minorities (although today they are primarily Hispanic, rather than African-American (U.S. Department of Agriculture, 2018). Beyond that, these programs collectively created a better, more equitable society by effecting an extraordinary redistribution of wealth to the lower and middle classes. Because wealth is passed down through generations, the denial of access to certain kinds of people in the past has had effects that reverberate over time (see Sharkey, 2013).

Inequality scholars agree that racial dynamics shape and guide policymaking, and these ideas have been well and thoroughly developed across many studies (see Epp, 2016). At the same time, our society views racism as an aberration, behavior to be condemned. What accounts for this contradiction? “American politics,” explain Desmond King and Rogers Smith, “has historically been constituted in part by two evolving but linked ‘racial institutional orders’” (2005, p. 75). The first of these orders seeks to preserve and maintain white supremacy, and is evident in Katznelson’s (2005) discussion of the history of the New Deal and Fair Deal. The second order, in contrast, opposes white supremacy. According to King and Smith, these two competing orders exist in every single action that takes place on the American political stage, and no analysis of American politics, including the laws that frame a social problem, will be complete unless it is analyzed in light of the framework that is defined by these racialized institutional orders.

The second important takeaway from new policy studies is that despite the widely-held idea that the government, since the collapse of the New Deal order, is increasingly hollow, weak, and dormant, “the government” is actually still an active policymaker (Epp, 2016). Crucially, it is important to note that a political system can shape policy either through action *or* inaction (Epp, 2016; Hacker & Pierson, 2010). When the government passes new laws and policies, it is clearly taking deliberate and purposeful steps to shape society. But as political scientists Jacob Hacker and Paul Pierson explain, government *inaction* in response to a problem like rising economic inequality should also be understood as deliberate, policy-shaping behavior when it takes the form of “drift” (2010, pp. 52-54).

Policy drift is an increasingly important means of shaping the world we live in, and proceeds in two stages. First, large-scale changes in society or the economy erode the

effectiveness of existing policies, raising the clear need for those policies to be updated. Think about the fact that the minimum wage and overtime standards of the FLSA have become increasingly ineffective over time, both because of the steady march of inflation and because of shifts in the economy. Second, “political leaders fail to update policies, even when there are viable options, because they face pressure from powerful interests exploiting opportunities for political obstruction” (Hacker & Pierson 2010, p. 53). Again, the FLSA has not stagnated because of a lack of debate or a paucity of ideas about how it should be updated to better apply to America’s modern economy. Instead, efforts to raise the minimum wage or strengthen overtime policies have been resisted at every turn by conservatives and business interests.

But in a federalist system like ours, power is allocated among and between different governments and agencies, and some entities have become much more active even as national policies have atrophied and federal actors have stood still. With regard to the laws and policies that affect the lives of working people, inaction at the federal level has spurred greater action at the local level in some jurisdictions.

This surge in policymaking has remade the state into a sprawling, multifaceted creature. “The state,” in other words, is not a single, uniform entity, but is instead comprised of multiple overlapping agencies and institutions. These various organizational forms may have very different mandates, goals, policies, and procedures, based not only on divergent institutional goals, but also based on the individual people who are in charge. In such a wide-ranging system, there is tension and conflict between individuals, offices, agencies, policies, and between different branches of government and different sovereign entities. For example, the United States Department of Labor has a clear interest in enforcing the country’s bedrock employment laws, even for undocumented workers; in contrast, Immigrations and Customs Enforcement has an

interest in apprehending and deporting undocumented people. While these two agencies are part of the very same government, they pursue goals that have sometimes been at odds (Smith et al. 2009). The same dynamic plays out across a range of contexts and localities, and at every level of government.

In light of this discussion, “the state” has multiple points of entry for low-wage workers to assert their rights and seek redress. A person who is experiencing wage theft in the District could, in theory, take a number of different courses of action. They could file a complaint with the federal Department of Labor, or with the DC Department of Employment Services. They could file a lawsuit in small claims court, in DC superior court, or in federal court. They could also forego direct legal action in favor of lobbying the DC City Council to improve workplace protections, or they could attempt to pressure other government agencies to scrutinize their employer. In other words, people – again, in theory – have the power to strategically pick and choose among different avenues of recourse.

The key point of this discussion is this: “the state” is neither a monolithic entity, nor simply a “brooding presence” looming over society and its people (Epp, 2016, p. 47). Rather, “[i]t is a complex array of particular agencies and particular groups of officials,” as well as laws, policies, and on-the-ground practices (Epp, 2016, p. 47). Each of these variables plays an important role in guiding the behavior of low-wage workers, employers, lawyers, and activists and organizers (Epp, 2016; Frymer, 2008). Likewise, each of these variables may be impacted, guided, and influenced by the variety of groups and interests that live and work in a physical place or policy arena. To be sure, as a general statement it is fair to say that powerful people and organizations wield an outsized influence on law and policy, and this fact has been well-documented. But as Paul Frymer persuasively argues, government institutions do not “simply

reflect the interests of the powerful.” They “can take on a life of their own and have an independent causal effect on how power is attained and manifested” (2008, p. 8). Institutions themselves, then, can “shape[] both the behavior of political actors and political outcomes, because as “independent sources of power and authority” they enact and enforce rules and policies which serve to guide behavior and conclusions, sometimes even in ways that do not quite reflect society’s preferences (Frymer, 2008, pp. 8-9).

The takeaway, then, is that it is important for Law and Society scholars who study inequality to clarify the higher-level policies and structures which create the environment and the framework in which a given act of research takes place (Epp, 2016). And when it comes to wage theft in particular, studies have demonstrated that context matters a great deal.

Daniel Galvin’s (2016) work, discussed in Chapter 1, used data from the Current Population Survey in order to analyze minimum wage violation rates in every state. But Galvin also systematically analyzed the existence and passage of wage and hour laws in every state and the District of Columbia from 2006 to 2013, and used these data to measure both the penalties for and probability of being detected for minimum wage violations. Galvin ranked these 51 jurisdictions based on the strength of their anti-wage theft laws, and evaluated how minimum wage violation rates changed over time based on the implementation of new laws, policies, and enforcement priorities. He grouped legal changes regarding wage theft into four categories:

1. Laws entitling workers to treble (triple) damages for unpaid wages;
2. Other changes enhancing the civil and criminal penalties associated with minimum wage violations;
3. Laws creating new legal or administrative processes to addressing wage theft claims; and
4. Laws adding new post-judgment penalties for offenders who do not pay up after a worker obtains a judgment against them.

Galvin found that minimum wage violation rates depend significantly on two factors: the strength of a jurisdiction's wage and hour laws as written, and the actions – or inactions – of the officials and institutions who bear responsibility for addressing the problem. Harsher penalties work. Treble damages resulted in a meaningful and statistically significant reduction in minimum wage violations. Other civil and criminal penalty enhancements also reduced wage theft rates, but this effect was not statistically significant. And finally, the last two categories of wage theft laws had no statistically significant effect on wage theft (Galvin, 2016, pp. 339-40).

However – and, perhaps, obviously – research suggests that the effectiveness of these policies also depends on whether they are meaningfully enforced. In 2007, for example, voters in Ohio approved a state constitutional amendment adding mandatory treble damages. But little more than a year later, Ohio's governor – under pressure from the business community – issued an executive order waiving imposition of these enhanced penalties “for first-time or isolated paperwork or procedural regulatory non-compliance” (Galvin, 2016, p. 340). The next governor, former Republican presidential hopeful John Kasich, extended this order. Galvin's analysis revealed that after the treble damages amendment went into effect, minimum wage violation rates in Ohio decreased significantly. After the governor issued his executive order, however, they shot back up to their pre-amendment levels. In a similar argument, David Cooper and Teresa Kroeger of the Economic Policy Institute assert that one reason why Florida has high minimum wage violation rates is because it has no state-level enforcement of wage and hour laws (2017, p. 12). In 2002, Florida did away with its Department of Labor and Employment Security, effectively leaving enforcement of wage and hour laws to the courts and the federal Department of Labor which is, as I discussed, underfunded and understaffed.

Galvin, Cooper, and Kroeger are careful to qualify their conclusions, noting that there is not clear or definitive empirical evidence about the importance of enforcement. But the idea that enforcement of laws matters to reducing crime rates finds support in the field of criminology, as well. Rational choice theory assumes that people are basically rational actors who weigh the expected consequences and benefits of their actions, and that the decision to commit crime is based on an offender's "expected effort and reward compared to the likelihood and severity of punishment and other costs of the crime" (Akers 2013, p. 24). Oftentimes, rational choice theory leads policymakers to increase criminal penalties in an effort to deter criminal activity. But research also shows, albeit modestly, that when people believe that they are more likely to be caught, independent of the penalties they will receive, they are less likely to engage in criminal acts (Nagin, 1998; Kubrin et al., 2009). When Ohio's governor announced a policy of leniency for first-time wage thieves, and when Florida abolished its state-level department of labor, these states signaled to unscrupulous employers that there was a low likelihood of being apprehended and punished harshly.

The purpose of this discussion has been to highlight the significance of local and state-level laws and policies. To recap, the protections and guarantees that America's workers have long enjoyed have deteriorated over time. This has been due to both changes in the economy and the rising price of consumer goods. Despite the clear need for policy change, the federal government has been inactive due to the influence of powerful, moneyed interests, who are able to use their power to effectively stymie reform. In response to this policy drift, some state and local governments have passed new laws designed to improve the lives of workers generally, and to combat wage theft specifically. These changes are not futile, and the policy decisions of local authorities can – and have – had meaningful impacts on the problem of wage theft. In light of

this and other, similar evidence, it is imperative that Law and Society scholars studying social problems pay close attention to the policy regime that frames an issue, and to the social and historical context surrounding that regime. The remainder of this chapter, then, sets the stage for this research project by discussing the social, political, and legal context of Washington, DC.

Welcome to the District

As this section will explain, the District of Columbia is a particularly interesting context in which to study a social problem like wage theft, due to its literal and symbolic importance as our nation's capital, its demographic characteristics, and the recent activism it has experienced around the issue of workers' rights. In many ways, the city exemplifies America. It is the seat of power for the federal government, and one of our most celebrated and well-visited places. It is also a semi-autonomous city with its own system of governance and laws which, sometimes, diverge markedly from the policies of the federal government. This has been especially true in the age of President Trump.

Spend the day traveling through the city, and you will see firsthand the wide variety of experiences that comprise the American story. The District is culturally, racially, and economically diverse, a place where people of many races, colors, creeds, and nationalities intermingle. It is also a city in which there is a stark and persistent racial and economic divide between white people, black people, and Latinos.

There is great wealth in DC, ostentatious and brilliant, apparent in the city's world-class museums, Michelin-star restaurants, high incomes, and soaring home values. But this affluence is mirrored by significant poverty, shameful and depressing, characterized by tents along main thoroughfares and the many people who beg for food and change in the District's landmark-

studded downtown area. The city is home to the world's most powerful people, as well as many who live on the social and economic margins of mainstream American society. This contrast of experiences exists in plain view, and one does not have to travel far to see it.

The next few sections give an overview of the District. In order to provide readers with a rich understanding of the context in which DC's low-wage workers live, work, and struggle, I paint a picture of the city's geography, demographics, economics, and laws.

The nation's capital

Both geographically and symbolically, the District is centered around the National Mall, a rich expanse of green grass and walking paths. The Mall is flanked at either end by the Lincoln Monument and the United States Capitol. It is lined with world-class museums, filled with rich stories, ancient artifacts, and priceless art. Standing on the Mall, it is hard not to feel a sense of awe. This is where presidents are inaugurated. Where our nation's laws are written, debated, and voted upon. Where, in August of 1963, Martin Luther King, Jr. gave his famous "I Have a Dream" speech to 250,000 people. It is a place of beauty, history, and prestige, and appropriately holds a special place in the identity of the city.

The city itself is divided into four unequally-sized quadrants, which are themselves divided into eight wards. The Northwest quadrant is the largest and most prominent. It covers the area north of the national mall and west of North Capitol Street, and houses many of the city's most popular and wealthy areas, including Georgetown, Dupont Circle, and Embassy Row. It also contains Federal Triangle, the central business district of the city. The smallest quadrant is Southwest, located south of the Mall and west of South Capitol Street, and it includes the up-and-coming Waterfront District. Northeast encompasses the area north of the Mall and east of

North Capitol Street, and contains such famous landmarks as Catholic University, the National Shrine, and the Supreme Court of the United States. And finally, the Southeast quadrant is located south of the Mall and east of South Capitol Street. It contains the famous Capitol Hill neighborhood and the Washington Nationals Baseball stadium, as well as the poorest neighborhoods in the District.

Demographics and segregation

The District is a place that fully reflects the broad range of American experiences. Given its status as our nation's capital, this is both appropriate and disheartening. While DC features significant racial, cultural, and economic diversity, it is also marked by great segregation and inequality.

As of 2017, the District of Columbia had approximately 700,000 residents (U.S. Census Bureau, 2018). This number, however, vastly understates the number of people who are actually in the city on a daily basis. Many people who work in the District live in the nearby suburbs of Maryland and Northern Virginia, which tend to be more affordable than the city itself. On any given workday, the consumer-adjusted population of the city swells to over a million people (McKenzie et al., 2010, Table 3). As one of America's premier cities, DC is also a popular tourist destination. It boasted more than 22 million visitors in 2016, who together spent more than \$7.3 billion dollars (Destination DC, 2017).

Over the past century, the population and racial demographics of the city have fluctuated greatly. During the first half of the twentieth century, the city's white population grew steadily and, sometimes, sharply, peaking at around 517,000 in 1950. But the 1950s also marked the start of the white exodus to the suburbs, in DC and all across America (Tatian & Lei, 2013). Over the

course of the next two decades, the total number of whites living in the District declined by more than 300,000, and the city became majority black around 1960 (hence its decades-long nickname, “Chocolate City”). This was not to last, however. The African-American population hit an all-time high of about 517,000 in the 1970s, but has declined ever since. Today, Washington DC is a diverse city. As of 2010, just over half (51.4%, or 309,000 people) of District residents were African-American, while whites comprised just under 35% of DC residents (roughly 210,000 people). About 55,000 residents are Hispanic (9.1%), with “all others” (including people of Asian, East Indian, and Pacific Islander descent) totaling about 28,000 residents (4.7%) (Tatian & Lei, 2013).

“In the District of Columbia,” write Stuart Butler and Jonathan Grabinsky of the Brookings Institute, “there remains a stark, persistent, white-black racial divide” (2015). Both the Southeast and Northeast quadrants of the city are physically split by the Anacostia River, which represents both a literal and a figurative divide in the city. Whites are heavily concentrated west of the river, especially in the more affluent Southwest and Northwest quadrants, while much of the city’s black population lives east of the Anacostia River. Most of the city’s Hispanics live in the northeast section of Northwest (Tatian & Lei, 2013).

Economy and wealth

Washington, DC has long been known as a city of consequence. It is home to members of Congress, high-powered attorneys, esteemed federal judges, and influential lobbyists. It is where national legislation is written, where deals are struck, and where the most prestigious law firms, lobbying groups, and thinktanks work on the most important legal and policy issues of the day.

For many, to work in DC is to walk the halls of power, as the city's most distinguished residents set the course for the entire country.

Some commentators have said that the city is recession-proof. This is not literally true, but DC is home to a strong and steady economy. This is in large part based on its proximity to and relationship with the federal government, which has steadily expanded since its inception, projects an aura of permanence, and may be relied upon to spend money in good times and in bad. The federal government drives the District's economy in at least three important ways. First, it is the largest employer in the District. As of 2010, fully 27% of DC workers were federal employees (Gallup, 2010). Federal government jobs have a reputation for providing good salaries and benefits, reasonable working hours, and reliable wage increases. Second, the existence of the federal government draws legions of working professionals – lobbyists, lawyers, policy researchers, and so on – to the city, which houses many private, white-collar firms (Florida, 2013b). And third, the federal government spreads wealth and spurs job growth in the greater Washington area in the form of lucrative government contracts, many of which flow to local businesses and organizations (Florida, 2013a).

But while the federal government is an important driver of growth and stability in DC, the economy has many more legs to it. As urbanist Richard Florida explains, the District has “clearly prospered from federal spending,” but the city has also developed a strong, white-collar, knowledge-based economy (Florida, 2013a). While the federal government is the region's largest employer, it is not the largest industry. “Rather, it is ‘professional, scientific, and technical services,’” which includes highly skilled jobs in “law, accounting, medicine, architecture and engineering” (Florida, 2013a).

In 2013, Aaron Renn, a senior fellow at the Manhattan Institute for Public Policy, explained that “[o]ver the past decade, the DC area has made stunning economic and demographic progress,” so much so that it was “gaining on [Los Angeles and Chicago] in terms of economic power and importance” (Renn, 2013). What we were witnessing, according to Renn, was not just positive growth for an important city, but “the start of Washington’s emergence as America’s new Second City” (after New York). Reasonable people might disagree on this point, of course, especially those living in Chicago and Los Angeles. The point, however, is clear: commentators hail the District as a key focal point in the American economy.

There are a number of factors that urbanists point to when discussing the economic strength and importance of the DC-area. During the 2000s, it ranked fourth among cities for population growth, and its per-capita GDP grew faster than any other comparable location other than the Bay Area (Renn, 2013). This trend has continued. The Census estimates that between April 2010 and July 2017, the population of the District grew almost 17% (U.S. Census Bureau, 2018). Many of the city’s new residents are young professionals, eager to find jobs in law, business, computer operations, politics, and policy. They are also highly educated – the best-educated in America, actually. Nearly half of residents over the age of twenty-five have college degrees, and almost 23% have graduate degrees (Strauss, 2016). In light of this discussion, it is not surprising that the area has consistently had low unemployment and sustained growth of good jobs. Between 2009 and 2013, 59% of all new jobs in the greater Washington area paid at least \$21 per hour (Florida, 2013b).

This glut of good jobs and talented people means that DC puts up some impressive numbers. In 2016, the median household income for the entire United States was about \$59,000 (Chandra & Yadoo, 2017). In DC, it was about \$75,500 (Bahrapour, 2018). Between 2007 and

2014, the middle-fifth of DC households saw income increases, on average, of 14%, bringing this group's average income to about \$72,000; the second-highest fifth of households saw increases of about 10%, with average incomes of around \$120,000. These are important absolute and relative numbers. According to the DC Fiscal Policy Institute, "[t]hese families fared far better than families in Baltimore, Philadelphia, and New York City, which experienced statistically flat or falling incomes" (Tuths, 2016, p. 3). And while the highest fifth of DC households saw no average income growth during this time frame, they were doing just fine with an average income of about \$280,000 (Tuths, 2016).

This period of strong economic growth has changed the landscape of the city, spurring the development of new, high-rise office and apartment buildings. As Ross Douthat observed in the New York Times in 2012

[T]he changes to Washington [over the past decade] have been staggering to watch. High-rises have leaped up, office buildings have risen, neighborhoods have been transformed. Streets once deserted after dusk are now crowded with restaurants and bars. A luxurious waterfront area is taking shape around the stadium that the playoff-bound Nationals call home. Million-dollar listings abound in neighborhoods that 10 years ago were transitional at best.

The trends that Douthat wrote about in 2012 have only continued. For the last twenty years, DC has been a city on the rise.

For some, anyway. When you read about the District's economy, you are likely to learn first the information that I just shared – the city is booming, full of smart, high-earning professionals, and there has been a sustained and consistent growth in jobs and housing. But dig a little deeper and you find that this same growth has left many people behind – and those people are, overwhelmingly, the poor and working class residents of DC, many of whom are people of color, and many of whom are long-term residents. Like the American economy in general, the

District's economy is bifurcated, split between high-paying, high-skill jobs on the one hand, and low-paying, low-skill jobs on the other.

In early 2016, Peter Tuths of the DC Fiscal Policy Institute highlighted the city's uneven growth in wealth and prosperity:

DC's poorest families have suffered a dramatic loss of income since the Great Recession, while higher-income families have seen their earnings rise. The income of the poorest DC households is now lower than in most major cities, and far lower than in the DC suburbs, an especially serious problem in a region where the cost of living is among the nation's highest. DC's persistent income inequality is also wider than in almost any other U.S. city. It is a sign that DC's economy is not working for all, and that development, which is pushing up housing costs throughout the city, is leaving collateral damage in its wake. DC's lowest-income residents are overwhelmingly people of color, and nearly half were born in DC, compared with just 17 percent of other residents. This suggests that as the District's population and economy continue to grow, long-term residents of color are being left behind.

The most common measure that economists use to measure inequality is called the "Gini coefficient," which analysts use to map the income or wealth distribution of the residents of a place. A Gini coefficient of 0 reflects perfect equality, meaning everybody has the same income, while a coefficient of 1 indicates perfect inequality, meaning just one household has all of the income (Naveed, 2017). In recent years, the United States has been criticized for having a high Gini coefficient, especially relative to other powerful, advanced countries, and income inequality has been a sustained topic of debate in America. It drove the Occupy Wall Street protests, played a significant role in the 2012 presidential election, and was the driving force behind Senator Bernie Sanders' insurgent campaign for the 2016 Democratic presidential nomination.

In 2016, the District had the highest Gini coefficient in the entire country, at .542 (Naveed, 2017). In contrast to the middle- and upper-class families in the District, the income of the District's poorest 20% of households actually decreased between 2007 and 2014, from an average of \$10,800 to just \$9,300. The second-lowest quintile's income rose slightly, from an

average of \$34,500 to \$35,900, but this increase was not statistically significant (Tuths, 2016). These income numbers are shockingly low, especially for the poorest District residents, and especially for a city with one of the highest costs of living in the country.

What is clear from looking at the numbers is that the “stark, persistent . . . racial divide” (Butler & Grabinsky, 2015) that infects DC is about much more than just location. The neighborhoods in Southeast DC have long been some of the poorest in the city, a fact that has become more pronounced over time. As the District has become increasingly developed, with modern and high-rise apartment and office buildings cropping up throughout the city, long-term residents and people of modest means – in practice, DC’s black population – have been pushed out of the most desirable living locations and have settled east of the Anacostia River (Tatian & Lei, 2013). The Urban Institute, a DC-based think-tank that conducts economic and social policy research, characterizes “challenged” neighborhoods as those where the “unemployment rate, share of residents without high school degrees, and share of households headed by single mothers all exceed the [city] average by 20 percent or more” (Acs et al., 2015, p. 2). In 1990, roughly 60% of challenged neighborhoods lay east of the Anacostia; by 2010, 75% did (Acs et al., 2015).

While DC has one of the highest poverty rates in the country, at 18.6%, this distribution is far from even. In 2016, 27.9% of DC’s African-American and 17.8% of the city’s Hispanic residents lived below the federal poverty line, compared to 7.9% of whites (Naveed, 2017). Ninety-five percent of white neighborhoods – those that are at least 60% white – have fewer than 10% of their families living below the poverty line, but the same can be said for only 22% of black neighborhoods. Fully 38% of black neighborhoods have more than 30% of their families

living below the poverty line, with another 40% having between 10 and 29% of families living in poverty (Butler & Grabinsky, 2015).

This racialized economic gap is reflected in DC's workforce. Across the country, people of color are concentrated in those jobs that have the lowest pay and the fewest benefits. The District is no different, with whites holding a disproportionate share of jobs paying more than \$15 per hour. While in the mid-2010s only 9.7% of white workers earned less than \$15 per hour, 24.8% of Hispanics and 30.4% of African-American workers did (Zhang et al., 2017a). These figures only analyze the actual workforce, however – that is, those people who are currently employed. Once you consider unemployment rates by race, the picture becomes even worse. The District has the highest black unemployment rate in the country, at 12.9%, and its African American residents are 8.5 times more likely to be unemployed than their white counterparts. And although the Hispanic unemployment rate in DC is only 3.1%, Hispanic residents are still twice as likely as whites to be unemployed (Jones, 2018).

There are significant education gaps as well. White neighborhoods have a 97% high school completion rate, while 82% of children in black neighborhoods finish high school. In fact, in 2011 the Washington Post reported that “DC public schools have the largest achievement gap between black and white students among the nation's major urban school systems,” as well as “the widest achievement gap between white and Hispanic students” (Layton, 2011).

As this discussion suggests, segregation is about much more than just physical location. Where a person comes from plays an enormous role in what kinds of educational and occupational opportunities they have, and what kinds of difficulties they face. In a variety of ways, the District's white residents fare far better than its black and Hispanic ones. They are wealthier, better educated, have better jobs, and live in safer and nicer neighborhoods. It is true

that DC has a strong, vibrant economy. There is a lot of privilege, power, and prestige in this city, a fact that is celebrated by various urbanists and economists. But at the same time, the wealth that suffuses the District is superficial, confined to the surface of the nation's capital and practically inaccessible to hundreds of thousands of people, the overwhelming majority of whom are non-white.

Political context

As the nation's capital, the District holds a unique position in the United States. By design, it is not a state, and so it has only a limited degree of autonomy. Instead, the federal government has significant power over DC. Article I, Section 8 of the Constitution grants to Congress the authority to “exercise exclusive Legislation in all Cases whatsoever” over the nation's capital. The Founders felt that they had some very good reasons for this. As James Madison explained in Federalist No. 43, this setup of granting the federal government “complete authority at the seat of government” is an “indispensable necessity,” lest the District – by virtue of the fact that it literally surrounds the federal government – exercise undue influence and control over the nation (Madison, 2005). The city instead operates as a semi-autonomous entity under the District of Columbia Home Rule Act, which delegates certain congressional powers to the District (DC Code § 1-201.01 *et seq.*).

Under the Home Rule Act of 1973, DC has its own legislative, executive, and judicial branches, but Congress has the power to block the implementation of any DC law. The mayor is the head of the executive branch, with the obligation to enforce city laws, the duty to oversee the city's agencies and budget, and the power to veto laws passed by the DC Council. The Council is the legislative body of the District, and has thirteen members. Five “at-large” councilmembers

are elected in a citywide vote, including the chair of the Council, and each of the city's eight wards also elects its own representative. Finally, the judicial system consists of the Superior Court, which handles trials, and the Court of Appeals, which is the court of last resort for the District.

Politically, the District is as blue as they come. Approximately 76% of voters are registered Democrats, compared to just 6% who are Republicans (Board of Elections, 2019). In the 2016 presidential election, Hillary Clinton received more than 90% of the vote; Donald Trump netted only 4%. This was not a surprise. Barack Obama earned almost 91% of the vote in 2012, and in fact, no Republican has ever won DC in a presidential contest (District of Columbia Election Results 2016, 2017).

The Council is, not surprisingly, overwhelmingly Democratic. Officially, it is made up of eleven Democrats and two Independents. The presence of independents, however, is little more than a quirky consequence of the Home Rule Act, which states that only three out of the five at-large members on the Council may be affiliated with the majority (that is, Democratic) party (DC Code § 1-221(d)(3)). Both of the independent members, Elissa Silverman and David Grosso, hold to progressive politics and were Democrats prior to running for office.

Despite the fact that the District's African American population is socially, spatially, and economically marginalized compared to its white population, African Americans have historically been a powerful force in local politics. Since 1975, when the city began to elect its mayors by popular vote, the District's mayors have all been African American (see Merica, 2013). Today, the elected attorney general and six of the thirteen members of the City Council are African American, as are many of the top aides and administrators in the Executive Branch.

Given that DC has long been strongly Democratic, but enjoys only limited autonomy, the District has sometimes had significant disagreements with the federal government, especially during those periods of time when Congress and the presidency have been controlled by Republicans. Congress has blocked the implementation of DC laws a number of times, including laws to expand coverage of abortion services, grant certain rights to same-sex domestic partners, and legalize marijuana. But even in the absence of such direct conflict, the District has generally had laws and policies that are much more progressive than those passed by the federal government. The next section will outline the ways in which DC's laws and regulations regarding the workplace differ from federal law.

Legal context

Broadly speaking, two parallel legal and regulatory systems govern the American workplace. The first system of rules is the one created and administered by the federal government. This includes a number of landmark national policies, which establish minimum employment standards that most – but not all – employers have to follow. Prominent statutes include Title VII of the Civil Rights Act of 1964, which bars discrimination in employment based on race, color, national origin, religion, or sex (42 U.S.C. § 2000e *et seq.*); the National Labor Relations Act (NLRA), which protects the rights of workers to act collectively to advance their employment interests, most notably by forming labor unions (29 U.S.C. § 151 *et seq.*); the Occupational Safety and Health Act (OSHA), which sets standards for workplace safety (29 U.S.C. § 651 *et seq.*); and the Fair Labor Standards Act (FLSA), which bars child labor, sets the minimum wage at \$7.25 per hour, and mandates overtime for most employees who work more than forty hours in a week (29 U.S.C. § 201 *et seq.*).

Importantly, these federal laws and regulations set the *minimum* standards that must be followed in employment. They create a floor for workers' rights, not a ceiling. In other words, while these federal protections cannot be undercut by individual jurisdictions, they can be supplemented and built upon. And as Congress has consistently refused to update and modernize federal laws and regulations, state-level policies have become extremely relevant to understanding the policy regimes under which low-wage people labor.

The District, like many states and cities, has passed its own slate of labor and employment laws which build upon the federal scheme. Actually, DC's protections for low-wage workers are arguably the most generous in the entire country. In 2018, Oxfam released a report analyzing the labor and employment policies of all 50 states and the District of Columbia, and ranking states based on how well their laws protect workers' rights and help guarantee a decent standard of living. The District came out on top: it scored second-highest on its wage laws and worker protection policies, and highest on union organizing rights (Rose et al., 2018). Oxfam ranked it #1 overall, writing that DC is "the national model for worker rights and protections" (Oxfam, 2018).

If we were to evaluate how well places respond to the problem of wage theft by looking only to written laws and regulations, the District of Columbia would receive among the highest marks in the country. The following list is a brief overview of DC's laws and regulations regarding the most common issues of exploitation faced by low-wage workers. A lot of information follows, but the takeaway for readers is this: DC provides protections for its workers that are significantly stronger, more thorough, and more robust than those secured by federal law.

1. Wage and Hour Laws

Minimum wage: At \$13.25 per hour, DC has one of the highest minimum wages in the entire country. While the federal minimum wage has been frozen at \$7.25 since 2009, DC has been steadily increasing its minimum wage since mid-2014. It will increase to \$15 by 2020, at which point it will be tied to inflation (DC Code § 32-1003(a)).

“Show up” time: Under DC law, every time an employer requires an employee to show up to work, they must pay them for at least four hours of labor even if the employee works less than that (DCMR § 7-907). Federal law has no similar requirement.

Split Shift: A split shift is where the hours worked by an employee in a day are not consecutive, not counting lunch breaks of less than an hour (DCMR § 7-999). Unlike federal law, DC discourages split shifts by requiring employers to pay their employees for one extra hour of work at the minimum wage each day that the employee is required to work one (DCMR § 7-906).

2. Family and Sick Leave

Family and Medical Leave: The federal Family and Medical Leave Act (FMLA) requires covered employers to allow their employees to take up to twelve weeks of unpaid, job-protected leave per year in order to care for themselves or a loved one who is suffering from a serious health condition. To qualify, employees must have worked for the employer for at least twelve months, and must have worked at least 1,250 hours in the preceding twelve months. Additionally, their employer must have at least fifty employees within a seventy-five mile radius of where the employee works (U.S. Dep’t of Labor, 2015).

The DC FMLA provides broader and better coverage than its federal counterpart. It applies to any employer with at least twenty employees, and any employee who has worked for at least 1,000 hours in the preceding twelve months. Additionally, employees are entitled to 16 weeks of unpaid family leave *and* sixteen weeks of unpaid medical leave every two years, rather than twelve weeks total per year (DC Code 32-501 *et seq.*)

Sick and Safe Leave: DC's Accrued Sick and Safe Leave Act expands upon the leave provided by the DC FMLA by also guaranteeing paid sick time off. Workers begin accruing paid sick leave on their hire date, and may use this time for their own medical needs, a family member's medical needs, or for emergencies related to domestic violence. This law applies to all employers, although smaller businesses are required to provide fewer sick days, and at a slower rate, than larger businesses. Notably, the law applies to *all* employees, including temporary workers, servers, and part-time workers (DC Code § 32-531.01 *et seq.*).

In contrast, federal law does not require employers to provide paid time off. Among advanced western nations, the United States is unique in its failure to guarantee paid sick leave for its workers (Heymann et al., 2009).

3. Antidiscrimination

A slew of federal laws prohibit discrimination in employment on the basis of certain characteristics. Title VII of the Civil Rights Act of 1964 bars discrimination on the basis of race, color, sex, creed, or national origin (42 U.S.C. § 2000e *et seq.*) The Americans with Disabilities Act (ADA) protects employees from discrimination based on their disability or perceived disability (42 U.S.C. § 12101 *et seq.*), while the Age Discrimination in Employment Act protects workers over the age of 40 from age discrimination (29 U.S.C. § 621 *et seq.*) The Genetic

Information Nondiscrimination Act prevents employers from asking employees to provide genetic information (42 U.S.C. 21F *et seq.*), and the Pregnancy Discrimination Act amended Title VII to make it illegal for employers to discriminate based on an employee's pregnancy, childbirth, or any related medical conditions (Pub. L. 95-555, 1978).

The DC Human Rights Act is much broader than the protections granted by these federal laws. In addition to protecting workers based on the characteristics above, District law prohibits employers from discriminating on the basis of marital status, personal appearance, sexual orientation, gender identity and expression, family responsibilities, political affiliation, credit history, place of residence or business, and matriculation. Additionally, DC law protects workers over the age of 18 from age discrimination (in contrast to federal law, which protects workers over 40) (DC Code § 2-1401 *et seq.*).

4. DC Wage Theft Prevention Amendment Act

When it comes to wage theft, the most important aspect of DC law is the DC Wage Theft Prevention Amendment Act (WTPAA, or "Wage Theft Act"). In 2014, the City Council unanimously voted in favor of this sweeping piece of legislation, which was designed specifically to combat wage theft in the District. Its passage resulted from years of organizing and activism by the DC Employment Justice Center (EJC), members of the low-wage community, and other organizations which advocate on behalf of low-wage workers and progressive causes.

It is worth discussing how the Wage Theft Act came into existence, because it highlights the importance of having a strong, motivated, and active workers' rights community. The effort was spearheaded by the EJC, which at the time hosted a free employment law clinic for low-

wage workers, but many organizations and individual people were part of the effort to pass the law.

Unlike some other legal nonprofits, the EJC did not limit itself to one-off dispensations of advice to clients. Instead, it utilized a community lawyering model. This model takes a bottom-up approach to social problems, and emphasizes working with members of the local community to identify social problems, come up with solutions, and advocate for systemic change (Tokarz et al., 2008). Community lawyers attempt to move away from the traditional model of lawyering, in which the lawyer serves her client in an arms-length, business relationship designed to address a particular legal issue. Instead, as Muneer Ahmad puts it, community lawyering is “a mode of lawyering that envisions communities and not merely individuals as vital in problem-solving for poor people, and that is committed to partnerships between lawyers, clients, and communities as a means of transcending individualized claims and achieving structural change” (2006, p. 1079). Emma Cleveland, a union organizer who worked at the EJC during this period, explains the organizers’ thinking:

For us, you do endless know your rights trainings and you can talk things through with people and let them know about laws, but at the end of the day if there isn’t some type of self-support and collaboration between workers, [where] they feel like there’s a community in support of one another, and if they aren’t having some type of leadership and power over the project, things don’t continue and you don’t really win anything.

When we were able to build something that looked more like people supporting one another, people were more emboldened. They were more likely to take other action, whether that be legislative or in support of other coworkers. So, it’s a service-provision model to say we’re going to set up these funded agencies that are going to provide services to workers, and it is an organizing model to say that workers are going to support one another and learn [from other workers] who’ve been through this experience themselves and know it deeply, who are going to support one another. And in the end, I think that’s going to have more strong, long-lasting impacts when funding pulls and when people move on to better paying jobs. Whatever it is, those relationships stay in the community.

With this orientation in mind, in 2012 the EJC undertook a serious and systematic effort to nurture a movement from the ground up by organizing and mobilizing low-wage victims of wage theft. “We did targeted outreach to 200-and-something low-income workers who’d had wage theft-related issues,” says Ari Weisbard, who was the EJC’s Director of Advocacy. “[We] did more follow-up than we normally can do with all of our people who attended the EJC’s clinic. Saying like, ‘Okay, so what actually happened in your case? Did you actually go to DOES [the DC Department of Employment Services]? If so, what happened there?’ Getting more information on what their case was like and then pulling them into doing advocacy if they were remotely interested in that.”

Over time, the EJC gathered a core group of motivated workers who worked hand-in-hand with the organization in order to understand, draft, refine, and advocate for the Wage Theft Act. Members of this group went out into their communities to talk about their experiences, to educate others on their rights and on the proposed Wage Theft Act, and to share their own strategies for fighting back (Weisbard & Leonard, 2015). These activities expanded over time as workers identified and publicized known “bad actors” through planned protests and call-in campaigns, in which members of the workers’ rights community phone the employer, one by one, in order to demand that they pay restitution to an aggrieved employee. In the lead-up to the debate over and vote on the Wage Theft Act, the EJC and its community partners organized public meetings where workers spoke of their experiences with wage theft and explained how the bill would help remedy the problem (Weisbard & Leonard, 2015). Before the Council itself, more than a dozen low-wage workers shared their stories and urged the Council to pass the bill.

The Council unanimously voted for the bill, and the WTPAA went into effect in late February of 2015. It was a comprehensive piece of legislation which overhauled the District’s

approach to the enforcement of basic workers' rights. On paper, the Wage Theft Act is one of the strongest anti-wage theft laws in the country, which was the goal of the workers' rights community from the start. "We wanted to be as robust as possible," explains Ari Weisbard, who also helped draft the law. "[O]ften, what we [did] is grab what looked like the best language, mixing and matching from other jurisdictions," he says, adding that in some areas, "we did go stronger than any other particular example."

Ultimately, the Wage Theft Act passed with very few edits. "For our initial introduced version, then, we assumed we would have to compromise a lot," Ari Weisbard tells me, "and we ended up only having to compromise on a few specific pieces." On its face, this is somewhat confusing. Where was the business community? Even in "employee-friendly" California, a progressive state with a strong workers' rights activist community, business organizations have regularly mobilized to block or water down legislation that would enhance workers' rights and increase employer accountability (see Fritz-Mauer, 2016).

There are two complementary explanations for the success of the EJC's campaign. The first is that DC's workers' rights community engaged in good strategy, and successfully built a strong base of support for the Wage Theft Act from the ground up. It is hard to argue that there's no need for reform when the people on the other side of an issue have spent more than a year raising awareness around the heart-wrenching and emotional stories of the working poor. Beyond that, in a city as progressive as DC it is not politically viable to oppose a law like the Wage Theft Act. "It's not like the minimum wage, it's not like a tax on everyone," Emma Cleveland says. "It's just enforcing [the law] against people who are not doing the right thing In DC, where everyone needs to have the perception of being progressive in order to win, it was difficult for people to come out against [the Wage Theft Act]."

The second explanation is, perhaps, less satisfying: workers' rights advocates got lucky. During this period of time, the DC Chamber of Commerce was going through a leadership transition. Before the Wage Theft Act passed, the DC Council had debated and approved increases to the District's minimum wage and an expansion of its paid sick days law (see DC Code §§ 32-1001 *et seq.*, 32-531.01 *et seq.*). The DC Chamber and some other employer organizations were active in those fights, but sometime after that, the person heading up the DC Chamber stepped down. Resistance to the WTPAA "tended to be more specific, rather than a big business coalition that was pushing back on it, so that was very helpful to us," Ari Weisbard says.

The end result was a strong and thorough omnibus bill that was designed (from the perspective of the workers' rights community) to be the best response possible to wage theft in the District. To that end, the Act changed the law in three primary and significant ways.

First, the WTPAA made it easier for workers to recover their wages. It did so both by enhancing employers' recordkeeping obligations and transparency requirements, and by increasing the scope of what is known as "joint and several" liability. Regarding transparency, the WTPAA mandates that businesses provide notices of employment to their workers, which must include the name and address of the employer, information about how much and how often the worker is to be paid, and contact information for the DC Department of Employment Services (DC Code § 32-1008(c)).

As I discussed in Chapter 1, people who experience wage theft are generally only able to sue and recover from the person or organization that actually employed them. But when the concept of joint and several liability applies to a given situation, a successful wage claimant will be able to recover the full amount of back wages and penalties from all of the entities that are,

according to the law, responsible to them. Say, for instance, that Annie works on a job site that is actually controlled and managed by two different employers, Alpha and Beta. The law in Annie's jurisdiction states that, in the event an employee of Beta experiences wage theft, both Alpha and Beta will be deemed jointly and severally liable. If Annie then wins a wage judgment for \$1000, she will be able to recover up to \$1000 total from either employer. It does not matter if Alpha was 80% responsible and Beta was only 20% responsible for Annie's wage theft – both entities will be 100% responsible for paying up to the full amount of the judgment.

The WTPAA expanded the application of joint and several liability in two key situations: Construction workers with wage claims can go after both general contractors and subcontractors, and temporary workers may sue both the staffing agencies that assign them work and the businesses that lease them (DC Code § 32-1012(c), (f)). There was good cause for this change – people who work in these industries are at a particularly high risk for wage theft and other rights violations (see Weil, 2014a). Workers who try to collect their earned wages from the subcontractor or temporary staffing firm that directly hired them often have a hard time getting their money, since these businesses have a variety of strategies for avoiding payment, including by closing up shop and disappearing (Weil, 2014a; see Cho et al., 2013). Joint and several liability makes it possible for workers to move up the employment food chain in order to recover their money.

The second significant change that the WTPAA made was to seriously ratchet up the civil and criminal penalties for wage violations and retaliatory acts. Like some other jurisdictions (see Fritz-Mauer, 2016), the District has taken the step of enhancing criminal penalties for wage theft. Prior to 2015, only employers who *willfully* failed to pay employees were guilty of a criminal misdemeanor. The WTPAA created two categories of offenders, negligent and willful, and

criminalized both types. Negligent offenders may be fined thousands of dollars for each employee whose rights they violate, while willful offenders face both fines and jail time (DC Code § 32-1307). Employers who attempt or succeed in willfully committing wage theft can also have their business licenses revoked (DC Code § 32-1308.01(i)). Reflecting the District's dedication to protecting low-wage workers in particular, these penalties are even stiffer for minimum wage violators. Even negligent ones face up to six months in prison or \$10,000 in fines (DC Code § 32-1011(a)). The Wage Theft Act also expanded the circumstances in which an employer could be found liable for retaliating against a worker who makes wage-theft related complaints (DC Code § 32-1311).

The Act also enhanced civil penalties. Recall that Daniel Galvin's (2016) analysis of wage theft laws found that the most effective legal change for reducing minimum wage violations is the imposition of treble damages, which allow workers to recover three times their unpaid wages. The WTPAA goes one step further, and empowers claimants to recover treble damages *on top of* their unpaid wages (DC Code §§ 32-1012(b)(1), 32-1308.01(c)(6)). "It's actually quadruple damages, which is basically unheard of," says Ari Weisbard.

Finally, in recognition of the fact that most low-wage workers are practically unable to assert their rights for a wide variety of reasons, the WTPAA (along with some more minor, subsequent legal changes) also expanded workers' access to justice by enhancing the ability of three different groups: the private bar, the DC Office of the Attorney General, and the DC Department of Employment Services.

The private bar

The Wage Theft Act contains a robust fee-shifting provision requiring employers to pay the legal costs of a successful wage claimant (DC Code § 32-1308(b)(1)). The intent of the drafters was to mobilize the private bar to bring more wage theft cases on behalf of low-wage workers. The logic is easy: by making these kinds of cases more profitable, more lawyers will be willing to litigate them, expanding the pool of attorneys to whom low-wage (and other) workers can go to for help when their employers steal their wages.

In America, statutes that shift the winning party's legal costs onto the loser are relatively rare. Instead, the standard "American Rule" holds that litigants are responsible for paying their own costs of representation, win or lose (Eisenberg & Miller, 2013). There are some prominent exceptions to this rule, of course. The Fair Labor Standards Act, for example, states that "[t]he court shall . . . in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action" (29 U.S.C. § 216(b)).

The WTPAA is another exception to the American rule, but it again goes further than other statutes by ensuring that successful plaintiffs' attorneys will get more money than is standard for public interest cases. What attorney's fees a claimant will recover under the FLSA and other statutes depends in large part on the method by which those fees are calculated. Over time, different matrices for determining fees have developed. These matrices are updated each year, and assign hourly rates based on experience. The most widely used matrix in the District is calculated by the United States Attorney's Office (USAO) for the District of Columbia, and is known as the USAO *Laffey* Matrix, which originated in the case of *Laffey v. Northwest Airlines* (D.D.C. 1983).

The WTPAA does not use the USAO *Laffey* Matrix, though. Instead, it requires decisionmakers to award a successful wage claimant attorney’s fees computed based on the matrix from *Salazar v. District of Columbia* (D.D.C. 2000). The *Salazar* Matrix is similar to the USAO *Laffey* Matrix, but performs its calculation based on a different Consumer Price Index. The particular details are not important – what is important is the fact that the *Salazar* Matrix results in much higher hourly rates, as Table 2.1 shows:

Table 2.1: *Laffey* and *Salazar* Matrix rates (For the period covering 6/1/18 – 5/31/19)

Years out of law school	USAO <i>Laffey</i> Matrix (Hourly Rate)	<i>Salazar</i> Matrix (Hourly Rate)
Paralegal/Law Clerk	\$166	\$202
1-3	\$307-340	\$371
4-7	\$351-358	\$455
8-10	\$417	\$658
11-19	\$491-544	\$742
20+	\$572-613	\$894

Sources: U.S. Attorney’s Office for the District of Columbia, 2018; *Salazar* Matrix, 2018.

The point of including the *Salazar* Matrix in the Wage Theft Act, rather than the USAO *Laffey* Matrix, was to mobilize the private bar to take on more wage and hour cases. This move wasn’t without controversy. Members of the Executive Branch, including representatives of the Mayor and the DC Office of the Attorney General, argued that the *Salazar* Matrix provision should be repealed. In October 2016, the Chief Deputy Attorney General of DC testified before the DC Council, asserting that the USAO *Laffey* Matrix should be adopted instead. “In *Salazar*, the court was looking at complex federal litigation,” she explained, adding that “wage cases are not complex,” but “are generally single issue cases, require few witnesses, and unlike complex cases are generally resolved within a year” (Ludaway, 2016, pp. 2-3). The Attorney General’s Office also challenged the idea that the higher rates were having the effect of increasing the number of wage theft cases brought by the private bar (Ludaway, 2016).

What the Executive Branch was concerned about was that these rates might spill over into other kinds of cases, and that attorneys who prevailed in lawsuits against the District itself would, by reference to the Wage Theft Act, argue that the fair value of their work should be calculated based on the *Salazar* Matrix. If successful, this could have cost the District millions of extra dollars in attorney's fees. Ultimately, the Council resolved this issue by adding language to the DC code stating that the inclusion of the *Salazar* rates in the Wage Theft Act should not be used to infer that those rates are appropriate for other kinds of litigation (DC Code § 32-1308.02).

In contrast to the Attorney General's claims about the *Salazar* rates failing to meaningfully mobilize the private bar, worker-side attorneys agree that the WTPAA's incorporation of the *Salazar* Matrix has had an enormous impact on their ability to sue employers for wage theft. To be sure, these attorneys have a clear financial interest in defending the higher rates. But they also insist, strongly, that the *Salazar* rates enable them to take on more clients, in more cases, and for free. Many plaintiffs' lawyers take cases on contingency, where the client agrees that the attorney is entitled to a percentage of the winnings if the case is successful. Because of the *Salazar* rates, plaintiff-side employment lawyers in the District are able to go one step further than that, and often represent low-wage workers without charge to the client (as I explain in detail in Chapter 8, this statement assumes that a given worker's case is both strong and valuable enough for an attorney to think it is worth taking).

Jonathan Tucker is an attorney who has been working with DC Wage Law, a private workers' rights firm in Chinatown, since 2015. He is genial and soft-spoken, but talks passionately about his work on behalf of his clients, most of whom hail from South and Central America. "Most of them are undocumented," Jonathan says, which "has created a concern on

their part to go forward with [a lawsuit].” There are a few reasons for this. Many of the people who Jonathan represents are illiterate and, like many undocumented workers, they live a life defined by fear. They earn little, and beyond that have often experienced ongoing, systemic wage theft, further depressing their already low wages. Most also support family members back home. But despite the fact that Jonathan’s clients are poor, they are able to afford his firm’s services:

The *Salazar* rates that are elected, or set in stone by the statute, they . . . are higher than most attorney fee rates in comparison to other parts of the nation, for sure. It’s very helpful. What it allows us to do is, we do not have to ask the client to pay a retainer. They don’t have to pay a retainer, they don’t have to pay a consultation fee, they need not pay fees for investigation, there’s no up front money that they have to pay.

The other worker-side attorneys that I interviewed agreed with Jonathan’s general sentiments about the *Salazar* rates. Michael Amster, a partner at Zipin, Amster, & Greenberg in Silver Spring, Maryland, tells me that the *Salazar* Matrix “allow[s] us to take cases that we otherwise wouldn’t take. It allows us to be able to justify taking smaller cases Because frankly, in a lot of these cases you’re dealing with people who are making very little money and sometimes what is owed to them is not that much.” One attorney, Jeremy, summed it up bluntly: “Poverty’s no longer a problem for a client in order to obtain representation.”

This last comment is probably an overstatement, though. Even in the District, poverty is still a barrier to obtaining representation, as I discuss in detail in Chapter 8. When a person is not paid for their work, the value of that work – their hourly rate – determines the size of their claim. Judges, who decide in a given situation what amount of attorney’s fees are “reasonable,” tend to be reluctant to issue fee awards that are disproportionate to the value of a case. In the end, many wage claims wind up being too small for lawyers to take on. Sita, for example, worked at a non-profit making \$35,000 per year, and when her employer terminated her he refused to pay her for about three weeks of work. Including penalties, her wage claim was worth about \$10,000, but

she wasn't able to find a lawyer who would take her case. They all told her that it was too small, and the prospect of collecting their fees was too uncertain.

With these caveats, the *Salazar* rates have certainly helped the District's working poor obtain legal representation. These higher rates also give wage theft attorneys one final, important tool: leverage. The overwhelming majority of lawsuits settle without going to trial. Often, this arrangement benefits everybody involved: Plaintiffs get their money sooner and without having to deal with the hassle of collections, while defendants pay less than they might if they were to lose at trial. The process is faster, and both parties save money in fees and costs. According to workers' rights attorneys in DC, the *Salazar* rates encourage settlement by virtue of the fact that they are, relatively speaking, high. "[I]t has allowed us to put pressure on employers that do not want to pay the wages that are owed," Michael Amster says. Jonathan Tucker agrees: "The fact that that rate is set in the statute, it pushes a case forward in terms of settlement prospects."

The Office of the Attorney General

In addition to empowering members of the private bar, the Wage Theft Act and a subsequent legislative change also enhanced the authority and enforcement capabilities of the Office of the Attorney General (OAG). Until 2017, the OAG had the limited power to enforce only those wage theft cases that had been initiated and investigated by the DC Department of Employment Services (DOES) (OAG, 2017a). The OAG, in other words, was reliant upon the diligence and care of the other agency.

Today, however, the OAG has robust and independent enforcement authority. It can conduct investigations, issue subpoenas, and compel employers to turn over evidence (DC Code § 32-1306(b)(2)). Importantly, the Office can also bring to bear the full range of penalties

available under the Wage Theft Act, including treble damages and criminal charges (DC Code §§ 32-1306, 1307). As part of this expanded program of enforcement, the DC Council provided funding for the OAG to hire two new full-time attorneys dedicated to bringing wage theft cases (OAG, 2017a).

On October 24, 2017, the OAG issued a press release announcing the office's plans for wage theft enforcement. It began in terms that would excite any member of the workers' rights community:

[T]he Office of the Attorney General (OAG) is launching an aggressive, comprehensive effort to hold abusive employers accountable and ensure that workers receive the wages they are owed. Findings of a 2017 study suggest that wages stolen from American workers by employers who violate minimum-wage laws exceed \$15 billion each year. But workers who lack resources or fear retaliation may have limited recourse when their employers refuse to pay them according to the law. Attorney General [Karl] Racine has positioned OAG to step in and help fill the enforcement gap.

Since making this announcement, the office has taken on a number of publicized wage theft cases on behalf of dozens of low-wage workers, and have recovered tens of thousands of dollars in unpaid wages, penalties, and fines (e.g., OAG, 2018a, 2018b).

Most significantly, in early August of 2018 the Attorney General filed a large-scale lawsuit against a national electric contractor named Power Design, as well as two labor brokers that Power Design had hired to staff its work sites. The OAG accused Power Design of misclassifying at least 535 employees as independent contractors and, as part of this scheme, failing to pay those workers minimum wage and overtime, and to provide them with paid sick leave. Additionally, Power Design allegedly did not maintain proper payroll records or pay unemployment taxes (OAG, 2018c).

This is significant, and not just because of the size and scope of the lawsuit, which could easily result in millions of dollars in fines and penalties. It is notable because the workers' rights

community in DC has been active for years in opposition to Power Design. DC Jobs with Justice and the Just Pay Coalition have held many rallies against the company. They have also issued public denunciations, and activists tried for years to get the DC government to take action to investigate and sanction Power Design. A few months before the OAG filed suit, Sequely Gray, an organizer with DC Jobs with Justice, expressed the frustrations of many of the people in the workers' rights community:

Power Design, for example! You know? Couple of weeks ago, the Department of Regulatory Affairs . . . they contacted folks from Power Design and gave them a notice that they were coming through to do inspections. But, Power Design sent all of their workers home for the whole week. So I think that raised a red flag because they're hiding something, for one, and the Department of Regulatory Affairs should have automatically sent that over to the Department of Employment Services to say "Hey, we need to do an investigation here because I came to do an inspection and all of the workers were sent home."

They should be working on that case right now! [K]nowing . . . how many times Power Design has been sued in DC and across the country, they should definitely be researching, investigating this contractor because they have an apprenticeship program [with the DC government], they're receiving taxpayers' money! And [the government's] just not being proactive about that. We've given them information, you know?

I asked Elizabeth Falcon, the Executive Director of DC Jobs with Justice, whether she thought their advocacy around Power Design had helped bring about the OAG's investigation of and lawsuit against Power Design. "I do," she told me. "I think the public pressure made this the OAG's first big labor case and the . . . report [on wage theft we] put out gave them a blueprint for the types of cases we would consider a job done well."

The DC Department of Employment Services

Finally, the WTPAA expanded the enforcement capabilities of the DC Department of Employment Services, the local agency that is (among other things) responsible for enforcing the

District's wage and hour laws. The Wage Theft Act empowered DOES indirectly by enhancing penalties for wage theft, but also directly by establishing that the District government's administrative hearing process could be used to resolve wage theft cases (DC Code § 32-1308.01). Employees who believe that they have been illegally denied their earned wages or have had their rights violated under DC's paid sick days law can choose to go through this more relaxed, administrative hearing in lieu of filing a formal lawsuit. Unless appealed, these administrative decisions are as legally binding as those issued in DC Superior Court. In creating this process, the District followed in the footsteps of some other states, like California, which has long used administrative hearings to decide wage claims (see Fritz-Mauer, 2016)

At least on paper, the process is straightforward and fast, and according to the statute it should take no more than 6 months start to finish. A worker submits a claim to DOES, which then serves a complaint on the employer. Assuming the employer does not admit to everything, DOES then conducts an investigation and issues an initial determination, which "set[s] forth a brief summary of the evidence considered, the findings of fact, [and] the conclusions of law" (DC Code § 32-1308.01(c)(6)). The agency then attempts to mediate and settle the dispute, but if that is not successful then either party can demand a formal hearing before an administrative law judge (ALJ) (DC Code § 32-1308.01(c)(10)(A)).

The hearings are less formal than court, but are designed to be a fair and efficient way to determine whether the law has been violated. Both parties may issue subpoenas, present evidence, examine and cross-examine witnesses, and otherwise argue their case. Counsel is allowed, but not required, and while witnesses must testify under oath, they can do so over the phone (DC Code § 32-1308.01(e)(3)). Within thirty days of the hearing, the ALJ is supposed to issue a decision that explains the facts and the law, and whether and how much the employer

owes to the worker (DC Code § 32-1308.01(f)(1)). The ALJ has the authority to issue the full range of civil penalties available, including unpaid wages, treble damages, statutory penalties, attorney's fees and costs, and any other appropriate relief, including job reinstatement.

Conclusion

In this chapter, I have outlined the social, political, economic, and legal context of the District of Columbia. Scholars have urged researchers who study inequality to pay close attention to the local context in which a particular social issue takes place, especially by clarifying the relevant laws, policies, and actors (Epp, 2016). This discussion builds upon and complements the work that others have done in the sub-field of new policy studies by explaining, in detail, why paying close attention to the local environment is so important in the context of wage theft in particular. The federal government has become inactive in workplace regulation, both by allowing the Department of Labor to dwindle in effectiveness and by letting landmark workplace protections stagnate (Hacker & Pierson, 2010; Galvin, 2016). As a response to wage theft, local jurisdictions have stepped in to pass their own more comprehensive policy regimes (Galvin, 2016; Cooper & Kroeger, 2017). Work by Daniel Galvin (2016) and David Cooper and Teresa Kroeger emphasizes that the frequency and severity of wage theft varies significantly across jurisdictional lines, and that the local laws of a place have a meaningful impact on how well low-wage workers fare.

In order to fully understand the experiences of the city's low-wage workers with wage theft, including how they think about it and what they choose to do in response, readers must first understand the context of these people's lives. How people think, feel, and react to their experiences is based, in part, on many local factors, including what the laws are, how a particular

experience is framed by society, and what various actors do and say (Albiston et al., 2014; Sandefur, 2008; Levitsky, 2008). In other words, research shows that the context of a place is important to guiding people's thoughts and behaviors (see also Galvin, 2016). The qualities I have outlined here matter to understanding wage theft in the District of Columbia. It matters that the District is a progressive city with a strong workers' rights community; that it recently passed a powerful anti-wage theft law, which built upon its reputation for having worker-friendly laws in general; and that low-wage workers have – at least in theory – a variety of actors who can help them assert their rights, including the OAG, DOES, and a cadre of plaintiff-side wage theft attorneys. These features are not only an important, symbolic representation of the city's values, but they also bring real benefits to workers and likely serve as some deterrent against acts of wage theft (Galvin, 2016). It is also important that the District is characterized by great inequality and a persistent racial divide, which means that most of the city's low-wage workers are people of color.

In addition, this case study highlights the fact that in order to achieve policy change, it is crucially important to have an active and mobilized community of people who advocate for workers' rights. Others have made this point through their research. Marc Doussard and Ahmad Gamal (2016) analyzed 255 anti-wage theft laws proposed between 2004 and 2012, finding that two factors significantly affect whether anti-wage theft laws will be introduced and how comprehensive those laws will be. The first factor is the strength of a state's workers' rights movement, which Doussard and Gamal measured based on union density and the presence of worker centers. In short, "union density and worker centers provide strong, positive predictors of legislative introduction" of anti-wage theft bills, although these movements have less control over the actual passage of anti-wage theft laws (Doussard & Gamal 2016, p. 799). Moreover, the

effect of workers' rights movements is moderated or even superseded by the second important factor: a state's ideological leanings. Liberalism is a strong predictor of whether anti-wage theft legislation will pass, and how strong it will be, while jurisdictions that are more conservative will stymie such efforts (Doussard & Gamal, 2016).

Much of Doussard and Gamal's work builds on prior research from the context of living wage ordinances, which require certain employers, like government contractors, to pay decent wages and benefits to their employees. This makes sense. Both "types" of reforms are pro-worker, challenge the status quo, and have been pursued at the local level. Scholars who study living wage ordinances have similarly found that workers' rights organizations and movements are important both for the introduction and passage of such laws (Martin, 2001), and for their effective implementation (Luce, 2005). Workers' rights organizations can serve to supplement government investigations and knowledge of a problem, advocate for viewpoints that may not otherwise be present in government, and hold government actors accountable for enforcement (Luce, 2005).

What we have seen in the District surrounding the issue of wage theft is the exercise of these ideas. The workers' rights community consists of a broad and strong coalition of non-profits, unions, and other community organizations. Led by the Employment Justice Center, it built support for reform from the ground up, organizing workers and advocating with them. This coalition largely authored the Wage Theft Act, then worked with the DC Council to introduce it and pass it. After the passage, the community – for the most part – successfully staved off efforts to weaken the law. In addition, it continued to put pressure on government actors to enforce the law and root out wage theft. As I discuss in Chapter 8, the District's workers' rights activists have had varying degrees of success with these efforts. But, at the very least, they have

succeeded in mobilizing the Office of the Attorney General, which has taken up the cause of prosecuting flagrant bad actors.

Chapter 3: Study Design and Methodology

In this chapter, I discuss in detail my research design and the methodology and strategies that I followed as I recruited participants and collected and analyzed data.

Methodology

I approached this project in two main phases. During the first phase, I sought to get the lay of the land and gain a full understanding of the relevant groups, laws, and government agencies in Washington, DC. It was crucial for me to gain this understanding of DC's environment and recent history because, as I explained in Chapter 2, wage theft is a problem that is best understood only when analyzed in light of the particular social, political, and regulatory context of a place. To that end, I read and analyzed DC statutes, regulations, and cases, as well as news stories about various employment and wage theft laws that the DC City Council has passed in recent years. I also made contact with and began to get to know relevant members of the workers' rights community in the District. Connecting with this community was something that I began to do during the summer of 2015, when I was living and working in the DC-area between my second and third years of law school. Every Wednesday I volunteered at a free legal clinic for low-wage workers run by an organization called the DC Employment Justice Center. Over time I became friends with the clinic coordinator and some of the other volunteers, and gained credibility with the organization. Later, I used these existing relationships to expand my network of workers' rights activists and organizers. In particular, I was able to forge a lasting and collaborative relationship with the Washington Lawyers' Committee for Civil Rights and Urban Affairs, which has now succeeded the Employment Justice Center as the key non-profit providing legal advice to the DC-area's working people.

During the second phase of the project, I collected original, qualitative interview data. I conducted approximately sixty in-depth, semi-structured qualitative interviews with representatives from four different groups of people: low-wage workers, activists and organizers in the workers' rights community employment attorneys (representing both plaintiffs and defendants), and employers. I also attempted to interview government actors, although these efforts had only very limited success. The core of this research project consists of interviews with low-wage workers, but the other groups of people with whom I spoke form a crucial part of my research. The members of these groups have relevant, experience-based perspectives to share, and hearing from this diverse array of viewpoints was key to gaining an understanding of the nuances and complexities of wage theft in DC.

Unfortunately, my research plan did not fully pan out, and I did not interview a critical mass of employers or government actors. I interviewed thirty-three low-wage workers, twelve workers' rights activists, and ten employment lawyers. Employers and government actors proved to be difficult to contact, however. I reached out to a number of employer organizations in the DC-area, including the DC Chamber of Commerce, the Restaurant Association of Metropolitan Washington, the American Sustainable Business Council, and Business For a Fair Minimum Wage. Some of these organizations never responded to my inquiries. Both the American Sustainable Business Council and Business For a Fair Minimum Wage were responsive and interested, but ultimately nothing panned out with either organization. I also attempted to reach out to individual employers, which resulted in a small number of interviews. On the whole, however, I did not collect enough data from which to draw conclusions about how employers think about the issue of wage theft. Instead, I use those interviews to supplement other groups' conclusions, and to fill in details of the environment in DC.

Nor was I able to interview any government actors in the District. I made significant efforts to speak with representatives from both the DC Office of the Attorney General and the DC Department of Employment Services. The Department of Employment Services was entirely nonresponsive, despite me sending multiple emails to multiple administrators, including the director. The Office of the Attorney General was more responsive. I exchanged several e-mails with supervisors in that agency, and met with two of them to discuss the research. They seemed interested, but in the end, did not participate in this research.

Participant eligibility

In order to qualify for participation in this study, participants had to meet these requirements:

- **Attorneys** must have practiced employment or labor law in the District within the last five years.
- **Activists and Organizers** must have dedicated some portion of their time to advocating on behalf of low-wage workers in the DC-area. This could have included lobbying for new laws or policies, doing direct informational outreach, assisting low-wage workers with their work-related issues, attempting to organize workers into unions, or working for an organization that does these things.
- **Employers** must have managed or employed low-wage workers within Washington, DC at the time of the interview.
- **Government actors** must have had experience working in the government, and this experience must have related in some way to enforce of labor and employment laws. This could have included, for example, working as or for a city councilmember, working as a government attorney, or working at a regulatory agency.
- **Low-Wage Workers** must have worked in the District sometime in the past several years, and they must have, at the time of recruitment, been a low-wage earner (see Table 3.1, below).

My focus on “low-wage workers” raises an important and unsettled question: what *is* a “low-wage” worker?

Surprisingly, and despite the frequent discussion of this group of workers, there is no agreed-upon scholarly definition for what constitutes “low-wage” work. Some researchers include all workers in the bottom 20% of earners (e.g., Cooper & Kroeger 2017). Others limit inclusion to workers who earn no more than 1.5 times the local minimum wage (e.g., Galvin 2016; Thiess 2012). Still other studies define low-wage work as work that pays less than two-thirds of the median hourly wage for a locality (McKay et al. 2015). These cutoffs have the benefit of creating clearly defined criteria for inclusion. But, one weakness is that some of them do not necessarily take into account the cost of living of the place in which people live and work.

For this project, I adopted a more expansive definition of low-wage workers to include anybody who lived in a household that earned less than 300% of the federal poverty line. The exact numbers that I used are reproduced in Table 3.1:

Table 3.1: Income limits for low-wage worker-participants

Persons in family/household	Maximum income for inclusion
1	\$36,180
2	\$48,720
3	\$61,260
4	\$73,800
5	\$86,340
6	\$98,880
7	\$111,420
8	\$123,960

For a single person, this came out to yearly earnings of about \$36,000; for a family of four, it came to household earnings of just under \$74,000. These numbers seem high, and in many parts of the country would enable people to live decent, middle-class lives. But this broader, more-inclusive definition of low-wage work is appropriate for this study for a few reasons.

First, it reflects the high cost of living in the District, which is one of the most expensive places to live in the country. To compare costs of living between different places, economists rank states and cities based on their “Regional Price Parities,” or RPPs. These RPPs measures the differences in prices across state and city lines, and the analysis covers all consumption goods and services, including rent. A 2016 analysis by the Bureau of Economic Analysis found that the District had the second highest RPP in the country, lower only than Hawaii, and on a level with New York City (Bureau of Economic Analysis, 2018). Put in simple terms, people in the District need more money to enjoy the same standard of living compared to almost every other place in the country. This fact is highlighted by research that the DC Council released in early April of 2018, which found that “[a]bsent any social safety net programs, a single adult would need to earn approximately \$36,988 per year to afford their basic needs,” which include “housing, food, health, childcare, transportation, utilities, clothing, and sanitary” needs (DC Council, 2018a). This number, \$36,988, is very similar to this project’s income limit for a single individual.

Second, my goal for this project was to speak to people who feel as though they are *economically insecure*. How a person responds to their rights being violated turns largely on how concerned they are about the consequences for doing so. As I was planning the project, I assumed that whether a person would be willing and practically able to advocate for themselves would depend a great deal on whether they felt financially secure. In other words, it is the state of being insecure about the future and fearful of the consequences of speaking up that constrains the paths that a person experiencing wage theft can and will take. The income cut-off that I have adopted here allowed me to take into account how expensive DC is without also being overinclusive of people who are financially secure.

Finally, this income range is the same as that which was previously used by the DC Employment Justice Center to determine eligibility for services at its free legal clinic for low-wage workers. As the next sub-section discusses, I recruited many of my participants through this clinic, and so it made sense for me to adopt their standards for inclusion.

Recruitment

I adopted three strategies for recruiting participants for this project. My primary and most effective strategy for recruiting participants of all kinds was to tap into existing social and professional networks that have already mobilized in DC around the issue of workers' rights and wage theft. In particular, I worked closely with two different groups: the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and the Just Pay Coalition.

For more than a decade, the DC Employment Justice Center (EJC) hosted a free legal advice clinic for low-wage workers experiencing employment-related legal problems. I began volunteering with the EJC in the summer of 2015, and formed a strong working relationship with both the clinic coordinator and the executive director. But in late 2015, the EJC began to have some of the same funding and organizational problems that many non-profits experience, and for a time it was not clear whether it – and the Workers' Rights Clinic – would survive. In early 2017, salvation arrived in the form of a merger with the Washington Lawyers' Committee, an older and more stable legal services non-profit. The Lawyers' Committee absorbed the EJC and took on its workers' rights mission, including the task of running the Workers' Rights Clinic. In doing so, the Lawyers' Committee also expanded the availability of the clinic by removing the income cap for clients.

Today, the Workers' Rights Clinic meets seven times per month in various locations around the city. Each year, it serves more than 1200 people. It is organized and managed by a core group of employees of the Washington Lawyers' Committee, but it really runs on the power of volunteer labor. Many of these volunteers are law students and attorneys, but many are also motivated community members who care about workers' rights. Volunteers greet clients, conduct detailed intake interviews to determine what work-related issues they have experienced, and then communicate with pro bono attorneys to dispense legal advice. Sometimes this advice also includes assisting clients with drafting demand letters, legal briefs, or other documents, or with filing a complaint with a government agency. Occasionally, the Washington Lawyers' Committee will directly represent people in their workplace disputes, or will refer their cases to local attorneys and law school clinics.

During the fall of 2017, I approached the leadership of the Washington Lawyers' Committee about collaborating on this research. They were supportive, and agreed to allow me to recruit participants through the Workers' Rights Clinic. Between March and October of 2018, we instructed intake volunteers to tell all of the clinic's clients about the project, and to ask whether they might be interested in hearing more about it. I followed up with those who expressed interest, and after verifying their eligibility, set up interviews with them. In total, I recruited 19 workers through the clinic.

I also worked closely with the Just Pay Coalition (JPC), an umbrella group of non-profits, workers' rights organizations, and labor unions that work together in order to implement laws and policies designed to secure and protect the rights of workers in the District. The JPC formally meets once a month, and is active around the issue of wage theft in a variety of ways. It lobbies the DC Council to implement legislation designed to protect workers, both by engaging

directly with Councilmembers and their aides, and by presenting testimony at public hearings. The JPC also pressures the DC government to exert meaningful oversight over the municipal agencies whose mandate it is to enforce DC's workplace laws. And finally, the JPC mobilizes its network to hold rallies, information sessions, and protests. These public actions are designed to raise awareness of the problem of worker exploitation in the District and to identify and shame known bad actors, especially in the construction industry. Working with the JPC was incredibly useful. It allowed me to engage directly with the existing network of workers' rights activists in the District, and also helped me connect with low-wage workers. In total, I recruited 6 workers through the JPC's extended network.

I supplemented this network-based recruitment strategy in two ways. First, I reached out to relevant people and organizations. I used this method mainly with regard to recruiting (or attempting to recruit) employers, attorneys, government actors, and activists and organizers. It was of varying effectiveness. Oftentimes, I received no response whatsoever. Nevertheless, it served as the main way by which I recruited lawyers.

Second, I recruited some participants through snowball sampling. At the end of each interview, I asked participants whether they could think of anybody who might be interested in talking to me. I would then follow up with those people directly, if their contact information was publicly available (as is the case for many lawyers and organizers). If not, such as with low-wage workers, I freely shared my contact information and let my participants know that their friends or acquaintances could reach out to me. In total, I recruited 14 workers through snowball sampling, including those who I met through the JPC's extended network. Several of these workers reached out to me after hearing about the project from their friends and acquaintances. Cora, for instance,

called me directly after her therapist told her about the project, while both Marion and Miranda got my contact information from a woman who was interested in the project, but not eligible.

Interviews

Most of my research data consists of the in-depth, semi-structured interviews that I conducted with people in and around the District. Semi-structured interviews are an appropriate and effective method for a research project like this one, which seeks to understand the experiences and perspectives of a population of people. The approach strikes a balance between the rigidity and organization of structured interviews and the easygoing style of normal conversation. Researchers using this format arrive to each interview with a structured list of questions and topics that they want to cover, but this list is far from exhaustive. Instead, interviewers deviate from their planned format in order to pursue interesting leads and topics that come up in conversation. Rarely did I stick closely to my planned order of questions, although I almost always covered everything that I planned to with my participants.

The semi-structured interview style was the best one for this project for several reasons. First, my research was, in part, exploratory, which this interview style is well-suited for. My goal here was to understand how people experience wage theft, including whether and to what extent wage theft causes personal and social harm beyond what people lose in raw earnings. Before conducting this research, I could have made educated guesses about what my participants would tell me, but I could not have anticipated the full range of experiences and responses that I heard about. Actually, I often found myself surprised by what people shared with me. This interview style left room for me to guide the conversation in different directions depending on the flow of the conversation.

Second, the semi-organized style of these interviews helped me build rapport with participants. I had some early concerns that I would have a hard time forging the kinds of connections that lead to the sharing of detailed and personal stories and thoughts. It is obvious that I do not come from the same background as many of the low-wage workers whom I interviewed. The way I look, dress, act, and speak all reflect my status as a highly-educated, middle-class white person. In contrast, many of the workers that I interviewed have limited formal education, are minorities, and have only rarely experienced financial security.

But there are two big benefits to semi-structured interviews that help researchers build rapport with their subjects. First, these interviews can be conversational in nature. After the first few minutes of each interview, I found it easy to slip into a cadence where I was able to set aside – at least somewhat – the fact that I was conducting an interview for the purposes of formal research. For a variety of reasons, it is entirely possible that participants did not feel the same level of comfort. But I noticed that as the interviews progressed, most participants became more relaxed and open about their experiences, and our conversations became more fluid. This reflects a second, related benefit to this interview style: it empowers participants to guide the flow and determine the atmosphere of the conversation by expressing their thoughts and feelings on their own terms.

My strong feeling is that, despite the differences between participants in this study and me, I was able to build meaningful rapport with the overwhelming majority of them. The people that I interviewed were incredibly open with me, and shared many deeply personal stories. They told me about the gross, shocking, mundane, and routine mistreatment they experienced, about their fears and insecurities, and the mental and physical pain and distress that they experienced as a result of wage theft and other hardships. At times, our conversations ranged beyond the

immediate topic. I heard stories of failed marriages, homelessness, sexual assault, and crimes that they had experienced or been accused of. Of course, I don't know what I don't know, and there certainly must be some thoughts and experiences that I did not hear about. But overall, I felt that almost all of my participants were open with me and willing to answer my questions with candor. A number of them even told me that they enjoyed the interview, and found it cathartic.

Each interview lasted about an hour. I met participants at a place that was convenient for them, including offices, coffee shops, and public libraries. For low-wage workers, I also reimbursed them for the cost of their transportation to the interview, and thanked them for their time with a \$15 gift card to Target. In addition, I brought information about workplace rights and the Workers' Rights Clinic to the worker-interviews. As I discuss in Chapter 7, a recurring problem among workers in general, and low-wage workers in particular, is that they do not clearly understand their rights, nor do they know where to go or what to do when they run into trouble at work. While some scholars advocate a hands-off, arms-length approach to research, this idea did not sit well with me. I know the waterfront of resources relevant to the District's working poor, and felt I could share this information without compromising the integrity of my methods. To that end, I typically gave workers information about their rights and the Workers' Rights Clinic at the end of the interview, similar to what Kaaryn Gustafson (2011) did in her study of women on welfare.

My full interview protocols may be found in Appendix A. But generally speaking, I began my interviews with workers by asking them about their living situation, background, and work history. The point of these general questions was to begin to build rapport and comfort with participants, and to move past the awkward first few minutes of conversation with a stranger.

The main portion of the interview consisted of me speaking with people about their recent jobs in the District of Columbia. I asked them whether they liked their jobs, what their job duties were, and how they found work. Eventually, I asked whether the participant had ever felt like they were mistreated at work, and if so, then how that mistreatment affected their lives, and what they did in response to that mistreatment and why. I also questioned people about the various laws and government agencies that are designed to protect their rights, and whether or not they felt like society did an adequate job at enforcing laws regulating the workplace. Finally, at the end of the interview, I asked all participants the same set of questions regarding whether they had experienced particular rights violations while working in DC in the last several years. I also collected basic demographic information.

Importantly, I generally did not directly ask worker-participants about particular forms of wage theft or use the phrase “wage theft” until mid-way through the interview. As I explained in Chapter 1, “wage theft” is a loaded and politicized term. I did not want to inject bias into the interviews by using this phrase too early. Instead, I asked general questions about whether participants had felt mistreated at work in the last few years, and from there, my questions and our conversation became increasingly focused on particular rights violations.

I spoke more directly with the activists and organizers, lawyers, and employers with whom I spoke. I mined these groups for their expert perspective on wage theft in DC. The details of these conversations changed from person to person, of course, depending on what they did for a living and what I knew of their particular areas of work and expertise. For example, if a participant had an expertise or history that I knew about, such as if they had helped draft a particular law, I questioned them directly about that. In general, however, I asked whether and to what extent they believe wage theft to be a problem in the city; whether they approve of the

government's response to the problem; whether they feel that DC's formal laws and regulations are appropriate and effective; and whether they would suggest any changes to DC's laws or policies.

Participant anonymity and immigration concerns

In designing this project, I took great care to protect the privacy and anonymity of participants. Initially, I planned to anonymize all of my data by assigning pseudonyms to participants, their employers and businesses, and the people whom they spoke to me about. I quickly discovered, however, that many of the attorneys and workers' rights activists preferred to be identified, both because they did not feel as though they had anything to hide, and because they were interested in the publicity. Based on this understanding, I gave employers, lawyers, and workers' rights activists the option to be anonymous or identified for the things they told me. Throughout this dissertation, I have identified real people by using both their first and their last name. Where I have identified people only by their first name, it is because that name is a pseudonym.

Out of an abundance of caution, I do not use the real names of any of the workers I interviewed. This is standard practice for this kind of work (e.g., Cho et al., 2013; Gleeson, 2016). In shielding the identities of participants, I had two general goals. First, doing so made participants feel more protected, which in turn empowered them to speak more freely with me about their experiences. Second, I was deeply concerned about the possibility of workers experiencing repercussions, either with their current employers or with potential future employers.

There was another issue that loomed large in my mind and encouraged me to shroud my worker-participants in anonymity: immigration. Low-wage workers, as a group, are likely to be undocumented immigrants. The Pew Research Center reports that in 2012, “unauthorized immigrant workers remain[ed] concentrated in lower-skill jobs, much more so than U.S.-born workers,” and “represented 24% of workers in the landscaping industry, 23% of those in private household employment,” and about 20% of those in apparel manufacturing, crop production, dry cleaning and laundry, and building maintenance (Passel & Cohn, 2015). Researchers who study low-wage workers have also found that large numbers of their participants are undocumented (Bernhardt et al., 2009; Gleeson, 2016), and express deep fears about immigration consequences (Gleeson, 2015).

Both the Washington Lawyers’ Committee and the General Counsel of my university were concerned that the government might attempt to subpoena my research in order to identify undocumented immigrants living in the District. While I was designing this project and writing this dissertation, the federal government was spending significant resources on finding, detaining, and deporting such people. The situation only worsened with the election of Donald Trump as president. The Trump administration issued new enforcement priorities, removing the Obama administration’s practice of exempting certain immigrants from enforcement and instead focusing on new arrivals and those with criminal records. As a spokeswoman for Immigrations and Customs Enforcement (ICE) explained in August of 2017, “The biggest change is under the previous Administration, there were a lot of individuals that were not considered amenable to arrest . . . since the change in Administration, our director has said there are not going to be any classes or categories of removable aliens that are exempt” (Berenson, 2017).

As a result, the government began deporting many non-violent undocumented people. In July 2017, for instance, a four-day operation by ICE resulted in the arrest of 650 people, approximately 450 of whom were not the targets of a raid, but only happened to be present during one (Berenson, 2017). In September 2017, ICE engaged in a series of raids specifically focused on “Sanctuary Cities,” including the District of Columbia. Fourteen undocumented District residents were deported as a result (Chason, 2017). In July 2018, ICE arrested 12 more residents in a series of raids in Northwest DC, where many Hispanic people live (Mills, 2018).

Given the Trump administration’s clearly stated priorities, and in light of these events, there has been a great deal of justifiable fear in DC’s immigrant communities. In light of this, I took several steps to protect participants. In addition to anonymizing worker interviews, I also told participants that I would not be asking them about their immigration status, whatever it might be, and that I did not want them to talk to me about it. On the rare occasion that they did, I simply did not transcribe that portion of the conversation. In addition, I did not obtain written informed consent from workers. Instead, I read them a script which outlined the project and its procedures and informed them of their rights, and then asked for oral consent. Finally, I deleted communications with participants, including emails and text messages. By the end of my transcribing process, then, there was no record that a particular worker had ever interviewed with me. Even if the government decided to subpoena my records, I would simply have no reliable information to share with them.

The fact that I did not directly discuss immigration concerns with participants is a weakness in this research. Given the context of this study, though, it was a necessary weakness. Moreover, the analytical loss is blunted by the fact that many other scholars have studied the various ways in which undocumented low-wage workers experience wage theft and other

violations of their basic rights (e.g., Valenzuela Jr. et al., 2006; Bernhardt et al., 2009; Fussell, 2011; Gleeson, 2015, 2016). Because of this excellent body of work, much of which I discussed in Chapter 1, we understand the particular difficulties experienced by undocumented workers, and I have been able to bring this perspective to bear throughout this dissertation.

Coding and analysis

After conducting and transcribing interviews, I used a program called HyperRESEARCH to code interviews. Coding is a process by which researchers critically examine their data through an analytic lens in order to identify recurring topics and points. It is not the final step of analysis, but rather an initial one, a way to start exploring your data. As Lyn Richards and Janice Morse (2007, p. 137) explain, “[i]t leads you from the data to the idea, and from the idea to all the data pertaining to that idea.” Put metaphorically, coding “generates the bones of your analysis [I]ntegration will assemble those bones into a working skeleton” (Charmaz, 2006, p. 45).

“[C]oding is a cyclical act” (Saldaña 2013, p. 8), and is used to both inform ongoing research and the process of coding itself. I began coding before I finished collecting data, and in the process identified popular issues and additional questions that I wanted to hone in on in later interviews. As I progressed with my analysis and the universe of topics became more defined, I placed my codes into larger categories. For instance, many of my participants talked to me about the consequences of wage theft, which ranged from strong emotions, to economic hardship, to health issues. I grouped these various codes into an overall “Results” category, and did the same for other broad themes. At the end of the process, I refined my codebook by deleting or combining codes that had appeared only a limited number of times.

One strength of HyperRESEARCH is that it is not limited to serving just as a codebook. It has a variety of tools that can be used for analysis. Researchers can group codes and interviews by type (e.g., “low-wage workers”) and build a variety of reports about the frequency and application of codes. I used the program to organize codes into categories, to isolate and critically analyze those categories in order to determine themes, and to link those themes to larger sociolegal research questions.

Chapter 4: Low-Wage Workers and Their Wage Theft

In this chapter, I introduce the group of low-wage workers that I interviewed for this project. I first describe these workers by providing some demographic information, including their racial composition, income, jobs, and the ways they describe their own experiences with poverty. I then discuss the range of rights violations that workers reported experiencing over the last few years of working in Washington, DC. Finally, I analyze these data to discuss several important trends to wage theft.

Who are the low-wage workers in this research?

Generally, the workers I interviewed for this project reflect the diversity of the District and the demographics of the low-wage workforce in Washington, DC, which is dominated by people of color. Out of 33 worker-participants, 28 are racial minorities: 18 identify as African American, 5 as Latinx, 2 as Asian, 3 as mixed. Four identify as white, and one participant declined to identify himself at all, which reflected his concern with anonymity.

One critique of this participant pool is that I likely under-sampled Latinx people, who comprise approximately 11% of the District's population (Census 2018), but – like African Americans – are more heavily concentrated in low-wage jobs (Zhang et al., 2017a). This was primarily due to my own language limitations. While I hired a Spanish-speaking translator who was able to contact Spanish-speaking workers and coordinate interviews, this extra hurdle simply made it more difficult for me to engage with the District's Spanish-speaking residents. As I explained in Chapter 3, though, the harm of this weakness is blunted by the fact that a significant amount of research on the low-wage workforce has focused heavily on Spanish-language workers and their experiences with wage theft (Valenzuela et al., 2006; Bernhardt et al., 2009;

Fussell, 2011; Gleeson, 2015, 2016). In other words, we already know a great deal about how wage theft plays out among low-wage Hispanic and Latinx workers.

Participants ranged in age from 22 to 66, with an average age of 47. Many of these people have had long careers as low-wage workers, and told me about their years or decades of low earnings. Poverty can be a sudden thing, though, showing up when you least expect it. A few workers had not stagnated in low paying jobs, but were recent entrants into the world of financial struggle. For example, until they ran into trouble in their careers, both Benjamin and Carl had earned good salaries. Carl had been making almost \$60,000 a year as a unionized employee of the District of Columbia, while Benjamin and his (now ex) spouse had together brought home \$180,000 a year. Both of these men, like many other Americans each year, encountered difficult and sudden hardships that derailed their careers and sent them into downward economic spirals.

The average household size of these workers was about two, with a range between one and six persons. Estimating an average twelve-month household income for my sample is difficult. While all of these workers qualified for this project based on its income guidelines, rarely did somebody tell me a definite number when I asked how much they had made in the past year. Many were unable to give me a clear idea of their earnings because they did not have one. Instead, I often heard ranges. Maynor and Camila, for example, told me that they had made somewhere between \$29,000 and \$35,000, but they were not able to narrow it down beyond that. I also heard vague, generalized responses, like “Not much!” or “Very little” or “I get unemployment,” with no further details. Some of these people had not kept good track of their finances; others were ashamed of their low earnings, and seemed to want to move past the topic.

Not surprisingly, most of the workers I interviewed were not close to meeting my income thresholds. Out of thirty-three people, only four thought they were within \$5000 of the applicable

income ceiling. Instead, most workers reported making close to minimum wage. Often, these low wages were compounded by erratic work schedules, a scarcity of work, and wage theft. Other people had marketable skills and the ability to earn a decent hourly rate, but faced the same income-depressing issues: difficulty finding steady work and wage theft. Earl, for instance, is a journeyman plumber with more than twenty years of experience under his belt. He has worked on large projects like the Walter E. Washington Convention Center and the Nationals baseball stadium, and at times he is able to earn upwards of \$30 an hour. But, more often he gets only limited hours, and is frequently misclassified as an independent contractor. As I discussed in Chapter 1, workers who are (mis)classified as independent contractors do not get the benefit of minimum wage and overtime laws, and have to pay a significantly higher tax rate than employees.

It is important to understand how low-wage workers think about their income and earnings. Nearly everybody I interviewed would have said that they were struggling. The people who form the basis of this research are low-wage based on the definition that I have given, but they are also keenly aware of their own economic insecurity. Poverty was a theme in all of my interviews. It is a creeping fear housed in the back of people's minds, always present, always requiring them to weigh their options and carefully consider their choices. As I explain in detail in Chapter 7, economic insecurity does much to guide how people think about and react to the act of wage theft. Violations that might seem small to many of us are anything but to people who have little to start with, and know it.

“My budget is week by week,” explains Kira, a unionized employee who works in the makeup department of a large department store. In Kira's case, she often has trouble getting her supervisor to input her paid sick leave on time. “If I'm working twenty-eight hours and I miss

seven and a half or eight hours out of the week [on my paycheck] then that throws everything off. A lot of us are working, making just enough money to get back and forth to work. So then if you don't pay me for a day, and I have to get back to work, that means maybe the babysitter doesn't get paid, maybe we don't eat the way we should that week.”

Many others said similar things, expressing concerns about everything from paying for basic necessities to surviving retirement. “You always have difficulties trying to figure out how you're going to buy bus tickets, how you're going to buy the things that you need,” says Marcos, a restaurant employee who had trouble with time shaving, overtime, and paid sick days. Sabbir, whose former employer never paid him overtime, told me what that extra money would have meant to him: “They should pay overtime, you know? So it can help us People like me, we are all struggling.”

These concerns are even more significant for people who have others to support. “I live in a world of fear,” says Agda. She is a single mom with strong values and a lot of tenacity who bartends at night in order to support herself and her 11 year old son. As somebody who works in the restaurant industry, which is notorious for its disregard of basic wage and hour laws, she reported experiencing wage theft constantly, across many jobs. Things should be easier for her soon, once she finishes her master's degree, but until then it is touch-and-go. “I have a kid to support and bills to pay. The stress level is insurmountable some days, you know? It's really hard.”

There was no “typical” job that participants had. Rather, they were peppered throughout a variety of industries that are well-known for being rife with workers' rights violations, including construction, food and drink, domestic work, maintenance, and retail. But some worked in industries that we do not often consider when we read and think about wage theft. Several

participants worked for the District government or for federal contractors, and others worked for non-profits. Nobody, however, was immune from the threat of employer exploitation.

The overwhelming majority of workers reported having experienced some form of wage theft at their jobs. As I discuss in detail in the next section, out of thirty-three worker-interviews I only met two people who did not report any situations that could have involved wage theft. This is noteworthy because, as I noted in Chapter 3, for the most part I did not actively seek out workers who reported that they had had trouble getting paid. Instead, I interviewed anybody who met my income requirements, and had worked in the District in the past few years. Many of my participants did not immediately present their jobs as involving wage theft, and a few even told me that they had never had trouble with their wages. For instance, Sabbir was not aware that his former employer's practice of not paying overtime was illegal, and Marcos did not know that he was legally entitled to *paid* sick days. As I talked to people, however, it became clear that the overwhelming majority of them had been cheated, one way or another, by their employers.

The kinds of wage theft in this research

What kinds of wage theft violations did my participants report? Beyond that, what kinds of other negative, unhappy experiences do low-wage people have at their jobs?

To recap, existing research shows that low-wage workers frequently suffer minimum wage and overtime violations, and that misclassification, time shaving, and unlawful pay deductions are also common (Bernhardt et al., 2009; Galvin, 2016; Cooper & Kroeger, 2017). My research is not quantitative, and I do not attempt to make the same population-level estimates of wage theft that others have. But because of the qualitative nature of my study, I was able to spend a significant amount of time having in-depth conversations with individual people about

their experiences with workplace mistreatment, something that quantitative researchers do not do. As a result, I was able to explore a broad range of rights violations in detail.

This section discusses what kinds of rights violations and other unpleasant, unsafe, and degrading experiences low-wage workers face at work. The range of questions that I asked and the responses that I received are reproduced in Table 4.1:

Table 4.1: Rights violations experienced by the workers in this study

Issue: In the last few years, have you ever, either at your current job or another one in Washington, DC, experienced any of the following?	Number (Percentage) (n=33)
Paid less than you were promised	17 (52%)
Paid less than the minimum wage	8 (24%)
Had problems getting paid, or been paid late	20 (61%)
Not been paid for all of your hours (time shaving)	7 (21%)
Had the cost of work tools or uniforms deducted from your paycheck	4 (12%)
Worked more than 40 hours in a week for a single employer without receiving overtime pay (1.5x regular rate).	19 (58%)
Denied time off when you asked for leave because you were sick, to take care of a close family member who was sick, or when you had a baby	14 (42%)
Had to work in unsafe or unhealthy working conditions	17 (52%)
Denied workers' compensation (if you were ever injured)	6 (18%)
Denied unemployment compensation after losing a job	6 (18%)
Punished or retaliated against for complaining about working conditions or workplace rules	20 (61%)
Felt discriminated against because of your age, race, sex, religion, or national origin	20 (61%)
Punished or retaliated against for trying to organize a union, or for your membership in a union	2 (6%)
Been asked about your criminal history in a job interview	2 (6%)
Been subject to sexual harassment or unwelcome sexual advances from your employer or co-worker	4 (12%)
Been subject to verbal abuse or degrading treatment from your employer	18 (55%)
Been punished or terminated unfairly	24 (73%)
Been unfairly denied a job promotion	6 (18%)

Overall, these findings are entirely consistent with prior research: Nearly all of my participants reported having recently experienced wage theft, as well as other (possibly legal)

acts of hardship and degradation. The takeaway is this: Wage theft forms a present and persistent part of the low-wage landscape, and so too do other acts of indignity.

Wage theft 101: Minimum wage, overtime, and the bait and switch

During the time when I was conducting this research, the minimum wage in the District was \$12.50, later increasing (on July 1, 2018) to \$13.25. Employers are required to pay their employees 1.5 times their regular hourly rate for every hour worked over forty in a week. These requirements only establish the floor of workplace standards, though. If employers tell workers that they will pay them a certain amount of money per hour or per job, then that promise is a legally binding and enforceable contract.

Minimum wage and overtime laws are longstanding, and deeply rooted in our collective understanding that workers in America are entitled to some essential baseline protections which guarantee a modicum of dignity in the workplace. Beyond that, we strongly believe in the validity and enforceability of private contracts, as these form the basis of our capitalist system and keep the gears of the economy turning. And yet, workers commonly reported being paid less than they were promised (17, or 52% of participants), earning less than the minimum wage (8, or 24%, and including being paid nothing at all), and not being paid properly for overtime (19, or 58%).

These basic violations ran the range of possibilities in terms of both how much money workers were cheated out of, and how frequently they were cheated. Earl, for example, told me about only a small number of times when employers denied him overtime or paid him less than they had promised. His one overtime issue stemmed from the fact that, like many construction workers (Carre, 2015; Juravich et al., 2015), he is often misclassified as an independent

contractor despite the fact that his employers exercise a significant amount of control over his daily tasks. In the situation Earl told me about, his employer paid “straight time” for his work, meaning he got paid for every hour, but did not get the premium overtime rate. In practice, this meant that he earned \$22 for those extra hours, rather than \$33. Another time, an employer told him he would be making \$40 an hour. When he started work, that all changed. “I ended up getting somewhere around \$18,” he explains, “so it was either a take it or leave it thing.” He took it. These experiences were relatively rare for Earl, but because he is a journeyman plumber with valuable skills, they still cost him a good amount of money each time – especially in light of the fact that he earns only about \$36,000 a year.

On the other hand, Cora – the shampooer at a high-end boutique salon who we met in Chapter 1 – experienced small amounts of constant wage theft. Under District law, tipped workers like Cora can be paid less than minimum wage based on the assumption that customer tips will make up the difference. If in a given pay period a tipped worker’s average hourly rate – after including tips – is less than minimum wage, then her employer is required to make up the difference. Tips were rare, though. Cora told me that she regularly made less than minimum wage, and her employer consistently failed to make up the difference. Maria, who works for a cleaning company, reported a similar experience: Her employer pays her \$1.50 less per hour than DC’s minimum wage requires. Workers like Cora and Maria do not experience the same double-digit-per-hour dollar reductions that people like Earl do, but wage theft is an ongoing fact of their jobs and a constant reminder of who has the power in a worker’s relationship with her employer.

Finally, there are those workers who are critically underpaid compared to what they had been promised, or who experienced ongoing, long-term minimum wage and overtime violations that were extraordinarily, shockingly costly. In Chapter 1 I introduced Ameen, who worked as a

driver at a foreign embassy and was, when we met, struggling to recover more than \$40,000 in unpaid base wages from his erstwhile employer. Ameen, however, had also regularly worked overtime – sometimes up to thirty hours a week – for which he had never been compensated.

Similarly, Caleb spent four years working at two convenience stores owned by a single woman. This understates the time and effort he put into his job, though. “It was ninety-eight hours a week,” he says. We are sitting in the basement of a library in rural Maryland. It is near his sister’s house, where he has been living ever since he had two heart attacks and lost his job. “You want to add it up? From 9:00 in the morning ‘till 10:00 at night . . . seven days a week.” But when business was good, he would work at the store until even later, 1:00 AM or beyond. “We slept there a couple of nights,” he says. Caleb rarely got a paycheck, though, telling me that there was only about a seven-month period where he got \$600 per month. Instead, his employer promised him that if he worked for her, he could live in the apartment above one of the stores and, someday, she would set him up with a restaurant, which Caleb planned to use to support himself in his old age. When the restaurant never materialized and the relationship soured, Caleb filed a wage claim with the Department of Employment Services, which conservatively estimated that his employer owed him \$75,000 in back pay alone. Factor in penalties, though, and that number blossoms to about \$300,000.⁴

Overall, my findings are in line with what quantitative researchers who examine wage theft report. Studies estimate that between 17 and 26% of low-wage workers are paid less than the minimum wage (Bernhardt et al., 2009; Galvin, 2016; Cooper & Kroeger, 2017), and that 76% of eligible workers experience overtime violations (Bernhardt et al., 2009). Put simply, this

⁴ I discuss Caleb’s experiences in greater detail in Chapter 8.

research bolsters what we already knew: low-wage workers experience frequent, and sometimes flagrant violations of their most basic pay-based workplace rights.

Sick, tired, and struggling for wages: Time shaving, late checks, and no sick days

Workers also frequently reported that they had experienced “time shaving,” where they were not paid for all of the hours they worked (7, or 21%), that they had been paid late or had trouble getting paid (20, or 61%), and that their employers had denied or tried to deny them sick leave (14, or 42%). These acts are all illegal under District law, of course. People have to be paid for all of the time they spend working. For most workers, employers have to set and follow a regular payday, which needs to occur at least twice a month (DC Code § 32-1302). All employers are required to provide between three and seven paid sick days to their employees, depending on the size of the organization (DC Code § 32-531.02). Beyond that, both the DC and federal Family and Medical Leave Acts require employers beyond a certain size to allow employees to take unpaid leave to get help for their health issues.

Marcos experienced all of these issues. He is 37, Hispanic, and – like many of his Spanish-speaking friends – has suffered a litany of rights violations. A steadfast man, he told me about the various abuses he had endured in a quiet voice, patiently answering my questions and showing little hesitation when it came to sharing personal details. We talked primarily about his last job as a dishwasher at an Italian restaurant. It is the kind of place that bills itself as “casual,” but charges \$30 an entrée and \$14 a cocktail, all while underpaying its back-of-the-house employees. In Marcos’ case, his former employer paid him minimum wage, but broke the law in other ways. Marcos typically worked around forty hours a week, sometimes up to fifty, “but that didn’t show up on my paystubs.” Even when his paycheck did reflect the fact that he had worked

overtime, it was usually short on hours, and he never got paid the right overtime rate. There is no question that the restaurant knew it was violating the law, and did so deliberately. “[I]t happened a few times,” he explains. “After I had punched out they made me stay and keep working because I had run out of hours.” He tried to talk to his superior, the chef, “but he didn’t care, he didn’t think it was important.” Neither did the manager.

In the three years that Marcos worked at this restaurant, he tried to call out sick twice. One of the strongest arguments for why restaurant workers should get paid sick days is simple: sick people spread their germs, and that is a real problem when those germs wind up on our food. When ill restaurant workers come in coughing and sneezing, they pose a direct threat to public health. In addition to benefiting individuals, then, the risk of contagious illnesses like the flu spreading to us through our food can be reduced if employers grant paid time off. In fact, workers without paid sick days report being 1.5 times more likely than workers who do get paid time off to work when they have a contagious illness (Smith & Kim, 2010, p. 6).

In light of this and other considerations, in 2014 the District expanded its paid sick days law to cover restaurant workers. Nevertheless, Marcos’ employers did not respect his rights. “I was never denied a sick day,” he says, “but when you call and say that you’re sick they’d make you feel bad about it . . . they put pressure on you, say ‘We need you and it’s your obligation to come in.’” On the rare occasion that Marcos did take time off when he was ill, it was unpaid.

Late or withheld wages were also common. Even when an employer agrees that it owes its workers money, that is no guarantee of payment. Cora’s employer, the boutique hair salon, paid her late more than once. She described the feeling of finding out: “I woke up one morning expecting a direct deposit notification from my bank . . . I didn’t get it. It’s still in the negative. It’s payday, what’s going on?”

Even Harriet, who works for the District government, had to fight for her wages on two separate occasions. The first time, in early February, she was out of the office and did not submit her time sheet on schedule. When she returned, Human Resources told her that she would have to wait until the next pay period to get her wages. So, when that rolled around she submitted her time sheets for the current pay period and the previous one. She still did not get her money. Eventually, she contacted her congressman, whose office contacted Human Resources. Human Resources finally paid Harriet in March, more than a month after the fact. Then in April, Harriet's check got held up again. When Harriet's daughter confronted Human Resources about it, they told her that "[Harriet's] supervisor said she had an error in her paycheck and so we was waiting for her to correct it, and she didn't." Problem was, Harriet did not know about the error. She says nobody ever told her about it, and even when she and her daughter spoke to Human Resources, Human Resources did not explain what the error was. Eventually, they just wrote Harriet her check with no additional explanation.

Are you sure you're entitled to those benefits?

Smaller numbers of workers reported unlawful deductions (4, or 12%), and being denied workers' compensation or unemployment benefits (6, or 18% each). Unlike many of the other problems that workers talked about, it was not always clear that these last two issues – being denied access to workers' compensation and/or unemployment benefits – constituted wage theft. As I argued in Chapter 1, it is fair to include these violations under the umbrella of wage theft because the unlawful denial of these benefits causes an employee financial harm while bringing a monetary benefit to the employer. With that said, these processes and systems can be complicated to navigate and understand, especially for a layperson. And I was, of course, hearing

about these experiences secondhand, sometimes months or even years after the fact. I cannot be certain, in at least some of the situations I heard about, that the employer had behaved illegally or even unfairly.

With that caveat, in some cases a workers' rights were clearly violated. Tonya, for instance, seriously injured both of her knees in February of 2017 when she fell at work. When there's a workplace injury, DC employers are supposed to file an incident report, inform a worker of her rights regarding workers' compensation, and work with the workers' compensation system to resolve claims (DC Code § 32-1501 *et seq.*). Tonya's employer did not fully inform her of her rights or work to process her claim. She was proactive, though, visiting a number of doctors and working with them in order to submit her paperwork. But, she did not hear anything about her claim for several months.

"I called workman's comp, I want to say, in January [of 2018] and inquired as to where my workman's comp benefits were, because my unpaid leave was running out," she explains. "They in return told me that my job had closed my workman's comp case out in March of [2017], shortly after I filed." Without giving any notice to Tonya, her employer and the District government had decided to end her claim. She then contacted her employer's Human Resources department. "I was then told that they . . . were not aware that I wanted to use workman's comp when I went out for [my] surgery, this is the first time they're hearing about me wanting workman's comp and my fall." Tonya was flabbergasted. "I'm like, 'What do you mean this is the first time you're hearing about my fall? There was an incident report that was filed! That's how this workman's comp paperwork came to be!'" This series of delays held up the processing of her paperwork by more than 9 months, depleting Tonya's resources and causing her to delay

the surgery she needed to fix her right knee. Ultimately, it also delayed her ability to return to work.

Lydia, in turn, had to fight for access to unemployment. She is a quiet woman, calm and gracious, and she exudes a sense of sadness. Lydia's primary difficulty in life has been that she suffers from major depression. For a while, she had a good job through an organization that does job training and placement for people with disabilities. When Lydia felt her depression beginning the process of spiraling out of control, she asked her employer to allow her to take some unpaid leave under the Family and Medical Leave Act in order to deal with it. Lydia then took about two weeks off from work, although she did not know that her employer had denied – without explanation – her request to use FMLA leave. While she was out, her employer contacted her to let her know not to return to her job site. Effectively, Lydia had been terminated.

“When I went to apply for unemployment,” says Lydia, “they denied me. I had to go to court, and I thought, if you're not working, you're not getting any income. How can you be denied unemployment?” The organization that employed her argued that although it had removed Lydia from her job, and although it had instructed her not to come to work and was no longer sending her a paycheck, she was nevertheless ineligible for unemployment insurance because she was still on their payroll. “The judge couldn't believe it,” Lydia explains. “[She] was like, ‘But [Lydia] wasn't being compensated! So how can you deny [her unemployment]? This is a waste of my time, the city's time, her time, and your all's time to even come in here and deny her.’” Lydia won her case, but – as with Tonya – the delay caused her unnecessary stress and financial hardship.

“Fuck you,” or, sometimes when you speak up, you learn to shut up

Twenty (or 61%) workers said that they had been unfairly punished or retaliated against for complaining about working conditions, especially when they took some kind of formal or informal action to try to recover their wages. This was one of the most common issues that I heard about. In many cases, this kind of retaliation is undoubtedly illegal. The District’s Wage Theft Act prohibits employers or “any person acting on behalf of the employer” from threatening or punishing any employee who has made a complaint or “is believed to have made a complaint” to any person that their employer has not paid them properly (DC Code § 32-1311).

This is a broad prohibition on retaliation. Read plainly, it covers not only workers who lodge formal complaints with the District government or in the courts, but also those who informally complain to their supervisors or employers that they have not been paid properly. Retaliation, though, is a hard thing to prove. Along with 49 other states, the District practices at-will employment, which means that employers can fire workers for almost any reason, or for no reason at all. It is easy for employers to come up with alternative, plausible excuses for why somebody’s been let go or had their hours reduced, knowing that the real reason can be shrouded behind the logic of at-will employment.

Ruben, for example, was used to working long hours at the Homeless Youth Retreat, a non-profit organization that provides housing and counseling for the District’s homeless. “Within a two week period, I was knocking out hours, like 88, 96, 104, 112,” he says. “I was crushin’ ‘em!” One big problem: Ruben got paid the same rate for every hour he worked, no overtime, even though he was not exempt. At first, he tried to talk to his supervisors about it. “Fuck you,” one of them said. “We’re not paying you, man. You’re lucky we’re paying you that!” But Ruben’s got his pride. He is college educated, a veteran, and he could not let it lie. So he

gathered up his paystubs and filed a wage claim with the DC Department of Employment Services. The agency determined that the Homeless Youth Retreat owed Ruben about a thousand dollars, plus penalties. After some negotiations mediated by the agency, Ruben walked away with \$2500, less taxes.

That was not the end of the saga, though. “Now that all the smoke has cleared, I’m not getting more hours,” Ruben says. He has gone from working 80 or more hours every two weeks to only a single shift. “I want to play it off, but one day?” Ruben asks me, incredulous. “Just *one* day? I got scheduled two days a month? I’ve been with you more than 15 years and that’s all I get called for? Is this retaliation behind me going to court?”

Others had similar stories. James is a heavy-set, older African American man, and he at first appeared to be cheerful in spite of his workplace difficulties. He was not. “I got to laugh so I don’t cry,” he explained to me the first time we met. James has been working at Market, a large supermarket chain, for several years. As a unionized employee he enjoys better benefits than workers at a lot of grocery stores. Nevertheless, he told me that over the years he has frequently run into problems, and his union has not done enough to help him.

James’ big issue is that his paystubs are not right. They are sometimes missing hours of overtime, and he has also seen his Sunday shifts – which pay more – get moved to other days. “It’s a lot of stories,” he warns me early on. While the details of the stories change, the basic formula stays the same: James says that his paycheck will be short, and he will protest; his employer will find merit to his claim and compensate him, at least in part; frequently, James will then experience retaliation after complaining about his manager’s actions.

According to James, the punishment Market inflicted on him varied by occasion. A few times, Market cut his hours. After he complained about his Sunday hours getting moved to

another day on his paycheck, he did not get scheduled on Sundays for a couple of weeks.

Another time, James – who works full time – got scheduled for only 19 or 20 hours for a couple of weeks straight. Once, Market transferred James to another, much less convenient store. He could not take public transportation to the new store, and either had to take an expensive taxi or walk several miles along a dark highway. “It got so dangerous to where I had decided that [if] I’m leaving at 9 o’clock at night, I’m not going to walk down the highway,” James tells me. “My life is more important than that. So I ended up having to catch a cab. The cab is costing me \$25, \$30! But I’m making \$11 an hour. So that’s three hours of my day that’s gone to a taxi cab.”

But the worst experience was when the retaliation ended with James’ suspension. After Market paid him some of his missing wages, “I thought everything was okay,” he says. “Then they sent me to [the night shift], started writing me up.” He asked the union for help, and his representative talked to his supervisors. The disciplinary write-ups continued, though. “Two nights later, they wrote me up again. The union called back and said, ‘Hey, can y’all stop writing him up?’” James’ supervisors agreed, then wrote him up the next day. “So I’m on the third write-up, that’s when the suspension happened.”

James filed a complaint with the National Labor Relations Board, which determined that he had been illegally suspended and ordered Market to pay him about \$2000 in missed wages. He won, in a way, but over time James’ belief that he was being retaliated against for speaking up about his wage theft took its toll. “I’m almost afraid to ask for my money, and it shouldn’t be like that!” he says. Would he speak up if his paycheck was short again? “It does discourage you,” he explains. “I got my check that’s coming up next week, it’s going to be messed up And I’m not going to say anything. I’m going to leave it alone.” Other Market employees apparently also got the message. One who was having similar problems told James that he was

not going to speak up because “he couldn’t go through the same thing I was going through.” Ruben feels the same way: “I don’t argue no more, I stopped arguing.”

James’ story illustrates some of the biggest problems associated with wage theft and retaliation cases. It is reasonable to read what I have written and be skeptical about the details. Was James, a member of a prominent union, really having repeat experiences where his supervisors would shave or move his hours so that Market would have to pay him less? On paper and in the abstract, this version of events seems at least a little unlikely. What were his supervisors’ motivations, and why didn’t his union take meaningful action? Maybe James was just mistaken, but I doubt it. He knows better than anybody what hours he works in a given week, and when he has complained, Market has admitted fault and paid him at least part of what he thinks he is owed. Plus, I saw the order issued by the National Labor Relations Board regarding his unlawful suspension. In other words, there are outside markers of accuracy and corroboration to James’ story.

But even accepting that James’ telling of his story was accurate, it is not clear that he was retaliated against for complaining about his wages. Maybe it is because James confronted his supervisors about his unpaid wages that his hours were cut, and he was transferred, and he was unlawfully written up and suspended. On the other hand, maybe his supervisors were just incompetent. Maybe they were willing to engage in petty, unfair behavior for other reasons. Maybe the scheduling issues James experienced were just how the hours fell those weeks as Market shifted personnel or responded to changes in buying trends. Maybe, maybe, maybe.

I do not write these things to cast doubt on James’ interpretation of events, because I credit his story, I saw supporting evidence of the facts, and he knows better than anybody what his experiences have been. The point is that employers like Market – or the Homeless Youth

Retreat, in Ruben's case – can easily spin alternative, plausible explanations that define a retaliatory punishment as nothing more than a mistake or impartial business decision. Retaliation is a powerful tool for employers, in large part because the event is so easy to shroud in uncertainty.

Other (legal?) degradations and indignities

As I wrote in Chapter 3, I usually did not broach the topic of “wage theft” until partway through my interviews with workers. Instead, I asked people generally about their experiences with being mistreated at work before delving into more specific questions about wage theft. As Table 4.1 shows, I also asked all worker-participants whether they had had certain unpleasant experiences, some of which do not fall under the umbrella of wage theft, and some of which might not have been illegal. Most had.

Workers frequently reported feeling discriminated against on the basis of their age, race, religion, national origin, or sex (20, or 61% of participants). Myron, for instance, was the only black man who worked for his employer, a construction subcontractor. He is in his late 40s, stocky, and although he sometimes has trouble finding words, he comes across as introspective and thoughtful. “My thing,” he says, “is that no sooner do people see a person of my race, the first thing they think is that we're lazy, we don't want to work, we're not going to come to work, we're just going to come and grab a few paychecks and then come up missing.”

What Myron's expressing here is one of the oldest, ugliest, and most racist viewpoints in this country. For centuries, African Americans have been portrayed as childlike, unreliable, and lazy (Verney, 2013). His understanding was also validated for him by a woman in his employer's

human resources department, who told Myron that he was being watched to make sure he wasn't stealing tools – a conclusion he had already reached.

Both federal and District law protect workers from discrimination based on race. But lawsuits are complex, confusing, and intimidating things. Even assuming an individual worker can overcome all of the personal and legal hurdles to filing one, workplace discrimination cases are notoriously difficult to prove (Selmi, 2000; Clermont & Schwab, 2009; Modesitt, 2010). For the large majority of workers who feel discriminated against at work, there is often no real legal recourse or solution available to them.

Most workers also reported that they had to work in unsafe or unhealthy conditions (17, or 52%), that they experienced verbal abuse or degrading treatment at work (18, or 55%), and that their employers punished them unfairly (24, or 73%). Sometimes, these experiences overlapped. James, the grocery store employee, was once instructed to stand in front of a cardboard baler by his supervisor, despite signs warning against that. When James refused, his supervisor yelled at him and threatened his job. Predictably, when the baler ejected the cardboard, James injured himself while jumping out of the way. His supervisor then accused him of faking an injury, although he was not, and refused to file a workers' compensation incident report. According to James, this is not abnormal behavior. "They cuss at me all the time," James says, "they stick their fingers in my face and feel like they can yell and shout and cuss at you anytime they want to."

Many workers told me about abusive, unpleasant, and unfair superiors who made their lives more difficult. But not every degrading act came from employers. Sometimes, supervisors just worsen an already awful situation, as with Miranda. She is a thin, African American woman in her 50s. She speaks to me with palpable frustration, regularly punctuating her sentences with

four-letter words to drive home her points. At the same time, she is unfailingly polite to me. Miranda worked in retail at a large chain store, and mainly handled the fitting rooms. For a few weeks, she tells me, “[e]very Sunday I worked, somebody was defecating on the floor, [and they] put a napkin over top of it [that said] ‘N----r get it up.’” The first time, the situation was bad enough that Miranda had to immediately clean it up herself. “I told [my supervisor], ‘That’s not [in] my job description and I won’t be doing that again.’” The second and third times it happened, her supervisor still told Miranda she had to clean up the mess. “I don’t know what [my supervisor] had against me,” says Miranda, “but she was just really nasty ‘Oh no, we’re not doing this,’ I said, ‘You know what? Now I’m sick. I need to go home.’”

Not all of the unfair, disgusting, and degrading acts that I heard about are illegal. Even the ones that are illegal are, practically speaking, often not actionable. James’ supervisor technically violated the law by refusing to fill out an incident report after James’ work-related injury, but because James only missed two days of work, and not the three required for workers’ compensation to kick in (DC Code § 32-1505(a)), there’s no legal remedy available to him. Nor could Miranda have filed a complaint against her supervisor, whose behavior offended Miranda but was not at all illegal. But, these workers and others nevertheless felt these experiences keenly, and reflected on them with bitterness and anger.

The patterns and qualities of wage theft

To summarize, significant percentages of the workers I interviewed reported experiencing various forms of wage theft, in addition to other kinds of rights violations and degradations at work. This chapter makes two contributions to what we know about wage theft. First, these findings bolster existing research, as they are consistent with what other researchers

report. Participants in this study report the same kinds of violations and incidents of mistreatment as low-wage workers in other studies, and at similar rates (see, e.g., Bernhardt et al., 2009; Gleeson, 2015, 2016). As I have discussed, quantitative studies on wage theft find high rates of minimum wage and overtime violations, as well as other forms of wage theft, like time shaving and misclassification (Bernhardt et al., 2009; Cooper & Kroeger, 2017). And Shannon Gleeson's (2016, p. 40) examination of low-wage workers in Northern California matches what my participants told me about their experiences that may not have been illegal at all: 64% of Gleeson's workers reported verbal abuse or degrading treatment, and 44% reported having to work in unsafe or unhealthy working conditions. To date, however, there have not been any comprehensive studies of wage theft among the District's working poor. This study replicates other researchers' findings, but does so in a new place that is widely considered (relatively speaking) to be extremely worker-friendly (see Rose et al., 2018).

Second, these findings build upon existing knowledge of the dynamics of wage theft among low-wage workers. Research focusing on wage theft has been quantitative, not qualitative, and focuses on the immediate economic costs of basic wage and hour violations. This chapter begins to situate wage theft within the context of the lives of low-wage workers, primarily by highlighting their economic insecurity, introducing their fears and concerns, and highlighting some of the difficulties they face in asserting their rights and confronting their superiors. Low-wage workers frequently report experiencing wage theft and other acts of workplace mistreatment, and at the same time, express deep concern about their financial future and ability to advocate for themselves. In order to gain a meaningful understanding of wage theft and craft careful, effective policy responses, it is crucially important to first understand the realities of working people's lives. The next chapter delves into the harms of wage theft in

further detail by discussing what it means to the working poor when their wages are late, short, or entirely missing.

With these data in mind, there are a number of key takeaways about the patterns of wage theft.

First: Nobody is immune from wage theft. Wage theft research to date has largely focused on the experiences of marginalized people, especially undocumented immigrants (e.g., Fussell, 2011). This project does so as well, but I spoke to a number of people who would have had smooth and decent lives but for the wage theft of their employers. Carl and Harriet, for example, both experienced wage theft while working for the District government, while Kira and James reported wage theft despite the fact that they are union members. Harriet – whose story I told above – had trouble getting paid, which she blamed on her supervisor, Geoff. This is not unreasonable, considering their acrimonious relationship and the fact that on one occasion, Human Resources told Harriet’s daughter that Geoff had instructed them not to issue Harriet’s check, citing some error that Harriet never did get an explanation about.

In Carl’s case, the government agency he worked for denied him his right to use a significant amount of paid sick leave, which ultimately cost him tens of thousands of dollars. DC’s paid sick days law does not limit use of sick time for physical illnesses; people can also use their leave for mental health reasons (DC Code § 32-531.02). Nor does the sick leave law crowd out separate agreements that provide better benefits. In Carl’s case, he had accrued over 1200 hours – about 30 weeks – of paid leave after more than a decade as a unionized employee. Under the terms of his collective bargaining agreement, DC’s paid sick days law, and DC government policy, Carl was entitled to use this leave when he fell into a severe depression following a

particularly upsetting event at work. Worse, the event in question that created Carl's mental anguish was actually caused by one of his supervisors, Andrew.

Carl clearly documented his depression, working with his healthcare provider to give his employer notes from both his primary care physician and a psychologist. He also informed his employer that he wished to use his accrued leave during his treatment and recovery. Time passed, though, and Carl was not getting any income. Over the course of months, his savings dwindled, and his union was not helping him figure out why he was not allowed to use his earned leave. Finally, after more than 6 months, Carl found out that Andrew, the same supervisor with whom he had had issues in the past, had deliberately placed him on unpaid leave. "I'm not going to pay him," Carl's union representative reported Andrew saying. Instead, Andrew placed Carl on "AWOL" status – unpaid leave, for those who are absent without a good excuse.

To be sure, certain kinds of workers are less likely to have their wages stolen, such as those who are members of a union (Cooper & Kroeger, 2017) or who work at large organizations, which tend to have established policies and procedures for complying with the law (see Bernhardt et al., 2009). Nevertheless, most low-wage workers have at least the *potential* to experience wage theft. Often, wage theft is not the result of an employer's policy or practice, but the petty, mean, lazy, or just plain uninformed actions of individual supervisors. Existing wage theft research has not paid careful attention to the power wielded by individual managers, but oftentimes it is these individuals who are the greatest source of distress for low-wage workers. They have the authority and autonomy to violate people's basic workplace rights, and do so with impunity even when these actions directly contradict an employer's established procedures. Miranda and James, for example, worked at large, national chains that surely have policies against time shaving, yet they report that their supervisors frequently engaged in it. Similarly,

Kira's employer has a clear policy surrounding sick leave, but she often cannot get her immediate supervisors to adhere to it.

Second: The examples I have given throughout this chapter highlight an important fact about wage theft: rights violations do not occur in isolation. Rarely did workers report that their employers exploited them in only one way. Bad acts are red flags for bad practices, an indication that an employer is not operating aboveboard in general. Often, the various forms of workers' rights violations that occur overlap and roll into one another, coalescing into a harm that is altogether more severe than any individual act. The end result is that many low-wage workers experience a slew of abuses, which can quickly compound and worsen if they speak up. This point has not been explicitly made in prior research, although it is intuitive and, most importantly, has clear implications for enforcement strategies.

Third: Offenses run the gamut. Some people told me that they thought they had been cheated out of a few hundred dollars, a couple days' wages. Some reported being cheated out of tens of thousands of dollars, even without considering damages. Wage theft can be large and infrequent, small and constant, and everything in between. Oftentimes, research focuses on the experience of the "average" worker, whose losses are calculated according to large data sets (e.g., Bernhardt et al., 2009; Galvin, 2016; Cooper & Kroeger, 2017). This kind of analysis is excellent for obtaining an overall, big-picture understanding of the problem, but elides the fact that there is a vast range in experiences with wage theft, both in terms of how it plays out and how much it can cost a person.

Fourth: As the next chapter will explain in detail, the immediate economic consequences of wage theft are only the beginning of its harms. The discussion around wage theft has overwhelmingly focused on its monetary costs, and while some researchers have pointed out that

this lost income leads to higher poverty rates (Cooper & Kroeger, 2017), there has not yet been an in-depth, qualitative examination of what the full range of wage theft's consequences are for the working people who experience it.

In the next chapter, I explore the range of these harms in detail. I argue that in order to meaningfully and effectively combat the problem of wage theft, it must be understood as a *social* problem, and not an individual one. This is both because of the massive harm that it causes society in the form of withheld dollars and unpaid taxes, and because the act itself cascades into a series of other hardships, causing deep and significant harm to the people and communities that experience it. And, as I discuss in Chapter 7, this harm is sometimes even worsened when workers attempt to use formal legal processes to assert their rights.

Chapter 5: The Costs of Wage Theft

What does it mean to a person when their employer denies them their basic workplace rights? What consequences does wage theft have for the low-wage workers who experience it, and why is this a problem worth paying attention to?

These are the key questions that I set out to answer with this research. In this chapter, I explore the myriad consequences of wage theft. In brief, wage theft's harms are deep and significant. The economic consequences of withholding a person's earnings can be great, due to the fact that many working people have limited (if any) savings, and must constantly work and earn in order to eke out a basic survival. But what we must understand is this: While wage theft's economic harms are serious and extensive, the damage that wage theft does to the working people who experience it goes far beyond the dollars and cents of it all. Losing money in any given pay period is only the beginning. For most workers, wage theft's economic consequences can cascade into a parade of significant, at times long-lasting injuries, including homelessness, anger, depression, and physical illness.

As I have discussed throughout this dissertation, studies have consistently shown the vast economic consequences of wage theft. Minimum wage violations alone are estimated to cost workers about \$15 billion per year in lost wages (Cooper & Kroeger, 2017). This form of theft affects millions of people every year, between roughly 17 and 26% of low-wage workers, and costs them a significant percentage of their overall income (Bernhardt et al., 2009; Galvin, 2016; Cooper & Kroeger, 2017). Workers who are paid less than the minimum wage are more likely to fall below the poverty line, forcing them to rely on social programs and placing unnecessary stress and pressure on the safety net (Cooper & Kroeger, 2017).

Other violations are also frequent, including unpaid overtime, time shaving (Bernhardt et al., 2008), and misclassifying workers as independent contractors (Leberstein, 2012; Carre, 2015). Wage theft in general imposes meaningful losses on society, both by artificially deflating the tax base, and by ensuring that working people – whose spending helps drive the economy – have less money to spend in the first place. Independent contractor misclassification alone – also known as payroll fraud – is estimated the cost the federal government billions of dollars in unpaid taxes (Tax Administration, 2009), depleting important safety net programs like Medicare and unemployment insurance that so many people depend upon (de Silva et al., 2000). These costs only increase once losses to state and local governments are taken into account.

What has been missing from the analysis of wage theft is a detailed and thorough discussion of what it means to people who feel as though they have been denied their basic workplace rights. A great deal of research has focused on the economic harms which flow from employer violations of our nation’s landmark wage and hour laws. My project builds upon this work, both by analyzing these economic consequences in detail and by examining the personal and social consequences of wage theft from the perspectives of low-wage workers themselves. A central thesis of this dissertation is that wage theft is not an individual problem, but a societal one. It is complex and varied, based heavily on the context of a situation, and its harms reverberate beyond the immediate act and beyond the individuals who experience it.

Consequently, in order to meaningfully respond to this problem, we must work to craft strategies that are equally contextualized, capable of dealing with the realities of how wage theft plays out and is navigated by the people who experience it. The first step to doing this is to understand the many ways in which wage theft causes harm to the people who suffer it. This

chapter fully discusses what low-wage workers themselves have to say about the effects of wage theft.

Dollars and cents in real life: The economic consequences of being cheated

“The fundamental issue we’re dealing with,” attorney Jonathan Tucker says, “is if people were just paid the wages that they work, that they earn, well, you no longer have a failure to pay rent, which is what I was dealing with [when I worked] at Legal Aid. You no longer have credit card debt collection, which is what I was dealing with at Legal Aid, or a foreclosure case.”

Jonathan and I are sitting in the conference room of DC Wage Law, the Chinatown law firm that specializes in helping low-wage, mostly undocumented workers collect their earned wages. It is a bright, welcoming place, with a conference table big enough to seat six or eight people. On one wall hangs a map of Central America, filled with dozens of brightly colored pins, which pinpoint the (typically small and rural) hometowns of the firm’s clients.

Jonathan is reflecting on the fact that when he worked at Maryland Legal Aid, he felt as though he was helping his client navigate difficult situations, but failing to get at the root of their problems: poverty. Suing bad faith employer for wage theft, on the other hand, feels like a much more comprehensive, thorough approach to improving clients’ lives. “All these other problems that are generated by the failure to pay wages are resolved,” he explains. Wage theft lawsuits are “a way to attack the cancer” itself.

Jonathan Tucker hit on something extremely important, a theme that recurred throughout my interviews: for the low-wage people who experience it, wage theft is about more than just the immediate loss of money. Often, the act itself causes a series of other, escalating harms. It is important to put this act in context, because the real extent of the damage that wage theft does

cannot be comprehended unless readers first understand the lives of the people in this dissertation. For those living on the economic margins, there is a thin, blurry line between survival and tragedy. When it comes down to it, most low-wage workers live paycheck to paycheck, with some hopes and prayers thrown in in a desperate effort to spackle everything together. It is a delicate balance, and even small shifts can cascade into serious consequences. This is especially true in a place like the District of Columbia, where the cost of living is among the highest in the country.

If wages are late, short, or entirely unpaid, the whole fragile scheme holding together a person's life is put in jeopardy. When the money you were expecting suddenly is not there, there's no easy solution to the problem. Everything gets thrown off and becomes uncertain. You scramble to figure out how to pay bills and rent while still having enough left over for food and transportation, because if you don't eat and you can't travel then you can't get to work, and if you can't get to work, you can't pay for the things you need (see Shipler, 2005; Edin & Shaefer, 2015). Workers who experience wage theft are forced to navigate a maze of hard choices. Making it through becomes a question of strategy: Who can you call? Who can you borrow money from? What is the best approach to take with utility companies, with the phone company, with the landlord? Do you fall behind on your rent, or do you make sure you have a working phone and enough food?

Often, the people experiencing wage theft have trouble paying for the things they need, much less the things they want. Over and over again, workers told me that when they are not paid properly, they struggle to meet their basic needs. Sometimes it works out, at least for a while. Landlords can be understanding, for a time, and friends and family can lend money, if they have it. But there are costs associated with these things. People begin to doubt you, and

there is never a guarantee of compassion and understanding. And, most of the time, it is hard to feel proud when your hat is in your hand.

In the last chapter, we met Harriet. She has five people in her household to support, including her sick dad, and she only makes about \$40,000 a year. Over the last few years, she's had a lot of trouble with her health. Even though Harriet works for the District government, she has had a hard time navigating the landscape of laws that are supposed to protect people like her, like the Americans with Disabilities Act and the Family and Medical Leave Act. Her efforts to invoke these laws have caused some fights at work, especially with her direct supervisor, Geoff. Harriet says that Geoff is not willing to provide her with reasonable accommodations for her disability, like an ergonomic workstation, and she gets harassed when she needs to work a shortened schedule. On two occasions, for reasons that Harriet does not fully understand, the government agency she works for failed to pay her on time.

When Harriet's employer held up her checks, her life spun further into a place of stress and uncertainty. Electricity, water, food, housing, her father's medicine – these things are all necessary to her existence, they all cost money, and the people and companies who control them expect regular payments. “I had to make arrangements with the rent,” she says, her voice run through with frustration. “[My landlady] was getting tired, because nobody wants to hear that your job is holding your pay. You're a government employee! They don't believe that! So I had to show proof that I've been begging for money.” She had to repeat this aggravating, shame-filled process with all of the people and companies who controlled her access to the basic necessities, with varying degrees of success.

Other workers told me about similarly difficult choices that they had to make. Marion prioritized doing well at her job over making noise about her unpaid wages, because the job

mattered to her. It was a stepping stone to independence, and Marion is eager to be self-sustaining. She has HIV, which has been hard. Coworkers have bullied her for it, and the disease killed her partner about ten years ago. In the last few years, she collided hard with the criminal justice system and lost custody of her children. But when Marion got out of jail, she signed up for a workforce reintegration and training program run by the District government. It seemed like a good next move. People in the program get a sub-minimum wage stipend of \$9 an hour, receive job training and professional development, and work at local businesses for up to forty hours a week. Any hour over forty, the business owner has to pay the worker overtime for.

Through this program, Marion worked about sixty hours a week at a hair salon in Northwest DC, but her employer refused to pay her overtime, telling her “I don’t have it in my budget to pay you.” This was grating, to say the least. “I worked from 7 in the morning until 9 o’clock at night for her,” Marion tells me, “and sometimes she wouldn’t even give me bus fare to get home.” But Marion was concerned that if she quit or refused to work, she wouldn’t get a good reference, and she badly needed a good reference. So she kept at it, through the long days, the tiring work, the unpaid hours, and the struggle to find bus money. One day, one of Marion’s coworkers noticed she was falling asleep at the salon. Her schedule was obviously long, and exhausting, but there was more to it: Marion was hungry. “You need something to eat? You need to recharge your battery?” he asked her. She did, and when her coworker heard that she didn’t have any money to buy herself food, he bought her some.

In the process of picking and choosing among your obligations, of begging friends for money and asking for extensions, your reputation can take a hit. Creditors, after all, have the power in the relationship, and – unlike many low-wage workers – they do not have to be forgiving of the people who owe them money. “There’s going to be people who are not going to

want to deal with you, they're just going to write you off [if] you don't pay your bills on time," says Kira. "We sure know that if T-Mobile called me up right now and said, 'Look, your phone bill is due. You don't pay it by tomorrow, [your] phone is going to be off,' and then I'm in jeopardy of my credit being off, which we know is why we can't get the homes that we need, cars that we want, because we have bad credit."

From the perspectives of workers, these situations are hardly fair. They worked, they earned, and they should be paid. When they are not, it is not right that they should have to suffer the consequences of undeserved poverty. "My friends used to tell me I was a fool . . . I should have just did my 40 and went home," laments Marion. "I would have to borrow money to pay my gas or electric bill," Miranda tells me, "because [my employer] was messing up! And I told them that, you know? I earned this!"

"I think it was cruel," says Carl, whose supervisor refused to let him use his months of saved-up sick leave when Carl fell into a severe, work-related depression. "How can someone decide for [me] my way of being? I have a mortgage, I have a brand new car, I have family to take care of, I have child support . . . I got to put gas in the car, I got to put food on the table, I got to pay electric, gas, water, and you know, maybe I want to take the kids to the park or something!"

There is something important to note about this discussion so far: All of these situations that are so difficult for workers to navigate have involved nothing more than life's mundane requirements and obligations. Low-wage workers experiencing wage theft often have trouble keeping up with the basics when there is even just a hiccup in their earnings. The longer that wage theft goes on, the more frequent or severe these hiccups become, the harder it becomes to

keep everything going. The pressure of poverty builds over time, and the chance that true tragedy will strike and upend a person's life only grows.

Eventually, for all but the luckiest, trouble will strike. Your car breaks down, you injure yourself, you get sick, or, over time, things just pile up to the point that you can no longer dig yourself out. While Ameen was struggling to get the embassy to pay him his salary, he got sick and had to go to the emergency room. "I go to hospital when I sick only for emergencies, and emergency is not full treatment," he says. It is a stopgap, and an expensive one: Ameen left with some prescriptions and a \$1500 bill. Manageable, if he had been paid the more than \$40,000 he had earned. Combined with everything else, though, it was too much. "I went for emergency and I did not pay my property tax for my car and my first car was being taken," he says. This was a worst-case scenario for Ameen, because the only way he had been able to make ends meet was by moonlighting as an Uber driver. Ultimately, he had to borrow a significant amount of money from family members to buy a second car, placing him further in debt. Then, things got worse. "I was given eviction letter," he says.

Eviction. That is a terrifying thought, and one of the biggest threats to poor people who experience wage theft. When I met with them, both Ameen and Naomi's landlords were in the process of removing them from their homes, and Caleb and Lisa had already been evicted. In Naomi's case, her landlord had also been her employer and onetime lover. It was this relationship that kept her working, salary-free, for more than a decade. Unable to find another job, Naomi could not afford to move into a new place, and she could not stay in her own. Had she been paid, she would have at least had some savings to blunt the impact of losing her job.

Even for workers who are not facing immediate homelessness, the prospect is a dark shadow in their minds. Cora, Lydia, Carol, and others all talked to me about the fear they felt as

a result of not being able to pay their rent. “I feel like I’m still homeless,” Carol says, “because my landlord could pick up the phone any day and tell me what court he will go to and say ‘Judge, she owes me \$70,000 in rent and I want her out of my property.’ What judge do you think that won’t tell me to get out, and I won’t even [get] 30 days?’”

The thing about poverty is this: the experience of being poor does not come from one aspect of adversity, like bad housing, or food insecurity, a lack of healthcare, or any other single issue. The essence of poverty lies in how a person’s hardships interact, coalesce, and build upon one another. “Isolating the individual problems [of poverty], as a laboratory would extract specific toxins, would be artificial and pointless,” writes David Shipler, because “[t]hey exist largely because of one another, and the chemical reaction among them worsens the overall effect” (2004, p. 11). It is this chemical reaction that defines the lives of the working poor, and the danger of wage theft’s overflowing harms that threatens the delicate balance of a person’s existence.

This fact is sometimes glossed over, especially by those who do not know what it is like to be poor, but the truth is well-known to people who work with those living on the economic margins. “[O]ne exercise that I do with my community members,” Kristi Matthews tells me, “is we have them come up with the biggest issue [that they face].” Kristi works as an advocate for the District’s homeless. She is also a member of the Just Pay Coalition, and she organizes and educates retail workers about their rights in her spare time. She is passionate about wage theft because she has experienced a lot of it, starting with her very first job in fast food, and ending with a recent part-time job working retail at a department store in the District. Hard work and economic precarity are two of the defining features of Kristi’s background. After Kristi’s community members come up with their biggest issue, “we have them do a web. [H]ow is it

impacting every aspect of your life? So someone might put, ‘I can’t find a job, which means I can’t find housing, which means I can’t cook the food I need, which means my health has gotten worse, which means I have far more debt.’ And you’d be surprised at how people’s webs start different, but each one has the same seven things.”

Sociologist Matthew Desmond (2016) drove this point home in *Evicted: Poverty and Profit in the American City*, a book that is as heartbreaking as it is essential to read. Over the course of a year and a half, Desmond studied the housing-related experiences of a small number of families living in Milwaukee. In *Evicted*, he reveals in stark detail the ways in which eviction is both one of the largest consequences and *drivers* of poverty. It is a consequence in that poor people have difficulty paying their rent, and frequently experience eviction as a result. It is a cause of poverty because a slew of negative consequences flow from eviction itself. It leads to joblessness, as people who are struggling to find a place to stay on short notice are unable to work, and are more likely to be fired from their jobs. The process itself also hurts families. Moving is expensive, and so is renting a storage unit for your things. New apartments require security deposits and additional rent. Beyond that, eviction is traumatic. Children must change schools and abandon friendships, and families lack a sense of permanence. This destabilization extends to communities, as the constant flow of new faces prevents the forging of community bonds that are so important to creating safe, healthy neighborhoods.

For many working people, wage theft is the blight at the center of their web of hardship. Pay-based rights violations expose people who are already struggling to other forms of economic trauma. The raw numbers on wage theft are shocking enough. Many are appalled to learn that minimum wage violations cost low-wage workers \$15 billion in lost earnings each year (Cooper & Kroeger, 2017), and that various forms of wage theft cost the average low-wage worker about

15% of her annual earnings (Bernhardt et al. 2009). But these numbers do not fully describe the texture of the economic hardship that low-wage victims of wage theft must survive, as immediate losses in earnings cascade into more serious hardships. Nor, as the next section will show, do these figures reveal the deep emotional reaction that many working people have when their rights are violated.

The emotional consequences of wage theft

So far, I have talked about wage theft in terms of its economic harms. And, as I have pointed out, most of the research on wage theft has focused on pocketbook issues. But throughout my discussion so far, inseparably woven into the words of the low-wage workers who form the core of this study, are the undeniable threads of emotional trauma. Remember Carl's description of his wage theft as "cruel," or James telling me that he laughs about his experiences to keep from crying? The powerful feelings that these two men shared with me – a relative stranger, somebody much younger and from a very different background – are not unique. I heard the same emotion-filled responses over and over again.

Not every worker expressed strong negative feelings about their wage theft. But, the ones who did not were typically not aware that their rights had been violated. Before our interviews, neither Ashna nor Sabbir knew that their former employers had unlawfully denied them overtime pay. They thought, instead, that this decision simply reflected company policy. It was a discretionary business decision. Because Ashna and Sabbir did not know their rights, their employer's bad practices did not activate within them a strong emotional response. Most workers, however, were generally aware of their own mistreatment, and had strong reactions as a result.

In all of the interviews, workers inevitably told me how their experiences at work made them feel. Sometimes I prompted this discussion by asking them directly. More often, workers' emotions were out in the open, on full display. Their feelings permeated their words, tracing the outlines of their hardship and bolding the details of their pain. When it comes down to it, many low-wage workers do not experience wage theft as just a financial crime. From the perspectives of employers seeking to save money on labor costs, wage theft may be little more than a business decision. But for most of the people in this dissertation, wage theft represents an unjust, traumatic, and deeply unfair exercise of power. It is a signal to a person that their rights do not matter, that hard work is not worth what it should be, and that they are not either.

In this section, I have tried to separate and categorize the non-economic harms that people shared with me. But it is not easy to parse out the different consequences of wage theft, to clearly delineate between the kinds of mental reactions that workers have when their rights are violated. I divide these various reactions into different subsections, but this is something of an artificial practice. In reality, people express a bundle of unhappy emotions and experiences as a response to wage theft, and these expressions are deeply intertwined with one another. For some workers, anger is the most prominent feeling, bleeding easily into discouragement and depression. Sadness rises to the fore for others, flowing into regret, shame, and frustration. Sometimes these emotions lead to or are worsened by physical consequences, too. Therefore, important trends and themes cut across the discussion that follows. To point out one example, I explain in the next subsection that some people view wage theft as a profound rights violation, a denial of their worth as a human being, and that this causes a great deal of anger. But of course, those who view their wage theft in this way do not *only* experience anger as a result.

Whichever emotions figured most significantly among the individuals I talked to, though, the takeaway is this: Separate and apart from the economic damage that wage theft visits upon its victims, it also causes mental and emotional anguish that can be severe and long-lasting for the people who experience it.

“And we wonder why people go postal!”: Anger and frustration at work

“It’s been really frustrating,” Sita explains to me. “I don’t need to deal with this right now in my life. I am starting a new life with my husband, and I want to have a nice life in this country and it’s my first experience working here, and it was unfortunately one of the worst experiences I have had in my life. I have faced a lot of adversity before, I have met a lot of your people, but this is really strange. I never thought this would happen. It’s been very, very stressful.”

Sita worked for a non-profit. Her employer fired her after she took a single sick day, refused to pay her about \$1800 in wages, and retaliated when she demanded her money by threatening to sue her for a variety of vague and imagined crimes. Sita’s new to the area, and while she and her husband are highly educated, they did not initially have a clear grasp on what Sita’s rights and options are. But they are motivated and energized by a deep anger at the injustice that she has experienced, a profound sense that they have been wronged.

Sita’s sharing with me a story that I heard repeatedly. She and I are talking on a Thursday morning in late summer, one day after meeting at the Workers’ Rights Clinic. We are speaking on the phone, so I cannot see her face or read her body language, but it is easy to understand the range of emotions she has been feeling. This is not just because Sita’s eloquent and articulate – she speaks four languages – but because her emotions sit just beneath the surface of her words.

This is how it is with most of the people I talked to, whose powerful feelings of bitterness, anger, and frustration suffused and brought stark meaning to their stories.

Workers commonly express a deep and abiding anger as a response to their wage theft. There are layers to this reaction, different aspects to a person's perceived rights violations that cause them to take offense. Not surprisingly, many workers are upset about the fact that they simply have less money than they otherwise would or should have. Given the importance of money, the fact that most low-wage workers live right on the cusp of not being able to pay for necessities, and the emphasis that our society places on wealth, this is not surprising. That workers are denied material wealth, and that this denial prevents them from being able to manage their finances, grates on them.

Miranda, for example, told me in detail about the frustration she felt when her former employer, a large department store, repeatedly failed to pay her for all of the hours she worked. "It was one time that my lights almost got turned out . . . [my supervisors] was tryin' to figure out what was going on, but I already knew it. The same way they could go in and add hours, they was taking hours away. And I thank God that I was able to borrow money from somebody, and I hate doing that, to make sure I had lights in here."

Kamila, a workers' rights advocate in the District, shares an argument that she had with her girlfriend, Andrea. These days Andrea has a decent job, but that is a relatively new development. Her old employer had a variety of unethical and exploitative practices, but also used old and outdated systems that sometimes led to short checks. "She called me [one day], she was so mad, her check was like \$100," Kamila says. "It was a two week check and it was \$100 because they had put in one day [of work]. And she was so mad. Her coworkers were trying to calm her down. She was doing the whole thing, and . . . it was a struggle. Because part of me is

like, ‘Walk out!’ But another part of me is like, ‘That’s half our rent! You need to fix it! You need to stay, and if you leave, this is what we get.’” Andrea told Kamila that enough was enough; she was ready to quit and come home. “I’m like, ‘Well, if you leave now they can technically fire you. How’re we going to pay our rent next month?’” Andrea stayed.

As Kamila’s story suggests, many people are also angered by the stress and trouble of having to navigate work relationships and bureaucracies just to get what they have earned. Bad enough not to get paid what you are due for a job that is tiring, unpleasant, and sometimes degrading. It is even worse when you have to spend your own time and energy dealing with somebody else’s (too-slow) system for fixing the problem. This extra hassle only adds to workers’ frustration, as they feel chafed by the fact that they are the ones who are required to fix their employer’s mistake.

At the end of Chapter 1, I argued that not all employers who commit wage theft do so in bad faith. Wage theft, as it is defined, does not require malicious intent. It can and does happen by mistake, and there are employers out there who rectify the problem when it happens and do so in good faith. I interviewed some of them for this project. But, I rarely heard about these kinds of employers from the low-wage workers I spoke to. More often, and as I discuss in Chapter 7, when workers like Cora – and James, and Kira, and Harriet, and, and, and – attempt to confront or negotiate with their employers, their employers double down on the violation and worsen the experience.

Tonya, whose workers’ compensation claim got closed without any notice or explanation, explains that the difficulty of trying to navigate her employer’s processes added insult to her injury. “I’ve had a couple of coworkers contact me . . . especially when they knew it was time for me to come back and I hadn’t,” she says. “People that I have really grown to know and love at

the job. [When they call me] I'm like, 'Um, I like the people that I work with but the bureaucracy behind corporate irritates me to the point that I don't want to go back.'

Others were less circumspect than Tonya as they expressed their frustration, especially in situations where an employer or supervisor is not willing to work to fix a problem. Kira, who works for a large department store, described feeling extremely frustrated over the regular hassle that she has to go through in order to get paid for her sick leave. She has tried speaking to her immediate supervisor about it, but he is not receptive. At one point, he told her that he didn't enjoy the inconvenience of sitting in an office inputting employees' sick time. "It's very frustrating, you know?" Kira asks me. "You end up having to catch your words, catch yourself, your emotions, so that you don't lose your job."

When Kira's daughter gave birth, she tried to use her sick leave to care for her child and new granddaughter, which she was entitled to do under the District's paid sick leave law. Nevertheless, she ran into a series of problems. The regional manager for the Human Resources department first told Kira, "Well, I have to look to see if you can do that." This shocked Kira, who then became angry when she could not get in touch with this same manager to follow up. "She gave me a whole runaround," Kira says. Kira's a union steward, and beyond that, she is an informed and assertive person who radiates a no-nonsense attitude. But what about workers who are not like her? "If you're doing this to me, then I can't even imagine what you're doing to other people," Kira says. Eventually, Kira contacted a friend in human resources, who took care of the problem and made sure she got paid.

"The whole thing is that I understand," Kira explains to me. "It used to be a saying about work, how people go postal? I clearly now understand that meaning because it's so many things going on." Kira was not being literal, of course. She is not actually going to go to her department

store and cause a scene or attack anybody. But she is describing the intense frustration that she feels as a result of having to deal with a thousand pay-related inconsistencies and aggravations that, in her mind, either should not exist or should be dealt with swiftly and easily. When they do exist, and when a worker has to take time to resolve them, it can be deeply frustrating.

Other workers agree that it is the little things, added up over time, that wear them down, that create the constant burn of simmering resentment and frustration. Maylin, whose supervisor shaved her time and illegally deducted money from her check, felt that there was no internal path forward for resolving her problems. She could not go talk to her supervisor about her issues, because “I know I can’t win an argument with her.” The company’s human resources department was also no help. “Most of us, all we’re trying to do is live a healthy, normal life, and do this as well as we can,” Maylin says. “And people with these little inconsistencies and stuff like that are tearing up our life!” She then echoes Kira: “And we wonder why people go postal!”

The anger that stems from wage theft, however, is not just about the money that is lost and the time and energy workers have to spend to try to get what they feel they are entitled to. The monetary and time costs of wage theft are obviously important, but what also deeply upsets workers is the fact that when their employer steals their wages, they feel deeply disrespected. “I feel cheated. I was cheated,” Will tells me. For years, Will worked more than 90 hours a week for a pool management company. He is a calm, stalwart African American man with two dogs, both of whom join us for our interview at a public library (“They’re service dogs,” Will’s girlfriend tells me with a wink). Will eventually quit his job after he says he realized that his employer was not paying him the hourly rate that he had been promised, nor any overtime.

“I’ve been cheated for a long time,” Will continues. “His refusal to pay has made it even worse, knowing he’s wrong I should be more upset, really, because this is over a long

period of time, a lot of money's involved. I think I'm more upset because of his refusal to honor what he's owed."

Will's words are bigger than his own experiences. Many workers think about wage theft in terms of right and wrong, fair and unfair. Wage theft is not simply a financial choice that employers make. It is not just business. Workers feel strongly that wage theft is personal, a commentary on the value of a person, and an upsetting assertion of power.

To some, wage theft is both a way for employers to test the waters, and a way to subtly accuse workers of being either too stupid to realize what is going on or too weak to do anything about it. "[It's] like they thought I was some kind of dummy, or they was just going to get over like that!" Miranda says, her voice sharp as she describes her internal reaction to her employer shaving hours off of her paycheck. "No, I'm not, I can't get out like that . . . you're already not giving me the same opportunity to grow as everybody else, and then you want to take what little money I'm getting? Oh, it's not going down like that!" Myron also viewed his unpaid wages as an insult to his intelligence. "You gonna tell me to come to work and I'm not gonna get paid for it? I'm like – did you think I'm stupid? I understand y'all trying to see how smart or dumb I am . . . but we got through all that on [the last job] site."

Others talked about their experiences in even more stark and upset terms. Wage theft is not merely insulting, offensive, unfair or infuriating. Wage theft is all of these things and so much more. To many people, when they do not get the wages that they have earned, when they are not allowed to access their most basic workplace entitlements, it is nothing less than a cruel and casual denial of their value as a human being. When I ask Harriet what it was like to be paid late, she does not hesitate "It makes you feel degraded, like you're useless." "Worthless," Cora agrees. "I wouldn't treat my worst enemy like this," Caleb told me on the phone before we met,

referring not just to his unpaid wages but the fact that his employer was fighting his recovery at every turn. Ameen tells me that when his employer ignored the letter he wrote asking for his pay, “that made me feel like they neglect me, or they did not consider me as a human.”

Workers’ rights organizers agree. As Jaime Cruz and Arturo Griffiths, two leaders of Trabajados Unidos de Washington DC put it, wage theft is nothing less than “economic violence.” “It’s not even an issue now of civil rights,” Jaime says, speaking in particular about the undocumented workers in his community. “It becomes [an issue of] human rights. This is a human being who should be treated as a human being, but you’re robbing him, knowing that you’re robbing him, and you know that he cannot address the issue because if he does then he exposes himself to be deported from this country!”

Experiences with wage theft typically cause people to feel angry, as these quotes show. And overall, the most common reaction to wage theft that workers spoke about was anger. But this was not the only emotion that people felt, and as the next section discusses, for some it was not even the most powerful.

“I want to kill myself sometimes”: Wage theft, depression, and distress

Beyond anger, many workers also expressed a deep sadness when talking about their experiences with wage theft. They explained that these perceived rights violations left them feeling depressed and ashamed, filled with a deep and abiding pain over their treatment and, for many, their inability to do enough about it. As with anger, the depression that workers experience is often worsened when they attempt to work with their employers to rectify the problem, or when they otherwise try to enforce their rights.

Depression is a powerful and complicated state of being. For the workers who experience it, wage theft and its consequences cause pain in a number of different ways. I have argued that to low-wage workers, wage theft is much more than a financial event. The material deprivations that result increase a person's stress and unhappiness, but separate from that is the pain that comes with rights violations. The fact is, many low-wage workers are keenly aware of both their own mistreatment and their relative inability to meaningfully remedy it. It is extremely upsetting for people to grapple with that reality that they have been wronged, and that there is no easy, clear, or reliable path forward for them. Many wind up despondent and unmotivated, bitter about and disinterested in their work.

Carl, for example, says that when his new employer pays him late and shorts him on his check, "it hurts, man. I mean, why you want to treat somebody [like that?] I be up here helping you take care of your business and looking out for you, and this is what you're gonna do to me?" The injustice he feels is apparent, and shared by others like Cora, who agree that it is emotionally traumatic when they are not paid their earned wages.

When Cora's employer dismissed her complaints about making less than minimum wage, "[i]t really dug deep. It just exacerbated the wounds of what I've been through with others So, all of the attempts" At this point, Cora trails off and starts to cry. It's a hard moment. As a former marine and a single mom, Cora's no pushover. But here she is, having a deeply personal outpouring of emotion in front of someone she met less than an hour ago. "I get emotional," she says, unnecessarily apologetic. "All of the attempts of me trying to be independent and successful have been met with these moments of struggle, to just stay planted."

One of Cora's problems is that she never got closure. She did not know what to do about the fact that her rights were being violated, she did not know how to advocate for herself, and the

pain of the experience sticks with her. She is not alone in this. “It’s very very hard for workers to move on from an employer who mistreated them,” Alex Taliadoros tells me. Alex is the project coordinator at the Kalmanovitz Initiative for the Working Poor at Georgetown University. He is young, charming, and quick with a compliment. Alex is also thoughtful and passionate about his work, which largely consists of overseeing research and advocacy on the issue of workers’ rights. “It’s just something that stays with them.”

Maria, a cleaner, agrees. “It affects my life a lot,” she says about the fact that she is paid less than the minimum wage. “I don’t have an opportunity to do anything. I’m making very little money.” Our interview is a difficult one. As we talk, her sadness and regret are palpable. She speaks quietly, haltingly, and I cut the interview off after only 30 minutes because I have the strong feeling that even my most basic questions about her job are causing her distress. Maria is a single mom, twenty-four years old, and she is educated. She went to college back in her home country, but that degree is not worth much here. Like Agda – like many low-wage people – Maria lives in a world of fear and intimidation: we speak on the phone, and at the end of the interview, I ask her for her address so I can send her some information about her rights, and the \$15 gift card I give to all of the workers who speak to me. She refuses, at first, and it is clear that she is afraid that giving me that information might wind up hurting her. But after I assure her that the recorder is off, and that I will immediately destroy the scrap of paper with her address on it, she relents.

Many workers do not feel like their rights have strong meaning, and this understanding adds to the pain of their experiences. The overwhelming majority of the workers I spoke to told me that they do not believe that the District government does enough to protect their workplace rights. “No matter what you do,” Harriet says, “you can never find no justice. You know how

hard that is? Someone can hurt your pay, keep your money, laugh in your face, and you know you have rights but yet no one shows you [that you] have rights. It's like, rights for everybody else, but not for you." In Harriet's case, she tried everything she could to assert herself when the government agency she worked for held up her paycheck. She went back and forth with the DC Human Resources department, she got her daughter – a human resources professional – involved, she contacted her congressman, and she went to the DC Department of Employment Services. "No, we can't help you," people kept telling her, "and that makes you feel defeated."

Low-wage workers know all too well what it is like to live on the economic margins. The concern that working people have about the future is constant. By itself, it weighs on their minds and causes mental and emotional distress. But when this ever-present concern is set aflame by wage theft, when the possibilities of gross economic hardship rise up and become that much more threatening, things become much worse. "So now I been not being paid for 11 month and a half now, and that kind of situation put me into a hardship life," says Ameen. "And it give me a lot of distress sometime, because I'm worried for paying my rent, and my car, and some other personal needs like clothes." Agda says that on top of everything else going on in her life – being a single mom and working her way through graduate school – dealing with disappearing wages is too much. "There's all this shit going on and now I'm battling with my employer, who – I'm here to make money, and the money's not coming in, and so mentally I'm just losing it!"

Part of the reason so many workers have such a strong reaction to wage theft is because so many of them are responsible for other people. There is obligation and pressure wrapped up in having a family that depends on you, but also pride. It feels good to be able to take care of yourself and your loved ones, to furnish a safe and stable home, to buy food and clothes, and to have some fun once in a while. The ability to provide is an important part of a person's identity,

and so when that identity is threatened, it is hard to cope. Success turns to failure, pride warps to shame, and it is small solace for a person to tell themselves that it is not really their fault.

“I was sending money to my family for some expenses,” Sita tells me. In her culture, younger people are expected to care for their elders. “I really believe in that,” she says. “My parents have spent a lot of money and energy behind me, and I really believe in giving back.” When Sita’s employer fired her and refused to pay her final wages, “I had to stop doing that, which I feel really bad about.” Like Sita, many workers remit money to other countries to help support their families back home (Gordon & Lenhardt, 2007). But Sita’s wage theft also had ramifications closer to home. She and her husband, John, signed a lease based on the assumption of two incomes, and when she was no longer able to contribute, the concern about being able to make ends meet caused her distress. Beyond that, the emotional impact of Sita’s mistreatment spread to John. “I know my husband is really worried about me, and it often interferes with his work,” she says. “After [my former employer] sends [me] an e-mail, I usually tell my husband, and he’s at work doing something and immediately gets distracted, and usually he has a lot of work so I feel really bad doing that.”

Sita’s not alone. Many workers talked to me about the ways in which their unpaid wages prevent them from meeting all of their family members’ needs, and the shame that this causes. “I can’t take care of myself or the ones I love, the ones I like, you know what I’m saying?” Carl asks. “It don’t feel right. It makes you feel less than. Who is me? I’m supposed to be a man to take care of mine’s and my household, and my family, and I couldn’t do none of that.” Carl has two sons. One is almost an adult, one is just a toddler, and he’s supposed to be an example for them. For a long time, he clearly was. He was making a decent salary, had good job benefits, and could afford a condominium and a new car. Now, he is facing foreclosure, he struggles to pay his

bills, and he does not fully understand what went so wrong at work that his employer denied him the ability to use his sick leave.

Caleb expressed the same sense of embarrassment, the same regret over his failure to provide. He worked long hours for four years with almost no pay, and is now embroiled in the wage claim process at the DC Department of Employment Services. “I don’t feel as a man,” he says. “I got grandkids! You know, their birthday coming . . .” He trails off here, but I fill in the gap with the obvious: Caleb, whose former employer owes him hundreds of thousands of dollars, cannot afford to buy birthday presents for his grandkids. He finishes his thought: “I ain’t a grandfather!”

For some people, the experience of wage theft is not that intense to begin with. Not everybody I interviewed, after all, was deeply upset. These feelings can also fade. As time passes, people are able to cope with the unhappiness of their workplace experiences. They can start new jobs or find new relationships that make them feel fulfilled, and help them move past what happened with their old employers. But it can be a long road, and sometimes a person’s emotions spin out beyond what is manageable, and go to the darkest of places.

Out of thirty-three interviews, four workers spoke to me about suicidal thoughts as a consequence of wage theft. It is not that suicide is a reaction to a single instance of stolen wages. Rather, in each case the workers in question responded strongly to the entirety of their situations. This includes not just perceived rights violations, but the stress and anxiety that accompany economic insecurity and the frustration and sadness that follow having to struggle for one’s earned pay.

Cora actually attempted suicide, but stopped herself right before the last act. When she placed a knife on her wrist and prepared to cut, the coldness of the metal blade jarred her out of

her stupor. She decided she should try to get help for herself instead. She is now in therapy, and has been doing much better. When we spoke she was still looking for a new job, but had hope for the future.

James is also in therapy. He works full time, but his income level qualifies him to live in a subsidized apartment that is owned by a social services program in the city. The program also provides him with access to mental health services. “I get at the point where I want to kill myself sometimes, you know?” he tells me. “So I know some of the trigger things, I take medicine with depression now, and it, it just” He pauses. “It’s rough, you know what I’m saying? It’s really rough. It’s already hard enough, and to have to fight just to get the money that – it’s rough.” Like James, Carl has been seeing a therapist, and now takes antidepressants.

Harriet’s story of attempted suicide is not about herself, but her father. He moved in with Harriet when her mom died, and she takes care of him now. It is not always easy. Medicare does not cover all of the costs of his medicine, and he needs some special food because he has trouble swallowing. When the government agency that Harriet works for held up her paychecks, things got harder. She fell behind on her finances, and could not get everything that her dad needed. Worse, he noticed how much trouble she was having. “My father was getting depressed because he was worried about me getting fired, and it was just a mess,” Harriet tells me. She is speaking quickly, clipping her words because of how frustrated she is. “He would try to commit suicide, I guess, that’s what I think, because he was trying to take pills so he wouldn’t be a burden.”

There may have been others who grappled with suicidal thoughts, but did not share them with me. It was not an issue that I felt comfortable asking people about directly. Carl, Harriet, Cora, and James all volunteered the information after I asked them how their wage theft had affected them. But other people also shared with me strong feelings of depression and emotional

anguish, and told me that they had been or were currently seeing a therapist. I cannot know for certain, but it is possible – maybe even likely – that other people in my sample also contemplated killing themselves.

The physical health consequences of wage theft

There is another angle to the claim that the experience of having your wages stolen is bad for your health: Wage theft leads to poverty, and being poor has long been linked to bad health outcomes. Researchers estimate that minimum wage violations alone artificially place hundreds of thousands of working people in poverty (Eastern Research Group, 2014; Cooper & Kroeger, 2017). Beyond that, this act also obviously lowers the socioeconomic status of millions of other workers, even if it does not do so enough to place those individuals and their families below the federal poverty line.

Common sense tells us that having less money makes life more difficult, but there is also powerful empirical evidence of this fact. “The relationship between poverty and health has long been documented in the literature of medicine,” write Drs. Christopher Mansfield and Lloyd Novick (2012, p. 1). Poor people, children and adults alike, are more likely to experience a variety of chronic health conditions, including diabetes, heart disease, obesity, stress, headaches and ear infections, and more (Mansfield & Novick, 2012; Conway, 2016). They are also significantly less likely to treat these conditions, because the United States does not have universal healthcare, and poor people are likely to not have health insurance. “Nearly 70% of the uninsured population is poor or near-poor,” write researchers at the Institute for Research on Poverty at the University of Wisconsin, Madison. “The uninsured tend to forego preventative care and to wait until an illness is severe before seeking medical care” (Simon, 2013, p. 1).

The relationship between poverty and health is not one-way. Instead, it is cyclical. Being poor – or more poor than you would otherwise be – leads to health problems, which in turn contribute to poverty (Conway, 2016). Relatively speaking, poor people have bad housing (Desmond, 2016), are exposed to more pollution, have less access to good, healthy food, and tend to live more sedentary lifestyles because they do not have access to safe recreational activities (Mansfield & Novick, 2012). Neighborhoods with higher poverty rates also experience more violent crime (Sampson, 2012), which can cause devastating, long-term harm to residents. Not only are they in more physical danger, but youth who are exposed to community violence have lower high school grades, are less interested in school, and score lower on standardized tests (Borofsky et al., 2013; Milam et al., 2010).

The negative effects of poverty persist across generations, and radiate out beyond individual people and into the larger community. “If that cycle [of poverty] happens across generations, then you are talking about major, seemingly intractable effects on communities living in poverty,” says Dr. Lee Goldman of the University of California San Francisco School of Medicine (Conway, 2016). The consequences are stark and significant: I grew up in Montgomery County, Maryland, a wealthy county just outside of the District of Columbia, where people can expect to live nine years longer than residents of Washington, DC (Marmot & Bell, 2011).

This story about poverty’s negative effects on health is illustrated over and over again by this research. Workers who are not paid what they are owed experience cascading economic harms. They struggle with homelessness, buying food and other necessities, and forego regular visits to doctors. They also experience a range of negative emotions, which are themselves bad health outcomes. But beyond these things, some also reported suffering direct physical harm,

especially when they had to struggle against their employers to get their earned wages. The injustice of wage theft and uncertainty about the future causes low-wage workers a significant amount of stress, which sometimes spikes during particularly aggravating moments, and which leads to a slew of negative health consequences.

Harriet most eloquently spoke to me about how her trouble at work causes her health problems, but her words sum up the feelings and experiences of others. “The mental stress that you get from working [at my office], places like that. You know, mental is more damaging than physical, ‘cause when your mental state is messed up it doesn’t let your body work right . . . that makes your nerves and your blood pressure go up,” she explains. For Harriet, it was both the injustice of the situation and her lack of good options for resolving her problems that made things so hard for her. “Not being able to get help from nobody, it’s like someone teasing you, saying ‘Ha ha ha, we can do this and nobody’s gonna help you!’”

Cora described feeling lethargic, “tight, and pain-ridden,” as though “rigamortis had set in.” “I don’t sleep well,” Sita says. “It’s been very, very stressful.” Workers like Sita and Cora lose sleep, have a hard time concentrating on tasks, and sometimes experience high blood pressure. “I went back to the VA and I was put on a tele-home monitoring system, and I got on that in January and my blood pressure was high,” Maylin says. She laughs after telling me this. “Since I’ve been terminated my blood pressure’s been good.” Caleb also has to watch his blood pressure. At one point during our conversation, he explains to me that he struggles to set aside the anger he feels, because he’s afraid that it’ll bring on another heart attack, and the last two were bad enough.

Conclusion

In this chapter, I have outlined the full range of harms that workers suffer due to wage theft. Existing analyses of this problem have largely focused on the immediate economic consequences of wage theft, estimating how many low-wage workers lose how many dollars per year (e.g., Bernhardt et al., 2009; Cooper & Kroeger, 2017). This research builds upon that body of work by carefully detailing the texture of the hardships that poor people suffer when they are denied their honest wages.

For many working people, wage theft does far more than create an immediate and temporary impact on their pocketbook. In the context of the lives of low-income people, who consistently struggle to make ends meet, even a brief delay in payment threatens serious economic consequences. These include unpaid bills, hunger, foregone doctors' visits, and in a worst-case scenario, eviction and all of the evils that accompany that process. There are other costs, too. Many workers report strong negative emotions. Anger and frustration are common, as are depression and sadness. In extreme cases, people become so upset over their wage theft that they contemplate and sometimes attempt suicide. Wage theft's harms do not stop there, however. The crime also has negative health consequences for both individuals and communities. Wage theft artificially increases poverty rates, and lowers the socioeconomic status of all of the people who are affected by it. Low earnings have long been linked to poor health, and wage theft's relationship with poverty cannot be ignored.

In short, wage theft cannot be understood as an individual problem that is purely financial in nature. For many workers, it causes deep and lasting harm, both because unpaid wages can quickly escalate into much more serious economic hardship, and because wage theft and its associated circumstances have serious implications for the mental and physical health of low-

wage workers. These harms do not stop at the individual, but poison families and communities, depleting the already-limited resources of the District's working poor.

My findings about the severe emotional response that many workers have to wage theft raise an important sociolegal question, however. Why is it that so many low-wage workers exhibit such a strong reaction to their pay-based rights violations? In the next chapter, I explore this in detail.

Chapter 6: Work, Dignity, and Rights Consciousness

Throughout this dissertation, I argue that wage theft is best viewed as a social problem, rather than an individual one, and that the personal and social consequences of the crime are broad and significant. In particular, in the previous chapter I discussed the cascading harms that workers say follow wage theft. These harms are economic, but also emotional, with feelings ranging from furious anger to deep depression and everything in between. Workers also report direct health consequences, including high blood pressure, stress, sleeplessness, difficulty concentrating, anxiety, and suicidal thoughts.

Although this research project provides new information by examining the personal and social consequences of wage theft, to some extent my conclusions are supported by what others have reported. For their study of how well California workers are able to collect on their favorable wage judgments, Eunice Cho and her colleagues (2013) interviewed a number of low-wage workers who had experienced wage theft and attempted to assert their rights. Workers described feeling frustrated, angry, and depressed over their treatment, the material hardships caused by wage theft, and the inefficacy of the legal system. One explained that “[t]here were even days where I had nothing to eat, and I had to go look for donations to find food for my family,” which “made me feel very depressed.” Another said that she “felt upset and powerless not to collect the wages” she was owed (Cho et al., 2013, p. 4).

What explains the strength and intensity of the reactions that low-wage workers have to wage theft? To some extent, it is certainly about the material hardship that results from workers being denied their pay. When wages don’t come in, either at all, in full, or on time, low-wage people have an extremely hard time making ends meet, which leads to a slew of negative emotions.

There is more to it than that, though. The pain caused by wage theft is not just about lost wages. Many workers also feel that when they are mistreated at work, it constitutes an attack on their dignity and their identity. The findings reported in Chapter 5 highlight this point: Carl calling his wage theft “cruel,” Caleb bemoaning the fact that he cannot afford presents for his grandchildren, Ameen stating that he felt as though his former employers didn’t view him “as a human,” and Cora and Harriet expressing that they felt “degraded” and “worthless.”

There are two significant, non-monetary reasons why so many low-wage workers express such strong reactions to wage theft. The first is that many of these people view their jobs as representing a core part of their identities. Work represents a pathway to dignity. It is a way to be self-sufficient, to not only survive, but provide, and in doing so to assert your own inherent value. This is the case even when the jobs in question are low-paying and, at times, undignified or frustrating.

The second reason wage theft is upsetting is because, like so many other people, low-wage workers have a keen sense of right and wrong, and are largely aware of and angered by their own mistreatment. This may be a surprising statement, given that much of the research on low-wage workers reveals that as a group, they do not have a clear understanding of their workplace rights. Nevertheless, many are aware of their wage theft, and feel strongly the injustice of their own perceived mistreatment.

The meaning of work

“What’s most important to people,” Jude Nwaokobian says, “is their job, their family and their home. For most people, those are the three primary things they think about every single day.” Jude’s an attorney at Outten & Golden, a plaintiff-side employment law firm with offices

in New York, San Francisco, Chicago, and Washington, DC. He and I are sitting in his office on a cold spring day. It is sparsely decorated, but airy, with a nice view and a lot of natural light. Jude himself is young, well dressed, and passionate about employment law. We met at the Washington Lawyers' Committee's Workers' Rights Clinic, where he is a regular volunteer, but Outten & Golden is also one of the best employee-side law firms in the country. Jude's explaining to me that in his experience, the jobs that people work help form the core of their personal and professional identities. When people or circumstances impede a person's ability to work their job, it has an impact on how they perceive themselves, and the psychological and emotional effect of that can be deeply upsetting.

The relationship between job and identity is well known among the District's cadre of working professionals. There is an idea that you can tell a lot about a community by what its "second question" is – that is, the thing you ask after first meeting somebody (Fallows & Fallows, 2018). In the District, the second question is definitely "What do you do?" or "Where do you work?" Baked into the culture of DC's professional class is an understanding that people come to DC for work, and an assumption that our jobs do much to define us. This is a town of ambitious, career-driven people, after all. But the District's second question is also a way to figure out whether somebody is worth talking to. Rolled into the inquiry are a set of related ones: How much money do you make? Who do you know? Can we network in a way that will help me? For members of the District's white collar job force, work is both a way to achieve and broadcast success, and people in this city place a great deal of stock in the idea that a person's job says much about who they are. What might come as a surprise to some of these working professionals, though, is that the jobs of the working poor are also crucially important to their identities.

There is an old and powerful narrative about America's poor. It goes like this: In this country, a land of freedom and opportunity, people who want to succeed will be able to. All one must do is work hard and apply herself, and over time, success will follow. This idea should be a deeply familiar one. It forms the core of the American dream, the national economic ethos of the United States, which historian James Truslow Adams first defined as "that dream of a land in which life should be better and richer and fuller for everyone, with opportunity for each according to ability and achievement" (Adams, 2017). We broadly tell ourselves that we live in a meritocracy, where success is allocated based on grit, hard work, and perseverance.

There is an implication wrapped up in this telling of the American Dream, though. If somebody does not succeed, if they do not climb the economic ladder over the course of their lives, it must be their own fault. Maybe they are lazy, stupid, or unprofessional, but for whatever reason they have not reached out and grabbed the bounty of opportunities that this country so readily presents. Poverty, then, is the consequence of individual decisions and, ultimately, personal failings. Lack of effort and care are the evils at the heart of the thing (Shipler, 2005).

Ben Franklin invoked this idea when he said that "laziness travels so slowly, poverty soon overtakes him" (Franklin, 1800). So did former Republican Speaker of the House Paul Ryan when a reporter asked him about his ideas for addressing poverty in America. "[If] you work hard but play by the rules, you can rise," Ryan responded. "You can do well. That's what we're taught. That's what we believe. That's what we think of as America. Problem is, there are just generations of people in this country who do not think that" (Ryan, 2016). In this story we tell, the protagonists are those who rise from humble beginnings, pulling themselves up by their bootstraps. We point to such individuals as proof that America is a land of equality of opportunity, where anybody can make it. We also use this narrative to blame lower-class people

for their own poverty, implicitly assuming that work is not important to them. If it were, they would not be poor (Shipler, 2005).

This narrative is not the only story we tell about the poor, but empirical research underscores its power and influence. In 2001, researchers polled Americans' perceptions of poverty, and found that most respondents blamed the poor for their own life's circumstances. Fifty-two percent of the public believed that lack of motivation was a major cause of poverty, and another thirty-five percent believed it was a minor cause. Nearly half of respondents asserted that individual personal failings are a bigger cause of poverty than circumstances beyond a person's control, and 44% expressed that welfare recipients do not actually want to work (Lichter & Crowley, 2002). These harsh viewpoints have become somewhat moderated over the last two decades. However, an analysis of polling shows that large segments of America – nearly half of respondents – consistently blame poverty on individual lack of effort, and a large majority either completely agree or mostly agree with the idea that poor people are too dependent on government assistance (Howard et al., 2017).

While this narrative about the American Dream reflects a core belief of America, it paints a picture that is as unrealistic as it is condescending. The myth of the American Dream works as a justification for inaction on the problem of economic inequality, providing cover for those who prefer not to act to aid the poor, but it does not reflect the fact that the working poor themselves accept and believe in its basic tenets. Ameen referenced the American Dream when he told me that his overarching goal was to save money to pay for his children's education, in the hope that they can someday "come out as doctors, engineers, or whatever field that anyone will be capable to do." Myron invoked it when he explained that although he would run into trouble with the law at different times in his life, he had tried hard to "find my way back to society" through honest

work. Like these men and many others, Lydia expressed great faith in the idea of success through effort. “My peers liked me, my supervisor liked me, so what more could I have asked for?” she says about her last job. “I could maintain financially without any public assistance or anything, so I felt like that window of Heaven had been opened again.”

Low-wage workers take pride in their work, even when their energies are focused on efforts that many people – including the workers themselves – would call menial or unimportant. Sabbir enjoyed working in fast food because it gave him the opportunity to support his family and learn new skills, “like [food] prep, like dishwashing and [working in the] back of the house, cleaning, working the cash register.” “There was a point in time when I had to work at an IHOP,” says Agda, explaining that at the time it was hard to find a job. “Did I love it? No. Did I take pride in the work and do the best I could? Of course. I’ve got a family to feed.”

Echoing these people, Ruben explains that his goal was to take care of the ones that he is responsible for. “I worked seven days a week to take care of my family, kids, to provide an excellent, excellent environment for my family,” he says. Many low-wage workers express a strong and deep devotion to the idea and practice of hard work, because work is a means to an end, a way to provide for the ones you love, and it does not have to be glamorous or prestigious to be something you care about. Lydia, for example, has been earning just enough to afford a small one-bedroom apartment for her and her teenage daughter. “[T]hat’s a little frustrating for her as well as me,” she says, but she’s also proud. “I try to tell her, at the end of the day this is ours. We’re not in a shelter, so that’s a plus. And I refuse to go back to a shelter.” Working is about earning money to survive, of course, but there is more to it than that. It is also about the dignity that comes with being a self-sufficient adult who fits into America’s broader economic landscape.

So when workers experience wage theft, no small amount of their frustration and anger stems from the perception that wage theft is an attack on this dignity. It is a threat to the least that they deserve, and a repudiation of the promise of fair treatment for honest work. Given this discussion, it is not at all surprising that people often experience wage theft personally, and discuss it in terms of fundamental fairness. “[W]e need to let people know that these practices exist and someone needs to monitor the supervisor that’s doing this, to monitor the division that’s doing this, because it’s not fair!” Maylin says. “It’s not fair.”

Agda, the bartender, echoes these thoughts about paid work reflecting a sense of basic fairness. In the restaurant industry, it is common for employers to bring in job applicants for a “stage” (which rhymes with “corsage”). A stage is, essentially, an unpaid audition. “Well, how many auditions do you have that are three to five hours long? I’m not an actor, mind you, but I can’t imagine any audition for any part being hours long,” Agda says. “A lot of people don’t even know what it is, they don’t know what it entails, but [people] need to be made aware. All these bars and restaurants, it’s fine if you want to have somebody come in and try it out, but you’re still going to have to give them the minimum wage, period.”

Contrary to the popular narrative that holds poor people responsible for their own poverty, low-wage workers in the District take seriously the notion that they should work hard, and that if they do, they will find success. This is not necessarily to say that the workers I interviewed are all model employees, at least from an employer’s perspective. Actually, some had no problem telling me that they were not. Nevertheless, the point remains that even for those who work menial jobs, work forms an important part of the landscape of a person’s life. This is both because people of varying income levels care deeply about their careers, and because in America, honest labor is a way for people to outwardly demonstrate their value, fit into society,

and provide for themselves and the ones they love. Many low-wage workers who experience wage theft are so offended by it because it reflects a degradation of the meaning of work, and because it serves to undermine a person's identity.

This is not the entire explanation, though. As I discuss in the next section, many low-wage workers also view wage theft as an unjustifiable repudiation of their basic rights.

Rights consciousness and reactions to wage theft

As a group, low-wage workers also express deep frustration over their wage theft because many of them are fully aware that their rights are being violated, and this awareness makes the situation that much more upsetting and offensive. The negative emotional consequences of these rights violations are compounded by the fact that many low-wage workers feel, justifiably, that they have no real recourse available to them.

The assertion that low-wage workers are broadly aware of their own rights violations might come as a surprise. Much of the literature on the rights knowledge and consciousness of workers, after all, concludes that they do not have a strong and or clear understanding of their workplace protections and entitlements (see Alexander & Prasad, 2014; Sheller Center for Social Justice, 2015; Restaurant Opportunities Center, 2012; Kim, 1999). Pauline Kim (1999), for example, has found that people in general do not understand the at-will rule for employment, which holds that employers may terminate their employees for any reason that is not otherwise prohibited by law. In practice, this gives employers broad latitude to fire workers at any time and for almost any reason, even frivolous ones. Despite the very limited legal protections against unjust or unfair firings, people tend to overestimate their rights, believing that their employers can terminate them only for good cause (Kim, 1999; see also Freeman & Rogers, 1999).

When it comes to low-wage workers in particular, almost 60% of the people in the study of wage theft conducted by Annette Bernhardt and her colleagues (2009) “misunderstood their minimum wage and overtime rights,” with workers frequently overestimating and underestimating the applicable minimum wage (Alexander & Prasad, 2014, p. 1072). More than 60% of restaurant workers surveyed by the Restaurant Opportunities Center (2012) also did not know the correct minimum wage. Experts assert that part of the reason wage theft is so common among people who are paid with tips or by “piece-rate” (e.g., farmworkers whose earnings are based on how many buckets of tomatoes they pick) is because these workers do not understand that regardless of how much they earn under these systems, they are entitled to be paid at least the regular minimum wage by their employers (Sheller Center, 2015; Allegretto & Cooper, 2014). Compounding these issues, low-wage workers also lack procedural knowledge: more than 77% of those in Bernhardt et al.’s sample did not know how to file a complaint about their workplace issues with the government (Alexander & Prasad, 2014, p. 1095).

Charlotte Alexander and Arthi Prasad (2014) report that while low-wage workers as a group have a poor grasp on their rights, undocumented people are more likely to understand their substantive minimum wage and overtime rights. Alexander and Prasad provide two possible explanations for this: first, undocumented people – who hold a disproportionate number of low-wage jobs – are likely to be the target of “know your rights” outreach programs. Second, they “may also be less complacent about knowing the law than their documented counterparts, as the law shapes their existence to a great extent, with the risk of arrest, detention, and deportation looming large in their working lives (Alexander & Prasad, 2014, pp. 1094-95). However much *relative* knowledge undocumented workers might have, though, research also finds significant gaps in their understanding. In their study of day laborers, Mary Nell Trautner and her colleagues

(2013) found that 45% of their respondents did not know the applicable minimum wage, and 21% did not know that it was illegal to be paid less than the minimum wage. Fewer than half both knew what the minimum wage was and understood that it was a legal mandate which employers are strictly required to follow. In short, a wealth of empirical evidence and expert commentary supports the claim that low-wage workers are not well-versed in the laws that are most relevant to their daily lives.

This research generally supports this finding. To be clear, I did not conduct a survey to determine the specific extent to which the workers I interviewed understand the law. But, I generally questioned the people I spoke to about their level of rights knowledge, and beyond that, a lot can be gleaned over the course of an hour long conversation. Many low-wage workers themselves expressed to me that they do not feel like they know what their protections and entitlements are. This back-and-forth with Myron, a former construction worker, is a good illustration:

Matt: Do you feel like the DC government does enough, too much, or not enough to protect the rights of workers?

Myron: To tell you the truth, I do not know because I really don't know what their rights are, as far as protecting workers in DC.

Matt: So you mean you don't really feel like you've got a clear idea of what your rights are?

Myron: Yeah.

Others expressed, at most, only a tentative understanding. When I ask Camila whether she knows her rights, she hesitates before answering: "Umm, I guess some rights?"

Not everybody expressed confusion, though. Susanna, the only worker who has never perceived any workplace mistreatment whatsoever, told me that she is well aware of her rights, and spoke about them both eloquently and accurately. She stood out to me for this reason, but

also because she is a deaf person. Perhaps unexpectedly, the fact that she cannot hear led her to develop a high level of rights knowledge. “After school, the staff would explain what to do as far as jobs, and [they would] explain real world experiences,” she says. “I made sure that I really listened and tried to be able to have what I needed to make good decisions and be careful as an adult, because you know, I didn’t want to be gullible. I wanted to be informed, and as a deaf person it’s very important that I’m aware of discrimination and how people try to discriminate against me, and [the staff at school] really drilled that into my head. And so, you know, because of that teaching I find it second nature to know what is acceptable and what is not.” Susanna’s experience is unique, because most people do not receive basic rights training while in high school.

Even among those who express confidence in their rights knowledge, there were some clear misunderstandings. James and Ruben, for instance, got the minimum wage wrong, while Jack misunderstood overtime laws. In Jack’s case, he has been embroiled in an ongoing dispute with his former employer, a large and popular restaurant. Jack worked two positions for this employer. Sometimes he would wait tables, and sometimes he would do catering. “In catering I was probably putting in about twenty hours a week,” he says, “with the waiting tables, I was probably putting in thirty hours a week.” Working fifty hours a week for one employer means that the restaurant should have paid Jack for ten hours of overtime, but it never did. Jack does not view this as a problem, though, because he never worked more than forty hours in a week as either a caterer *or* a server. He viewed these two positions, with their different duties and base rates of pay, and independent positions, regardless of the fact that his employer did not change based on the role.

Despite this discussion, however, the majority of low-wage workers are largely aware of their own wage theft, either when it occurs or shortly thereafter. Not only do they know when they are generally treated poorly by employers, which by itself does not require any legal knowledge, but they often know that what they are going through is both wrong *and* illegal. This understanding, not surprisingly, inflames the feelings of injustice that sufferers of wage theft feel.

This might sound counterintuitive, or at least contradictory. How can a group of people with poor knowledge of their rights also be generally aware of their own rights violations? The answer lies in the fact that wage theft is often nothing more than a casual repudiation of a person's most basic entitlements. "Wage theft" is an umbrella term that covers many different kinds of offenses, but the most common forms violate our country's oldest and most rudimentary workplace laws. These laws are not only longstanding, they also line up with our own cultural and moral understandings of how things *should* be at work.

So even as the details of these laws escape low-wage workers – and in fact, escape many of us – they still comprehend the outlines of their own mistreatment. James might think that the minimum wage is fifty cents higher than it actually is, but his confusion does not hamper his ability to know that it is illegal (and wrong) for his employer not to pay him for all of his hours. Earl may not get all of the tax implications of being misclassified as an independent contractor, but he knows he is not running his own business, and his employers' refusal to pay him overtime is nevertheless offensive. While Sita is a relatively new arrival with almost no working knowledge of the legal system, she still feels keenly the injustice of her employer firing her for taking a sick day and then refusing to pay her final wages. The knowledge of their own

mistreatment, and the belief that it is not only unfair but also illegal, creates within many workers a powerful sense of injustice.

Conclusion

The nuanced understanding I have presented in this chapter is important for two reasons. First, it helps to explain why so many people report such a strong emotional reaction to wage theft. For many low-wage workers, wage theft's economic consequences are compounded by a deep sense of injustice. This feeling of injustice flows from the strong emphasis that many low-wage workers place on honest work and all that ought to accompany it. The importance of work to one's identity, dignity, and sense of self extends to those at the lowest rungs of the economic ladder, and does much to explain why low-wage workers often exhibit strong reactions to wage theft. In addition, while it is not inaccurate to say that low-wage workers as a group have a poor understanding of their rights, this assertion elides the fact that many low-wage workers who suffer wage theft are aware of their own mistreatment.

Second, in considering wage theft and how it should be addressed, it is crucially important to understand the viewpoints of those who are actually affected by it. For the most part, agencies like the Department of Labor and the DC Department of Employment Services enforce workplace laws through a complaint-based system. This approach largely requires workers to notify the government of a problem before there will be action. Before a person will assert their rights, though, they must both understand that they have rights and actually want to try to enforce them. This is why workers' rights advocates in the District of Columbia hold know-your-rights trainings and lobby the District government to engage in more outreach and education.

Even as low-wage workers – and many Americans in general – have a limited understanding of their workplace rights, my findings reveal that many working people have at least an intuitive sense of their own mistreatment. They are often able to name this mistreatment as both illegal and wrong, and strongly desire to have it remedied. Translating this knowledge into action is difficult, though. Most workers either do not take action over their wage theft, or take only very limited action – for example, by confronting their supervisors and then giving up. In the next chapter, I discuss in detail whether, when, and how low-wage workers take action to assert themselves. Why do the overwhelming majority of acts of wage theft go unreported, at least as far as official processes are concerned, and what are the factors that low-wage workers consider when weighing how to respond to their own exploitation?

Chapter 7: From Wage Theft to Legal Claims, And Everything In Between

Throughout this dissertation, I have shared dozens of stories of wage theft and other instances of workplace mistreatment. I have also written about the experiences of some of the workers who tried to take action against their employers. These responses range from people confronting their employers directly to filing formal complaints with administrative agencies or in the court system. In this chapter, I analyze the process by which an instance of wage theft transforms into a legal claim. This is a precarious path for workers to tread, with many opportunities to stray.

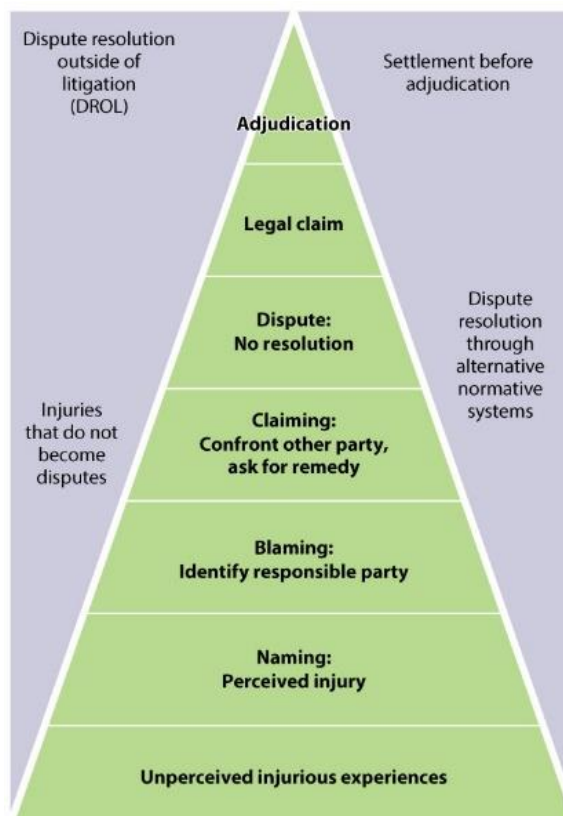
I first explain the theoretical framework that I rely upon here, discussing existing sociolegal research in the area of disputing. I then analyze in detail how workers think about their rights violations, and why they do or do not come forward to assert their rights when they feel that they have been mistreated.

Theoretical framework: Naming, blaming, and claiming

The primary framework that I rely upon for this analysis is research in the field of disputing. Scholars have paid a great deal of attention to the process by which people recognize an injury, assign responsibility or blame for that injury, and take action to obtain a remedy (e.g., Albiston et al., 2014; Calavita & Jenness, 2015; Hoffman 2003; Felstiner et al., 1980). Beginning in the 1980s, findings from the Civil Litigation Research Project changed how sociolegal scholars think about disputes and their resolutions. This research revealed that there are many more disputes than researchers previously believed, but the vast majority of these disagreements are never acted upon by the people who experience them (Albiston et al. 2014).

Scholars began to recognize disputes as social constructs – that is, whether a given situation will evolve into a dispute depends heavily upon social context and personal understandings (Albiston et al., 2014). Broadly speaking, disputes proceed in three phases: naming, blaming, and claiming. During the “naming” phase, a person recognizes that they have been wronged, and that some right of theirs has been violated. Blaming consists of assigning responsibility for that violation. Finally, claiming involves a person attempting to assert their rights by voicing their grievance and seeking a remedy of some kind (Felstiner et al., 1980). Claims can be addressed to a variety of actors. A worker could, for example, confront their supervisor, file a complaint with an administrative agency (like the DC Department of Employment Services), or file a lawsuit (Albiston et al., 2013; Levitsky, 2008).

As a useful tool for thinking about disputing, scholars have often adopted the “dispute pyramid,” pictured here:



The base of this pyramid is made up of “unperceived injurious experiences,” a category that covers all *possible* disputes, a smaller number of which actually become perceived as injuries by the people who experience them. The top of the pyramid consists of those disputes which are finally adjudicated through the justice system. As experiences proceed from the bottom of the pyramid to the top, the number of situations remaining within the pyramid dwindles, because there is attrition at each level. This attrition takes many forms – some experiences are never recognized as disputes, while others settle out of court or are simply dropped. Other disputes are never raised at all, perhaps because people are afraid of retaliation or believe that doing so will compromise their sense of dignity (Bumiller, 1992). In the end, only a very small percentage of all possible legal disputes are actually adjudicated (Albiston et al., 2014).

While the pyramid has been a useful conceptual tool, it has also been critiqued for overemphasizing legal remedies as the key process for understanding disputes. The pyramid suggests that there is a single linear path on which disputes progress, and it does not adequately take into account the many non-legal ways that people respond to their perceived injuries (Albiston et al., 2014; Engel & Munger, 2003). To be fair, while the dispute pyramid does consider some of these alternative responses, it focuses “on the legal path and the factors that lead to attrition from it at each level of disputing” (Albiston et al. 2014, p. 107). As Catherine Albiston, Lauren Edelman, and Joy Milligan point out, “the very concept of dispute itself tends to focus on the narrow precipitating events that give rise to individual disagreement, rather than the fundamental structural features of society or the long-term social processes that generate conflict” (2014, p. 107).

Albiston and her colleagues have instead suggested a new metaphor: the dispute tree. The tree is designed to better represent and analyze the various social processes that structure and resolve disputes. It also places greater emphasis on the alternative ways in which disputes can be resolved. It has many branches growing from a central trunk, representing the wide variety of paths that a dispute can take on its way to resolution. “Some branches represent traditional paths through the legal system, with side branches for settlement and private ordering, truncated branches for injuries named and blamed but not claimed, and fruitless tips for grievances that were pursued without remedy then abandoned” (Albiston et al., 2014, p. 109; see also Morill et al., 2010). These paths can also involve efforts to resolve disagreements through a quasi-legal system, such as an organization’s internal grievance process or court-provided arbitration or mediation. Finally, other branches represent non-legal or extralegal responses. These can include collective action, like a strike or community boycott; self-help, such as direct confrontation; and even wholly internal responses like “self-reflection and prayer” (2014, p. 109). For this analysis, I adopt the dispute tree as my conceptual tool, because it does a better job of reflecting the wide variety of responses, both legal and non-legal, that workers have in response to wage theft.

At this point, an extensive body of research on disputing shows that the ability and willingness to name a problem, blame somebody for it, and make a claim are both socially and culturally patterned (Calavita & Jenness, 2015). As Rebecca Sandefur (2008, p. 342) explains, “studies frequently find that people often do not think of their justiciable problems as having any connection to law or rights and also reveal powerful influences of local social context on how disputes are understood and pursued.” The relevant “local social context” that affects how a person thinks about and responds to their experiences is made up of many factors, including individual people, organizations and institutions, widespread cultural beliefs, and a person’s own

background and upbringing. For example, scholars point to “agents of transformation” – including lawyers, friends, coworkers, organizations, government institutions, and others – as playing an important role in managing and shaping a person’s feelings and expectations regarding a given situation (Albiston, 2005; Edelman et al., 1993; Felstiner et al., 1980). The messages that these agents of transformation provide influence how people think about an issue, including whether a person decides that a given event is a legal problem (or a problem at all), and whether and how that problem should be addressed (Albiston et al., 2014; Gleeson, 2015).

More broadly, cultural frames and understandings also influence whether and to what extent people will perceive a rights violation and then make a claim. Sandra Levitsky’s (2008) study of home caregivers, for instance, revealed that this group of people adopt two frames when talking about their experiences: a “legitimizing frame,” referencing the widely-held American view point that long-term care is a family responsibility, and an “injustice frame,” where people assert that their current difficulties or burdens are unfair. Those who adhere more strongly to the legitimizing frame are less likely to believe that their needs regarding long-term care form a basis to claim rights or entitlements.

Perhaps not surprisingly, members of groups that are lower on the social hierarchy – including lower-income people, those lacking formal education, and racial minorities – perceive fewer problems and make fewer claims (Sandefur, 2008; see Best & Andreasen, 1977; Curran, 1977); “[C]laiming behavior varies inversely with socioeconomic status” (Albiston et al. 2014, p. 114), with higher-income people being more likely to take action, including legal action, in response to perceived injuries (Sandefur, 2008). To some extent, this is about both resources and the kinds of problems that people experience. Wealthier people are better equipped, and therefore more willing, to pursue legal action; they are also more likely to have disputes with

higher stakes, which are more likely to be pursued in general. But, these factors do not explain the entire relationship between class position and action. “Although clearly part of the story,” writes Rebecca Sandefur, “an explanation based on cost, resources, and stakes is insufficient to explain the full pattern of class differences” (2008, p. 347). Other factors related to social rank are also key to understanding why lower-class people are less likely to take action over their problems, including “a sense of entitlement or feelings of powerlessness, as well as differences in past experiences with civil justice problems” (2008, p. 347).

There has been some research on disputing in the particular context of employment rights violations among low-wage workers. Shannon Gleeson (2015) reports that workers in Northern California, many of them undocumented, fail to invoke their rights for a variety of reasons. In particular, they stay silent because they have limited knowledge of their rights, fear retaliation by employers (especially related to *la migra*), and are concerned they might lose their jobs.

Charlotte Alexander and Arthi Prasad (2014) studied wage theft-related disputing using the data collected from the landmark study of wage theft among low-wage workers in Chicago, New York, and Los Angeles (Bernhardt et al. 2009). They drew a number of conclusions. First, “some number of actual workplace rights violations are never even identified, or ‘named,’ by workers.” This fact is especially true for those workers who have relatively less political, social, and economic power, including women, older workers, and nonunion workers. “Second, claiming is another point of escape from the [dispute] pyramid.” Although 33% of the workers in the study named a workplace problem, 43% of these workers chose not to make a claim. The biggest reasons why these workers reported staying silent is that they feared retaliation and believed that their complaints would have no effect.

A lack of procedural knowledge is also an issue, however, with workers reporting that they just do not know how to make a claim. Not surprisingly, then, very few of the workers in Alexander and Prasad's study who did make claims did so by engaging in formal legal action: 96% made internal complaints to their employers, while only 4% filed a lawsuit or administrative complaint. Alexander and Prasad conclude that when it comes to low-wage workers who experience wage theft, the primary problems they face to invoking their rights arise at the naming and claiming stages. In short, "low-wage, front-line workers often lack the legal knowledge and incentives needed" to meaningfully enforce their own rights (2014, p. 1098).

This theoretical and empirical discussion forms the backbone of my analysis of how workers think about and respond to wage theft. An act of wage theft represents a potential dispute, which workers may recognize (name), assign responsibility for (blame), and pursue through a variety of formal and informal processes (claim). There are two central disputing-related questions that I analyze in this dissertation. First, in the context of low-wage work, how and to what extent do acts of wage theft progress through the disputing process? Put another way, why do low-wage workers name, blame, and claim, or not?

Second, what happens when low-wage workers in the District of Columbia *do* attempt to take formal action, either through the court system or a government agency? The rest of this chapter is devoted to the first question, although I touch on the second. In the next chapter, however, I do a deeper dive into the second inquiry, analyzing what options are available in the District for workers who wish to formally assert their rights, and what happens when workers attempt to do that.

“I realized I was being treated unfairly”: Naming wage theft for what it is

Naming a situation as a problem is a crucial first step to workers taking action over their wage theft. There is intuitive truth to this claim, of course: before a person will stand up for themselves, they must realize that they have something to stand up about. In addition, a wealth of empirical research supports the idea that “inaccurate or incomplete knowledge of the law can limit one’s willingness or ability to assert their rights” (Trautner et al., 2013, p. 320; see also Singh, 2008; Albiston, 2005). For instance, in her study of workers who made efforts to take advantage of the Family and Medical Leave Act (FMLA), Catherine Albiston (2005) found that when people had basic information about their rights under the FMLA, they felt empowered to take action. Rights awareness itself provided workers with both a legal and moral justification for trying to use FMLA leave.

The process of naming a particular act as wage theft has two components to it: Workers must both understand what their rights are, and they must be aware that their own situation gives rise to a rights violation. This statement seems obvious, but it is necessary to keep in mind to gain a full understanding of how, when, and why workers respond to wage theft. Not only do they need to be educated on the law, but they also need to get straight the facts of their employment. These things are not always easy to do.

As I discussed in Chapter 6, low-wage workers are often confused or mistaken about their rights. People who do not understand the law are not going to take action to assert themselves because, in their minds, there is nothing to take action over. Some of the workers I interviewed fit this description. Jack, Sabbir, and Ashna all told me about overtime violations, but they did not know – prior to our conversation – that their rights had been violated because they were not clear on the law. Camila and Sita’s employers refused to let them take time off

when they were sick, but neither woman knew this was illegal, as opposed to merely offensive. Naomi believed, wrongly, that she was not entitled to be paid for her work as a paralegal, in part because she herself had agreed to work for no hourly rate. By the time she discovered otherwise, the statute of limitations had run on any wage claim she might have had.

Even when low-wage workers are aware of a particular legal right, however, they sometimes fail to name an injury for what it is because they do not know that they're experiencing it. Once again, it's important to keep in mind the context of low-wage workers' lives. They live on the edge of poverty, which carries with it a significant amount of stress, fear, and distraction. They are often very busy, because they have families to support, work erratic or uneven hours, must take public transportation to get to work and, at times, have to scramble to deal with unexpected and unwelcome situations. These facts help explain why so many of the workers I interviewed were not able to provide me with specific information about their jobs, like their rate of pay, annual income, or dates of employment. In light of this, some workers who otherwise know their basic rights just do not have the time and mental energy to sit down and figure out whether their workplace is violating those rights.

My conversation with Lydia illustrates this point. Lydia technically worked for a government contractor, but her direct supervisor was a government employee who she got along well with. She says that this supervisor used to warn her that she was not being paid her proper wages, and urged her to investigate the situation. When I ask her whether she had ever looked into it, she says no. Why not? "So much else was coming down and my main focus was not going back to a shelter, being homeless," she explains. "It was so comfortable being able to go in my own place with my kids. That was pretty much my main focus. I was making the money to

maintain financially with no help, and that was just wonderful.” In addition, Lydia found her paychecks to be confusing, and was not sure what everything written on them meant.

Similarly, Will says it took him some time before he realized that his employer was cheating him out of his wages. “It’s something I feel I should have discovered much earlier, but I took for granted that he was being honest,” Will tells me. “Once I sat down and figured it out, the number of hours I was working times the pay rate, that’s when I found out. So when I questioned ‘em, they said, ‘Well, no, we never promised you that.’ But you did. Not only did you promise it to me, you wrote it on my paystub. So why is it on my paystub if I’m not getting it? And that’s where the problem started.”

For workers like Will and Lydia, a lack of knowledge keeps them from naming their own experiences as wage theft. But, as I argued in Chapter 6, many low-wage workers in the District are generally aware of their rights, as well as their own mistreatment. Worker knowledge levels, though, change based on the kind of wage theft at issue. Those who suffer violations of rights that are newer, more complex, or less commonly understood are not as likely to perceive their experiences as rights violations.

One example of such a law is the District’s policy requiring employers to provide paid sick days. Not surprisingly, there is widespread confusion over this. Sequenly Gray, the research coordinator at DC Jobs with Justice, tells me that when she visited businesses in the District to see whether workers and managers knew about DC’s paid sick days law, she found a distinct lack of knowledge:

I visited about 60 businesses, talked to about 265 people, and . . . I asked staff members if they had known [about paid sick days] or had an orientation, or even if information was posted in the break room about [the] minimum wage or paid sick days, or if they had even tried or successfully used a paid sick day.

And only ten percent of those people had actually successfully used a paid sick day or actually knew about it. Even managers, about seven managers I spoke with had no idea that they were supposed to have this information up in the break room about paid sick days and [the] minimum wage.

Some of these managers and employees, Sequenly adds, “could not tell me what the minimum wage was during the current time.” But in many instances, when it comes to the most common forms of wage theft, like minimum wage violations or being paid less than promised, the real barrier to disputing is not a lack of knowledge. “Certainly for some it is,” says Jonathan Tucker, who largely litigates on behalf of undocumented immigrants. But “there’s too many sources of information now available for somebody not to know if they’re being underpaid the minimum wage,” especially if that person has been working or living in the District for some time. “[Workers] see it on advertisements, they’ve heard it on the radio, they have friends and coworkers who have told them about it. Somehow, they have learned that what’s going on is wrong.”

What Jonathan’s referencing is the “local social context” (Sandefur, 2008) that does so much to structure how people think about and respond to their rights violations. Informational networks in the District are not perfect, not by any means, which is why the workers’ rights community spends a significant amount of time and effort struggling to get the government to do more know-your-rights outreach. But despite the flaws that workers’ rights activists perceive in the District government, there are many sources of information in the city. Some of the District’s legal reforms, especially surrounding the minimum wage, have been widely reported on. The Office of the Attorney General sends representatives to speak at community events, provides a clear and comprehensive guide to workers’ rights on its webpage, and issues press releases regarding its wage theft prosecutions. The Department of Employment Services also disseminates some information, including through bus advertisements. Last, and perhaps most

importantly, the workers' rights community is active and motivated, and engages with thousands of low-wage workers per year.

These people and groups comprise the District's "agents of transformation" who serve to manage and shape the feelings and expectations that low-wage workers have about their workplace experience (see Albiston et al., 2014). These actors help workers name their experiences as injuries in three ways. First, they do so through direct interactions. The Washington Lawyers' Committee's Workers' Rights Clinic, for example, serves about 1200 people per year, and many other organizations do outreach as well. Will discovered at the clinic that he should have been paid for the time he spent preparing for and cleaning up after his shifts, while Naomi learned that her wage theft was illegal when she went to a non-profit for help with an unrelated problem.

Second, these actors educate low-wage workers by sharing information with the broader public, which then filters into and through social networks. People who read bus ads, engage with the workers' rights community, or visit the know-your-rights page on the website of the Office of the Attorney General later share information with their family, friends, and co-workers. Marion, for instance, learned that her employer's refusal to pay her overtime was illegal after she spoke to her mother about it.

Finally, these agents of transformation, especially the workers' rights activists, influence larger cultural narratives about wage theft. The way that a society talks about an issue has an effect on how people perceive, think about, and react to it. In exploring this point, social movement theorists invoke the concept of collective action frames, which "refer to sets of beliefs and meanings that shape our understandings of our circumstances, including what kinds of action are imaginable, which targets are appropriate for blame, and what political concepts (such as

rights) may be employed in a given context” (Levitsky 2008, p. 556; see also Snow & Benford, 1988; Ferree et al., 2002). Levitsky (2008) distinguishes between legitimating frames, which reinforce the status quo, and injustice frames, which assert that something morally wrong has happened and that a remedy is necessary.

When injustice frames are more prominent, people are more likely to perceive experiences as rights violations and to feel morally and legally justified in agitating for change and demanding redress. In her study for home health caregivers, Levitsky found that participants who adopted an injustice frame were more likely to define “rights” expansively, and to believe that the government should play a more active role in solving their caregiving-related problems. In the context of sexual harassment, Anna-Maria Marshall (2003) credits feminist activists and civil rights lawyers for the promulgation of an injustice frame that defines sexual harassment as intolerable discrimination.

In the District, an injustice frame about wage theft dominates. A variety of actors portray the act in stark moral terms, framing it as a deep injustice which must be robustly addressed by the government. The key proponents of this message are members of the workers’ rights community, like Raymin Diaz, a union organizer who spends his time educating workers and helping them enforce their rights. We’re talking on the phone one day, and he describes to me how he thinks about wage theft:

I’m outside a 7-11 right now, right? If I walk in here and I walk out with a freakin’ candy bar and the guy sees me put it in my pocket, what the fuck’s gonna happen? You think he’s just gonna let me walk out with it? No, he’s gonna call the cops, you know what I mean? That’s where I’d like to see wage theft eventually. Maybe a little harsher than that! I’m not talking about a beatdown. I’m talking about, like, the contractors just gets nailed, and huge fines, and guess what? When you go to bid for another job, oh shit! Wait a second! You meant to tell us you did not pay these workers in 2000-whatever this much? I’m sorry, buddy. [The punishment] has to sting. It has to hurt the same way these workers are hurting. It has to hurt.

Ray, like many other members of the workers' rights community, morally equates wage theft with "regular" theft, asserts it should carry with it real and lasting sanctions, and recognizes that workers who have their wages stolen from them experience real harm. Activists spread this injustice frame at rallies, protests, and community meetings, and also through press releases and other public statements. This framing has filtered its way into the community, and helps explain why many low-wage workers speak of wage theft in terms of basic fairness.

This frame has also been adopted by powerful members of the District government, who amplify this messaging through official statements and political acts. For example, after the Attorney General sued an electrical subcontractor named Power Design for a widespread scheme of misclassifying workers as independent contractors, Councilmember Elissa Silverman called for Power Design to be removed from a government apprenticeship program. "We shouldn't be putting our tax dollars toward companies that are robbing workers of their wages," she said (Thebault, 2018). It's not that Power Design was "skirting its responsibilities," "failing to comply with legal requirements," or engaging in some other euphemistic act. In Councilmember Silverman's words, the company was committing a crime.

The Attorney General talks about wage theft in similar (if somewhat more moderate) terms, both at community meetings and in press releases issued by his office. "Workers must be paid all of the wages they earn," one release quotes him as saying. "There is no excuse for cheating people out of their hard-earned dollars, and employers must live up to their obligations to pay employees for the hard work they have performed. My office is committed to protecting workers from wage theft and other abuses, and we want to send a message to employers that they will be held accountable if they violate District laws" (OAG, 2017b).

In summary, naming is an important point of exit for low-wage workers on the path of disputing. Some number do not name their experiences as injuries because they fail to realize that their rights have been violated. This failure occurs both because some people do not know their rights, especially the newer and more complex ones, and because some people do not understand that the facts of their situations actually constitute rights violations.

A majority of the workers I interviewed who experienced wage theft, however, were able to name their experiences as injuries. This naming did not always occur at the time of the act, though. For example, Will and Naomi say that it took them some amount of time to realize that their employers had underpaid them. In Naomi's case, she realized after the statute of limitations had run out on any claim she might have had. This is not the case for most workers, however, who do understand the ways in which their employers exploit them, and identify this exploitation in a timely manner as both wrong and illegal.

There are a few explanations for why this is the case. Wage theft often involves violations of our most basic workplace laws. It just does not take much information to understand that it is illegal for an employer to pay less than the minimum wage, deny overtime, shave hours, or refuse to pay at all. Beyond that, many of the District's low-wage workers do have a reasonable understanding of their rights, or are able to access this information through community groups, social networks, and government actors and agencies. Moreover, there is a powerful narrative in the District that labels wage theft in harsh terms, informing low-wage workers that the act is unjustifiable and deserves redress. This narrative extends from workers' rights activists to government officials, as these various actors speak with one voice in promulgating an injustice frame around the issue of wage theft. The end result is that the context

of the city robustly shapes a setting where wage theft is deemed illegitimate and workers' rights are taken seriously.

Workers in the District, then, are often able to name their wage theft-related experiences as injuries, either at the time they occur or sometime shortly thereafter. They also have little trouble assigning blame to their supervisors and employers. The next section discusses what happens to wage theft disputes at the claiming phase. As I explain, this is the part where most wage theft disputes end.

“Where is my money?”: Wage theft and barriers to claiming

During the claiming phase, a worker confronts the person or entity who she blames for her wage theft and demands a remedy (Albiston et al., 2014). Claiming can involve formal or informal processes, with everything ranging from talking to a supervisor to filing a lawsuit or administrative claim. Other researchers have found that many of the low-wage workers who recognize their legal problems for what they are drop off the disputing path at the claiming stage. In particular, they express being afraid of retaliation by their employers. Such retaliation can take many forms, but workers are acutely aware of both the danger of losing their jobs and the risk that their employers will contact immigration authorities (Gleeson, 2015). They also report not knowing how to file a formal complaint, and that they believe taking action will not be effective anyway (Gleeson, 2015; Alexander & Prasad, 2014).

My findings are consistent with this body of research. For a variety of reasons, low-wage workers who believe they have valid legal disputes are nevertheless extremely reluctant to pursue these claims. A small number do, but only to a very limited extent. As Alexander and Prasad (2014) found, the overwhelming majority of those who take action do it informally by

speaking to employers, supervisors, or Human Resources departments. As I discuss in the next chapter, these approaches are often unsatisfactory. For instance, Myron’s supervisor told him point blank that he would not pay him for a full day of work because Myron had not been “authorized” to work that day. “I was just shocked, stung, and I ain’t know what to say,” Myron tells me, “so I just left it alone.” Like Myron, workers who speak up and are denied usually fail to escalate.

The findings I report here, however, also build upon existing research by exposing and discussing a number of “barriers to claiming” that have not received significant attention in the context of low-wage workers who experience wage theft. As I explain, workers fail to aggressively pursue their claims for a variety of overlapping reasons. Consistent with other researchers’ findings, low-wage workers in the District of Columbia fail to make claims because they fear retaliation, especially the kind that leads to a loss of income, and do not know how to file a formal complaint. But beyond that, low-wage workers in the nation’s capital express a significant lack of faith in both their ability to navigate the system and in the system’s ability to protect them. These explanations are all discussed in more detail below, but what they have in common is that they are all inextricably tied to workers’ low position on the social and economic hierarchies that structure our society.

Barriers to claiming: Economic insecurity and job loss fears

Perhaps the biggest explanation for why low-wage workers do not attempt to assert their workplace rights, either at all or to a significant degree, is because they are afraid that they’ll become unemployed if they do. For people who live in poverty or just on the edge of it, loss of income is an overriding concern. As I have explained, low-wage workers have little in the way of

savings, and even a temporary loss of income can have devastating effects on a person's way of life. For many, even a bad employer who steals their wages is better than no employer and the prospect of debt, hunger, and homelessness. These facts are well understood by attorneys and workers' rights activists. "For most people," Joanna Blotner says, "the most important thing is keeping whatever the bare minimum income is, keeping that job. It is much worse to be out of a job and start that search process over again and scramble for income in the in between." Joanna's the Paid Family Leave Campaign Manager at Jews United for Justice, a Jewish-progressive organization that belongs to the Just Pay Coalition. "Losing a job is almost guaranteed losing housing, losing whatever other supports and bills you've got to pay in your life," she adds.

Earl, for example, is a journeyman plumber who has experienced regular wage theft from construction subcontractors. In his view, the government is not interested in taking action until somebody steps forward and makes a report. When I ask him whether he has ever done that, he laughs. "Okay," he says patiently, "if you step forward, what are the odds? You're outnumbered with all the contractors here, and then you'll be scapegoated. You won't be able to get no work. You won't be able to find a job. You won't be able to get nothing. So how do you step forward?"

We often think of low-wage jobs as ubiquitous and easy to find, because they require few skills, have a high turnover rate, and there is a low barrier to entry. This way of thinking about low-wage work implicitly assumes that if a worker loses his job, he can easily find another one that is about as good. Earl doesn't fit into this mold, though. Although his income qualified him for this study, his job requires real expertise, and sometimes he earns a high hourly rate. But even those who do work more "typical" low-wage jobs, the ones that we think of as easy to replace, say that their economic insecurity buys their silence. Marcos, who has spent years working as a restaurant dishwasher, explains that although he "felt really bad" about his wage theft, he did not

speaking up because he “didn’t know where else to look for work,” so he “just had to put up with it.” Maria, who cleans office buildings, agrees: “[F]or the employers it’s easy, they can just take the job away from you, but for you it’s really difficult to get a job.”

Concerns about job loss are worsened by the kinds of characteristics that make people particularly vulnerable to an uncertain and unreliable job market. Having others depend on you, for example, heightens the anxiety you feel about the prospect of unemployment, and increases the need to put up with a bad situation. “There’s the fear, especially when you’re a single parent,” says Agda, a bartender. “You’re responsible for someone else. It’s like this huge weight. Every action that you take, it doesn’t just reflect on you, it affects this person that you’re responsible for.” “Really, it’s the necessity” that keeps you silent, Maynor agrees. “You have to help your family, you have to [provide for] your wife.”

For others, concerns about passing a background check keep them in place. “It’s hard [to find a job] because I have a record now,” Marion tells me, “and sometimes I don’t get [interviews], sometimes I get interviews that go well, sometimes they be like ‘I can’t hire you because of your background.’” As Devah Pager (2008) has found, criminal records are major barriers to employment, especially for African Americans, who tend to have more difficulty finding work in the low-wage labor market than equally-qualified whites anyway (Pager et al., 2009). James’ struggles against his employer’s wage theft have driven him to think about killing himself, but he still feels that he cannot leave his job. He has tried looking for other work, “but I have a criminal record and it kind of deters. I’m guessing that deters a lot of employers from hiring me, especially with me being an older gentleman.” Lydia echoes James’ thoughts about age: “[I]n the world of work, you have a lot to do with applying for different jobs. So that’s the fear now, with me being 50. Who wants to invest?”

Perhaps the biggest inflection point for worker vulnerability is immigration status. Although I did not speak to any workers about their status, undocumented people have a difficult time finding work in this country due to laws requiring employers to verify the citizenship status of all employees. As a result, undocumented workers seeking a new job have limited options, and often must choose to either 1) present false proof of citizenship, which carries its own risks, or 2) accept low-grade, wage theft-riddled jobs in the underground economy. As Shannon Gleeson (2015) has found, immigration concerns are a major reason why undocumented workers do not confront their employers over their exploitative practices. Indeed, these concerns have only increased in a world where Donald Trump is president, as he frequently demonizes undocumented workers and has sought to deport even those who do not pose a threat to public safety (Berenson, 2017; see Chason, 2017; Mills, 2018).

Barriers to claiming: Other retaliation

While one of the biggest fears low-income people have is that they will lose their jobs if they complain about their wage theft, employer retaliation can take many forms. Workers also express concern over other forms of punishment and harassment that fall short of direct termination, but still create powerful incentives for silence. Ruben and Miranda, for example, told me that after they spoke up, their employers began to cut their hours. The uncertainty of uneven hours and erratic schedules simultaneously hurts workers' incomes and makes it hard to search for other jobs. It also has the effect of intimidating others. For instance, some of Miranda's coworkers wanted to take action over their wage theft, "but they was scared of the backlash, like . . . how they shortened my hours," she explains.

Supervisors have a variety of strategies for making workers' lives more difficult. According to Miranda and James, their superiors did not give them the opportunity to advance in their positions, and also harassed them. Sometimes supervisory harassment is just petty and annoying, but other times, it threatens a person's livelihood. Harriet believes that her direct supervisor held up her paychecks to punish her for filing a grievance, which had devastating effects on her and her family's well-being. James's managers unlawfully suspended him, Lisa says her employer evicted her in retaliation, and Miranda tells me that once, when she interviewed for another job, she got the distinct feeling that her manager told the potential employer that Miranda had been in a physical fight at work.

Like anybody else, low-wage workers are also concerned about leaving their jobs on good terms so that they will be able to have a positive reference. Although Marion knew that she could file a complaint for unpaid overtime with the Department of Employment Services, she did not. "I didn't follow through because I was like, I'll take the experience because I need it on my resume," she explains. "[My old employer] is one of my references, so I [didn't] want to."

Barriers to claiming: Concerns over navigating the system

Low-wage workers also report that they do not formally pursue their claims because they feel unprepared to navigate the legal system. There are two aspects to this: workers lack procedural knowledge, and are also intimidated by the prospect of legal action.

As other researchers have found, many working people do not understand even the basics of how to bring a lawsuit or file an administrative claim (see Alexander & Prasad, 2014). Just *filing* a lawsuit is confusing, to say nothing of going through the processes that follow, including discovery, legal research and writing, making and responding to motions, and oral arguments.

The confusing nature of the legal system is, after all, a big part of the reason that people hire lawyers. In theory, administrative agencies like the Department of Labor and Department of Employment Services are supposed to provide a softer and more accessible avenue for enforcing one's rights. In practice, many low-wage workers are unsure of how to take the first step to access these agency processes.

This is partly because of the confusing and sprawling nature of the administrative state. There are three federal agencies that regulate the workplace: the Department of Labor (DOL) works to remedy wage theft, the Equal Employment Opportunity Commission (EEOC) provides a forum for addressing discrimination, and the National Labor Relations Board (NLRB) is responsible for enforcing the National Labor Relations Act, which protects the rights of employees to engage in collective action, most commonly by forming unions. As if that were not confusing enough for normal people, there are also parallel state- and city-level agencies. In the District, the Department of Employment Services investigates and punishes wage theft, the Public Employee Relations Board roughly mirrors the NLRB for unionized public employees, and the Office of Human Rights deals with discrimination claims.

“You’ve got all these different [agencies],” James says, exasperated, “but nobody does anything!” By the time he and I speak, he’s a veteran of the administrative system, having already complained to a variety of government agencies in response to a wide range of perceived problems. He had visited the EEOC, DOL, and NLRB, but he found these processes to be slow, frustrating, and confusing. He also felt like these agencies were not adequately helping him, especially with his wage theft. Eventually, he gave up and filed a lawsuit in federal court. When I ask, he says that he never even considered filing a wage claim with the DC Department of Employment Services (DOES). He did not know he could. After I tell him that I think that

agency's headquarters is close to his home, he laughs bitterly, muttering "that would be too funny."

Like James, some workers have not heard of DOES at all. Many told me that they don't know where to begin to figure out how to assert their rights. "I don't know where I should go or to whom I should talk," says Sabbir. "And maybe there's a way we can fight about it but I don't know the way, how I should start, or how to do it."

But even those workers who are familiar with DOES express confusion. Cora and Earl, for example, have both participated in a variety of DOES-run programs designed to help District residents find work. In fact, Cora is one of the few people I interviewed who spoke well of DOES. When I ask her whether she might file a wage claim, she says "I don't know, and I wouldn't know how to do it." Earl has the same problem. "Where do you take your complaint?" he asks. "Do you take it to the city? Where do I go? Who do I complain to?"

Beyond that, some low-wage workers are – understandably – reluctant to file a formal complaint or lawsuit because they are not confident that they can successfully navigate the system. It is not a lack of knowledge that holds them back, necessarily, but a desire to avoid a process that is intimidating, confusing, time-consuming, and emotionally draining. "I just didn't want any more added stress," says Nate, explaining why he hadn't pursued formal action. Nate's tall, well-spoken, and educated, the kind of person who is clearly comfortable in his role as a high-end caterer. For years, his employer misclassified him – and all of his coworkers – as an independent contractor, which eventually led to some tax problems. Nate found an attorney, who told him that he had been misclassified and asked whether he wanted to do something about it. At that point, though, Nate was in the hospital undergoing experimental cancer therapy. "I just want to get out of here," he told his lawyer.

This is something of a unique circumstance. What cancer patient would want to do *anything* that could add to their stress? But Nate is far from alone in his reluctance to take on the burden of pursuing a claim. Going to the government is “a lot of work, it’s a lot of follow up,” Agda says. “They want this, they want that, then they want to call the employer and then it’s like, you know, either you’ve moved on from that job and you don’t want to deal with it anymore, you don’t want to see [your old employer] anymore, or it didn’t end well anyway so you think they’re going to [say bad things about you] But you just don’t want to deal with it, you know? There’s a lot of mental aspects to it.”

The path of least resistance is for workers to just try to move on from their workplace. In many ways, it is much easier to swallow the frustration and pain of wage theft than it is to deal with the hassle of fighting an uphill battle. “I’ve had to talk so many people out of not leaving,” Kira tells me. “Like, please stay and fight for your rights. Don’t leave.”

Miranda saw the same thing from her coworkers. The large department store where she worked frequently shaved time off her paychecks. After it happened once, Miranda began to keep careful track of her hours in a notebook. Four or five times, she says, she used her own records to confront her supervisor, and each time the company wound up cutting her a check. Not surprisingly, other employees were also being underpaid. “[My supervisor] gave me a check, and after I did it, four other people had to get checks!” Miranda tells me. The workers got together and talked about filing a group complaint with DOES, but ultimately never did. “I thought about going to the wage and labor board,” says Miranda, “because a lot of people were complaining about it, and I thought, ‘There’s power in numbers.’ If a group of us feel that we’ve been treated unfairly, then probably it’d be quicker than it just being one person. But of course, most everybody at that point that was going through the same injustice I was going through just

wanted to get the hell out of there.” Eventually, that’s exactly what Miranda herself did. As far as she knows, none of her coworkers ever went to DOES.

Barriers to claiming: Lack of power, lack of faith

The last major reason why workers fail to claim their injuries is that they simply do not believe it will do any good. Agitating at work or filing a complaint is not likely to achieve justice, but there is a real chance that speaking up will carry significant costs. There are two aspects to this barrier to claiming. First, low-wage workers understand the stark power imbalance that exists between employers and workers. This imbalance is only amplified when the worker in question is economically or socially vulnerable, which explains why wage theft research consistently finds that it is more pronounced among the working poor, undocumented immigrants, non-unionized employees, women, and minorities (Cooper & Kroeger, 2017; Bernhardt et al., 2009). As Maria puts it, employers “have the money, they have the power, and it’s your word against their word so I don’t think there’s anything you can really do about it.”

Others also expressed feeling alone in their struggle for justice. “We have no one, really, in our corner but guys like you, Bread for the City, [other] programs,” says Will. “That’s who we go to.” Like a few others, Will tried and failed to find an attorney to represent him. For reasons he does not understand, the lawyer he spoke with was initially excited about his case, but then refused to take it. “I don’t know if they bought him off or not,” Will tells me. “I can’t prove it, but he really never helped at all.” Privately, I think that bribery cannot possibly be the explanation. It is far more likely that the attorney just decided Will’s case was not strong enough, leaving him with only two realistic options: move on, or file an administrative complaint.

Employers are aware of this power imbalance, and many use it to their advantage. When Ameen's former boss, an ambassador to the United States, taunted Ameen by inviting him to file a lawsuit over his unpaid wages, the ambassador was relying on the fact that Ameen has very little money and no legal knowledge. When Cora's supervisor threatened to fire her after Cora asked for her unpaid wages, she was sending a clear message about speaking up. People like Maria's employer, who refuse to comply with the most basic workplace laws, do so confidently because they can do so with impunity. "Fear and intimidation [are] what threaten workers the most," says Allen Cardenas, the coordinator of the Workers' Rights Clinic. "They usually have family to support, they have bills, and they don't have the time to stop working and find a new job if they raise hell at their current job. Stability's important for them, and I understand why you're scared to ruffle some feathers, because it could cost you your job and it might mean that your kids can't eat."

Workers hear these messages loud and clear, and are aware of how employers strategize. "When people know they can take advantage of others to their own benefit, and they know the other person is kind of scared to even reach out or even find information, they have what they want," Naomi tells me. "[Employers are] not going to volunteer or give you a clue of what your rights are," says Lydia. "They're in your handbook, but if you try to pursue it then you're retaliated on." As I discussed earlier, this retaliation can take many forms and be very hard to prove. Workplace disputes often come down to one person's word against another's, and that's thin proof upon which to risk a claim. "When you're told you'll be taken off the schedule, it's not like you're getting a formal e-mail in writing where you have any proof of this," says Joanna Blotner of Jews United for Justice. "It's an interpersonal conversation, oftentimes with nobody

else around to hear, it's your word against theirs, so workers have very little power to react against it, to push back, to prove offensive retaliation where it is happening in the workplace."

The natural lack of power that workers feel is compounded by the second aspect to this barrier to claiming: many low-income people lack faith in the District government and do not trust it to serve them well. Some believe that the government is not helpful because it is plagued with inefficiency, staffed by employees who are largely incompetent and unmotivated. "It's no good," Caleb says about DOES and the people who work in the Office of Wage-Hour. "You come to work, but you don't go to work! It looks like, down DOES, looks like you're going to church. Everybody dressed up, looking good, but you ain't doing nothing!" Ruben agrees, summing up his experience with DOES like this: "Everybody on some slow motion time, you know? I got to the point where I had to call the mediator to make sure of my court date, because DOES wasn't even keeping me up with the court dates!" This general belief is not limited to those with personal experience, but permeates throughout the community. Even Susanna, who has never had a reason to go to the government for help, tells me that "[t]he government typically takes too long in the process of addressing [people's] concerns and issues that they're having, and it's not taken care of in a timely manner."

Other workers have a much more cynical view. It is not just that the government is inefficient. The system itself is designed to favor the haves at the expense of the have-nots (see Galanter, 1974). Earl, for example, describes a race to the bottom in the construction industry, where contractors refuse to hire District residents, deny overtime, pay unfairly low wages, and misclassify workers as independent contractors. "These companies that have come into this city to do work have no licenses to do work, but it's okay for them to do work," he explains. Earl does not mean that these contractors are operating legally. Far from it. He is arguing that the

city's leadership is not interested in taking meaningful action. "There's definitely a lack of political will!" he says. "There's something in it for them. I mean, every politician wants something out of it. If I'm gonna do something for you, what do I get out of it?" In the minds of many, because working people have relatively little social and political power, they are not able to effectively sway the government to protect their interests. The system is, more or less, designed to impede their efforts to obtain justice against exploitative employers. "People like me just get caught up in the system, and I'm just one of those that got caught up, and I'm gonna suffer," Carol tells me. "And I am suffering."

This theme recurred throughout my interviews. Many workers in the District of Columbia do not have faith that going to the government for help will be worthwhile. Instead, the experience will be long, aggravating, and confusing, and when all is said and done, their efforts might do more harm than good. They may not win; if they do, they may not see any money. Worse, speaking up can result in additional harm, ranging from stress and uncertainty to harassment and termination.

In her book *Precarious Claims*, Professor Shannon Gleeson beautifully illustrates how pursuing a legal claim can be a deeply upsetting and emotional experience for low-wage workers. Gleeson examined the experiences of low-wage workers in Northern California who attempted to enforce their rights through administrative processes. Her findings reveal that what I have reported here is not unique to the District of Columbia:

While we tend to think of legal mobilization as an empowering process, I found that many workers focused on what was missing or lost throughout the ordeal. A lack of access to key brokers and experts, issues with language and communication during appointments and proceedings, and the time, monetary, and emotional costs of endless wrangling all weighed heavily on them For some, the lesson to be learned was to always speak up and defend your rights; for many others it was to learn to remain quiet, as there is much to be lost (Gleeson, 2016, p. 127).

Low-wage workers are not alone in feeling cynical and skeptical about the District government's willingness and ability to aid working people. As I discuss in detail in the next chapter, workers' rights activists and employment lawyers also take a dim view of the District government's ability to manage wage theft claims. In particular, and as I discuss in greater detail in Chapter 8, these people are critical of DOES, the main workplace enforcement arm of the local government. "A worker, honest[ly], if they have a wage claim they have a better chance of waiting for the next semester at a law school to open up so [a law school clinic] can potentially take their case than they do at having DOES review their claim," says Allen Cardenas, who coordinates the Washington Lawyers' Committee's Workers' Rights Clinic. "The law school will be more responsive." Union organizer Ray Diaz is less polite: "They don't give a shit about investigating, really resolving issues for people."

Other forms of action and resistance

A key insight in the field of disputing is that many disputes are dealt with through quasi-legal or non-legal methods. This is why Catherine Albiston and her colleagues (2014) encourage researchers to adopt the metaphor of the disputing tree, with its many branching pathways, rather than the pyramid and its linear path to resolution through the formal legal process. In the context of wage theft, the journeys of most low-wage workers are far better illustrated by the disputing tree. The fact is, very few of them adjudicate their claims through the judicial system. As I discuss in the next chapter, a rare few are able to file a lawsuit, either on their own or with the help of counsel, but the overwhelming majority of working people who feel that their employment rights have been violated are not equipped to take action like this. Some others do

take quasi-legal action by going to a government agency to file a complaint, a topic that the next chapter also deals with. Most, however, do not.

What about alternative methods for getting justice? As I have written, low-wage workers experience wage theft in the context of a gross power imbalance. Their employers violate their rights with near-impunity because the likelihood of detection by government agencies is low, and because workers are extremely unlikely to take formal legal or quasi-legal action in response. At the same time, however, low-wage workers in the District of Columbia are the subjects and beneficiaries of a social movement that has sought to challenge, if not upend, this power imbalance. Workers' rights activists, including members of the plaintiffs' bar, have spent years mobilizing low-wage workers and lobbying the government, and have succeeded in creating a legal scheme that makes the District one of the most pro-worker places in the country (Rose et al., 2018). These efforts have undoubtedly improved life for the District's working people and, as the next chapter discusses more thoroughly, have also provided workers and their advocates with a set of tools that can be devastatingly effective at holding employers accountable and compensating people who have experienced wage theft.

It is reasonable to think that in light of these legal reforms and the powerful injustice framing that exists around wage theft in the District, its low-wage workforce would feel empowered or justified to take action in a variety of non-legal ways as a response to wage theft. A worker who does not receive overtime could, for example, decide to steal from her employer, rationalizing that this approach is justifiable because her employer is already committing theft. Or, a worker could choose to quietly organize her co-workers into a union in order to garner greater job protections.

The notion of “resistance” is a relevant point of consideration here. Austin Sarat defined resistance as “behavior or actions seen to be at odds with the expectation of those exercising power in a particular situation” (1990, p. 347 n. 15). This definition, however, is too narrow. As Kaaryn Gustafson explains in her book *Cheating Welfare: Public Assistance and the Criminalization of Poverty*, it “overlooks will, intent, intent, agency or defiance as aspects of resistance,” granting the same meaning to both intentional and unintentional acts, so long as the effect is to defy expectations of the powerful (2008, p. 173). Sociolegal scholars, according to Gustafson, have in general focused too heavily on behavior and actions without also considering the mental states and goals of the actors themselves (2008, pp. 171-76).

Acts of resistance can also be alternative methods of resolving wage theft disputes when they are done with the intent to alleviate the frustration that a worker feels and when they contradict the goals or desires of employers. I approached this research expecting to hear some stories of resistance, of workers going behind their employers’ backs to even the score, or of workers being mobilized by the injustice of their situation. To some extent, I did. Jack, Kira, Ekay, and Nate were all motivated by their experiences to become active, or more active, in the District’s workers’ rights community. Jack, in particular, is well-known among activists, a familiar face who testifies at public hearings, rallies, and has even discussed his experiences on TV.

Similarly, Maylin told me that she wanted to speak with me because she fundamentally disagrees with the at-will system of employment, and wanted the opportunity to share her story as part of an effort to undermine it. “I believe that I need to let someone know,” she explains. She also engaged in another resistant act, though. Maylin worked for a federal contractor, and it was her job to travel around the District and conduct surveys. She used a tablet for work, which

also tracked her productivity, and Maylin's supervisor would sometimes use this information to fight Maylin over her timesheets, insisting that she remove periods of time during which her supervisor felt she was not productive. The problem, from Maylin's perspective, was that the periods of time in question always involved activities that Maylin should have been paid for. Sometimes, for example, Maylin would set up an appointment to conduct a survey, and the other person would be late. This was hardly Maylin's fault, but her supervisor would refuse to pay her for the time she spent waiting for her appointment showed up. Rather than pick a fight she knew she could not win, Maylin came up with a solution: because she was paid for her travel time, she would remove the block of time as her supervisor instructed, and then inflate her travel time by the same amount. Traffic is a notorious problem in the DC-area, after all. Maylin always got her money, and the lie was easy to both pass off and rationalize.

Miranda told me about two other resistant acts. On one occasion, Miranda's supervisor instructed her to show up at work at 5 AM to help conduct an audit. "When I got there that day I didn't do nothing," Miranda says. "I had coffee and doughnuts. I sat my ass right there with the machine doing this countin' shit, I didn't know what the fuck I was counting. I was just doing the machine in my hand." Miranda, who was already frustrated by her schedule, her wage theft, and the ongoing behavior of her supervisor, pretended to work just enough to collect a paycheck for a task she had no interest in doing.

Miranda's other story of resistance is far more exciting, and was the only act of illegality that I heard as a response to wage theft and general mistreatment. Although Miranda worked for a large department store chain, she says that she and many of her colleagues experienced consistent wage theft in the form of time shaving. The employees debated filing a complaint with DOES, but never did. One, however, came up with an alternative plan:

I said “Don’t do it, Adam.” He said, “Fuck them.” He called some of his buddies, they did a snatch and grab. It was terrible. They was knocking customers out the way, I mean, [grabbing] coats, and when it first happened, I was like, “Oh my god!”

Then about two days later – because he had quit. He said, “Anything happen up in Weeble’s?”

I said “Yes, as a matter of fact. . . . your ass had something to do with that.”

He said, “You got that right. I got \$800 for that stuff, too.”

So, Weeble’s was investigating. They said, “Anybody know anything?” They offered \$350. I said to myself, “Shit. The fuck I would tell you.”

It is possible that there were acts of resistance other than what I’ve shared here that workers just did not tell me about, but I have my doubts. If the actions in question were legal, there would be no reason to keep them from me. People may not have wanted to tell me about their illegal acts, but by and large the workers I interviewed were honest with me about their deeply personal experiences. Only in two instances did I have a strong feeling that a person was guarded in their responses; overwhelmingly, people were willing to answer my questions directly, even where their responses cast them in a negative light.

By and large, low-wage workers do not engage in acts of resistance, legal or otherwise. Their reactions to perceived acts of wage theft are instead best described as efforts to cope. When wage theft occurs, workers are willing to take some action in response, but it is largely limited to confronting their supervisors and, if that fails, trying to deal with the problem as best as they can. A small number take formal action, but most are extremely reluctant to take that step. A few also become invested in broader advocacy efforts, but this also requires an investment of time and energy. Those things are hard to give when there are much more pressing matters, like earning enough to pay rent and purchase food.

Conclusion: When workers name, blame, and claim

In this chapter, I have discussed how people who experience wage theft in the District of Columbia think about their rights violations, and what barriers exist to them taking action. There are many branching avenues that a dispute can take, but most instances of wage theft go unreported. Low-wage workers' potential legal claims typically wither away during two key points in the disputing process: naming and claiming. With regard to naming, some workers fail to recognize their wage theft for what it is because they do not have a clear understanding of their rights, and/or because they do not realize that what they have been experiencing is illegal exploitation. At the same time, however, I have argued that most low-wage workers – despite their imperfect rights knowledge – generally understand the mistreatment that they experience. These are not contradictory conclusions. Rather, they reflect the fact that wage theft often involves violations of our country's most basic workplace laws, like the minimum wage and overtime. Even as the details of these laws might escape people, such violations are recognizable to those who suffer them. As an employer's illegal practices become more complicated or involve violations of laws that are less well known, the likelihood of a worker successfully naming her experience for what it is declines.

If they successfully name their injuries for what they are, though, workers are then highly likely to give up on their disputes during the claiming phase. Many are willing to at least confront their employers or supervisors about perceived wage theft, but few do so frequently or aggressively, and even fewer pursue formal action. There are some very good reasons for this. Workers fear employer retaliation, lack the knowledge and confidence to navigate the legal system, and believe that filing a claim will not be worthwhile. Ultimately, the common theme that ties these barriers to claiming together is the concept of power. Simply put, employers have

it, and workers do not. This dynamic structures every workplace interaction, serving to guide and heavily constrain the practical options that are available to workers who feel mistreated and want to do something about it.

To summarize, then, there are significant economic, social, and psychological barriers that low-wage workers have to clear if they want to pursue a wage theft dispute against their employers. Workers understand these issues, and decide – after weighing possible and foreseeable consequences – whether and to what extent they are going to speak up to assert their rights. This analysis raises an important question, though: When and why *do* workers speak up? It is a question that has not been addressed yet in this context. Other researchers have focused on failures to claim (e.g., Alexander & Prasad 2014), with little discussion about the circumstances under which a low-wage worker who experiences wage theft will attempt to vigorously assert their rights.

As a first step, people must be aware of what their rights are, and they must be aware that their rights are being violated. Naomi, for example, told me that she would have attempted legal action, but by the time she found out she had a claim the statute of limitations on it had run out. Similarly, Will would have done something sooner had he been aware that his employer was, as he put it, cheating him.

Even when workers are aware of their mistreatment, they still avoid formal claiming. For most people to pursue action over wage theft, they have to reach a breaking point where the offensiveness of their exploitation outweighs the possible costs of asserting themselves. When wage theft is small or infrequent it is easier to ignore, and workers are not likely to take action even though many report that this treatment deeply upsets them. Similarly, when a given approach to claiming carries with it relatively few job-related consequences, workers are more

likely to use it. This explains why many are willing to directly confront their supervisors, but are reluctant to escalate their dispute into something more formal.

But eventually, for some people, things do reach a tipping point, the calculus shifts, and they decide to take formal action. Ameen, Caleb, and Maynor, for example, all did their best to ignore or cope with the fact that they were not being paid or treated appropriately. These men only escalated their claims and attempted formal action after they were fired, and when the consequences for speaking up no longer included loss of income. Wrapped up in this consideration, however, are also the concepts of dignity and equity. Like most of the rest of us, low-wage workers expect a certain level of fair treatment from their employers. When their employers' behavior crosses the line and becomes so egregious as to be intolerable, people are galvanized to action. "Many times, our [clients], they come to us not because of how they've been paid but because of how they've been treated," says Jonathan Tucker, an attorney. "They're fired without notice, they might've had an illness or an accident, they've had to leave work for a period of time, they come back, there's no job for them. They've been [working] there for years and years, there's no accommodation made and then they come to seek redress."

Others agree. Allen Cardenas is the coordinator of the Workers' Rights Clinic, and much of his job involves advocating for people who have experienced wage theft. "It often is a big catastrophic event that causes people to come forward," he explains. "At the clinic, people will come forward for being illegally fired, but once we talk to them more we find out that they did have wage theft and they didn't know it. That ties back into people not knowing their rights, but there is definitely a pattern of people putting it off for years and then coming forward once they're fired or once they've been physically assaulted at work."

Much wage theft is small or irregular, and while it can have an outsized impact on the people who experience it, they only rarely pursue their rights through formal processes. It would be wrong to conclude from this discussion, though, that many low-wage workers are willing to put up with some amount of exploitation. Taking into consideration the context of these peoples' lives, it is more accurate to say that low-wage workers in the District are *required* to tolerate some mistreatment and abuse because they do not feel as though they have another choice. This conclusion finds support in quantitative research, which shows that all over the country, low-wage workers experience wage theft at shocking rates (e.g., Bernhardt et al., 2009; Galvin, 2016), but rarely take action over it (Alexander & Prasad, 2014). It is absolutely crucial to understand these facts if we want to craft a meaningful response to wage theft. As it stands now, our system of labor standards enforcement depends on workers speaking up. In fact, it relies almost *entirely* on workers being willing to bring complaints against their exploitative employers. It is therefore a significant problem that the vast majority of acts of wage theft go unreported.

And yet, as I discussed in Chapter 2, on paper the District is (arguably) the most worker-friendly place in the entire country (Rose et al. 2018). Relatively speaking, it has generous employment and labor laws, and the Wage Theft Prevention Act overhauled the legal and regulatory environment in an effort to craft a system capable of providing a meaningful response to the widespread problem of wage theft. In other words, the District government has made efforts to redress the social, economic, and political power imbalance that exists between workers and their employers. Where, then, does the breakdown happen? Why is it that in one of the most worker-friendly jurisdictions in the entire country, workers so often fail to pursue their

wage theft claims through formal processes? And, what happens when workers do try to invoke formal systems of enforcement? The next chapter addresses these questions.

Chapter 8: Struggling for Justice in the Nation's Capital

Sita's Story: You want your wages? We'll sue you

In the early spring of 2018, WorldTalk offered Sita a job as the organization's Program Coordinator. It seemed like a great opportunity. She had been trying for months to find work in the DC-area, where her husband was living, and she was eager to begin her new life with him. The salary was not great – \$35,000 a year, no benefits – but she believed in the mission of the non-profit: to spread peace and understanding through affordable language classes.

Sita's only twenty-eight, but her resume is impressive. Although she has experienced adversity, with the support of her parents she has managed to work her way to success. She speaks four languages (“English, Bengali, Hindi, some German”), has two master's degrees, and carries herself with an air of professional competence. At first, it seemed like WorldTalk's Founder and President, Steven, recognized her value. “One of the toughest parts of my job is being presented with over 315 qualified candidates and somehow finding the *one* person who will be the best fit,” he wrote to her. “I think you have the enthusiasm, experience, attitude, and work ethic to make a fantastic contribution to [WorldTalk], and I am delighted to offer you the Program Coordinator position.”

Sita enjoyed some aspects of the job, but her opinion on it quickly soured. “The main issue was that since I was the only person in the office working here in DC, I was having a lot of responsibilities at the same time,” she says. It was too much work. Sita wound up putting in more than forty hours a week, including time on weekends. She is used to hard work, but this was tiring, and Steven had presented the job as a normal 9-to-5. Worse, though, Steven turned out to be hard to work for. He did not respect her time or her schedule, and Sita felt like he did petty things just to make a point about who was in charge. For example, Sita told Steven that on most

days, she needed to leave work at five o'clock sharp or else she would miss her shuttle bus home, but despite knowing that, he frequently kept her late for unimportant reasons. "He used to call me every day at like . . . 4:59 or 4:55, and then he would just go on talking about random stuff that's completely unimportant for like fifteen, twenty minutes," she explains.

Steven also nitpicked her work, made condescending and racist comments, and blamed Sita for things that she felt were not her fault. Sita began to look for other jobs in her spare time, and continued to feel frustrated and stressed out at work. Things came to a head in mid-August, after Steven got upset with Sita for a scheduling mishap that she felt was his fault. She decided to take a mental health day. "I said I was having some stress-related issues and I don't want to go to work, I cannot go to work on that Thursday. I was going to work from home, and Friday I was not going in at all," she says. This was a valid invocation of DC's paid sick days law. Sita did not know that at the time, though, because – in violation of District law – WorldTalk did not provide its employees with paid sick leave.

Steven responded badly. He demanded a doctor's note, even though employers are not allowed to do that unless an employee misses at least three days of work. Sita refused, telling Steven that because she did not have health insurance, she could not afford to go see a doctor. Steven then terminated Sita over e-mail. This was bad enough, but the termination letter also included some statements that shocked her:

This decision was made in light of statements from former interns and volunteers and in light of numerous statements you have made and specific actions you have taken that we believe were intentionally aimed to undermine the best interest of the organization, obstruct the operations of the organization, and slander members of the organization. While we understand these efforts achieved their purpose for the most part, we believe there may have been more serious, potentially illegal activity taking place either by you or under your direct instruction. One of those actions that we believe took place (based on clear written evidence from you) is a felony in the United States and carries a prison term of up to five years, with a fine of up to \$250,000.

These accusations were confusing and intimidating, and Sita had little idea where to begin with them. What could she have possibly done to warrant a threat of incarceration? Unfortunately, things then got worse. Steven refused to pay Sita her wages for August, totaling about \$1800, and he escalated his threats when she demanded them. “We are considering filing a lawsuit,” he responded. “We believe that [WorldTalk] has been under no obligation to pay your salary as of June 21, 2018, and potentially as early as May.” Steven included a litany of offenses that Sita had allegedly committed, including “repeated malicious disparagement and defamation of” WorldTalk and its personnel and “negligent abuse of private and confidential information.” He informed Sita that she would only be paid part of her August wages, and only if she jumped through a series of hoops, including signing non-disparagement and non-disclosure agreements, and producing an affidavit proclaiming her innocence. Sita refused. Among other problems with these demands, the agreements that Steven sent to Sita were grossly one-sided and unfair. They limited only Sita’s words and actions, not those of WorldTalk or Steven, and they were so broad and inclusive of such a wide range of actions that Sita would have opened herself up to legal action the moment she signed them.

With the help of volunteers at the Workers’ Rights Clinic, Sita sent Steven a demand letter for her unpaid wages. It fell on deaf ears. He sent her a long reply, insisting that due to her “subversive” and “malicious and calculated” actions, she was not entitled to any wages at all. In fact, she had caused “considerable” and “quantifiable” damage to the organization, which Steven could prove with “pages and pages of written evidence.” Steven again threatened to sue Sita for a variety of vague and imagined offenses, telling her that she would be liable for “a minimum of \$168,000, plus any legal and court fees.”

Sita tried, one last time, to negotiate. She learned that her unpaid wages were higher than she had thought. In March, when Sita started the job, WorldTalk required her to complete five days of unpaid “training.” Problem is, there is no such thing as mandatory unpaid training for employees in the District of Columbia. She should have been paid for this time, in addition to her work in August. Sita offered to sign edited, reasonable non-disparagement and non-disclosure agreements, and to settle her potential wage claim for about \$2600 – roughly the value of her unpaid wages, and far less than what she was entitled to under District law.

“We understand you want to extort money from our non-profit,” Steven shot back, calling her actions “clear blackmail.” Nevertheless, he offered her about \$1400, but demanded that she sign the same one-sided agreements that she had already refused to sign. Sita ignored this message. Two weeks later, Steven wrote again to offer her almost \$1800, the full pre-penalty value of her unpaid August wages, but again demanded she sign the agreements. She also ignored this message.

This experience has had its costs. “I’m depressed and unhappy because of this whole situation,” Sita says. “I really cared about the organization, and I put in a lot of effort and a lot of hard work. I think I’m a very hardworking person. So when he tells me I didn’t do my work properly, it really feels like a personal insult, so that really irks me.” Sita and her husband had trouble paying their bills, and she had to stop sending money to support her family back home. “I don’t really feel like going anywhere or doing anything,” she says.

While this saga had been going on, though, Sita had been busy. She had found a new and better job, but had also been contacting attorneys, hoping somebody would take her case. Despite the fact that her wage claim, including penalties, was worth about \$10,000, nobody would agree to represent her. Her claim was just too small.

With nowhere else to turn, I helped Sita file a wage claim with the Department of Employment Services (DOES). It has now been four months since Sita submitted her claim, and her dispute has not been resolved. In fact, there has been very little forward movement. It took two and a half months for DOES to even send notice of Sita's wage claim to WorldTalk, and another month before the agency informed Sita that it would be holding a factfinding and mediation conference. That conference, however, has not been scheduled, and the employee in charge of evaluating Sita's claim has not been responsive to her requests for information. Every step of the way, Sita has had to be proactive in her communications with the agency, which she has learned is disorganized, slow, and uncommunicative. "It is getting ridiculous," she tells me, frustrated. "[I am] really confused about why it is taking him so long to take every small step."

Caleb's story: Filing, re-filing, and no end in sight

For more than four years, Caleb worked for a woman named Marjani, who owned two convenience stores in the District: Easy Mart and Capital City Mart. Caleb worked at Capital City Mart doing pretty much anything and everything: building, remodeling, cooking, maintenance, sales, ordering and stocking supplies, and security. The last part of his job was especially important. The shop is located in a rough neighborhood, and Caleb has more than a few stories about times he has been in danger. "Every [guy] coming there, 18 years old, they got a gun or a knife," he explains, "every day somebody say 'I'm gonna kill you.'" More than once, Caleb found himself looking down the barrel of a gun.

Caleb's ability to be a jack-of-all-trades is impressive, especially since he says he was working about 98 hours a week. There is one more thing, too: Caleb's illiterate. He is not ashamed of this fact. Actually, Caleb is proud that he has been able to work around his inability

to read, and that he was indispensable to Marjani and her business. But despite this indispensability, for most of his employment Marjani did not pay him. Instead, she let him live in an apartment over one of the stores, promising that if he worked with her she would put him in charge of his own restaurant someday. “That was going to be my retirement,” he tells me.

Over time, though, their relationship became toxic. In part, this was due to Marjani’s family. Caleb does not belong to Marjani’s religion, and her brothers took issue with that fact. They tried to muscle him out of the business, both by badmouthing him and by threatening violence. At one point, one even threatened to decapitate Caleb. There were other issues too, though. The restaurant never materialized, and Marjani became jealous and abusive when Caleb dated other women, even though she and Caleb were not in a relationship. Then, one day, Caleb had two heart attacks, and after he got out of the hospital he found that he could not keep working. “I can’t even paint no more,” he laments, “my body is going down, my arm messed up, my legs I miss work. I love what I do. I miss hanging some drywall, painting, fixing your house up, making it look better, but my body just can’t take it.”

Marjani tried to evict Caleb from his apartment. At that point, he decided to take action over his years of unpaid work. “They gave me the eviction notice and I was like, in my mind, ‘You can’t evict me!’ I don’t pay, you owe me. You can’t evict me. So I caught [Marjani] coming in, I said, ‘You owe me for almost 5 years.’” With some help, Caleb calculated that Marjani owed him more than \$160,000 in unpaid minimum wage and overtime; including penalties, Caleb says he is entitled to more than \$600,000. She refused to pay him anything, though, even after Caleb sent a demand letter.

Caleb found an advocate in the workers’ rights community and went to file a complaint with DOES. The first time Caleb filed the complaint, DOES issued a determination in his favor.

Marjani challenged DOES' conclusion, and she and Caleb went to a hearing with an administrative law judge. Marjani showed up with an attorney ("White guy, kept yelling," Caleb says), and she also brought a key piece of evidence with her. It was a signed and dated letter, which said:

To Whom It May Concern,

This is a letter to confirm that I, contractor Caleb [Marcus], have taken the contract of remodeling a commercial property named [Capital City Mart], which is located [in the District of Columbia]. And I would like to confirm by signing this letter that I am not owed any money, and that I am paid in full amount.

Caleb Marcus⁵

The problem, of course, is that Caleb could not have possibly written or signed this letter, because Caleb cannot read or write. Marjani's lawyer, though, managed to get Caleb's claim dismissed by arguing that Caleb had had his complaint served on the wrong employer. His dispute was with Capital City Mart, but his complaint had been sent to Easy Mart. Although Marjani owned both, the hearing officer dismissed Caleb's claim.

Caleb insists this was the wrong decision, but he had no choice but to re-file his claim. The second time, Caleb says, DOES got his hours wrong. The agency relied on the demand letter Caleb had sent Marjani, which listed his hours at seventy per week, rather than the ninety-eight Caleb asserts he actually worked. This had the effect of putting Caleb's unpaid wages at \$75,000, far less than what Caleb believes he is owed. He tried to clear this up with the DOES employee in charge of his claim, to explain that the letter was wrong and he had actually worked much *more* than 70 hours a week. "I already told him, 'Look, sir, I'm illiterate,'" Caleb says, recounting his conversation with this person. DOES wouldn't accept his explanation, and he grew frustrated. "I'm telling him, 'You a professional, man! I'm telling you this. Are you

⁵ Although this is a first and last name, it is a pseudonym.

listening to me? This is your job every day! Are you paying attention? . . . It's 98 [hours per week]!" Eventually, DOES gave Caleb an ultimatum: accept the miscalculation, or dismiss and re-file the claim. "My blood pressure went up [when he said that]," Caleb tells me. "I got weak at the knees."

When we spoke, Caleb planned to re-file, but the process has already been hard on him. "This is terrible even to talk through," he says. His experience has left him feeling bitter and resentful of DOES and its employees. "You come to work, you not going to work! These people not working! They not serving nobody! It's not just me, I'm not just a single one. It's a lot of cases." He tries not to blame the individual employees at the agency, though. "It's the head, it's the ones that's in charge," he explains. "You not checking the papers, you not checking the resources, and whoever down from you is not doing their job, whoever down from them is not doing their job. It comes from the top!"

Maynor's Story: The \$5 an hour dishwasher and the \$100,000 lawsuit

For about a year, Maynor worked at an Asian restaurant called Eastern Flavors. Located in a trendy part of Northwest DC, Eastern Flavors is an attractive, mid-range restaurant with good online reviews. The restaurant was not as nice in the kitchen, though, where the owners worked Maynor extremely hard. He was there about seventy hours a week, and over time his job became increasingly more difficult. "They hired me to work as a dishwasher," he explains, "but then they had me doing food prep and a bunch of other jobs. I was required to do all of the stations at the same time So I complained about it being too much work . . . and that's why I got fired." Maynor felt that his termination was unfair, but there were also other acts of abuse

and discrimination that upset me. “They even tried to fight me when I left,” he says. “They threw soy sauce at me.”

Some of Maynor’s friends told him about an attorney they trusted, and Maynor went to talk to him. Once he did, Maynor realized just how badly he had been mistreated. He knew that Eastern Flavors was a lot of work for little pay, and he knew the owners were violating the law to some extent, but he did not fully understand the extent of it. Maynr had been earning between \$700 and \$800 every two weeks, but should have been making almost twice that. In fact, over the course of the year that he worked there, Eastern Flavors had underpaid Maynor by almost \$25,000.

Maynor’s attorneys filed a lawsuit on his behalf, which two other workers joined in on. Despite the workers’ powerful allegations, Eastern Flavors refused to settle. After a long, four-day trial, the jury reached a verdict for Maynor and the other plaintiffs. The judge ordered Eastern Flavors to pay more than \$150,000, plus attorneys’ fees, including about \$100,000 to Maynor alone.

This whole process was vindicating for Maynor. Unfortunately, he’s no stranger to hard work and poor treatment. He has been fired unfairly from other jobs, and he knows what it is like to have his wages stolen. But this experience was different. “When they said the case had been won by me, I felt good. I felt really happy with everyone. There were lots of people there that had been fighting for the case,” Maynor explains. In that moment, he felt the support of his family and of his community, and knew for certain that he was not alone in his struggles.

Maynor has not received all of his money yet, because Eastern Flavors refuses to comply with the court’s orders. He knows he is in good hands, though. He speaks glowingly of his attorneys, both in terms of the way they treat him and the work they have done, and he is hopeful

for the future. “[The lawyers] are trying to put a lien on [my employer’s] house and on the bank account so that eventually we can get the money,” Maynor says. In the meantime, though, he has been able to recover about \$33,000. For a man who was making \$5 an hour before all this started, it’s a life-changing amount of money.

Lisa’s Story: No overtime, no job, no home, no options

In 2012, Lisa took a job as a counselor at the Giving House, a faith-based non-profit in the District of Columbia that provides transitional housing and support for teenage mothers who would otherwise be in the foster care system. You can tell immediately that Lisa’s the kind of person who will make a good counselor for at-risk youth. An African-American woman in her mid-60s, she’s soft-spoken and thoughtful, with a master’s degree in community economic development. According to her job description, Lisa would be working forty hours a week as a salaried, non-exempt employee. In simpler terms, this meant that she would receive a fixed amount of money each pay period, but if she worked more than forty hours in a week, she would be paid overtime. The salary was not very high, but Lisa also got to live on-site in a below market-rate apartment.

In practice, though, the Giving House treated Lisa like she *was* exempt from the District’s minimum wage and overtime requirements. She often worked more than 40 hours a week, but she made the same amount no matter what. “Early on in my employment, I informed my supervisor that the way they were classifying us as exempt was not correct according to my understanding of the law,” says Lisa. “I shared my thoughts, but I noticed they didn’t agree with me, and I didn’t push it because I was glad to have a job.”

But one week in early 2016, things reached a tipping point for Lisa. The District of Columbia is known for having winters that vary wildly from year to year. Some are mild, with little to no precipitation, while others bring serious blizzards. When those strike, the town shuts down. 2016 was a year for blizzards, and naturally, many of the Giving House’s employees could not make it to work. “Everybody knew in advance that we were getting the snow,” Lisa explains, “but the management team made a decision . . . instead of bringing in other people to relieve the [counselors], they just wanted the [counselors] to work 8 hours on, 8 hours off, come back and work 8 hours [on], 8 hours off. That’s the way we worked for about three days.” In just that three day period, Lisa worked thirty-six hours. It was exhausting, but more than that, she felt like the Giving House did not appreciate her efforts. “That was too much in and of itself, the way they had us work. But they had made comments about, ‘Well, we’ll figure out how to compensate you,’” she tells me. “In the end, they never did anything.”

That felt wrong to Lisa. She had done her part, gone above and beyond the call of duty. It was bad enough when her employer’s wage theft was consistent and small, like the background noise to her career, but the punctuated violation was too much to let slide. She decided, finally, to file a wage claim with DOES, even though she was concerned about retaliation. “I knew it was a risk,” Lisa explains, “but I just thought that that was the right thing to do, that they can’t get away with that, they can’t treat people like that and think it’s okay.”

About eight months after Lisa filed, DOES issued a determination in her favor. The agency found that she was misclassified as exempt, should have earned overtime, and had been underpaid by \$838.11 over about an 18-month period. The notice DOES sent Lisa included the following chart (Table 8.1):

Table 8.1: DOES calculation of Lisa’s unpaid wages

Check Date	Reg. Hours	OT Hours (OWH)	Salary Paid	Total Hours	Hourly Rate	OT Rate	Agreed Wages (OT) Due	Unpaid Amount
12/31/14	95.1	9.93	\$1041.67	105.03	\$9.9178	\$14.88	\$1090.91	\$49.24
1/15/15	87.62	.38	\$1041.67	88	\$11.837	\$17.76	\$1043.92	\$2.25
5/15/16	63.67	16	\$1,196	79.67	\$15.012	\$22.52	\$1316.10	\$120.10
6/30/15	76.63	12.76	\$1,196	89.39	\$13.38	\$20.07	\$1281.36	\$85.36
7/15/15	79.95	.58	\$1,196	80.53	\$14.852	\$22.28	\$1200.31	\$4.31
8/14/15	80	.23	\$1,196	80.23	\$14.907	\$22.36	\$1197.71	\$1.71
9/15/15	57.17	28.91	\$1,196	86.08	\$13.894	\$20.84	\$1396.84	\$200.84
9/30/15	79.71	9.53	\$1,196	89.24	\$13.402	\$20.10	\$1259.86	\$63.86
10/30/15	95.13	1.88	\$1,196	97.01	\$12.329	\$18.49	\$1207.59	\$11.59
11/30/15	72.12	16.58	\$1,196	88.7	\$13.484	\$20.23	\$1307.78	\$111.78
12/31/15	98.24	.72	\$1,196	98.96	\$12.086	\$18.13	\$1200.35	\$4.35
1/29/16	87.83	10.12	\$1,196	97.95	\$12.21	\$18.32	\$1257.78	\$61.78
2/29/16	103.58	1.5	\$1,196	105.08	\$11.382	\$17.07	\$1204.54	\$8.54
3/15/16	89.1	7.58	\$1,196	96.68	\$12.371	\$18.56	\$1242.88	\$46.88
3/31/16	87.3	9.73	\$1,196	97.03	\$12.326	\$18.49	\$1255.97	\$59.97
4/29/16	85.36	.8	\$1,196	86.16	\$13.881	\$20.82	\$1201.55	\$5.55
TOTAL								\$838.11

This chart is confusing for a few reasons. A significant amount of information is missing, including entire pay periods, the dates actually covered by each check, and how DOES performed its calculations for the pay periods that are present. Additionally, where DOES did discover unpaid overtime, it assigned Lisa widely varying pay rates, ranging from about \$9.91 to \$15 per hour. The explanation for this is simple enough: the agency calculated Lisa’s pay rate for

a given period by dividing her salary for that period of time by the total number of hours she had worked during the pay period. It then multiplied this hourly rate by 1.5 to determine what rate Lisa should have been paid for her overtime. In effect, because Lisa's salary stayed constant regardless of how many hours she worked, this approach caused Lisa's pay rate to *decrease* the more hours she worked. If this is confusing, then here is an illustration: a worker who gets paid \$1000 for 40 hours of work has an hourly rate of \$25, but a worker who gets paid \$1000 for 50 hours of work has an hourly rate of \$20. According to DOES, the more time Lisa put in, the less valuable she became.

This is also the wrong approach to take. Lisa's offer letter stated that her salary was to compensate her for up to 40 hours of work per week. Parties to wage and hour disputes will sometimes argue over whether a worker's salary was intended to cover all time worked in a week, or only up to 40 hours of work. In Lisa's case, her employer's own documentation makes the answer clear. DOES should have calculated Lisa's normal hourly pay rate by dividing her weekly salary by 40, and her overtime rate by multiplying her hourly rate by 1.5. Since Lisa's salary was intended to compensate her for her first 40 hours of work in a week only, the agency also should have treated all of her working time over 40 hours in a week as entirely unpaid. If it had taken this approach, Lisa's unpaid wages would have been significantly higher. These errors are not small. Properly calculated, Lisa's unpaid overtime in the first row comes out to about \$184, rather than \$49.24. This is not just a difference of \$135, either. Given the District's penalties for wage theft, which entitle a worker to treble damages on top of their unpaid wages, the full value of Lisa's claim for the first row's pay period was \$196.96 when it should have been \$735.30. This error also compounds over time, since Lisa's wage claim covers a period of more than a year.

Not all of these issues occurred to Lisa, but the decision just did not look right to her. “My initial review of their findings, I thought that the primary week or weekend in question was not properly documented,” she says. The calculation for the block of time covering the big snowstorm, during which Lisa had worked thirty-six hours in three days, did not seem right. Had DOES miscalculated her unpaid wages? Had the Giving House wrongly reported how many hours she had worked? She did not know. So, Lisa appealed the decision, and DOES set up a meeting between her and the Giving House to try to mediate the dispute.

While this was going on, there were some other big changes in Lisa’s life. She had left her full-time position as a counselor at the Giving House, although the organization was still her landlord and she did some part-time work. Lisa had also temporarily moved away from the District to work on Hillary Clinton’s presidential campaign. Right around the same time that DOES issued its initial determination finding that the Giving House had underpaid Lisa, the non-profit e-mailed her to tell her that she had to move out of her apartment before the end of the month. This was illegal under District law, and it was also a violation of Lisa’s lease, both of which required the Giving House to provide its tenants with much more notice when it required them to leave.

Making this more difficult was the fact that Lisa was living and working in Michigan at the time. Nevertheless, a friend agreed to go get her belongings before the Giving House’s deadline. But when her friend arrived at Lisa’s place, she discovered that the Giving House had already moved Lisa’s things out. After Clinton lost the presidential election, Lisa came back to the District without a job, without a home, and with her personal items disorganized and scattered.

DOES held a mediation in December, but at that point, Lisa had lost her drive to pursue her wage claim. “When we had that December meeting, what was in my mind was, at that time, I was broke. I didn’t have a job of any kind since Hillary lost, and I was also homeless. So, I did not want to go back into figuring this out.” Although she felt like the agency had miscalculated her unpaid wages, Lisa decided to accept its determination. She got about \$2400, less taxes. It is not what she thinks she deserves, nor is it the maximum that District law entitled her to even based on the agency’s calculations, but Lisa needed the money.

For a time, Lisa tried to get DOES to take action against the Giving House over her eviction. “The hard part, the trauma,” she says, “is the retaliation, is violating my rights as a tenant, because they were living the best of both worlds. They had an employee and they had a tenant, and they were violating my rights on both fronts.” Lisa’s crying as she tells me this, the pain of her experience plain upon her face. She is also apologetic throughout our conversation. It took us months to actually get together – every time I reached out to her, she told me she wanted to meet, but then weeks would pass without any word. During our interview, the reason for this becomes clear. On the one hand, Lisa wants to talk about what happened to her; on the other, it is just easier not to.

Almost two years after the fact, DOES has not taken final action on Lisa’s retaliation complaint. She saw some movement from the agency early on, but only when Lisa was, as she puts it, “persistently persistent.” “I would push it [forward],” Lisa explains, “then I would stand back because I didn’t want to go through the pain.” Ultimately, the discomfort and sadness associated with Lisa’s efforts drove her to a stop. On any given day, as upset as she is by her perceived mistreatment, it is easier for her to put off pursuing her claim until, at the very least, tomorrow. “There’s no driving force from their end,” she tells me, explaining why her retaliation

complaint has stagnated. “It’s always had to be me pushing, and that’s why . . . I’m where I am now.”

Pathways to justice in the District of Columbia

I chose to share these four stories in detail because they generally reflect the experiences and efforts of that small percentage of low-wage workers who do attempt to use the District’s formal legal processes to obtain justice for their wage theft. By and large, these vignettes are not encouraging, but they are built around common themes. These are the themes that I have discussed throughout this dissertation, the experiential brushes that paint the outlines of how wage theft plays out among the District’s working people.

This chapter examines what happens when workers do not give up on fighting for their unpaid wages, but instead escalate their claims by pursuing their rights through formal legal action. In short, it is not an easy path. Those who choose to move forward are usually unable to find legal representation, but if they can get an attorney, there is a good chance they will find success. If they cannot, and they go to the government for help, they will almost certainly find the process to be confusing, inaccessible, and frustrating. In many instances, they will feel ill-served, and their efforts might well result in additional personal and financial harm.

This is a grim and upsetting overview of how wage theft plays out among the District of Columbia’s working poor. It is also confusing. In Chapter 2, I discussed in detail the social, political, and legal environment of the District. It is a progressive town with a vibrant and active workers’ rights community, and in the last few years the government has passed new laws designed specifically to combat wage theft. These laws are among the strongest and most comprehensive in the entire country. The punishment for wage theft is significant, and includes

both hefty civil penalties and the possibility of criminal consequences. On paper, these efforts reflect a city that believes violations of basic workplace laws should not be tolerated, and that low-wage workers deserve robust and meaningful protection of their rights.

And yet, workers in the District do not themselves feel the power of their rights. Overwhelmingly, they are critical of the District government, and do not have faith that there has been a meaningful effort to enforce the laws. How can this be the case? Why is there such a disconnect between the District's workplace promises and the reality of life for low-wage workers, and where does this disconnect come from? And, perhaps most importantly, when workers do decide to take action, to come forward and fight for the enforcement of their rights, what happens?

In this chapter, I closely examine wage theft enforcement in the District of Columbia. I detail the various paths that low-wage workers can tread if they wish to take formal actions to challenge their wage theft, and explore how feasible and effective these different approaches are. I also discuss the extent to which the District government has made efforts to enforce its own wage and hour laws. When it comes to wage theft enforcement in the District, there are three key players: the Office of the Attorney General (OAG), the private bar, and the Department of Employment Services (DOES). The federal Department of Labor (DOL) is also, technically, a relevant actor, since that agency is responsible for enforcing the Fair Labor Standards Act (FLSA) throughout the country, and its headquarters is located in the District. I do not discuss it in detail here, though, because I did not speak to many people who see it as a significant player. Workers' rights activists generally view it with distrust, especially given the Trump administration's apparent disinterest in wage theft enforcement, and they largely focus their efforts and attention on the local government. Employment lawyers, likewise, generally view the

DOL as having taken a step back from the issue. As Shlomo Katz, a management-side attorney with the law firm Brown & Rudnick says, “certainly the current administration on the federal level is not making [wage theft enforcement] a priority.” Low-wage workers in the District are also far more familiar with DOES, and did not report any meaningful interactions with the DOL.

Throughout, I rely upon the full-range of interviews that I conducted for this project, drawing upon the perspectives of low-wage workers, workers’ rights activists, and employment lawyers. A thorough and detailed discussion follows, but the takeaway is this: While there are some spots of encouragement regarding wage theft enforcement in the District of Columbia, the city is failing to live up to the promises it has made. In the end, the people who need the most help are also those who are the least likely to get it.

“Wage theft is illegal and will not be tolerated”: The Office of the Attorney General

In mid-November 2018, DC Jobs with Justice held its annual “I’ll Be There” awards at the All Souls Church in Northwest DC. The All Souls Church is an old and established presence in the community, and its Unitarian congregation places a strong emphasis on social justice. With its progressive politics and large meeting halls, it is a natural ally for DC’s workers’ rights community.

Every year, DC Jobs with Justice honors local organizations and community members who have a positive impact on the community. In 2018, more than a hundred people filtered into the church to eat, drink, and celebrate those who had made a difference. The DC Office of the Attorney General was one such honoree. “[T]he Office of the Attorney General under the leadership of Karl Racine has taken action protecting workers by suing businesses with a pattern of wage theft, including Power Design, Inc. on behalf of over 500 workers,” the awards

announcement read (DC Jobs With Justice, 2018). When Karl Racine took the stage to accept the award on behalf of his office, he did so to thunderous applause, which only grew stronger as he delivered a rousing and heartfelt speech. In it, he spoke eloquently and at length about the importance of enforcing the District’s basic workplace laws, and thanked the workers’ rights community for their efforts to protect the independence of the OAG and advocate for working people.

That DC Jobs with Justice chose to honor Karl Racine reflects the ongoing, collaborative relationship between the OAG and the workers’ rights community. It is a recent development, though. For a long time, the mayor appointed the DC attorney general, which made the attorney general a political actor constrained by the desires of his or her boss (see *Zukerberg v. Dist. of Columbia Bd. of Elections*, 2014)). In 2010, however, District residents voted overwhelmingly in favor of a referendum transforming the attorney general into an elected position (*Zukerberg*, 2014). Karl Racine, who had been a managing partner at a large law firm, became the District’s first elected attorney general in 2014. This shift granted the OAG independence from the city’s mayor, creating a situation where the right person with the right motivations would have the power to make a significant difference for the District’s working poor. To members of the workers’ rights community, Racine is that kind of person.

After his election, the OAG readied itself to start pursuing wage theft cases. This took some time, though, because until 2017 the office did not have independent enforcement authority. Instead, it was reliant upon DOES to investigate wage theft cases and then refer those over to the OAG. The City Council eventually passed reforms granting the OAG the full power to investigate and prosecute cases on its own, however, and the office then hired dedicated attorneys to work specifically on wage cases. “The term ‘wage theft’ is not a metaphor,” Racine

said in an October 2017 press release. “The money in the cases we are bringing belongs to workers, and we want to make sure they get it” (OAG, 2017a).

Although the team of people dedicated to enforcement actions is small, they have been busy, and have filed more than half a dozen lawsuits against exploitative employers. The office focuses its efforts on employers who engage in wage theft as a systematic practice, the kinds of businesses whose violations form a core part of their business model, rather than an occasional mistake. As a result, lawsuits are always on behalf of a group of employees. The size of the group and the overall value of the cases, however, varies significantly. When the OAG sued Briggs Chaney Wireless, Inc. for instance, it recovered about \$15,600 in back wages for five workers (in addition to \$5000 in penalties for the District itself) (OAG, 2017c). At the other end of the spectrum, the city’s lawsuit against Power Design has been brought on behalf of more than 500 workers and is potentially worth *millions* of dollars.

To workers’ rights activists, the OAG stands out among DC government agencies. Sequenly Gray, the research coordinator for DC Jobs with Justice, speaks glowingly about the office:

I have not heard any bad stories about the Office of Attorney General, except for that they just needed more staff. And that’s what they’re doing now, right? They were limited to doing certain things because they were understaffed, and now they have more staff so they’re doing more things. And like I said, they’ve been really proactive with reaching out to the [Just Pay] Coalition to ask for wage theft claims.

In fact, it was Sequenly herself who spurred the OAG’s lawsuit against Briggs Chaney Wireless. “I just sent over a report that I did in summer of 2017,” she told me during our interview. “I gave it right to [an attorney at OAG], and he’s like, ‘Thank you!’ He was really grateful for that So they are doing a great job, and he always tells me, ‘Well, if you have people who need help,

send them my way. Shoot me an e-mail, I have no problem. We want cases. Please send me cases.”

Many other members of the workers’ rights community also credit the OAG for its work. In part, they simply appreciate the effort that the office makes to work with community organizations, which they feel is lacking from other government agencies, especially DOES. Beyond that, though, there is broad approval for the strategy that the OAG has adopted. Barbra Kavanaugh, speaking to me before the OAG’s efforts became well-known, describes what her ideal role for that office would be:

The Attorney General could set up a special counsel. Appoint someone, say “Your job is wage theft. Your job is not necessarily to sue every single case, but to let employers know they never know when you’re doing to show up. It could be for the \$10,000 case, it could be for the \$500 case, but it’s because you own a chain and we think this is throughout your chain.” That, I think, would be extremely effective.

This largely describes the OAG’s strategy. That office cannot be a silver bullet to the heart of wage theft in the District. It is not a specialized wage theft agency, and it does not currently have the personnel, expertise, or resources to bring a large number of enforcement actions. However, the office does strategically use what power and resources it has. By focusing on cases involving groups of workers and outsourcing some of its information-gathering to motivated local organizations, it uses its limited resources effectively while also building credibility in the low-wage and workers’ rights communities. Additionally, each lawsuit and settlement is accompanied by a press release stating, in the strongest language, that wage theft is wrong and will not be tolerated. As I argued in Chapter 7, this messaging is important to creating a social framework in which workers feel comfortable asserting their rights and employers are deterred from violating the law.

Because of the OAG's limited resources, however, very few workers in the District of Columbia are able to directly take advantage of the wage theft work the office does. An individual worker, or even a group of workers who have collectively experienced wage theft, will almost certainly be unable to obtain representation from the government. I do not write this to be critical of the OAG, however. Its efforts at enforcement are still in the early stages. There is room for growth, and there is little question that – right now, at least – the agency is motivated to take action against unscrupulous employers. The office plays an important role in wage theft enforcement in the District, as it is able to fully pursue and publicize systematic cases in order to send a powerful message. But this role is limited in scope, and cannot serve the direct needs of the vast majority of the District's low-wage workers who experience violations of their basic rights. For those who are able to obtain advocacy from the OAG, however, it is an enormous benefit.

Wage theft and the private bar

A second option for workers in the District who experience wage theft is to find a private attorney who will take their case. There are a number of lawyers in the city who will represent workers for no money up front, either on contingency (where the attorney takes a percentage of the overall judgment or settlement), or based on the prospect of collecting attorney's fees from the defendant employer(s). As I explained in Chapter 2, the Wage Theft Prevention Act has a relatively generous attorney's fees provision. A lawyer with 8-10 years of experience, for example, is entitled to \$658 per hour. The purpose of this aspect of the law was to mobilize the private bar to take on more wage theft cases by increasing the prospect for profit.

According to the District’s employment attorneys, that is exactly the effect it has had. “It’s allowed us to take cases that we otherwise wouldn’t take,” says Michael Amster. Michael is a partner at Zipin, Amster, & Greenberg, a small firm in Silver Spring, Maryland, and he specializes in representing low-wage workers who have experienced wage theft. “It allows us to be able to justify taking smaller cases,” he explains. Jonathan Tucker of DC Wage Law strongly agrees. “It’s very helpful,” he tells me. “[T]here’s no up front money that [clients] have to pay. . . . We are a boutique firm focusing only on wage theft, and it’s in large part thanks to that provision of the statute.”

Beyond compensating attorneys and encouraging them to take on more cases, the Wage Theft Act’s generous attorney’s fees also grant workers additional leverage for negotiating settlements. The potential costs of a lawsuit, after all, can quickly balloon out of control precisely because attorneys are so expensive. There is a big incentive to settle a case where the defendant is faced with the prospect of paying not just her own fees, but those of her opponent, especially when those fees are as significant as they are under the Wage Theft Act.

Shlomo Katz, a management-side attorney who sometimes represents low-wage workers on a *pro bono* basis, explains how he used the threat of his fees to obtain a former client’s money. By the time Shlomo joined the case, his client had already filed a wage claim with the Department of Employment Services. Through that process, Shlomo obtained a \$500 judgment for his client, but the employer refused to cooperate. Shlomo’s a quiet, patient man, but eventually his patience ran out. “Now, I started [saying] things like, ‘You know, we could go after you for my attorney’s fees, which at this point are \$10,000,’” he says. “So I said, ‘You can pay the \$500, or we can go after you in court for \$10,000. What do you want?’ So then she asked

for my client's PayPal address and said she would send him the money, which after a few days, she sent half of it, and so we kept pursuing it.”

There is no question that the Wage Theft Act's changes have benefited workers (as well as plaintiff-side employment lawyers). There are more wage theft attorneys in DC today than before the Act, and they are able to take on a broader range of cases. But, all things considered, there are still significant barriers to low-wage workers obtaining representation. The grim reality is that most are simply unable to.

There are two primary reasons why, despite these legal reforms, low-wage workers in the District still are not able to find lawyers to represent them. Both of these reasons have to do with the fact that collecting attorney's fees is an uncertain proposition. As a result, lawyers pick and choose which cases they take on. It is important to keep in mind that attorneys like Jonathan Tucker and Michael Amster are running a business. They are also true believers in the value of their work, and they care about their clients and the issue of worker exploitation, but they need to make sure that they are able to bring in enough money to pay rent, salaries, utilities, and all of the other costs that come with running a business (see Cummings, 2012, for a discussion of such “private public interest law firms”).

The first issue to obtaining representation is that many workers' cases simply are not worth enough money. The Wage Theft Prevention Act – like other laws with fee-shifting provisions – states that victorious plaintiffs “shall be awarded *reasonable* attorneys' fees and costs” (DC Code § 32-1308(a)(1)(a) (emphasis added)). In practice, though, judges are unwilling to order fees that are disproportionate to what a case is actually worth to a plaintiff. Nobody understands this fact better than plaintiff-side attorneys, who report that it compels them to limit

what kinds of cases they'll take to those that meet a certain threshold. This point is illustrated by my exchange with Jerrod, a plaintiff-side attorney who requested anonymity for this statement:

Jerrod: Let's say someone walks in with [unpaid wages of] only \$250. Yes, that is illegal. I take that all the way to trial. I win at trial. The max a person can get is \$1000 . . . in wages, liquidated damages, and everything. And then there are civil penalties, and you get interest, maybe someone gets \$1,200, max.

And then you're like, "Oh, your honor, just so you know, this took two years and I have attorney's fees of \$70,000." No judge is going to give you \$70,000. They're going to be like, "Uh, here you go, here's \$10,000, have fun."

Matt: \$10,000 might even be generous, because courts are wary of disproportionate attorney's fees.

Jerrod: Exactly. So maybe the judge will give you \$1000 too, send you home.

Some attorneys told me that a worker needs a minimum of about \$10,000 in unpaid wages to qualify for legal representation. This is an extremely high threshold for a single person to meet, though, and many workers with valid cases struggle to find lawyers. Sita's wage claim, for example, is very strong. Her employer's wage theft was blatant and her claims are well documented, including with emails in which her employer admits to the act. But because she was only denied about \$2400 in earned wages, three different law firms turned her away. "When you sign a client you also have to think about the financial aspect of it," says Jerrod. "Yeah, a person has a good case, but [if] a person's damages are next to nothing, I'm not going to do that. It's not financially sustainable." He gestures around himself, drawing my attention to the space we are in. It's very nice – clean, crisp, tastefully decorated, with a great view of a main thoroughfare. "Look at the office!"

The second issue workers face in obtaining representation is that some employers are effectively judgment-proof. The prospect of going after them is just too uncertain. These employers may have stolen a great deal of money, but it is highly unlikely that anybody will ever

be able to collect anything from them because their businesses are unregistered, they keep no assets, and they are hard to hold accountable. Often, these employers operate in what is known as the “underground” or “shadow” economy, which refers to the sector of the economy where activities elude government regulation, taxation, and notice (Feige, 2007). These employers fail to pay taxes, pay their workers under the table, and violate a wide range of laws and regulations (see Weil, 2014b).

This problem of collections is due in significant part to the issue of “fissuring,” which I discussed in Chapter 1. As a brief recap, over the past few decades many companies have reduced the scope of their operations, electing to focus their energy on a relatively small number of core tasks in an effort to cut costs and increase profits by streamlining business. As part of this process, organizations have outsourced many of the jobs that their own employees used to perform. They now hire contractors to provide support staff for necessary tasks like janitorial services, human resources, and payroll (Weil, 2014). Many of these contractors have thin profit margins, and competition among them is fierce. “Since competition is often price-based, the pressure to reduce costs becomes intense,” explains Dr. David Weil, “leading these subsidiary businesses to lower wages, allow more precarious employment conditions and, in many cases, subvert or even violate workplace laws and labor standards” (2014b, p. 109). Worse, these contractors are often difficult to track down, sue, and collect money from because they operate under the radar, are unwilling to comply with legal judgments, and keep few assets (Weil, 2014b; Cho et al., 2013).

This is the reason why, for example, Eunice Cho and her colleagues (2013) found that more than four out of five workers in California who filed successful wage claims with the state agency were unable to collect any money. Many of their employers refused to pay. In many

instances, they simply closed their doors to avoid the consequences of their actions, but continued to operate precisely the same business under a different name.

“You have these fly by night contractors, some of them making good money, but they just have this employment practice where they have twenty employees, and then they get a new contract, they make the employees work the last month of the contract and then hire some other twenty employees,” explains Michael Amster. “I can’t sue those people.” Paul DeCamp, who headed the Department of Labor’s Wage and Hour Division under President George W. Bush, says that “it’s a little bit like whack-a-mole. Because a lot of these companies, they pop up, somebody hears about a problem, that company goes away. The person flees, opens up a new company under a different name, maybe in a different state, and you can expend an extraordinary amount of . . . resources trying to track down these folks with a questionable return at the end.”

When low-wage workers *can* obtain legal representation, though, it is an incredible boon. As I explained in Chapter 7, two of the reasons that people do not pursue action over their unpaid wages are because they do not know how to file a claim, and even if they do, many believe that they will not be able to successfully make their case. Attorneys are, of course, experts at navigating the legal system, and being able to have one of those is a powerful advantage. From the perspectives of workers’ rights activists and employment lawyers, the best option for a low-wage worker who has gone unpaid is to find representation. “An individual employee will typically do better going to a private attorney,” claims Michael Amster. Allen Cardenas, who coordinates the Workers’ Rights Clinic, agrees. A worker’s best bet, he tells me, is to find a private lawyer; if they cannot, their second best option is to try to find a law school clinic to represent them, even if that involves waiting for several months.

Research supports these commonsense claims about the value of lawyers. Analyzing more than 1800 employment discrimination lawsuits filed in federal court, Laura Beth Nielsen, Robert Nelson, and Ryon Lancaster found that a plaintiff's likelihood of success was heavily dependent on whether they were able to obtain counsel. "One in five plaintiffs acts as his or her own lawyer," the authors write, "operating pro se over the course of the lawsuit, and they are almost three times more likely to have their cases dismissed, are less likely to gain an early settlement, and are twice as likely to lose on summary judgment" (Nielsen et al. 2010, p. 188). This effect holds across a range of case types, including landlord-tenant disputes (Seron et al., 2001), divorce (Maccoby & Mnookin, 1992; Ellis, 1990), small claims (see Engler, 2010), and administrative appeals, such as those involving unemployment insurance (Kritzer, 1998; see Engler, 2010). These results are not due to a "selection effect," either – that is, where the observed impact of counsel is actually due to the fact that the kinds of cases that are likely to tempt lawyers are simply stronger, leading to more favorable results for plaintiffs. In studies involving random assignment of legal representation, researchers have found that having a lawyer independently leads to better outcomes for plaintiffs regardless of the inherent strength of the case (Kritzer, 1998; Seron et al., 2001).

The truth of this is found in this research, too. James, for instance, was struggling with his lawsuit when we spoke. "I don't know what I'm doing," he says, "and I completely messed up everything. I couldn't phrase things the way I guess the courts want to hear it." Abraham, who is embroiled in a lawsuit against his former employer for unlawful termination and discrimination, feels the same way. The process has been confusing and time-consuming, and not for a lack of effort on his part.

In contrast, because Maynor was able to find attorneys to represent him, he had an extremely positive outcome on his claim, securing a judgment for all of his unpaid wages plus the maximum penalties allowable under law. Moreover, Maynor himself did not have to pay any money to his attorneys. This is not to say that the process was easy or fast, but Maynor did not have to spend long hours figuring out how to assert his own rights. Absent representation, he probably would not have been able to get what he was entitled to. Lawsuits are complicated enough. Making it harder is the fact that Maynor's former employer has been wholly uncooperative, and Maynor himself has little formal education and speaks almost no English. Today, instead of feeling depressed over what happened to him, he feels vindicated and satisfied, both because his rights were enforced and because he is tens of thousands of dollars richer as a result.

The reforms enacted by the Wage Theft Prevention Act are significant, and according to attorneys in the District, have improved access to justice for the working poor by allowing plaintiff-side attorneys to take on a broader range of cases than before. There is also reason to think that things will continue to improve. It has only been four years since the Act went into effect, after all. Right now, the community of wage theft attorneys in the District is still small. With the Wage Theft Act's damages and fee-shifting provisions, "you would think that there would be more people bringing these types of cases," says Jason Rathod. There are not many, though.

Jason is a partner at Migliaccio & Rathod LLP, a boutique firm that specializes in bringing wage theft class action lawsuits. We are sitting in the firm's conference room along with Jason's partner, Nick Migliaccio. It is a cozy, comforting place, and the friendship and chemistry between Nick and Jason is apparent from the first moment. It is easy to imagine them

working well together, even on time-consuming and complex cases. They are both affable and passionate, and have focused on wage and hour litigation for a long time. They are also both surprised that in the wake of the Wage Theft Act's passage, there have not been more firms focusing on representing low-wage workers. "We've been doing these cases for years and years and years," Jason says, "but it's tough for someone to get expertise right away in an area of law, so that's probably a reason."

In other words, there is room for growth in this community of lawyers, especially since the efforts to undermine the Wage Theft Act have now, apparently, been finally defeated. It is reasonable to expect that in the near future, as this market continues to expand and more attorneys become aware of the viability of bringing suit on behalf of low-wage workers, more workers will be able to find representation. But the fact is, scarcity of lawyers is not the real problem here. Most working people who experience violations of their basic workplace rights are not going to be able to find an attorney to take their case because the economics of it all will stand in the way.

Most low-wage workers who want to formally assert their rights therefore have two choices: they can file a lawsuit themselves, as James did, or they can seek help from the Department of Employment Services. For most people, filing a lawsuit is out of the question. It is too daunting, too confusing, and too time-consuming. It requires people to visit, re-visit, and struggle with the pain and frustration of their experiences. Beyond that, they are likely to lose (see Nielson et al., 2010; Seron et al., 2001). Realistically, the vast majority of the workers in the city can only turn to the Department of Employment Services for help with formal enforcement of their rights.

Wage theft and the Department of Employment Services

Of the various actors and organizations affected by the changes in the Wage Theft Act, the Department of Employment Services (DOES) arguably saw the greatest expansion of its power and authority. DOES is the District-level equivalent of the federal Department of Labor. It employs hundreds of people in more than twenty offices, and it provides a wide range of services ranging from unemployment compensation to workforce development to labor standards enforcement. Its Office of Wage-Hour enforces the District's minimum wage, overtime, and paid sick days laws (DOES, 2019).

To recap, the Wage Theft Act empowered DOES both indirectly and directly. It indirectly enhanced the agency's authority by significantly ratcheting up the penalties for employers who refuse to pay their workers all of their earned wages. Successful claimants are now entitled to treble damages on top of their unpaid wages, plus interest and reasonable attorney's fees. DOES also has the power to order reinstatement, other injunctive relief, and statutory penalties. The Act directly empowered DOES by establishing that wage claims may be finally adjudicated through the District's existing administrative hearing process (see DC Code § 32-1308.01). As a result, the agency's wage claim process now has greater significance and finality.

The goal of such administrative processes is to simplify dispute resolution and improve access to justice for average people. Administrative hearings are supposed to be a gentler, more relaxed alternative to the slow, procedurally-laden process of filing a lawsuit and moving through the formal justice system. According to the Wage Theft Act, this process should be quick – no more than six months, start to finish. In theory, a worker should be able to successfully make their way through the agency's wage claim process without outside help, and

if they choose to avail themselves of it they will receive all of the same remedies that are available to actual litigants (DC Code § 1308.01).

On paper, DOES holds a great deal of promise. Reading about its broad statutory authority, it is easy to imagine that even if this system is not perfect, it is still effective. The agency's broad mandate equips it to serve the needs of low-wage workers, hold employers accountable, and build lasting and powerful relationships with the highly motivated members of the workers' rights community, who could do much of the information-sharing and investigating that would otherwise fall to DOES.

Unfortunately, this description does not play out in practice. The truth is that DOES is fundamentally failing the needs of the District's working people. There is a wide gap between the agency's promise of meaningful enforcement of the city's basic workplace laws and the reality of its anemic response to wage theft. Few low-wage workers in the District report having a good opinion of DOES; few are even aware that they can go to the agency for help. These problems are worsened by the fact that among workers' rights activists and employment lawyers, DOES has a bad reputation. These key actors, who could do much to spread word of the agency and otherwise assist it in its mission, view it as incompetent at best and actively dismissive at worst. Those workers who do go to the agency for help report similar critiques, finding the process to be long, aggravating, and difficult. Critiques of the agency are not just subjective, however. There are critical flaws built into its approach to wage theft enforcement that make it far less effective than it could otherwise be.

The rest of this chapter discusses the Department of Employment Services. The OAG and private bar have an important role to play in enforcing workers' rights, and the empowerment of these actors in recent years has been important to creating a comprehensive policy response to

the problem of wage theft. But for the vast majority of low-wage workers who experience wage theft, DOES represents the last, best hope for the protection of their rights. In light of the irreplaceable role that the agency plays in the District's overall scheme of wage theft enforcement, I have paid close attention to it.

In the pages that follow, I discuss three aspects of the Department of Employment Services that are crucially important to the topic of wage theft. I first address the agency's reputation among the city's workers and stakeholders. I then discuss what the process is actually like for people who do work up the courage to go to DOES to file a wage claim. Finally, I analyze the agency's overall enforcement scheme, comparing its strategy to established best practices and to what stakeholders argue DOES should be doing in response to wage theft.

The widespread negative perception of DOES

In Chapter 6, I explored the myriad reasons why low-wage workers who experience wage theft do not take formal action to assert their rights. Mirroring what other researchers have found (see Alexander & Prasad, 2014), many of the people I interviewed told me that they did not know where to go or who to talk to in order to file a complaint about their wage theft. Even workers like James, Cora, and Earl, who are familiar with the various municipal and federal government agencies, did not know that they could go to DOES for help.

In addition, many workers fail to make claims because they simply do not have faith in the District government in general and in DOES in particular. The low-wage workers in this study tend to view the municipal government with a healthy degree of skepticism, often expressing that they do not believe that it will protect their rights. This negative viewpoint extends to DOES, not just because it is a part of the government, but because many low-wage

workers have interacted with the agency in one form or another and come away dissatisfied. They may have filed for unemployment, attempted to use DOES' job-finding resources, or signed up for training programs. Whatever their interactions, though, many low-wage workers have a dim view of the agency.

There are always exceptions to a general rule, of course. Cora – who did not know she could file a wage claim with the agency – is one of the very few people in this study who speaks well of DOES. But the general perception of the agency is summed up by people like Ruben and Earl, who complain that they have little to no faith in the system. “The process with DOES was fake,” Ruben reflects. “Department of Employment Services, I’ve given up on,” explains Earl. “I have no respect for them, period.”

These findings alone would be bad enough for the prospect of wage theft enforcement in the District. Low-wage workers represent the heart of the agency's constituency. These are the people that DOES is intended to serve, and their lack of confidence in the agency is crippling for the prospect of effective enforcement. Without worker participation, DOES can never be effective, because DOES – like many other government agencies – uses a passive, complaint-based strategy to find and punish unscrupulous employers. What this means is that the organization *needs* workers to participate in its process. It needs them to know where to file a complaint, and more than that, it needs workers to have the confidence to stand up for themselves and work with the government. The fact that workers lack faith in the agency that they are supposed to trust to help them with their workplace issues is damning. The cheapest form of advertising, after all, is word of mouth, and when the word is that DOES is no good, ordinary people are not going to go to it for help.

This problem is compounded by the fact that the important stakeholders in the District also view DOES as deeply flawed and ineffective. These are people who know the District's legal and regulatory system well, who understand the options available to low-wage workers who experience wage theft, and who guide workers in response to their rights violations. "I know that a lot of partners in our coalition that work directly with immigrant workers . . . don't always feel comfortable encouraging and bringing those workers to DOES to report their claims," says Alex Taliadoros, the project coordinator at the Kalmanovitz Initiative for the Working Poor at Georgetown University. "So, if even worker advocates who know about DOES and know about worker rights don't feel comfortable directing workers there, there's a breakdown in the system."

Alex's sentiments were repeated by nearly everybody I interviewed. Almost universally, workers' rights activists and employment lawyers have a negative impression of DOES. They perceive the agency to be inaccessible and unwilling to work with members of the community. They criticize its employees for incompetence and disinterest, and also view DOES as slow and inefficient. Finally, they criticize the agency for its enforcement strategies, and assert that DOES refuses to engage in the kinds of actions that would be most effective at actually helping workers and deterring unscrupulous employers.

One of the largest complaints that stakeholders have about DOES is that it does not do enough to reach out to and work with members of the community, including attorneys. The strongest critiques along this line come from workers' rights activists. It is important to understand this complaint in context, though. The overwhelming majority of these people strive to advance workers' rights because they truly believe in the importance of the cause. Their jobs are not *just* jobs – they feel compelled by their morals to advocate for the city's poor, and as a result, have a strong personal and ideological interest in crafting meaningful solutions to the

problem of wage theft. To that end, they are eager to work hand in glove with the municipal government. They report, however, that the desire to collaborate is largely a one-way sentiment. DOES is perceived to be closed off and unwilling to work together in any meaningful way, refusing to share information, take advantage of the District's high level of community activism, or listen to constructive criticism.

In many ways, these stakeholders simply view DOES as inaccessible, both to them and to the people they represent. "On a lot of different levels there's a lot of things lacking," says Jaime Cruz. Jaime is on the board of Trabajadores Unidos de Washington DC. He is a smart, likeable man, who – in a distinct New York accent – speaks emotionally about racial and economic inequality. I am sitting in a brightly lit office with both Jaime and Arturo Griffiths, the Executive Director of Trabajadores Unidos. The walls of the room are covered in colorful posters supporting immigrants' and workers' rights, leaving no question as to the goals and motivations of the organization. "There's a lack of sensitivity, there's a lack of just providing general information to the public on . . . wage and hour situations, that the process is this, this is where you can come to resolve these issues," Jaime goes on. It is a point Arturo strongly agrees with. "[DOES] don't relate to us!" he says, referring to the District's Latino community. "It doesn't tell us, 'This is your place, all the information about what you need is right here.' At the front desk there's nobody who speaks Spanish, so . . . our people feel intimidated to go to a place like that. Some people do. The ones who are more aggressive, they go. But the ones who [aren't], they can't go."

I heard this complaint about language access and communication from a number of people, and verified it for myself. DOES headquarters is located in Northeast DC, near the intersection of Benning Road and Minnesota Avenue. It is a large, modern building, with high

ceilings, bright lights, and a clean look to it. As soon as visitors walk through the glass front doors, they find themselves standing at a security desk manned by half a dozen people. It is not possible to just wander into the agency. You need a specific purpose, and you need to be ready to show official identification. There may be good reasons for this, but when I asked some workers' rights activists why there was such an emphasis on security, they told me, simply, that it was "so people don't come in from the street and assert their rights." Cynicism aside, though, Arturo was correct: when I went to DOES, nobody at the front desk spoke Spanish.

Beyond that, I was not able to get any basic information about workers' rights. When I was not allowed past security, I introduced myself as somebody who works with low-wage workers, and asked whether the agency had any informational handouts about workers' rights and wage theft. A security guard put me on the phone with somebody in the Office of Wage-Hour who told me that yes, they have posters, and some (but not all) are in Spanish. I gave him my e-mail address. "You'll have them before you get to your car, young man," he said. I never heard from him.

Arturo and Jaime engage mainly with undocumented, Spanish-speaking workers who have experienced wage theft and other violations of their rights. These are the kinds of people who, by dint of their citizenship status and cultural and language differences, are often excluded from official processes and considerations. When it comes to wage theft, however, they clearly should not be. Undocumented, Spanish-speaking workers make up a significant proportion of the District's low-wage workforce (see Chapter 2), and are especially susceptible to having their wages stolen (Valenzuela Jr. et al., 2006; Bernhardt et al., 2009; Fussell, 2011). But even workers' rights activists who work with and represent the interests of American citizens think of DOES as inaccessible to the community. "I know that [workers are] not going to DOES to seek

help,” says Rachel, explaining that this is because they do not know that they can, and because “they don’t trust [DOES] But even when they do go, folks are so frustrated. . . . It just doesn’t feel accessible to a lot of people.”

These activists represent an incredibly valuable resource that the District government could take advantage of. Whereas an administrative agency is at least somewhat removed from ordinary citizens by virtue of its position in government, workers’ rights organizations are often deeply embedded in the communities they serve. They have credibility, prestige, and above all, access to information about rights violations that DOES might not otherwise learn about. Activists are often aware of businesses that are breaking the law (see Weil, 2018; Su, 2016), and they are eager to share this knowledge with the District government. DC Jobs with Justice and other members of the Just Pay Coalition, for example, deserve credit for at least two of the lawsuits brought by the OAG. But activists report that when they try to work with DOES in the same manner, the agency is not interested. Emma Cleveland, a union organizer who previously worked at the Employment Justice Center, describes one such experience:

I think it was over 400 businesses that we touched, over a thousand workers over several years. I oversaw that project and we were using that data to send to the Department of Employment Services to say “Hey, go after these wage thieves. We’ve got complaints from workers . . . they told us they don’t get paid sick days. Here’s a list of every business that we talked to that doesn’t give paid sick days, here’s a list of” – and then when that list was too long for them, we were like, “Here’s *multiple* offenders, here’s businesses that have both workers saying they’re getting under the minimum wage *and* no sick days, or no overtime and no sick days, or no minimum wage and no overtime. Here’s that list.” And as far as I know they never did anything with that data.

Complaints about the agency’s unwillingness to engage with the community do not just come from workers’ rights activists and workers, though. Attorneys report the same kinds of issues, including with the basics of communication. “Just getting DOES to answer the phone is difficult,” says Shlomo Katz, who explains that in his experience “you call a switchboard, you

get switched around, eventually you leave a message, and they may or may not call you back eventually.” In Shlomo’s case, his repeated efforts at communication were not successful in establishing him as a representative of his client. “I don’t think I got a hearing notice,” he tells me. “I recall hearing about it by accident. I think one of those phone calls where I finally got through to somebody, she said, ‘Oh, you know, the hearing’s in two days.’”

Ultimately, Shlomo and his client prevailed at the hearing. Although Shlomo was one of the last people I interviewed, he was one of the first who confirmed for me that the government had actually set up the administrative hearing process created by the Wage Theft Prevention Act (see DC Code § 32-1308.01). Many of the stakeholders I interviewed were uncertain as to whether it actually existed, and some believed that it did not. “[T]hat process isn’t set up yet,” says Barbra Kavanaugh, a Georgetown law professor and the former Executive Director of the Employment Justice Center. She amends her comment, but not much. “It may be! It’s a black box.”

Jason Rathod and Nick Migliaccio, whose law practice largely consists of bringing class action lawsuits on behalf of underpaid workers, explain that at first they were excited at the prospect of working with DOES, but quickly gave up. “[T]he statute created this administrative body that was supposed to be able to hear claims,” says Jason, “and we’ve tried to avail ourselves of it and just ran into a brick wall.” Jason and Nick read the Wage Theft Act and thought that using the administrative process would be ideal for some of their clients. In 2017, they contacted DOES to ask about how to do that, but quickly decided it was not a forum they could use with any level of confidence. Not only did the agency seem completely disorganized, but Jason and Nick actually detected some hostility towards their efforts. “They put up so many barriers to actually using it,” explains Jason, “and they told us, ‘Well, they can’t have counsel in

this proceeding. They need to disavow their counsel and give us the right to prosecute it' And that sounded really puzzling. That didn't seem at all right to us." The end result was that Jason and Nick decided they couldn't send their clients off into the unknown. "To say, first, you don't have a right to counsel, you can't have a lawyer represent you. Oh, that's a really interesting concept," says Nick, sarcasm edging into his tone.

Nor was this a one-off experience. On another occasion, Nick and Jason referred a worker who they could not represent to DOES. "Maybe a week later I got an e-mail from her," says Jason, "and she was like, 'Oh, they actually told me that I need to go to this other thing called small claims court.'" He and Nick start to laugh at this memory, which they find ridiculous. "No, they shouldn't be shunting people off to small claims court! You have a wage claim, you belong in this forum," Jason continues. "[I]t's unclear as to whether there's any process whatsoever set up under this law," adds Nick.

This is hardly what the authors and supporters of the Wage Theft Act envisioned. Through their efforts, the District has robust laws that are designed to effectively protect and enforce the rights of low-wage workers. But three years after the Wage Theft Act went into effect, many of the most informed people in the city are unsure whether and to what extent its provisions are actually being implemented, and have little confidence in the key agency that is supposed to enforce the law.

In addition to viewing DOES as inaccessible and unwilling to work with relevant community members, stakeholders also perceive the agency wage claim process to be long, ineffective, and unreliable. To some extent, these problems are inherent in any legal action. From the perspective of parties to a dispute, any administrative or regulatory process is a burden that life is better off without, and all things considered, a fast resolution is ideal. This is true not only

for wage claimants, who often feel strongly about their claims and want their money quickly, but also for employers. “Everyone assumes that if you’re on the management side that you think delay is good, and sometimes it is,” says Daniel, a management-side attorney at a large law firm in the District. “But there’s also a built-in inefficiency about that It’s not a way to do this.”

Stakeholder critiques of DOES go far beyond complaining about the kinds of delays and inefficiencies that can reasonably be expected, though. “What we know about DOES,” says Perry Redd, the former Employment Advocacy Director of the Washington Lawyers’ Committee, “is that timeframes are not their priority.” Under the Wage Theft Prevention Act, even allowing for some administrative delays, the entire process should take six months or less (see DC Code § 32-1308.01). This has never been the case, however, and stories abound of delay and stagnation. “It takes forever to get cases prosecuted or investigated or otherwise,” agrees Rachel, a workers’ rights activist. Workers themselves report the same thing. Ruben says his claim took eighteen months, start to finish. After Sita submitted her wage claim, it took the agency two and a half months to send a complaint to her employer. Lisa’s claim for overtime took about ten months, and it would have been longer but for the fact that her life circumstances forced her to accept a settlement that she felt was too low. Jack experienced the worst delay of anyone I spoke to. “We’re approaching the two year anniversary of my firing and the two year anniversary of the filing of my paperwork,” he says. This is a story that Jack has told many times to advocates, the City Council, and at public meetings, but – understandably – he is still exasperated as we talk.

For many of these stakeholders, the agency is so flawed in large part because the people who work there are not particularly motivated to do their jobs well. These stakeholders tend to couch their criticisms by explaining that they have had some positive interactions with some

DOES employees, but speak poorly of the agency in general. It is a cynical view, but also one based on experience. For example, Allen Cardenas, who coordinates the Workers' Rights Clinic, attended a meeting with DOES in early 2018 to discuss the fact that the agency was not following the Wage Theft Act's short timeline for processing claims. "It was a lot of people just not caring," he says. "It's easy to remove yourself from wage theft when you have a salaried job, when you are living a good life. . . . [The process is] very inefficient, but it doesn't seem like they are interested in improving efficiency."

To workers' rights activists like Allen Cardenas, who know well what wage theft can do to a person's life, this orientation is baffling. Sequenly Gray, the research coordinator for DC Jobs with Justice, expresses being stunned at what she has seen. "I do feel like they are in a position where they can do so much more to help the working people, even businesses, here in DC," she says, "and they just don't do it. . . . I just don't understand. I just can't grasp it. How do you not help someone who doesn't have anything? It's a moral thing, right? It's a *moral* thing. What type of person are you?"

In the District of Columbia, there's a widespread perception among workers, activists, and attorneys that DOES has fundamental problems with competency, efficiency, and effort. Given this general belief, what actually happens when workers attempt to use this system to remedy their wage theft?

Fighting for justice through the agency process

To recap, here is what is *supposed* to happen when a low-wage worker in the District experiences wage theft. First, they become aware that their rights have been violated, and decide to do something about it. If confronting their employer does not fix the problem – and it

sometimes does – then the worker must find a lawyer, file a lawsuit themselves, or file a complaint with the Department of Employment Services. Practically speaking, it is impossible for most people to find a lawyer or bring their own lawsuit. So, low-wage workers either file a complaint online, or else go in person to DOES’ headquarters in Northeast DC. At the headquarters, a person who speaks their language directs them to the Office of Wage-Hour. There, they meet with a government employee, an expert on the District’s workplace laws, who helps them file a complaint against their employer.

Shortly thereafter, DOES serves a copy of the complaint on the employer via certified mail. The employer has twenty days to respond. If they do not, DOES accepts the worker’s allegations as true. If the employer does respond, DOES conducts an investigation and evaluates the evidence. Either way, DOES makes an initial determination within sixty days of serving the complaint. This determination states the facts, the evidence taken into consideration, the legal issues, and the agency’s conclusions, including whether and how much the worker is owed in unpaid wages, fees, and damages. At this point, either the worker or the employer may challenge the determination and demand a hearing before an administrative law judge (ALJ) in the Office of Administrative Hearings (OAH). OAH holds the hearing within thirty days of a request, and the judge reaches a final decision within thirty days of the hearing. Altogether, this process should take no more than 4 to 6 months (DC Code § 32-1308.01).

“Yeah,” says Allen Cardenas, “those timelines just don’t happen.” It is a fair criticism, based on what Allen’s personally seen and heard, and finds broad agreement. Workers, lawyers, advocates, and even DOES administrators all agree that the process is slower than it should be. This fact is frustrating to the workers who go to the agency for help. “Oftentimes, the filing of a

complaint will take so long, and it frustrates workers until workers just forget about it,” Perry Redd explains.

Some workers who go to DOES see their cases languish for long periods of time. Ruben, Caleb, Sita, Jack, and Lisa all complained to me about the interminable delays they experienced. Workers and stakeholders alike report that unless a claimant (or her representative) puts pressure on the agency, there can be little or no forward movement on a claim. “Most people don’t ever get a hearing, or even [get to] explain their case in person,” says Allen Cardenas. “We’ve gotten a couple of people hearings, but that’s after going to DOES, pushing for these hearings, advocates demanding that these people be seen, and that takes a really long time even with our help.” Lisa, whose story of unpaid wages and retaliation I told at the start of this chapter, characterized DOES’ communication as “honestly pretty good,” but also criticized the agency for its inactivity. “There’s no driving force from their end,” she says. “It always had to be me pushing.” In her experience, when she stopped pushing, nothing happened. Eventually she did stop, and so did progress on her claim.

Jack’s story of delay is particularly egregious, and the process so offended him that he has become active in the workers’ rights community. Jack is an artist, likeable and creative, but to pay the bills he has done a lot of manual labor – landscaping, painting, catering, serving, and so on. He has spoken about his experiences at anti-wage theft rallies and to the news media, and I met him after seeing him testify before the DC Council. He invites me over to his apartment to talk, where he serves me lemonade and shows me his various art projects. They are creative, and dominate his eclectic apartment. The most impressive one is a recreation of the Hollywood Hills, but instead of the iconic white letters spelling out “HOLLYWOOD,” they say “FUCK YOU.”

After the restaurant Jack worked at fired him, he went to DOES to file a complaint. The agency told him that he had two viable claims against his former employer. Not only had Jack been denied his right to paid sick leave, but he had been illegally fired in retaliation for trying to use it. Initially, he had hope for the process, but it soured over time:

I'd been told back on September the 29 of 2016 that this process was going to take sixty days. So, I was anticipating a payout or a settlement or something around the holidays of 2016. And I heard nothing. And I heard nothing. And I heard nothing. So after 160 days, I took a field trip down to Judiciary Square and I went to the Office of Administrative Hearings to see if they had my case. They told me, one, that they had never heard of me or my case, and that they don't even handle retaliation cases, and that they had no idea who I was or what they could do for me. Go try somebody else.

This was confusing and frustrating for Jack. He had contacted DOES after about 160 days, and the employee who had initially met with him told him that, because there had been no progress made on his claim, DOES was forwarding his dispute over to OAH. After some time, it did make it over there. "By the time we eventually landed in the Office of Administrative Hearings, it was probably close to 250 days passing," he explains. At that point, his former employer filed a motion to compel arbitration, claiming – correctly – that Jack signed an arbitration agreement when he started work. "That's where we are right now," he says. "We went to an arbitration motion hearing I think in August of last year, and we are mid-April of the following year and I'm still waiting to hear on the motion to compel arbitration." Like others, Jack complains that this entire process has seemed to take place inside of a black box that he has not been able to penetrate. The District government, and especially DOES, have not communicated with him about the most basic aspects of his case, including whether it was progressing, whether his employer had responded, or what he could reasonably expect moving forward. "Everywhere I have gone," Jack says, "there's been a lack of cooperation or a lack of

follow through to communicate It was just abhorable!” He is clearly frustrated. “560 days later I’m still waiting to tell my story to the administrative hearing judge or anybody!”

Delays are one thing. The timeline spelled out in the Wage Theft Act is important as a matter of justice and efficiency, and especially because low-wage workers feel strongly the impact of their wage theft and usually have a pressing need for their unpaid wages. But if timeliness were DOES’ only issue, or even its biggest issue, that would still be tolerable if the rest of the process worked well. If, despite being slow, DOES communicated with claimants and made them feel respected, if it did a good job applying the law, and if its procedures were set up well, then the District’s low-wage workers and stakeholders would have little to complain about.

Stakeholders and workers alike insist that this is not the case, though. All of my interviews with people who have experience with DOES were punctuated by critiques and complaints, many of them deeply troubling. As I discussed in the last section, workers and stakeholders alike frequently describe communication issues with DOES, and report that the agency is slow, inefficient, and seems to be permeated by a culture of disinterest. The consensus is that without outside pressure, either from workers or their advocates, the agency will not resolve complaints with vigor or speed. Even when third parties attempt to communicate with DOES they are sometimes unsuccessful, and report agency responses ranging from silence to hostility.

The most troublesome aspect of this discussion, though, is that people have little faith that the agency will do a good job applying the laws that are supposed to remedy and deter wage theft. In the introduction to this chapter I shared Lisa’s story in detail, and argued that DOES’ calculation of her wage theft was deeply flawed and led to a determination of unpaid wages that was hundreds or thousands of dollars lower than it should have been. Others also report seeing

errors like this. “I don’t know if the people over there are attorneys or what,” says Marv, a worker-side employment lawyer who asked to speak anonymously. “I don’t think they are. I think that they’re very incompetent. . . . In my limited experience of dealing with them, I don’t think that they have a good understanding of the wage and hour laws.”

On one recent occasion, a client of Marv’s came to him after having first gone to DOES. “They had calculated my client’s [unpaid] overtime at like \$3500, and I calculated my client’s overtime at more like \$25,000,” Marv tells me. This is a stunning difference, to say the least, and underscores Marv’s impression of the agency. “I’ve had similar instances like that,” he adds.

Jonathan Tucker, one of the attorneys at DC Wage Law, also has doubts about how robustly DOES applies the law. “For example, the question of liquidated damages, it doesn’t seem to enter into the equation. Wage and Hour tends to do a good job of calculating wages owed and then finding out a way to pay wages owed. But, in DC in particular . . . the employee’s owed so much more.” Other stakeholders backed up the assertion that DOES resolves claims without applying maximum penalties, and I saw documentation to that effect.

There is an argument to be made in favor of settling wage claims for much less than they are technically worth. The dispute goes away, and the employee gets some money. Both of these things are undoubtedly positive. Beyond that, in some cases the employer might not be particularly blameworthy. Mistakes do happen. But when a low-ball settlement is based on the government’s ignorance, when it is just the result of a misapplication of what the law requires, it is indefensible. Even where these situations are not predicated on a misunderstanding of District law, but rather on the idea that the goal is to get a worker paid what they earned, the approach is dubious. The best empirical research out there, after all, tells us that harsher civil penalties

effectively deter wage theft, but that actual application of these penalties is incredibly important (Galvin, 2016; see also Cooper & Kroeger, 2017).

Criminal penalties could also play an important role in deterrence (see Nagin, 1998; Akers, 2012). In recognition of this fact, the Wage Theft Act enhanced the possible criminal sanctions for wage theft. Employers who do not pay their workers properly can be convicted of misdemeanors, and if they did so “willfully” – meaning intentionally or knowingly – then they can also face jail time (DC Code § 32-1307(a)). It is a powerful tool, and could be used to send a strong message. Other progressive places, such as California and New York, have used criminal charges for that purpose (Su, 2016; New York OAG, 2017). Despite these legal changes, however, the District has taken no steps to pursue criminal convictions for employers who violate the law. Not only is DOES apparently uninterested in working with the OAG to go after particularly egregious offenders, but the agency does not appear to have considered the basics of what that would look like.

DOES ignored all of my efforts to talk about this research, but I did attend a meeting between the Just Pay Coalition and two of the agency’s administrators. Both of these administrators have years of experience at the agency, and wield significant authority. At one point, they began to explain how difficult it is to collect money from the kinds of fly-by-night employers who operate illegally and keep no assets. They agreed that these kinds of employers should nevertheless face some kind of deterrent sanction, at which point I asked whether DOES had considered referring these civil judgment-proof cases over to the Office of the Attorney General for criminal prosecution. The agency had not, nor would it. “This isn’t the right process for doing something like that,” one of the administrators told me. “What works, what I have seen

work, is where a group of workers gets together and they go hire an attorney to bring criminal charges for them.”

This shocked me. It is a stunningly misinformed statement, all the more so because the speaker plays an important role in crafting enforcement strategies for wage theft. Now that we have dedicated public prosecutors housed in the government, what he described is simply not how criminal prosecutions work. Although America has a history of citizens hiring private attorneys to conduct criminal prosecutions (Steinberg, 1984), such occurrences are extremely rare (Bessier, 1994). Beyond that overarching fact, District law expressly states that criminal prosecutions for unpaid wages may *only* be brought by the Office of the Attorney General (DC Code § 32-1306). As the agency with primary responsibility for investigating wage theft, DOES has an important role to play in enforcement efforts involving criminal prosecutions, but its leadership does not seem to grasp that basic fact.

Stakeholders and workers report a variety of other problems with the District’s wage claim process. It seemed like everybody I spoke to had at least one comment to make about the flaws they had observed or experienced. Shlomo Katz reported that the ALJ who conducted his client’s hearing was not experienced with wage cases, even though it had been about two and a half years since the Wage Theft Act went into effect. “She wasn’t exactly sure what the procedures were,” he says, “and it turned out her copy of the DC Code that she had on her desk didn’t even have the right pages in it.” This issue is not the fault of DOES, since wage claim hearings are held at the Office of Administrative Hearings, a separate agency. It does, however, speak to the larger issues that exist in the District’s handling of wage claims.

Others complained that the agency does not protect workers from retaliation. Ruben saw his hours cut drastically. Lisa’s employer evicted her with almost no notice, and although she

filed a retaliation complaint with DOES, she says she has not been able to get the agency to take action. “[S]omething that we’d like to see more of,” explains Alex Taliadoros of the Kalmanovitz Initiative for the Working Poor, “is [DOES] stepping in and protecting workers who file complaints from retaliation, from being fired altogether. My sense is that that has very rarely happened, and by DOES’ own admission that has very rarely happened in DC . . . and that’s a crucial part of what DOES needs to be doing in order for workers to feel comfortable in coming forward and bringing their complaints.”

There are also significant issues built into DOES’ very system for collecting wage claims, which make the process needlessly inefficient and more difficult for the workers who depend on the agency for help. For example, every wage claim must be notarized. If a worker files their complaint in person then they can use the agency’s on-site notary, but that does not mean the process will be fast. Ruben, for instance, says that he had to wait an hour and a half to see the notary. If a worker instead chooses to file online, DOES is very clear that it does not process claims until the worker prints out their paperwork, gets it notarized (which usually costs \$5), and then sends in a physical copy to the agency.

Stakeholders are baffled by this requirement, which strikes them as an entirely unnecessary hurdle. There is nothing in the law that requires wage claims to be notarized. The DC Code says only that complaints submitted to DOES “shall be sworn” (DC Code § 32-1308.01(b)(2)), but this could be accomplished by something as simple as a signature.

It is not clear what exactly happens when a worker files a wage claim online, but the process is clearly disorganized. When Sita used DOES’ online system, she was able to upload supporting evidence, including her pay stubs and offer letter. After she sent in a notarized copy of her complaint, she did not hear anything from the agency for a few weeks. Eventually, she

picked up the phone and managed to speak to the employee in charge of her case. He said he had just gotten her file, and would start working on it soon. But did she have any evidence that she could send over to him, like her pay stubs or an offer letter? Evidently, these crucial supporting documents that Sita had already submitted had never made it to his desk. Later, the same employee again asked Sita whether she had ever received an offer letter, which she then submitted for the third time.

Stories like this do not surprise people who are familiar with the agency. Allen Cardenas explains that when he and others met with DOES, “a lot of the meeting was just talking about their administrative process, about what they do, about how files sit in a box too long, and for [a claim] to actually be on the desk of someone to review it, it has to go through like four different hands to be stamped properly, filed properly, printed. And it [is] just a very bureaucratic and administrative process that really could be streamlined.”

The problems with some of these issues are apparent. When workers are not protected from retaliation, or when the agency misapplies the law, there is a clear failure that must be remedied. But how important are some of these other issues I have raised? How much does it matter that the ALJ in Shlomo Katz’s hearing did not have the right pages of the DC Code? Why is it a problem if workers have to get their wage claim forms notarized? So what if Sita had to resubmit her supporting documents? At a glance, some of these things might seem like small problems. They are not. They are reflective of a larger pattern, all of which suggests that the agency processes implemented by the DC government to attack wage theft do not reflect an adequate understanding of the community of people who need the most help.

Throughout this dissertation, I have worked to analyze wage theft in context. The act of stealing another person’s wages is offensive in the abstract, but it is that much worse when it is

done to people who have the least to give and the most to lose. Low-wage workers, *especially* those who experience wage theft, are busy, strapped for cash, and have only a limited understanding of the legal and regulatory system. Any barriers to recovery will serve to deter claims, and the larger or more frequent these barriers are, the fewer people will come forward.

In Shlomo's case, the issue with the ALJ's copy of the DC Code and her unfamiliarity with the hearing process was not a big deal – the employer did not bother to show up to the hearing, and Shlomo, an experienced attorney, was able to secure a good outcome for his client. But Shlomo's client, Rolf, was in a rare position by virtue of the fact that he had representation at all. It is easy to imagine a situation where an employer does show up, the worker does not have an attorney or deep knowledge of the law, and the ALJ renders a flawed judgment based on incorrect information and the fact that the claimant is not able to skillfully advocate for themselves.

The issues with the claims-making process are not minor. The system, as it exists, requires claimants to spend extra time and energy dotting their i's and crossing their t's. Rather than streamline the process, DOES has introduced and allowed unnecessary hurdles to claiming. These hurdles make the process more difficult than it needs to be, and undoubtedly have a deterrent effect on would-be claimants. "Even though I am an educated white man with a degree from George Washington University, I have been treated like trash," says Jack. "And what I see is that those more vulnerable people, and I like to bring up the example of the single working mother who's got two or three jobs, trying to keep her rent paid and [to take care of] her two or three children . . . who has so many other important responsibilities in her life that she can't pursue this type of deep, comprehensive follow through [that I have done] just to get my case out there!" Sita had similar thoughts, telling me that although she had the knowledge, resilience, and

wherewithal to find a notary, contact DOES, and stay on top of her claim, she is highly educated and had the help of somebody with knowledge about the process. What about those who do not?

Thus far, I have discussed how relevant actors in the District of Columbia think and feel about the Department of Employment Services, and what happens when low-wage workers go to the agency for help with their wage claims. In the next section, I build upon this analysis by taking a step back to discuss, in a broader sense, the agency's overall enforcement scheme.

DOES and (its lack of) strategic enforcement of the District's wage and hour laws

"I like to say that the District is all dressed up with nowhere to go," Kira tells me. As a retail worker and union steward, Kira has a significant amount of experience with wage theft. She has had to deal with it herself, and she has also spent a lot of time advising her co-workers about their workplace issues. Throughout our interview, she expresses a deep skepticism over the government's willingness to enforce the District's baseline wage and hour laws. "We have all these great things that's on paper, but either they're not being funded, they're being underfunded, or they're not being enforced," she goes on. "It's like, who's managing the people who employ the citizens of the District, or the people who come in the District to work? Nobody."

Kira is not alone with these thoughts. Workers and stakeholders alike expressed this sentiment over and over again. The consensus is that when it comes to enforcement of the laws designed to benefit and protect working people, the city falls far short. Stakeholders, in particular, are heavily focused on the gap that exists between the District's legal guarantees and the actual application of its laws. This is a common theme in the field of Law and Society. A wealth of research has exposed and explored the disparity between what social scientists call the "law on the books" and the "law in action" (see, e.g., Calavita, 2016). In short, legal promises are

never practical guarantees, and to some extent there will always be a failure to achieve the full potential of a policy or law.

In the District of Columbia, you do not have to be a scholar to see this gap for yourself, and to the people of the city the gulf is wide and apparent. “We have very strong wage theft protection in DC, but the tools that [the] law provides to the DC government in order to fight wage theft and reduce it aren’t really utilized,” says Alex Taliadoros. Perry Redd was more direct: “the laws are great on paper, but they’re pretty much garbage in practicality.”

Passing the Wage Theft Act was an enormous victory for the District’s low-wage workers and their advocates. Without question, it is one of the strongest policy responses to wage theft in the entire country. But, much of the work of changing policy comes after the vote on a law (see Luce, 2005; Hacker & Pierson, 2010), when it is time for politicians, administrators, and advocates to roll up their sleeves and work on actual implementation.

Enforcement of the Wage Theft Act is the problem. Specifically, the District government – with the OAG being the exception – does not engage in smart and effective strategies for attacking wage theft. To stakeholders and workers alike, the District government’s basic orientation to combatting the problem is deeply flawed and ineffective.

In the ongoing conversation about policing labor standards, there is a concept known as strategic enforcement. In summary, strategic enforcement is about the effective use of limited resources to achieve the long-term goal of enhancing employer compliance with basic workplace laws (see Weil et al., 2010; Weil, 2018). It’s “a deliberate approach to change the practices of wage violation that have become commonplace in certain industries,” writes the Just Pay Coalition (2018), and it does so by “tak[ing] account of industry-specific business models,

dynamics, and regulations with the goal of creating ripple effects that will influence the compliance behavior of a number of employers at once.”

Put simply, strategic enforcement is about getting the most bang for your buck through the careful application of resources to strategies that will be effective long term. It requires government agencies to do more than just implement new strategies, however. An enforcement body must also adopt a long-term mindset, with the goal being to create ongoing, sustainable compliance (Weil, 2018). To that end, organizations must do three key things:

1. Prioritize the allocation of resources so that they will have the most impact;
2. Focus on changing the behaviors that result in legal violations in the first place; and
3. Find mechanisms and implement strategies that will have an effect on compliance even after an investigation is over (Weil, 2018).

In significant part, this requires agencies to engage in proactive compliance efforts, shifting resources towards active strategies with the specific goal of establishing a robust presence and creating a culture of compliance in an industry (Weil, 2018). However, “[t]he crisis of compliance in low-wage industries will not be solved by the state alone,” writes Professor Janice Fine, an expert on strategic enforcement. In order to be successful, strategic enforcement “require[s] creative collaboration between government, workers, organizations, and—where they exist and are willing to participate—high-road firms” (Fine, 2017, p. 45).⁶

At first glance, this sounds like an intuitive and obvious concept. Of course government agencies should use their resources in the most efficient way possible, including by working with community organizations and adopting a long-term mindset! But, in practice it stands in stark

⁶ “High-road” employers are those who not only follow labor and employment laws, but also actively work to provide decent jobs with good wages and benefits (see American Sustainable Business Council, 2018). Because they are often outspoken about the importance of fair and dignified workplaces, there’s good reason to think that many would be willing to work with the government to reduce wage theft.

contrast to how most government agencies operate, including the Department of Employment Services. Rather than engage in strategic enforcement, DOES uses a complaint-based process to root out employers who are committing wage theft. It is an inherently reactive strategy: the agency waits for workers to report their employers, and then takes action to force those employers to follow the law. This has also “been the dominant approach taken by the federal government for many years,” as well as most states and cities (Fine, 2017). It is a practice that has been criticized for missing large numbers of violations and failing to create sustainable and long-lasting compliance (Weil & Pyles, 2005; Weil et al., 2010).

There are some clear problems with this passive, complaint-based strategy. It relies on low-wage workers coming forward and reporting their employers, even though they are extremely unlikely to do so. As I discussed in Chapter 6, for a wide variety of reasons working people are practically unable to take real action to assert their rights, even when they know that their rights have been violated and even when these violations deeply offend them. The realities of these peoples’ lives means that they are filled with fear and reluctance over the prospect of taking official action against their employers. Many do not even know what their rights are, whether their rights are being violated, or where to go in order to seek help. In light of these facts, a reactive, complaint-based strategy will always be ineffective.

Research drives this point home. The fact is, complaint rates are low. David Weil and Amanda Pyles (2005) find that in the context of the Fair Labor Standards Act and Occupational Health and Safety Act, very few workers complain, but it is not because there are high compliance rates across the board. Rather, people just are not likely to speak up. Worse, the industries with the highest level of violations tend to have low complaint rates, emphasizing the weakness of this strategy (Weil & Pyles, 2004).

In addition to my own findings, there is also specific evidence of the inadequacy of a complaint-driven process for rooting out wage theft in the District. The Office of Wage-Hour receives between 600 and 800 complaints per year, which include violations of the District’s paid sick leave, minimum wage, and overtime laws (Zhang et al., 2017b). At the same time, a research firm hired by DOES found “that there is significant noncompliance with minimum wage laws” in the District, estimating that in a single year, nearly 40,000 workers in the District experience minimum wage violations (Zhang et al., 2017a). Even if the Office of Wage-Hour receives 800 complaints in a year, and even if *all* of those complaints are about the minimum wage, a staggering number of violations in the District go undetected.

The agency is essentially playing whack-a-mole with bad employers, going after them only when workers stick their necks out. This responsive strategy might – *might* – remedy a problem after the fact, but so much of the harm of wage theft occurs during and immediately after the act, when workers struggle to figure out what is happening and have to scramble to pay the bills. Attacking these harms six or more months after they occur does nothing to assuage the very real anxiety, pain, and anger that people feel at the moment of and in the time period following their rights violations. Not only does a reactive strategy fail to prevent wage theft as effectively as a proactive one, it leaves workers open to harm because, by definition, the government comes into the equation only after laws have been broken. This is true of the courts, as well. Unlike the judicial system, however, DOES has the mandate to aggressively and proactively protect workers’ rights.

Workers’ rights activists in the District are well-educated on the issue of strategic enforcement, and in the wake of the passage of the Wage Theft Act have sought to bring this perspective to the fore of the discussion. They testify at Council hearings, publish reports and

policy briefs, and regularly raise the issue with elected officials and career administrators. They emphasize the importance of educating employers and workers alike about the law, using the full range of legal tools available in the Wage Theft Act, conducting targeted enforcement actions, and engaging in media campaigns and working with community organizations to root out bad actors and empower workers.

Ari Weisbard, for example, who helped write the Wage Theft Prevention Act before going to work for a city councilmember, speaks for many when he expresses the importance of community partnerships and prioritizing enforcement in industries known to have high rates of wage theft:

So if we really have a mayor . . . who [is] interested in [wage theft] and who appointed the right folks in the agency to proactively choose one industry per year to really focus on that industry, do strategic enforcement, work with community groups who are connected to that industry, to funnel cases and help empower those community groups so that they could build their own prestige in the communities as folks who could get something to actually happen when things [go] wrong, or when wages [are] stolen. . . . That kind of thing, I think, could do wonders.

Barbra Kavanaugh, who was also instrumental in the Wage Theft Act's passage, emphasizes the value of education and randomized audits:

I don't think they're proactive. I would love to see more paper audits. We talked about *zero* [audits], and I think [DC] Jobs with Justice was talking to DOES . . . [about] sending people out to businesses and making sure that the various notices [with information about workers' rights] that are required are actually on the wall somewhere. Again, I think that should be done as a matter of enforcement. I mean, how many city youths do they hire? Give them all a clipboard and tell them to walk into every small business along Columbia Road. It doesn't have to be hard.

Joanna Blotner of Jews United for Justice explains how crucial it is for the District government to conduct widespread, ongoing education campaigns, and to forge close partnerships with community organizations like the one she works for:

The idea of strategic enforcement is incredibly important. We know in DC, in particular . . . workers are commuting in from Maryland, Virginia, West Virginia,

wherever The wages are different across multiple jurisdictions, overtime laws are different, sick day laws are different. . . . We have to be doing better enforcement, better outreach, better engagement. It has to be in partnership with unions, with other partners who know these fields really well, who understand the unique culture of the job that's there.

The ideal that emerges from these descriptions is an agency that is deeply embedded in the community it serves, maintains an active presence among workers and employers, has developed close working relationships with community organizations, and uses its leverage at key points in place and time in order to have the largest impact possible. Perhaps most importantly, these stakeholders describe an agency that has a clear-eyed understanding of the difficulties inherent in the lives of low-wage workers, and of the ways in which those hardships effectively prevent self-help over rights violations. In light of this understanding, the agency knows it must be proactive, resilient, responsive, and protective, because only by being these things can it effectively achieve its mandate to find, remedy, and prevent wage theft in the District.

Workers' rights activists universally agree that this is not the labor standards enforcement agency that currently exists in the District of Columbia. "They're making efforts towards strategic enforcement," acknowledges Alex Taliadoros. "I know they've identified four key industries in DC that are susceptible to wage theft, and have in some ways focused on those industries. But the type of strategic enforcement that we're envisioning and that we've seen in other cities . . . is a lot more robust and a lot more wide-reaching than what we've seen in DC, and that involves a lot of different aspects of how it's approached." Identifying industries rife with violations is a good first step, but what about random or targeted audits? Widespread education campaigns? Protecting workers from retaliation? Working closely with community organizations? Publicizing significant enforcement actions and large penalties? "We haven't seen any of that," Alex says.

Although the District identified some industries in which wage theft is more prevalent, from the perspectives of stakeholders, DOES is falling far short of its enforcement potential. They see a distinct lack of proactivity on the part of the agency, and are deeply frustrated by it. Worse, a lack of proactivity is not the only problem. The agency often fails to even react to community members who make serious efforts to help it fulfill its mission. Recall Sequenely Gray and Emma Cleveland's efforts to notify DOES of bad actors, or Nick Migliaccio and Jason Rathod's attempts to smoothly guide their clients through the agency process. "There are so many different organizations that are naming bad players, that are saying these people are doing bad things for workers, and DOES is waiting for the workers to come tell them," says Kristi Matthews, who organizes and advocates for retail workers. "Why? Why, if an entity is telling you *these people* are doing bad things to workers, why do you need [workers] to come tell you? Go do something!"

The problem seems to be one of will and motivation. At one point, DOES did make some effort to be proactive. In 2015, shortly after the Wage Theft Act went into effect, DOES began an outreach effort known as the "Zip Code Project." The Zip Code Project was to proceed in two phases.⁷ Phase 1 involved visits to area businesses in order to educate employers about DC's wage and hour, occupational safety and health, and workers' compensation laws. Among other activities, inspectors asked to view non-public areas of workplaces in order to check whether employers had put up the informational posters required by law. If inspectors determined a business was not in compliance with these posting requirements, they would issue a "Notice of Violation" and place that business on a list for a follow-up visit. The businesses were told that

⁷ Much of this information is not readily available, but I obtained a copy of a legal memorandum that the DC Chamber of Commerce used to successfully challenge the Zip Code Project. I base the description of the Zip Code Project on that memo, which I corroborated through other interviews and conversations.

during the follow-up visit, the inspection would be more thorough, and they might be fined. During Phase 2 (which never occurred), DOES planned to conduct random compliance investigations and review employer records. Even employers about whom no complaint had been made could be subject to these investigations.

In late April of 2015, the DC Chamber of Commerce wrote a memo challenging the legality of the Zip Code Project. “I looked at [the Zip Code Project] and I said, ‘I think this is unconstitutional,’” says Daniel, one of the attorneys involved in the challenge. “You can’t just walk in and start looking at stuff. There’s a body of law about this, about getting an administrative warrant. So we looked into it and I was persuaded after we looked into it that I thought it was unconstitutional.” The big issue, according to the Chamber, was that the government was demanding to view non-public areas of the business without an administrative warrant, and if businesses refused, then they could be subject to sanctions. In Daniel’s mind, this was a violation of due process. The Chamber raised its concerns with both DOES and the OAG, and in September 2015 DOES announced the end of the outreach effort.

Workers’ rights activists and even some government actors are unsure about what happened to the Zip Code Project. It is a little hard to get information about the effort, but one thing is clear: with tweaks, such proactive efforts by the government could certainly be constitutional. There are, of course, many government agencies that engage in compliance investigations that are either random or not initiated by a direct worker complaint, including departments of health and labor standards enforcement agencies around the country (see Fine, 2017). Beyond that, the United States Supreme Court has stated that administrative searches are, generally, constitutional so long as “the subject of the search [is] afforded an opportunity to obtain precompliance review before a neutral decisionmaker” (*City of Los Angeles v. Patel*,

2015, p. *10). This review does not have to be robust, though, and even a hearing before an administrative law judge will satisfy the due process requirements of the United States Constitution (*Patel*, *12). DOES is not able to enter any section of any workplace at will, without even a reasonable suspicion of wrongdoing, but it can certainly engage in agency-directed, proactive compliance and outreach efforts.

Rather than adjust its approach, DOES largely gave up on being proactive after ending the Zip Code Project. In an agency oversight hearing that the DC Council held in March 2018, Councilmember Elissa Silverman questioned then-DOES director Odie Donald III on the issue of strategic enforcement. Councilmember Silverman asked whether Donald believed enforcement efforts could be improved, and if so, how that could be accomplished. Donald replied that enforcement efforts can always be improved, but denied that his agency was engaging or would engage in strategic enforcement. “The law is complaint-based,” he said, “and so this proactive enforcement – I noticed that there was a misquote or misstatement . . . where you mentioned that we’ve been working with you on proactive enforcement. I don’t agree with that We administer the law, and the law is complaint-based. . . . DC Code 32-1308.01, it requires administrative procedures on the complaints, and it’s very prescriptive. So I would look at that law, because that’s the law we have to enforce” (DC Council, 2018b). Donald was asserting that his agency’s failure to engage in proactive enforcement strategies was not due to an administrative failure. Rather, the DC Code actually *prohibited* DOES from doing anything other than being reactive around the issue of wage theft.

The problem is that it is not possible to square Donald’s position with what the DC Code actually says. The portion that Donald said precludes strategic enforcement, section 32-1308.01, only lays out the procedures that must be followed when a worker does file a complaint. It says

nothing about restricting strategic efforts by the agency to enforce the District’s wage and hour laws. Read as a whole, Title 32 of the DC Code makes it abundantly clear that the District government, including DOES, can and *should* engage in proactive efforts. Other provisions state explicitly, for example, that the mayor and her agents “*shall* investigate violations of [Title 32],” including on their “own initiative” (DC Code § 32-1331.05, emphasis added), and that they have the power to “investigate or ascertain the wages” of DC workers (DC Code § 32-1005(a)). Whether the director of DOES was honestly mistaken or, as one person suggested to me, possibly making up his answer on the spot without any forethought, his response was troubling and confusing to workers’ rights advocates. To many, it served as direct evidence from the agency itself that many of their critiques are valid.

Concluding thoughts: On wage theft enforcement in the District of Columbia

The District’s slate of employment laws represent a powerful counter to the problem of wage theft. In particular, the Wage Theft Act created a social and legal framework that carries great promise for reducing the frequency and severity of this problem. That law passed with the support of the District’s workers’ rights community in the District, and its authors drafted it with great care in a deliberate effort to be as comprehensive as possible. In part, that law holds such promise because it adopted a multi-pronged approach to remedying this social problem. It empowered multiple actors, enhanced civil and criminal penalties, and provided low-wage workers with new avenues for redress of their rights violations.

Three key groups form the core of the District’s anti-wage theft enforcement regime: the Office of the Attorney General, the private bar, and the Department of Employment Services. On paper, this looks like an effective approach. Wage theft is a complex social problem, and it

requires a complex, multi-pronged response. In an ideal enforcement scheme, there are important roles to play for government prosecutors, private attorneys, and labor standards enforcement agencies. The OAG publicly targets bad actors who engage in systemic wage theft, sending a forceful message that fair work deserves fair pay regardless of the type of job or the kind of worker. The private bar, in turn, eases pressure on the government by taking on viable cases, a category that has been expanded in the wake of the passage of the Wage Theft Act. DOES arguably has the most important role of all. The private bar and OAG only have the capability to assert the rights of a limited number of workers, and most working people who experience wage theft will need to rely on a government agency to formally enforce their rights. As an agency with a dedicated labor standards enforcement branch, DOES has the potential to fill in this significant gap in representation.

To some extent, this enforcement scheme is working. But to a much greater extent, it is not, and the failure lies with DOES. Low-wage workers, workers' rights activists, and many attorneys view the agency negatively. They have little faith in the organization to enforce the District's basic workplace laws, reporting that the agency is closed off, inaccessible, unhelpful, and ineffective. Their feelings about DOES range from disdain to dismay, from anger to condescension, but most agree on a single conclusion: by and large, the agency is failing the District's working people.

In a city as progressive as DC, with strong anti-wage theft laws and powerful messaging around the issue, is this really what the Department of Employment Services is like? The portrayal of an anemic and ineffective agency is one perspective, but is it a fair one? People could argue with the validity of what I have written by pointing out that workers' rights activists naturally have a strong orientation in favor of the working poor, and are therefore predisposed to

criticize government efforts on behalf of low-wage workers as inadequate because such efforts could never reach the lofty ideals held by these stakeholders.

Ultimately – and unfortunately – the picture painted by workers’ rights activists is fair for a variety of reasons. These stakeholders are themselves reliable and trustworthy people. As a group, they are highly educated. Some have a significant amount of formal education, including degrees from the nation’s top universities, but even those who do not still have a great deal of experience-based knowledge about the workings of the District government. In other words, these people are generally clear-eyed, knowledgeable, and level-headed. They know the constraints and limitations of government bureaucracies, and formulate their opinions and ideas within the framework of that understanding. This is not to say that workers’ rights activists do not have biases. All of us do. But their descriptions of the agency are based on a wealth of real-life experiences, rather than broad assumptions about how the world works.

Moreover, what workers’ rights activists reported to me was validated by other groups of people. For this research, I deliberately set out to obtain varying perspectives on wage theft, both to gain a fuller understanding of the problem, and to test, challenge, and verify findings. People consistently critiqued the Department of Employment Services along the same lines. Some hedged, of course. Shlomo Katz, for example, told me that perhaps he had such a hard time communicating with DOES staff because they were busy canvassing the District for unpaid workers to help. This explanation could be plausible if Shlomo were one of only a small number of people with whom I spoke, or if he were largely alone in describing an agency that seems rife with missteps and errors. But he was not, and he is not. The fact is, I heard similar comments and complaints about the agency over and over.

There is a key perspective missing from this discussion: that of the Department of Employment Services itself. Over several months, I made multiple attempts to speak with administrators at the agency, including the director herself. Initially, I informed the director of my project, and asked to speak with somebody from DOES so as to gain a better understanding of the agency and its processes. When this failed to garner a response, I added that I would also like to both share my findings with the agency and provide it with the opportunity to discuss its work and respond to its critics. I later attempted to contact other administrators who work directly in the Office of Wage-Hour. I never received any kind of answer, or even acknowledgement, from any person. In a way, this is itself a response, a data point from which I can draw some limited conclusions. Unfortunately, these conclusions support the narrative portrayed by the participants in this research: DOES is not a communicative agency, nor one that is very interested in introspection, critiques, research, or collaboration.

To a significant degree, DOES is a black box. What happens inside of the agency is not clear because I was not able to get access to it or its employees. In the absence of direct engagement with DOES, however, I made significant efforts to gain an understanding of the agency's perspective and functioning through other sources. In addition to conducting extensive interviews with workers and stakeholders who are familiar with the agency, I also attended hearings and meetings, listened to DOES administrators speak about wage theft, assisted Sita with filing her wage claim, and read carefully through the information that the agency publicly releases. I have woven much of this information throughout this dissertation, especially in this chapter.

What I have found is that, at least on the surface, many of the agency's employees and administrators are polite, and some do express what appears to be a genuine interest in taking

wage theft seriously. Overwhelmingly, however, the experiences I have had with the agency and the information I have obtained support the picture that has been painted by low-wage workers and stakeholders. For example, Darien, the wage-hour compliance specialist in charge of Sita's wage claim, is sometimes responsive and always polite. I have the impression that Darien is a decent employee and a cooperative man. Unfortunately, though, the process has been so rife with mistakes and delays that Sita has quickly become disillusioned. Two and a half months passed between when she filed her wage claim and when Darien sent information about her complaint to her former employer. A month after that, Darien informed Sita that the agency would hold a factfinding conference, but has since ignored her efforts to schedule it. He also refuses to provide her with a copy of the official complaint, and has repeatedly lost, misplaced, or forgotten about relevant documents. Throughout, Darien has been only inconsistently responsive, and Sita has always had to be the one pushing for progress on her claim. The timeline outlined in the Wage Theft Act is clearly not going to be met in her case. At this point, her experience has been an exercise in frustration, replete with the same errors and missteps that so many others report.

I do not necessarily write these things in an effort to attack the people at the Department of Employment Services Office of Wage-Hour. Many of the employees at the Office of Wage-Hour are reflective of the community of people they serve. The DC municipal government is a large driver of the African American middle class in the District (see Gardner, 2013, p. 308), and many employees of DOES undoubtedly have friends and family members whose incomes would qualify them for this project. In other words, there is reason to think that the people who work at DOES do have a reasonable understanding of the troubles experienced by the city's low-wage workers.

It may very well be that some of these problems are not the fault of the agency's front-line workers or supervisors, or even its higher-level administrators. If, for example, the timeline in the Wage Theft Act is not followed because the wage-hour compliance specialists are chronically overworked, are forced to use old and outdated technology, or otherwise do not have the resources they need to work efficiently, then that speaks to a broader problem with the District government and how it has allocated funds. Another researcher, one who was able to gain access to the agency and study it from the inside, might have a very different take on the challenges that the agency faces and the tactics it employs as a response to wage theft. It is certainly possible. At the same time, however, it is hard to see how an insider's perspective could explain away the range of significant issues that I have reported here. It is also not possible to presume that DOES, as an institution, has a keen understanding and a healthy amount of empathy for the District's low-wage workers, given the significant and frequent problems associated with the agency's wage claim process.

What accounts for this gap that I have reported, the gulf between what could be and what is? Where does the breakdown happen? It is an impossible question to definitively answer with the information I have, and I will not try to do so here. But to many low-wage workers and most workers' rights activists, the fault lies at the top, with the leadership in the executive branch of government. There is a popular – and unproven – narrative in the District that portrays the government as being in bed with the wealthy and powerful, represented heavily by a somewhat nebulously-defined group of employers and developers. These people allegedly build the city up in the pursuit of wealth, skirting employment laws designed to protect ordinary residents in order to deliver luxury apartments and fancy office buildings, all while lining their own pockets. Because of their money, wealth, and prestige, these same developers and employers exert a

disproportionate and unjustifiable amount of influence. Not every member of the municipal government is believed to be guilty of this favoritism, but the mayor and her top aides are.

The corollary to this story is that the municipal government, in privileging the perspectives of the wealthy and powerful, just does not really care about the chronic issues experienced by the city's long-term residents, who are largely poor and working-class people of color. According to this narrative, the reason wage theft enforcement is so lacking in the District is because the people who need it the most are the city's most vulnerable, its least powerful, and its least valuable. Wage theft, says Kamila, is "happening in DC with the black community, with the Latino community, the immigrant community. I think that . . . people in those communities [have been] taken advantage of ever since there was work, and it's not a priority for Mayor [Muriel] Bowser because it's poor people of color."

Kamila made this comment off the record so that it would not be tied back to her organization. For the same reason, Anna told me off the record that "unless there is a mayor that is making that a massive priority and giving that direction then it absolutely won't happen at the lower levels. And I've seen government move when it needs to, and when it's been directed very explicitly to, and I think that that direction has not been given." As Lawrence, a long-time worker-advocate put it, "as long as black people are getting the short end of the stick, the stick is alright to be used." These same sentiments persisted throughout my interviews with low-wage workers, many of whom described a government that favors the powerful, that will not effectively protect the rights of the poor, and especially of people of color. "I hate it," Carol says. "I think the District government's *worthless*, I do. They're more harm to us than help." "I just been here all my life and I done seen all the changes in the city," Marion agrees, "and they don't want to help us."

I cannot say whether these views are true or not. There is certainly validity to them, though, and the people who expressed them to me were all speaking from experience. The evidence is not definitive, however, and even as the District government is the subject of scathing critiques, it has at least created a legal and regulatory regime that is among the most supportive of workers in the entire country (Rose et al., 2018). To a certain extent, though, it does not matter if the District government *actually* operates in a way that discriminates against the working class, against people of color, and in favor of employers and developers. The District's plan for attacking wage theft depends heavily on the participation of low-wage workers and workers' rights activists, who must trust and collaborate with the government in order to find and deter bad actors. When these people fundamentally lack faith in the government's willingness to help them, when they in fact express a deep cynicism about the effort, the prospect for effective and meaningful enforcement of the District's laws is in great peril.

Conclusion: Power and Poverty in the Heart of America

The District of Columbia is a city of hierarchies, where great wealth and power stand in stark contrast to significant deprivation and widespread exploitation. As the District's economy continues to grow, and as its culture of success keeps expanding into new regions of the city, tens of thousands of its people are being left behind. This dissertation has focused on the workplace struggles of these people, whose labor makes the city run. Low-wage workers are ubiquitous, and while even they describe their jobs as menial and unglamorous, they individually and collectively play crucially important roles. They build, repair, and clean our homes and offices; care for our children, our sick, and our elderly; grow, pick, and prepare our food; and engage in innumerable other acts that are necessary to the smooth running of our daily lives. Without their efforts, modern society would not exist.

Many of these low-wage workers are hardworking and diligent. They take great pride in working and providing for themselves and their loved ones, in being a part of America's economic landscape. They are not perfect people or employees, nor do they claim to be. Whatever flaws they have, however, are no worse than those found in Americans in general. And like the rest of us, low-wage workers believe in the American Dream, our national economic ethos, and express a heartfelt desire to live and earn with dignity. Central to this call for dignified work is a reasonable demand: employers must adhere to our fundamental workplace laws, and if they don't, then the government must enforce those laws.

All over the country, this call is going unanswered. Employers constantly subject low-wage workers to violations of their most basic workplace rights. The national numbers are staggering. Minimum wage violations alone are estimated to affect between 17 and 26% of low-wage workers, costing them \$15 billion per year in lost wages, and artificially placing hundreds

of thousands of working people in poverty (Bernhardt et al., 2009; Eastern Research Group, 2014; Galvin, 2016; Cooper & Kroeger, 2017). Eligible workers are frequently denied overtime pay and paid time off (Bernhardt et al., 2009). Independent contractor misclassification suppresses wages and increases taxes for individuals, and costs federal, state, and local governments billions of dollars per year in lost revenue (Leberstein, 2012; Carre, 2015). This type of violation allows employers to shirk their tax responsibilities, depleting the important social safety net programs upon which so many people rely (Leberstein, 2012; see de Silva et al., 2000).

While these costs are spread out over hundreds of jurisdictions, thousands of miles, and millions of workers, individual people still suffer acute harm from wage theft. This harm goes far beyond an immediate and temporary loss of income. Low-wage workers, especially in a place as expensive as the District of Columbia, are the most economically vulnerable among us. They live paycheck to paycheck, hand to mouth, and almost never have savings or investments that they can rely upon during hard times. When wages are late, short, or entirely missing, the fragile financial scheme holding together a person's life falls into jeopardy. Even a temporary or relatively small loss of earnings can cascade into a range of serious and upsetting economic hardships. Workers struggle to figure out how to pay for the basic necessities of life, including electricity, heat, rent, and food. Fear looms large: fear of eviction, of illness, of hunger, and of accidents. When a person's wages are stolen, just managing the basics is hard enough, to say nothing of the kinds of activities that make life more than just a form of existence.

Wage theft's harms, however, are not limited to economics. In setting aflame financial insecurity, the act causes stress, fear, and uncertainty. In making a person feel degraded and disrespected, it causes anger, frustration, sadness, and depression. In extreme cases, people

contemplate suicide. Too often, these feelings worsen as workers consider their options in response.

The fact is, in spite of the District of Columbia's legislative efforts to enhance employer accountability and empower low-wage workers, the overwhelming majority of these people are rarely able to vindicate their rights. Some never realize their rights are being violated; many do, but are nevertheless unable to successfully assert themselves, as they lack – or believe they lack – the power, knowledge, energy, and wherewithal to obtain justice. Confronting supervisors is often unsuccessful; traversing the system of courts and administrative agencies seems dangerous at best, and impossible at worst. In the precarious context of low-wage workers' lives, in light of the gross power imbalance between employer and employee, retaliation is a present and ongoing concern, and many believe that they will ultimately regret speaking up. Frequently, these beliefs stem from experience. Such fears and concerns are only heightened for more vulnerable people. Older workers, undocumented workers, workers with criminal backgrounds, and those with families to support all have unique points of vulnerability that further constrain the realistic range of actions available to them when their employers violate their rights.

Perhaps most upsettingly, and despite the efforts of reformers in the District government and the workers' rights community, many low-wage workers express a lack of faith in the government's ability and willingness to enforce their rights. Some view government cynically, and believe it favors (wealthier and more powerful) employers; others simply see it as slow, inefficient, inaccessible, and incapable.

When low-wage workers do attempt to take action over their rights violations, they rarely feel vindicated as a result. Most are unable to obtain legal representation, either from a private attorney or the DC Office of the Attorney General. The brave few who choose to pursue their

own lawsuits find out that the process is confusing, intimidating, and scary, and they are usually unsuccessful. Those who go to the DC Department of Employment Services (DOES) are often able to recover some money, but report that the agency is slow and unresponsive, incapable or unwilling to protect or advocate for them. These feelings are shared by the District's stakeholders, including workers' rights activists and employment lawyers, who take a dim view of the District government's efforts at enforcing the laws that are designed to protect the most economically vulnerable among us.

* * *

There can be no justification for what I have presented here. No matter your political orientation or class position, regardless of your economic viewpoints or social beliefs, the realities of wage theft are intolerable. Violations of our nation's most longstanding workplace laws, the baseline protections that form the cornerstone of American labor policy, are unacceptable. This is especially true when the victims of wage theft are the poorest among us, when they are overwhelmingly racial minorities, and when the site of these offenses is the capital of our nation. The District of Columbia, after all, is not *just* another American city. It is a place with great symbolic importance and an incredible amount of opportunity. Bad though wage theft is in the abstract, disheartening though these findings would be in any other context, they are all the more damning for the fact that they come from the heart of our country.

Throughout this research, I have heeded the call of scholars who urge researchers who study inequality to focus on the social, legal, and political environment of a particular location (see Seron & Munger, 2017; Epp, 2016). To that end, I have taken care to explain in detail the social and regulatory framework of the District, and to interrogate wage theft among the working poor within that specific context.

This research reveals that Washington, DC has made some significant strides in responding to this social problem. Its efforts have not been wasted. The District has some of the best anti-wage theft laws in the country. When meaningfully invoked, they have the power to turn the tables on unscrupulous employers. Thanks to these reforms, Maynor was able to find attorneys to represent him at no cost. With their help, he placed his hands on the levers of power and walked away validated, satisfied, and tens of thousands of dollars richer. Plaintiffs' attorneys now represent a broader class of unpaid workers without requiring a retainer or taking a cut of their clients' earnings, an expansion of access to justice that is noteworthy, laudable, and capable of replication. The same City Council that unanimously passed the Wage Theft Prevention Act also empowered the Office of the Attorney General to independently prosecute bad employers, and in little more than a year the OAG has vindicated the rights of dozens of workers by collecting tens of thousands of dollars in unpaid wages.

These events did not take place in a vacuum. The workers' rights community in the District is diverse, motivated, and extremely active. It has successfully pushed many pro-worker policies forward and, as part of those efforts, has successfully promulgated a narrative that portrays wage theft among low-wage workers as a significant wrong that should be condemned harshly. This is not the only narrative about wage theft in the city, but it is a powerful one, and it has taken root even among some of the District's most influential political actors, including the Attorney General and members of the City Council. These politicians amplify the message of the workers' rights community, sending a clear signal to low-wage workers that their pay-based workplace grievances are valid. Together, the legislative changes and messaging around wage theft help explain how many of the District's low-wage workers think about their workplace

mistreatment. They understand it to be both unfair *and* illegal, and frequently report feeling deeply offended by acts of wage theft.

The context of the city matters a great deal. The District's laws, politics, and social messaging set it apart from many other jurisdictions. Vindicating experiences like those that Maynor had are not the norm of the city's victims of wage theft, but they are important, and the efforts that the District has made provide hope for the future. At the very least, the environment of DC has had an important impact on how people think about their rights violations and how they are able to respond, even as this impact is also limited.

The notion of power has been central to my analysis of wage theft. "Power" refers not only to the dominant ideas that permeate and structure society, but also to the dynamics of interactions between people. In other words, one understanding of power views it as "the outcome of social transactions" and the ability of a person to "achieve foreseen and intended effects" in a social interaction (Ewick & Silbey, 2003, p. 1333). In the District of Columbia, low-wage workers and workers' rights activists have been able to bring a significant amount of power to bear in order to broadly define wage theft as a gross injustice that must be remedied, but the effects of these efforts have been limited. Wage theft is common largely because employers and workers alike understand that low-wage workers lack the power to assert themselves in their interactions with employers. The possible costs are too high; the potential rewards are too uncertain. Working people both understand and *feel* this lack of power. It forms a persistent and defining feature of their realities.

The District is partly to blame for this. The city's anemic enforcement of its workplace laws contributes to the sense of powerlessness that low-wage workers feel, which itself makes them less likely to attempt to enforce their rights. Although some have pointed out that the

notion of “legal consciousness has become somewhat shopworn in the field of law and society” (Gleeson, 2016, p. 10), it is useful for thinking about the effects of laws and policies on how and when individuals decide to exercise their rights. “Legal consciousness” refers to “how people think about the law,” including “prevailing norms, everyday practices, and common ways of dealing with the law or legal problems” (Nielsen, 2009, p. 7). It stems from the idea that law and society are mutually constitutive, and generally “examines the role of law, broadly conceived, in constructing understandings, affecting actions, and shaping various aspects of social life” (Nielsen, 2007, p. 1243). Legal consciousness does not just involve the study of formal law, then, but also the common, everyday understandings and applications of the law. Ordinary people may themselves be “agents of legal continuity, change, and legitimacy as they perpetuate, invent, or resist cultural tropes, concepts, and interpretations that invoke political and legal associations” (Barclay & Silbey, 2007, p. 669).

In their seminal book on legal consciousness, *The Common Place of Law*, Patricia Ewick and Susan Silbey (1998) explain that there are three general orientations that people hold in relation to the law. Those who stand “before the law” respect and defer to the law and legal authority. They view legality as something that is relatively fixed and impervious to individual action, as well as distinct and separate from ordinary social life. People who are “with the law” view it as a game where different players can strategically maneuver within a set of rules in order to achieve their goals. Finally, those who stand “against the law” resist law and legal authority, conceiving of legality not as “an arena of transcendent authority to which one defers,” or “as a game that one plays in order to seek one’s interests and values,” but rather as a net in which people are trapped and must struggle for freedom (Ewick & Silbey, 1998, pp. 183-84). Crucially, a person’s legal consciousness is related to their economic and social position, but can also be

shaped by circumstance and experience (Gleeson, 2016; Calavita & Jenness, 2014; Hoffman, 2003). Poorer people are less likely to invoke the law and its processes (Gleeson, 2016; Sandefur, 2008), and are more likely to view the law with cynicism, expressing doubts about its ability to remedy social problems (Nielsen, 2004).

“Legal consciousness is thus a dynamic process wherein people experience events in their lives, make sense of those events, and respond to them. In doing so, individuals not only express a perspective on legality, they shape its meaning and boundaries” (Blackstone et al., 2009, p. 634). Put simply, how people view and think about the law and its institutions is based on the context of their lives and experiences, and this thinking also affects whether and how people will attempt to use the law and access its institutions. Their decisions regarding whether to invoke the law and their experiences in attempting to do so, in turn, also serve to guide and shape the law’s power in everyday life.

In spite of the efforts of government reformers and the District’s workers’ rights activists, too many of the city’s working people do not view the law and its institutions as capable of solving their problems. The overwhelming majority who experience wage theft never attempt to formally assert their rights. Many understand, sometimes after being rebuffed, that they will not be able to find a lawyer to represent them, and that they probably cannot succeed by representing themselves in court. For the majority of wage theft’s low-wage victims, the only real option is to seek help from the Department of Employment Services. Most will never do so. Many do not know they can; many others lack faith in the agency.

At the same time, however, low-wage workers largely express a desire to work with the very same government that they feel is absent, inaccessible, or unhelpful. Even as they criticize the District for being callous and indifferent, for not working to protect their rights, many

nevertheless leave the door open to the possibility of working with a government that makes genuine and effective efforts to enforce the city's workplace laws.

Wage theft is a complex problem, an act that preys upon people's vulnerabilities and an ill that plagues society at large. It is old, and it is common, and it will never go away, not entirely. But things don't need to be this way. This does not have to be the experience of the District's working poor. The fact is, wage theft *can* be effectively confronted with thoughtful policy solutions. Through effort and intervention, the words of the story that I have written here can be smudged, blurred, and finally erased.

There is much more work to be done. The Department of Employment Services remains the last, best hope for the majority of the District's working people, but it is falling far short. The District of Columbia, however, already has all of the tools that it needs to turn DOES into the agency it should be. The right laws, processes, and resources already exist. The same workers' rights activists who were instrumental in passing and defending the Wage Theft Act remain willing and eager to work hand in glove with the government on this issue. The city's leaders are highly intelligent and have proven, time and again, that they are capable of tackling difficult problems. There is already powerful messaging about wage theft that defines it as intolerable, criminal, and important to redress. And, finally, the city has the resources to treat this social problem with the seriousness that it deserves: as of 2018, DC enjoyed a budget reserve of more than \$2.4 billion (Jamison, 2017).

By adopting the right strategies, the District could create a truly comprehensive and effective system for enforcing its fundamental workplace laws. It could reduce wage theft, vastly increase access to justice for the working poor, improve the lives of thousands of low-wage workers, inspire confidence in the government among stakeholders and workers alike, and be a

model for the rest of the nation for how low-wage workers ought to be treated. These are not easy tasks, but they are attainable. In order to achieve these goals, however, the District will have to significantly change the operation and orientation of the Department of Employment Services.

The rest of this conclusion outlines the changes that the District of Columbia, and especially the Department of Employment Services, must make in order to create a twenty-first century labor standards enforcement plan that is capable of addressing wage theft with the seriousness and creativity it requires.

Building confidence among stakeholders

An effective attack on the problem of wage theft necessarily requires workers, workers' rights activists, and employment lawyers to have confidence in the government agency responsible for enforcing the District's labor laws. Workers and stakeholders alike express a significant lack of faith in DOES, however, and many express doubts about the agency's ability to fulfill its mandate. At the same time, these people are open to the prospect of working with the agency, and many express an earnest desire to do so. Forging closer working relationships with stakeholders is perhaps the single most effective thing that DOES can do to improve its enforcement capabilities.

There are a number of different groups that DOES should include in the regulatory process. Most importantly, the agency must engage the Just Pay Coalition, especially those member organizations that work closely with low-income people and have firsthand information about wage theft. These organizations are able to conduct outreach, collect information about rights violations, and help low-wage workers navigate the process of filing a wage claim. There is every reason to think that they would be highly effective at these tasks, given their strong

ideological motivations and the fact that many of the members of the Just Pay Coalition enjoy prestige in the community. In fact, DC's activist community has a successful history of finding and reporting wage theft to the government.

DOES should also engage with local law school clinics, some of which have told me that they would be interested in working with the agency to represent wage claimants. This would both serve the public interest and be an excellent way to train students in advocacy. Such advocacy would benefit both DOES and low-wage workers by streamlining the process, ensuring that proof and arguments meet a certain standard, and improving agency efficiency. Similar collaborations have proven effective in other jurisdictions. For years, the California Division of Labor Standards Enforcement has worked with law students, who help people fill out wage claim forms, provide claimants with information about the administrative process, and actually represent workers in administrative hearings (see Su, 2016).

Similarly, DOES must do more to engage local attorneys. On paper, many of these stakeholders view the agency's process as promising, but they do not utilize it. Some simply prefer to go to court, but others report that they have learned not to rely on the agency. DOES should not only be willing to allow attorneys to fully participate in the agency process on behalf of clients, it should actively seek such participation. By working with attorneys like Jason Rathod and Nick Migliaccio, DOES could improve efficiency, ensure that proof and arguments meet a high standard, and build prestige as these lawyers become more confident in referring low-wage workers to the agency.

The District should also include high-road employers in the regulatory process. This may be more difficult to accomplish, but there are opportunities to build collaborative relationships. Employers who follow the law, after all, have a vested interest in the law being enforced, as their

competitors' unlawful practices undercut their ability to compete. In many industries, high-road employers may even know which of their competitors operate in violation of the city's basic workplace laws. Beyond that, high-road firms have more than just a pecuniary interest in the government investigating and punishing wage theft. Many work to follow the law because the law itself is consistent with their moral and political beliefs. Employer groups like Business for a Fair Minimum Wage and the American Sustainable Business Council, for example, have the specific purpose of advocating for policies that will create more equitable workplaces. Such employers and organizations would likely be happy to work with the government, but there is no indication that the District is currently pursuing such partnerships.

One of the high-road employers whom I interviewed for this research, Logan, told me about his significant efforts to communicate with the District government about his competitors' legal violations. Ultimately, he found the agencies he contacted to be inaccessible and unwilling to take action. Logan runs a business in a field known to be rife with workers' rights violations, and spent several months attempting to work with the government to take action against some of his exploitative competitors. Logan is a conscientious employer who keeps his business license current, but "half of the big operators in DC, they're not registered businesses," he explains. That means they're operating illegally, failing to pay sales taxes, and are likely violating other employment laws as well.

Logan first contacted the DC Office of Tax and Revenue, which confirmed that his biggest competitors are unlicensed. Logan then attempted to get the Department of Consumer and Regulatory Affairs (DCRA) to investigate these businesses and take action, but to no avail. Every step of the way, he says, DCRA found reasons not to investigate, repeatedly explaining to Logan that there was not a good enough reason to think any illegal activity was taking place.

When Logan first asserted that his competitors were operating in the District without a license, DCRA responded that there was no evidence of that fact beyond Logan's claims. Logan then directed DCRA to his competitors' webpages, which state that they work in the District. DCRA informed him that this could simply be false advertising. Or, perhaps, the other businesses had just recently set up their webpages, and they were not yet selling products or services in the District. Logan then drew the agency's attention to online service reviews from District residents. The agency still insisted that this was not enough to open an investigation, because the reviews could be fake. "Well, yeah, *maybe*," Logan says, exasperated, "but why is that the orientation that you're taking to a claim that's being submitted to you, an investigative body?"

What did DCRA claim it needed to take action? Nothing less than a receipt from Logan himself. "Are you asking me to conduct a sting?" Logan asks, incredulous, as he tells me this story. "I'm the complainant! I'm not going to do that. I'm not going to use my competitor in order to get a receipt and then submit that information along with a complaint." Eventually, Logan simply gave up, and has since expressed a lack of faith in the municipal government.

Logan represents a particular kind of employer in DC. He is smart, motivated to treat workers fairly, and willing to work substantively with the District government in order to improve the city's culture of work. There are others like him, and there is significant potential for the District to work more closely with such employers in order to discover, investigate, and remedy wage theft and other violations of law.

Engaging with these groups will also indirectly improve the relationship between DOES and the low-wage community. Information filters through networks. If DOES is able to improve its reputation among the key groups that interact with low-wage workers, low-wage workers will begin to hear more positive things about the agency.

Disputing and the power of education

Many low-wage workers fail to approach the government for help with their work-related issues because they do not understand their rights, they do not know where to go for help, or they do not believe that the agency will be willing or able to help them. DOES could begin to address these key issues by engaging in a widespread education campaign. This campaign must both educate people about their rights, including where to go if they need help, and draw publicity to the problem of wage theft in general.

Workers' rights activists describe DOES' outreach efforts as significantly lacking, and the fact that many workers do not know that they can go to the agency for help underscores this point. DOES should engage in a broad and sustained campaign to inform the District's low-wage workers of their basic rights, especially regarding the minimum wage, overtime, and paid sick days. Because many working people rely on public transit, the government should run a sustained advertising campaign focused on trains and buses. The agency, however, should also play radio ads and send spokespeople out to conduct interviews in local media. Perhaps most importantly, representatives should directly engage with residents by going out into community spaces, such as churches, shelters, and neighborhood meetings. Face-to-face interactions are important to making government processes and employees seem accessible, dedicated, and caring.

These outreach efforts should not be limited to low-wage workers, however. The government should work with stakeholders to create and disseminate information about workers' rights and the process of filing a wage claim. By collaborating with people embedded in the community, the District can ensure that it creates information that is effective at communicating with the group of people it is trying to reach.

Similarly, the District should work to engage and educate employers. A significant amount of wage theft occurs not out of malice, but because of employer ignorance about wage and hour laws. Some people who commit wage theft are not doing so in bad faith, and would undoubtedly prefer to follow the law. The District should work with business owners to develop materials that can be used to quickly and easily inform employers and managers of their most common legal obligations, such as the laws and procedures surrounding workers' compensation, unemployment insurance, and the payment of earned wages. This information is all available online, of course, but it is not always easy to find, nor is it always organized well. The District could disseminate this information cost-effectively by using existing processes – for example, each time an employer applies for or renews their business license, they should receive this information as a matter of course.

Relatedly, DOES must also draw a significant amount of publicity to the issue of wage theft. It is an enormous problem in the District, endemic to low-wage work, and it has a devastating effect on people's lives. It also inflicts broad harms on communities, especially immigrant communities and communities of color, and harms society in general by artificially deflating the District's tax base. In light of these realities, DOES should frame the problem in the same way that the DC Office of the Attorney General (OAG) does. Call wage theft what it is: a crime, a violation of peoples' fundamental workplace rights, and an affront to the way things should be.

Currently, however, DOES' webpage has very little information on wage theft. Other than the OAG, the District government has not made any serious efforts to raise awareness about this issue. It should, however, mimic the state of California, whose Labor Commissioner's Office has created a dedicated, attractive, easy-to-navigate web page about wage theft (appropriately,

the address is www.wagetheftisacrime.com). This website has clear information about workers' rights, promises protection from retaliation for workers (including undocumented workers) who come forward, and has simple directions for filing a variety of complaints with the state government. Other progressive jurisdictions, including Seattle and New York, have adopted similar approaches. The Seattle Police Department even actively encourages citizens to file criminal complaints if they experience wage theft (Seattle Police Department, 2019).

As part of this publicity campaign, DOES should also publicize its enforcement actions. Doing so will send a clear message to employers and workers alike about the seriousness with which the government treats wage theft. It will deter bad actors, inspire workers, and build confidence in the agency. To low-wage workers and their advocates, even a relatively small enforcement action – worth, say, \$5000 – can seem significant. Given the penalties that apply in DC, however, many wage judgments will be much larger than this.

Improving the wage claim process

This research has highlighted the significant barriers that stand in the way of low-wage workers asserting their own rights. One key problem is that workers reasonably perceive the wage claim process to be long, confusing, and unresponsive. In light of this, DOES must also make filing a wage claim easy and efficient.

Currently, aspects of the claims-making process are confusing and convoluted. The actual claim form is long and sometimes unclear. It does not, for example, allow a claimant to note whether they have an advocate, nor to explain if they were paid on a salary basis. DOES should collaborate with workers' rights advocates or experts from other states to make the form concise, understandable, and comprehensive. The agency should also eliminate the requirement that wage

claims be notarized. It is an unnecessary hurdle that is not required by the law. As part of improving the initial filing of paperwork, the agency must also improve its organizational skills. When workers file a wage claim online, there is no excuse for their supporting evidence getting lost in transit.

To streamline the agency process, DOES should adopt an official policy allowing advocates to participate, whether they are attorneys, law students, family members, or community members. Bringing informed, motivated stakeholders into the process will help workers and make the job of the agency easier. Right now, it is just not clear whether this is allowed. The investigator in charge of Sita's wage claim has been somewhat communicative with me as Sita's advocate, but others – including attorneys – report that DOES is not responsive.

Relatedly, DOES must improve its communication. Many stakeholders and workers complain that the agency fails to proactively share important information and is hard to get in touch with, and I also experienced this firsthand. Even Lisa, who described DOES' communication as "honestly pretty good," also told me that she had to constantly stay on top of her claim in order for there to be any forward movement. Others reported similar issues with the agency, stating that the responses they received ranged from nonexistent to slow to hostile.

Finally, DOES must reduce the amount of time it takes to process claims. The fact is, low-wage workers cannot afford to wait many months or even years for their money. Beyond that, the longer a legal process takes the more frustrating it becomes and the more people lose faith in the government. Even agency administrators acknowledge that delays are a significant problem. DOES must engage in a critical and comprehensive self-evaluation in order to identify inefficiencies and streamline processes. If this requires additional money, then the District

government should be ready and willing to allocate funds out of the city's massive reserve to give this problem the attention that it deserves.

Utilizing all available enforcement tools

The District must also utilize all available tools for enforcement of its wage and hour laws. The Wage Theft Prevention Act empowers the District government to impose significant civil and criminal sanctions on employers who commit wage theft. Most significantly, workers are entitled to liquidated damages equal to three times the amount of their unpaid wages (see DC Code § 32-1308.01), but the government also has the authority to levy various fines and penalties (DC Code § 32-1307). In fact, the DC Code suggests that these civil sanctions are *required*, stating that “the Mayor *shall*” assess such fines (DC Code § 32-1307(b)(1), (2), emphasis added), and that DOES “*shall* require the [employer] to provide relief including . . . liquidated damages equal to treble the amount of unpaid wages” (DC Code § 32-1308.01(c)(7)). Furthermore, the District has the authority to deny business licenses to employers who commit “willful” acts of wage theft. The government, however, does not currently use its authority to impose the full range of these sanctions. This must change, both because treble damages are appropriate to compensate workers who have experienced wage theft, and because significant civil sanctions are important for deterrence (see Galvin, 2016).

The District must also take action to criminally prosecute employers who cheat their workers. This is a controversial idea, to be sure. In the past, I have argued that criminal sanctions are not the best approach to enforcing workers' rights, both because they do not primarily emphasize making workers whole and because wage theft prosecutions can be a hard political sell (Fritz-Mauer, 2016). Although they are not a silver bullet to the heart of wage theft, criminal

prosecutions can be an important and necessary part of a thorough and effective enforcement plan for two reasons.

First, sometimes criminal sanctions are simply appropriate. Some employers, for instance, are effectively immune to civil judgments. These are the fly-by-night contractors who commit wage theft as a matter of course, but operate illegally and keep few assets. As I discussed in Chapter 8, private attorneys will not sue them, and DOES cannot collect any money from them. There clearly should be *some* sanction for employers who violate the law, however, and with civil penalties off the table, only criminal prosecutions are left.

Sometimes criminal prosecutions will be appropriate for employers who are not judgment-proof, though, because their wage theft schemes are so wide-ranging and egregious that they simply deserve harsher penalties. In other words, criminal charges should be applied against the worst of the worst offenders. In 2013, for instance, prosecutors in Santa Monica, California filed an eleven-count criminal complaint against the Wilshire West Car Wash. Over the course of three years, Wilshire West stole more than \$650,000 in wages from more than seventy-five employees. Eventually, two managers pled no contest to a variety of misdemeanors (see Fritz-Mauer, 2016). This example represents exactly the kind of case that is ripe for criminal prosecution, because the illegal actions of the employer were especially flagrant and widespread, and so deserved the harshest condemnation.

The second reason why criminal sanctions are important is because they send the powerful message: wage theft is a crime, and the District takes it seriously. Bringing and publicizing criminal charges can serve to inspire low-wage workers and workers' rights activists to trust and cooperate with the government, and will also signal to employers that they cannot expect to freely violate their workers' fundamental workplace rights.

To use criminal prosecutions effectively, DOES must work closely with the Office of the Attorney General. Only the OAG may bring criminal prosecutions against employers who commit wage theft, but DOES has a crucially important role to play in this process. It is the key government agency that investigates employers, and is in the best position to make an initial determination as to which cases are suitable and appropriate for prosecution. Both of these agencies should begin to map out what such a partnership would look like, and should take steps towards such collaboration.

Adopting a model of proactive investigations

Perhaps most importantly, DOES *must* move beyond its one-off, complaint-based strategy for enforcing the District's basic workplace laws. It must be proactive, and use all of its tools, manpower, and authority to engage in comprehensive investigations. This will require both expanding the frequency of directed investigations – that is, those initiated by the agency rather than by an individual's complaint – and changing how the agency responds to individual complaints.

During President Obama's administration, the Wage and Hour Division (WHD) of the Department of Labor made significant efforts to conduct more directed investigations in targeted, high-risk industries. By partnering with worker centers, workers' rights organizations, and unions, the agency was able to learn about and take action on wage theft schemes that otherwise might have stayed under the radar (Weil, 2018).

Like the WHD, DOES must prioritize enforcement actions and investigations in industries known to be rife with noncompliance, including the service, cleaning, construction, and retail industries. These industries often employ undocumented workers, who are both

particularly vulnerable to rights violations and especially unlikely to go to the government for help, since they fear deportation and retaliation more than the typical native-born or naturalized worker (Gleeson, 2015). In the District, these industries also have high rates of minimum wage violations (Zhang, 2017a), and are also likely to be violating overtime laws, DC's paid sick days law, and laws against misclassifying workers.

DOES has limited resources, both in terms of finances and people, and should focus these resources at the greatest points of leverage. This will include both random audits, such as those engaged in by departments of health all over the country, and vigorous investigations based on credible information about violations. Significant weight should be placed on information that is provided by unions and other worker-friendly organizations, as these groups often have credibility in the low-wage community, and serve as effective intermediaries between the government and workers who are unable or unwilling to file a formal complaint (see Weil, 2018; Su, 2016).

At the same time, the agency should also change the way it responds to complaints. Certain kinds of complaints are indicative of larger problems, of employers engaging in a systemic practice to violate workers' rights. These should trigger broad, quick action by DOES. When multiple workers complain, for example, the agency should respond by immediately scrutinizing the employer's entire business. This investigation should examine not just current workers, but any person who has worked for that employer within the past three years, which is the applicable statute of limitations for wage claims.

Even some *individual* complaints should spark broader investigations, however, where the facts of the complaint appear to reflect a pattern rather than a solitary event. Both Ruben and Lisa, for example, complained to DOES that they were working long hours without receiving

overtime, and DOES found merit to their claims. Ruben and Lisa both had coworkers with the exact same job titles and duties, and the validity of their claims strongly suggests that their employers were misapplying the law across the board. Why, after all, would a business classify only one of the workers with a given title as exempt from overtime? DOES should have requested all of their employers' payroll records for all similarly situated employees. According to Ruben and Lisa, it did not. They thus traversed their wage claims alone, which not only decreased the power and the effect of the agency's sanction, but also left them exposed – as the squeaky wheels – to subsequent retaliation.

To conduct investigations, DOES should also adopt new strategies. In addition to forging partnerships with workers' rights groups and unions, the agency should engage in surveillance of businesses and conduct off-site interviews with workers prior to an inspection. In doing so, DOES will be able to collect crucial information about who works at the business, how many employees it has, what its normal hours of operation are, and who the supervisors appear to be. Crucially, it would also be able to engage with workers in a context free of employer coercion and intimidation (see Su, 2016).

Adopting an anti-wage theft mindset: Understanding low-wage workers and dismantling the myth of neutrality

Strategic enforcement is about more than just adopting smart strategies. Agencies like DOES must also adopt the right mindset. They must keep overall goals in mind and always think carefully about how to best apply limited resources to achieve long-term success. A failure to embrace this way of thinking has led agencies to adopt enforcement strategies that are overwhelmingly complaint-driven. To an extent, this approach has been understandable. Responding to complaints yields a short-term success, and evaluating investigators based on how

quickly they dispose of complaints is a simple metric by which to measure how well the agency is doing. But, this orientation does not do much to contribute to create the kinds of industrial and cultural shifts that will lead to long-term deterrence. The best strategy for attacking wage theft is not always the one that yields the fastest or most easily measurable results. The best strategy is one that builds long-term relationships and creates ongoing compliance in high-risk industries. Many of the suggestions for reform that I have made here will help to accomplish those goals.

For these changes to be successful, however, DOES must also institute organizational shifts. It must adopt a clear-eyed and empathetic understanding of what the lives of low-wage workers are actually like. It may very well be that the agency's employees, many of whom are longtime residents of color, know very well what it means to be a low-wage worker. This understanding, however, is not reflected in the agency's approach to combatting wage theft. To be blunt, the Department of Employment Services' complaint-driven strategy is never going to work, not in any meaningful way. This research has highlighted the significant barriers that stand in the way of low-wage workers being practically able to assert their own rights, and some of these barriers are the fault of the agency itself. It is entirely unrealistic to expect a complaint-based strategy to be effective when we know, for a fact, that the majority of workers who experience wage theft will never go to the government for help. To combat wage theft effectively, the District's leadership must accept this reality. In doing so, it will also understand that the best way to improve access to justice for the city's working poor is to stop expecting them to seek it. Government must bring justice to the workers.

Some would assert that when agencies adopt the kinds of reforms I have outlined here, they actually hinder their overall mission. The argument goes like this: government agencies like DOES are supposed to be neutral, unbiased, and fair. Bureaucratic processes were created, in

part, to impose neutrality and avoid conflicts of interest. Forging close connections with workers' rights organizations, conducting focused investigations, declaring wage theft to be a "crime" – all of these tactics will decrease the political capital and overall credibility of the agency by marking it as a partisan and biased actor. This mindset is what California Labor Commissioner Julie Su calls the "myth of neutrality." As she explains, the myth consists of two underlying premises: first, the government should not appear to take sides; and second, the government should not disrupt the status quo, because the status quo is neutral in some way (Su, 2016).

This is the wrong way to think about the role of an agency like DOES. DOES is, fundamentally, on the side of the law. That means that it is on the same side as workers who experience wage theft, and it is also on the same side as high-road employers who do not commit wage theft. It is *not*, and should not appear to be, an ally to employers who violate the law, nor does it need to appear to be *neutral* with regard to those people or the topic of wage theft itself. DOES should be fair and evenhanded in its application of the law, but the agency is charged with finding, punishing, and remedying wage theft, and it must use every tool, resource, and strategy that it can in order to achieve its mandate.

A related concern is that of regulatory capture, which broadly refers to "the process through which special interests affect state intervention in any of its forms" (Dal Bó, 2006). The fear is that by forging close connections with the workers' rights community, DOES may become inappropriately beholden to and swayed by these activists, resulting in an agency that has lost its neutrality and operates to the unfair detriment of employers. The question, then, is: How does DOES even the playing field for low-wage workers and make it feasible for them to obtain workplace justice without tipping the scales too far against employers?

Concerns over regulatory capture and perceptions of bias are worth taking seriously, but may be headed off if the District does two things. First, by involving high-road employers and employer organizations in the overall regulatory process, especially in the creation and dissemination of information, the agency can avoid even appearing to be illegitimate or unfairly biased. Second, DOES must maintain an organizational position that emphasizes robust, but impartial and fair enforcement and application of the District’s workplace laws. What I am advocating is not an agency that blindly follows the lead and accepts the claims of low-wage workers and their advocates. Rather, DOES must encourage and empower participation by these groups (among other stakeholders), and it must efficiently and effectively evaluate wage claims. In other words, a serious policy solution to the problem of wage theft does not involve DOES accepting claims as gospel; it requires only that the agency treat such claims as legitimate, serious, worthy of investigation and, if credible, deserving of all available legal sanctions.

Regulatory capture by the workers’ rights community is a distant concern, however, a theory far from the reality of how things operate in the District today. This fear ignores the fact that to an extent, DOES has already been captured by the business community. To be clear, there is no reason to think that the agency is engaged in the kind of corrupt “revolving door” or “influence through incentives” models of regulatory capture that economists have long written and warned about (see Dal Bó, 2006). But its anti-wage theft strategy reflects the interests of a segment of the business community which benefits, or believes it benefits, through anemic enforcement of the District’s workplace laws. Given that the business community does hold significant sway in the District,⁸ and in light of the fact that the agency has adopted the passive

⁸ For example, in June 2018 DC voted in favor of a ballot initiative that would have gradually eliminated the tip credit. The tip credit allows businesses to pay tipped employees a sub-minimum wage (currently \$3.89 per hour in DC) based on the assumption that those employees will make enough in tips to bring them above the city’s “standard” minimum wage (currently \$13.25 per hour). The local restaurant association came out strongly against

kind of enforcement strategy that this community would prefer, there is little reason to think that by adopting the changes I have outlined, the Department of Employment Services would swing so far in favor of workers' rights activists that it would be fair to say it has been "captured."

Crucially, dismantling the "myth of neutrality" also means that the agency cannot be content with a society in which low-wage workers frequently experience violations of their fundamental workplace rights. Worker exploitation is the norm in many low-wage industries, but there is nothing "neutral" about this status quo. It must be disrupted, and it must be disrupted thoroughly. This task will not be easy. It will require a range of new strategies, and some critical introspection about what works and what does not. None of these suggestions for reform will work effectively, however, if the District government and its administrators do not also adopt a viewpoint that accepts wage theft for what it is: a widespread, ongoing social problem that causes deep and lasting harms, and which must be dealt with strongly and creatively.

Conclusion: Avenues for future research

I approached this research with the goal of understanding the dynamics of wage theft from a socio-legal perspective. I sought to engage low-wage workers directly, to capture and articulate their viewpoints as a way to examine how poor people experience, think about, and react to violations of their fundamental workplace rights. This research is primarily rooted in the framework of disputing, but it also draws upon research in the areas of power and resistance, and legal consciousness. To improve my analysis and obtain a more balanced understanding of the

this policy change, and engaged in a widespread opposition campaign. When that campaign failed, the business community successfully lobbied the City Council to overturn the will of the voters and repeal the initiative (Nirappil, 2018).

social, legal, and regulatory environment in the District of Columbia, I also analyzed formal laws and policies and interviewed different stakeholder groups.

Not long after I began collecting data, however, I realized that I needed to closely analyze the actual implementation and enforcement of the District's workplace laws. It would not be enough to simply collect and report the perspectives of low-wage workers and stakeholders regarding wage theft in the District; I needed to consider why these people feel the way that they do, and whether and to what extent there could be policy changes that would both address their concerns and be practical and useful. To that end, I paid extremely close attention to the Department of Employment Services and its enforcement strategies, and thought carefully about where there are flaws in the process that could and should be addressed.

My analysis of the District's labor standards enforcement agency, however, raises additional questions for future research. There is a large body of research in the field of political science devoted to analyzing the cultures and enforcement styles of administrative agencies (see, e.g., Kagan, 1989; Scholtz, 1991). Even thirty years ago, it was "clear that regulatory enforcement and decisionmaking styles do vary substantially, even across different offices that enforce the same law, and across different cases in the same office" (Kagan, 1989, pp. 91-92). I have not been able to fully capture the perspective of the leaders of the Department of Employment Services because I was not able to gain access to the agency. Instead, I have only been able to adopt an outsider's perspective. I sought to ensure that this perspective was balanced and accurate by relying on a variety of resources, but in the end I am still commenting from the margins of the agency. Although I was able to gather much data from my observations and interactions with DOES and through interviews with knowledgeable people, the culture and organization of the office is still shrouded in mystery.

Future research on wage theft should therefore do two things related to organizational analysis. First, it should analyze labor standards enforcement agencies from within, paying close attention to the thoughts and actions of individual, front-line workers who bear primary responsibility for enforcing the law. Second, future research should rely upon the body of work on regulatory enforcement that Robert Kagan, John Scholtz, and other political scientists have built over time. In doing so, scholars who study wage theft should also analyze the overall organizational culture of a labor standards enforcement agency, exploring both the factors that influence this culture – for example, special interests, grassroots movements, or political oversight – and how this culture itself influences the behavior of rank-and-file regulators. Through this lens of analysis, we will be able to gain a greater understanding of how to change agencies to make them more effective at finding, investigating, and remedying wage theft.

Finally, wage theft researchers must seek to capture the perspectives of employers, who are important stakeholders in this debate. Employer voices are almost entirely absent from existing research on the experiences of low-wage workers (see, e.g., Bernhardt et al., 2009; Cho et al., 2013; Gleeson, 2016; but see also Shieler, 2005). I tried to engage with the business community, but ultimately failed to do so. I can only speculate as to why, but I suspect that there are two reasons. First, employers are generally less interested than other stakeholders in discussing wage theft. The issue does not impact them in the same ideological or personal way that it does low-wage workers and workers' rights advocates, nor is it part and parcel of their book of business, as with employment lawyers. Second, it is possible that despite my best efforts (for example, avoiding the term “wage theft”), I “signaled” to potential employer-participants that I fall on the pro-worker side of the spectrum. A simple Google search reveals my relationship with the workers' rights community, and although I conducted this research without

prejudice, my background may have made potential participants wary. Another researcher with deeper ties to the business community may have better success speaking to employers and business leaders about wage theft.

This is a crucially important task, because employers should be involved in this conversation. I have argued that wage theft is a complex social problem that requires sophisticated and purposeful solutions. This research has built upon our understanding of wage theft by carefully detailing the perspectives and experiences of low-wage workers in the specific, relatively pro-worker environment of Washington, DC. It has detailed the reverberating harms that individuals and their communities experience due to wage theft, and highlighted critical flaws in the typical, passive, complaint-based scheme of enforcement utilized by most labor standards enforcement agencies, including the DC Department of Employment Services. I have used this data to propose the changes that are necessary for DOES to become effective at achieving long-term success combatting wage theft. The District government will continue to struggle against this problem, however, unless it takes into consideration the full context of wage theft. This requires the government to adopt a detailed understanding of the limitations placed upon low-wage workers by the realities of their lives, but it also requires taking into account the viewpoints and beliefs of other stakeholder groups. Ultimately, there is an opportunity here for the government to create a robust and effective plan for reducing the frequency and severity of wage theft through collaboration with working people, their advocates, attorneys, *and* employers who want to follow the law and compete on a level playing field.

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Appendix A: Interview Protocols

Workers' Rights and Wage Theft Interview Protocol

(Low-wage workers)

Thanks for meeting with me today. My name is Matt Fritz-Mauer, and I'm a graduate student at the University of California, Irvine. You're being asked to participate in my research study. I'd like to tell you about it before you decide whether to participate. Please feel free to ask me questions at any time.

The point of the study is to learn more about the workplace experiences of workers in Washington, DC I'll be asking you questions about your background, your job history, your job experiences, and your viewpoints on the laws that apply to workers. I want to protect your privacy, so your participation in this study will be anonymous. You will not be identified, and I will be changing the names of all of the people and organizations that you tell me about. At the end, I'll write a research paper using the information from these interviews. It won't be about you specifically, but about workers generally.

The interview will take about 1–2 hours, and with your permission I'll audio record it. Within the next week, I will write down what we said in the interview. This is called a transcript. I will then delete the audio recording, and I will carefully go through the transcript to remove information that could be used to identify you. I will also destroy all of my notes or recordings of this meeting. By the end, I won't have any record that you were interviewed. All I'll have is the transcript without any information that can identify you. This transcript will be securely stored.

You will be paid for your time with a \$15 gift card to Target, and I will also reimburse you for any money you spent getting here. And the information you share with me will be used to help researchers, activists, and lawyers understand what kinds of experiences workers in DC have, and how they can better work with and for you in order to improve working conditions and legal protections for workers.

Before you decide whether to participate, I want to talk to you about some of the risks of the study, and what I've done to make sure you're protected. Some of the questions that I ask might cause you to think about unpleasant experiences. I don't want to cause you discomfort, and so you can choose not to answer questions. You can also end the interview at any time. If you decide later that you don't want to be part of the study, then you should let me know right away. If you leave the study, you can ask me not to use any of the information that you shared with me. Do you understand what I've said to you so far?

There are two final, important points that I want you to understand. The first is that even though I will do everything I can to protect your privacy, there is a chance that ICE or another government entity will try to get a court order to get my research. To protect against this, I will not be asking you any questions about your immigration status, and I do not want you to talk to me about your immigration status. If you do tell me about it, I'll immediately delete that part of the tape recording. This isn't because I think your immigration status isn't important. It's

because I want to make sure that you are protected. This way, if ICE asks me for information, I won't have any to give them. Do you understand what I've just said to you?

Second, you may have talked to a lawyer about the same situations you'll talk to me about. It's very important that you keep the conversations that you had with any lawyers private, and that you don't share them with me. You can tell me about the same experiences that you've told the lawyer about, but you should not tell me what the lawyer said to you, what you specifically asked the attorney, or the legal strategies or issues you and the attorney discussed. For example, you can tell me if your employer does not pay you all of your wages, but you should not tell me what your lawyer thinks about that. The reason for this is that I want to make sure that your conversations with your attorney remain private and protected, and that they cannot be discovered by anyone else. Do you understand what I've just said to you?

[For deaf participants only] Finally, although I will do everything I can to maintain your privacy, we may communicate through a third-party interpreter using Video Relay Services or Telecommunications Relay Services. I cannot guarantee that this third-party will protect your identity, or keep secret the things we talk about today. If you have concerns about this, please let me know and we can discuss another way to communicate.

Everything that I just told you is also on the Study Information Sheet that I've handed you. Do you have any questions for me right now?

If you have questions later, you can contact me or my adviser. You can also contact the University of California if you have any questions, comments, or concerns. All of this contact information is also on the Study Information Sheet.

Do you agree to be interviewed?

If yes: May I record it?

[Informed consent must be obtained before proceeding]

I'd like to begin with some basic questions about you so I can learn more about you, and so I can get an idea of the overall picture of the group of people that I'm interviewing for this project.

Interview ID number: _____

Group designation: LW

I. Information about worker

1. What part of town do you live in? (Write in)

How do you like living in that area? What do you like about it? Is there anything you don't like about it?

Do you live with anybody else?

2. In the last 12 months, approximately how much money did you earn?

Are you the major wage earner in your household?

Are you supporting others? [Who? How many?]

II. Current job/work history

Now I'd like to ask you some questions about your work and work experiences. These questions will focus on your most recent job, but will also ask you to think about other jobs you've had in the last few years. There are no "right" or "wrong" answers to any of these questions. Please just answer as best as you can. But, please keep in mind that you shouldn't tell me about any conversations you've had with a lawyer, or anything about your immigration status.

1. Do you currently have a job?

a. If no:

What was your last job?

When did you have it?

What were your job duties?

b. If yes:

Do you have more than one employer? By employer, I mean the person or company who pays you.

How long have you been doing this job?

What are your job duties?

How did you get this job?

Are you in a union?

(If applicable) About how many other people do you think work for your (main) employer in DC?

About how many hours per week do you work for your (main) employer?
How many hours do you work overall? **[Important to be clear that I'm asking about hours actually worked, and not the worker's official schedule]**

Does your employer ever require you to be available or on-call for work during hours that you are not working?

How much control over your work schedule do you have? By that, I mean are you able to help decide what hours or days you work?

[Make sure to ask these questions about all jobs they say they have.]

2. Overall, about how long have you been working in the [relevant name] industry? I mean not just with your current employer, but for as long as you've been doing this kind of work.
3. How much do you make at your job/were you making at your last job?
 - a. How are you paid? For example, some people receive a set salary, others are paid hourly or by the task, or make their money mainly by tips or commission.
 - b. Do you receive a pay stub with information about your wages, hours, and deductions on it?
 - c. Has your employer ever paid you with a personal check or with cash?
 - d. What other positions are available at your current job? Do you think you have the opportunity to get promoted?
 - e. Is there a pattern to who does what kind of work or is in what position at your job?
4. What's it like to work for this employer?
5. What do you like about your job (or last job)?
6. What don't like about your job (or last job)?
 - a. Do you face any difficulties at work on a regular basis?
7. How does this job compare to other jobs you've had in the past?
8. In general, do you think you're treated fairly at work? What makes you say that?
9. Thinking about the job you have now (or the last job you had), and without telling me about any conversations you've had with a lawyer, have you ever felt that you were

mistreated? What happened?

b. What did you do in response?

c. Why did you react that way?

10. Thinking about other jobs you've had in the last few years, did you ever feel like your employer mistreated you? What happened?

d. What did you do in response to that mistreatment?

e. Why did you react that way?

11. Have you ever complained at work because you felt that you were being treated unjustly?

What did you complain about?

What happened when you complained?

Have you ever complained about anything else?

Wage and hour violations?

Discrimination?

Harassment?

Behavior of other employees or supervisors?

Unsafe or unhealthy working conditions?

III. Workers' rights, wage theft, and the government

Now I want to ask you some questions about the government and the laws that are designed to help and protect people like you. Some of these questions will ask for your general feelings about things, while others will be about specific laws in DC

1. Do you think that the government does enough or too much to help and protect people like you in the workplace?

What would you like the government to do more or less of, and why?

2. **[Hand participant minimum wage increase schedule card]** As you may have heard, DC recently began raising its minimum wage. Did you know about these changes? Do you think they have any impact on your life?
3. As you may know, DC has a law guaranteeing a certain amount of paid sick leave for most workers. Have you heard about this law? Do you think it's had an impact on your life?
4. Are you familiar with the term "wage theft"? [Either way, define as: When wages or benefits that an employee is legally entitled to are denied to her; give examples of unpaid overtime, paying less than was promised, unlawful deductions]

How did you learn about this term?

5. Did you know that DC passed a law in 2014 to try to do a better job at fighting wage theft? **[the Wage Theft Amendment Act of 2014]**

If yes: Do you think this law has had any impact on your work experiences?

6. Are there any other laws that you think have had an impact on your work opportunities and experiences?
7. As you know, workers have certain rights. They're entitled to the minimum wage, to take time off when they're sick, to work without being discriminated against, and so on. Do you feel like you clearly understand what your rights are?

Do you have a way of finding out about what your rights are?

Is there any way that you think the government or organizations could do a better job of letting people know what their workplace rights are?

8. I'm interested in learning about where you might turn to for help if you felt like your rights were being violated at work – for instance, if you weren't being paid all of your wages. Who do you feel you could turn to for help?

Push them to respond to possibility of turning to:

Local/federal government Local organizations or community groups

Private attorney Friends/family

Union

9. There's been a lot of debate over what should be done about the problem of wage theft. One idea is to make employers who commit wage theft face jail time; another is to make it so that workers who sue their employers and win should be able to recover more money; still another is to require employers to do a better job at keeping records.

Thinking about your own workplace experiences, do you think there is a need for additional protections? If so, what do you think the government could do to better protect and help people like you?

10. Would you be willing to join with others to work toward more protections? [Maybe already does it?] What would you need to be able to do that? (e.g., time off, more information, protection from retaliation).

IV. Specific rights violations

Now I'd like to ask you some specific questions about experiences that you may or may not have had at work. We may have already talked about some of these situations, but I have to ask about all of them, so please bear with me. When answering these questions, think about the job(s) you have now, and the job(s) you've had in the last few years.

In the last few years, have you ever, either at your current job or another one in Washington, DC, experienced any of the following?

		(Mark with an X, write in as needed)
	Paid less than you were promised	
	Paid less than the minimum wage [Provide chart of increases over last two years]	
	Had problems getting paid, or been paid late	
	Had the cost of work tools or uniforms deducted from your paycheck	
	Worked more than 40 hours in a week for a single employer without receiving overtime pay (1.5x regular rate of pay). (May necessitate follow-up questions to determine whether they qualify for OT)	
	Denied time off when you asked for leave to take care of a close family member who was sick, or when you had a baby?	
	Had to work in unsafe or unhealthy working conditions If yes: What kind of job had unsafe or unhealthy conditions?	
	Denied workers' compensation (if you were ever injured)	
	Denied unemployment compensation after losing a job (What happened?)	

	Punished or retaliated against for complaining about working conditions or workplace rules	
	Felt discriminated against because of your age, race, sex, religion, or national origin?	
	Punished or retaliated against for trying to organize a union, or for your membership in a union	
	Been asked about your criminal history in a job interview (When did this happen?) [If before Dec. 17, 2014, not illegal]	
	Been subject to sexual harassment or unwelcome sexual advances from your employer or co-worker (What happened?)	
	Been subject to verbal abuse or degrading treatment from your employer (What happened?)	
	Been punished or terminated unfairly (What happened?)	
	Been unfairly denied a job promotion (What happened?)	

Possible follow-up questions:

You didn't mention [problem] when I asked you about whether you felt like your employers had mistreated you. Why not?

What did you do in response to these issues?

Now I'd like to ask you some basic questions about your background. If you feel any of these questions is too personal, you can decline to answer it. But just as a reminder, all of this information will be kept private. We will not record your name, so it won't be possible to tie your answers to you, and you will not be identified as a participant in this study.

Personal characteristics (Write in or circle):

a. Race: _____

Do you feel that your race has ever affected your work opportunities or experience?

b. Where were you born?

c. Gender identity: _____

d. What is your marital status? Single Married/Partnered

e. How old are you? _____

f. Highest level of school completed: _____

g. What languages do you speak? (Write in)

How well would you say you speak English?

Native speaker

Speak, very well

Speak, well

Speak, but not very well

Speak, poorly or not at all

h. Do you have a disability, and has it affected your work history and experience?

i. Has your sexual orientation ever affected your work history and experience?

j. Do you have an arrest or criminal record, and, if so, has it affected your work history and experience?

Workers' Rights and Wage Theft Interview Protocol

(Workers' Rights Activists/Organizers)

Thank you for agreeing to meet with me and participate in this interview. It's part of a project designed to learn about the workplace experiences of people in Washington, DC My questions today will focus on your experiences as an activist/organizer over the last few years, and the experiences you've had working on behalf of low-wage workers. Your participation is completely voluntary, and you should feel free to refuse to answer questions or stop the interview at any time. But, anything you share with me will stay between us, and your identity will never be revealed to anybody outside of the research team. There are no "right" or "wrong" answers to any of these questions. Please just answer as best as you can. Before we begin, do you have any questions for me?

[Informed consent form must be signed before proceeding]

Interview ID number: _____

Group designation: A

I'd like to begin with some basic questions about you and the work you do as an activist and organizer so I can learn more about you.

I. Basic information/Current job

1. Where are you from? What brought you to DC?
2. How would you describe your work?

How long have you been doing this kind of work?

How did you get into this kind of work?
3. What are some things you like about your job?

Do you feel as though you're making a difference?
4. What are some things that you find frustrating, or that you don't like about this job?

II. Legal Issues

The primary purpose of this project is to examine the experiences of low-wage workers with employment-related issues. Because this is a multifaceted question, I want to know what people like you think about that topic.

5. Generally speaking, how do you feel about the government's laws regulating employment? I'm referring to things like wage and hour laws, laws regulating withholdings, and so on.

What do you think the goals of these laws are? Do you think that they are effective at achieving their goals? Why or why not?

6. Do you think that the government does enough to protect the rights of workers in Washington, DC, with regard to employment-related legal issues? What makes you say that?

Do you think the government does enough to protect the rights of employers in Washington, DC, with regard to employment-related legal issues? Why do you say that?

7. With regard to employment, what do you think are some of the biggest problems faced by low-wage workers, and why?
8. Are you familiar with the term “wage theft”? [May be defined as: When wages or benefits that an employee is legally entitled to are denied to her; give examples of unpaid overtime, paying less than was promised, unlawful deductions]

If yes: How did you learn about this term?

9. How much of a problem do you think wage theft is?
10. Do you think that the government has responded to the issue of wage theft appropriately? What makes you say that?

Is there anything you think the government should do more of? Less of?

Is there anything else that you think the government should do differently with regard to this problem?

11. As you may know, DC recently began raising its minimum wage, and the city currently has the highest minimum wage in the country at \$12.50/hour. What do you think of these minimum wage increases? Do you think they’re helpful? Why do you say that?
12. As you may know, DC now has a law guaranteeing a certain amount of paid sick leave for most workers. Have you heard about this law? Do you think it’s been helpful? Why do you say that?
13. Do you think that workers who have problems with wage theft are able to get the support and help that they need?

What makes you say that?

14. How helpful do you think the legal system is for low-wage workers with employment-related disputes?

What could be improved?

15. There's been a lot of debate over what should be done about the problem of wage theft. One idea is to make employers who commit wage theft face jail time; another is to make it so that workers who sue their employers and win should be able to recover more money; still another is to require employers to do a better job at keeping records.

Thinking about your own experiences, what do you think the government should do about this problem, if anything? Why do you say that?

16. Are there any other ways that you think wage theft can or should be addressed other than what we've discussed today?

Finally, I'd like to ask you some basic questions about your background. If you feel any of these questions is too personal, you can decline to answer it. But just as a reminder, all of this information is confidential, and you will never be identified as a part of this study.

17. Personal characteristics (Write in):

k. Race: _____

l. When were you born?

m. Gender identity: _____

Workers' Rights and Wage Theft Interview Protocol
(Labor/Employment Lawyers)

Thank you for agreeing to meet with me and participate in this interview. It's part of a project designed to learn about the workplace experiences of people in Washington, DC My questions today will focus on your experiences as a labor and/or employment lawyer over the last few years, and the experiences you've had with low-wage workers who have employment-related disputes. Your participation is completely voluntary, and you should feel free to refuse to answer questions or stop the interview at any time. But, anything you share with me will stay between us, and your identity will never be revealed to anybody outside of the research team. There are no "right" or "wrong" answers to any of these questions. Please just answer as best as you can. Before we begin, do you have any questions for me?

[Informed consent form must be signed before proceeding]

Interview ID number: _____

Group designation: L

I'd like to begin with some basic questions about you and the work you do as an activist and organizer so I can learn more about you.

I. Basic information/Current job

1. Where are you from? What brought you to DC?

2. How would you describe the legal work that you do?

How long have you been doing this kind of work?

How did you get into this kind of work?

3. What are some things you like about your job?

Do you feel as though you're making a difference? Why do you say that?

4. What are some things that you find frustrating, or that you don't like about this job?

II. Legal Issues

The primary purpose of this project is to examine the experiences of low-wage workers with employment-related issues. As part of that effort, I want to know what people like you think about that topic.

5. Do you think that the government does enough or too much to protect the rights of workers in Washington, DC, with regard to employment-related legal issues? Why do you say that?

Do you think the government does enough or too much to protect the rights of

- employers in Washington, DC, with regard to employment-related legal issues? Why do you say that?
6. With regard to employment, what do you think are some of the biggest problems faced by low-wage workers?
 7. Are you familiar with the term “wage theft”? [Either way, define as: When wages or benefits that an employee is legally entitled to are denied to her; give examples of unpaid overtime, paying less than was promised, unlawful deductions]

If yes: How did you learn about this term?
 8. How much of a problem do you think wage theft is? What makes you say that?
 9. Do you think that the government has responded to the issue of wage theft in an appropriate way? What makes you say that?

Is there anything you think the government should do more of? Less of?
 10. As you may have heard, DC recently began raising its minimum wage. What do you think of these minimum wage increases?
 11. As you may know, DC now has a law guaranteeing a certain amount of paid sick leave for most workers. Have you heard about this law? Do you think it’s been helpful? Why do you say that?
 12. Do you think that workers who have problems with wage theft are able to get the support and help that they need? What makes you say that?
 13. Generally speaking, how helpful do you think the legal system is for low-wage workers with employment-related disputes?

If you think there are problems with the legal system in this regard, then what would you say are the biggest ones, and why?
 14. Do you think that the legal system is able to fairly and effectively deal with employment disputes between employees and employers? Why do you say that?
 15. There’s been a lot of debate over what should be done about the problem of wage theft. One idea is to make employers who commit wage theft face jail time; another is to make it so that workers who sue their employers and win should be able to recover more money; still another is to require employers to do a better job at keeping records.

Thinking about your own experiences, what do you think the government should do about this problem, if anything? Why do you say that?

16. Are there any other ways that you think wage theft can or should be addressed other than what we've discussed today?

Finally, I'd like to ask you some basic questions about your background. If you feel any of these questions is too personal, you can decline to answer it. But just as a reminder, all of this information is confidential, and you will never be identified as a part of this study.

17. Personal characteristics (Write in):

n. Race: _____

o. When were you born?

p. Gender identity: _____

Workers' Rights and Wage Theft Interview Protocol

(Employers)

Thank you for agreeing to meet with me and participate in this interview. It's part of a project designed to learn about the workplace experiences of people in Washington, DC My questions today will focus on your experiences as an employer/manager over the last few years, and the experiences you've had with low-wage workers. Your participation is completely voluntary, and you should feel free to refuse to answer questions or stop the interview at any time. But, anything you share with me will stay between us, and your identity will never be revealed to anybody outside of the research team. There are no "right" or "wrong" answers to any of these questions. Please just answer as best as you can. Before we begin, do you have any questions for me?

[Informed consent form must be signed before proceeding]

Interview ID number: _____

Group designation: E

I'd like to begin with some basic questions about you and the work you do as an activist and organizer so I can learn more about you.

I. Basic information/Current job

1. Where are you from? What brought you to DC?

2. How would you describe the work that you do?

How long have you been doing this kind of work?

How did you get into this kind of work?

About how many people do you employ/manage? How many of them would qualify as being low-wage workers?

3. What are some things you like about your job?

What are some things that you find frustrating, or that you don't like about this job?

II. Legal Issues

The primary purpose of this project is to examine the experiences of low-wage workers with employment-related issues. Because this is a multifaceted issue with different relevant viewpoints, I want to know what people like you think about that topic.

4. Generally speaking, how do you feel about the government's laws regulating employment? I'm referring to things like wage and hour laws, laws regulating withholdings, and so on.

What do you think the goals of these laws are? Do you think that they are effective at achieving their goals? Why or why not?

5. Are you familiar with the term “wage theft”? [Either way, define as: When wages or benefits that an employee is legally entitled to are denied to her; give examples of unpaid overtime, paying less than was promised, unlawful deductions]

If yes: How did you learn about this term? What do you think of it?

6. How much of a problem do you think wage theft is? Why do you say that?
7. Thinking about employment-related legal issues, do you think that the government does enough or too much to protect the rights of workers in Washington, DC? What makes you say that?

Do you think the government does enough or too much to protect the rights of employers in Washington, DC, with regard to employment-related legal issues? What makes you say that?

8. Do you think that the government has responded to the issue of wage theft in an appropriate way? Why or why not?

Is there anything you think the government should do more of? Less of?

9. With regard to employment, what do you think are some of the biggest problems faced by low-wage workers?
10. As you may know, DC recently began raising its minimum wage, and the city currently has the highest minimum wage in the country at \$12.50/hour. What do you think of these minimum wage increases? Do you think they’re helpful? Why do you say that?
11. As you may know, DC now has a law guaranteeing a certain amount of paid sick leave for most workers. What do you think about this law? Do you think it’s been helpful? Why do you say that?
12. Do you think that the legal system is able to fairly and effectively deal with employment disputes between employees and employers?

If you think there are problems with the legal system in this regard, then what would you say are the biggest ones?

13. There's been a lot of debate over what should be done about the issue of wage theft. One idea is to make employers who commit wage theft face jail time; another is to make it so that workers who sue their employers and win should be able to recover more money; still another is to require employers to do a better job at keeping records.

Thinking about your own experiences, what do you think the government should do about this problem, if anything? Why do you say that?

14. Are there any other ways that you think wage theft can or should be addressed other than what we've discussed today?

Finally, I'd like to ask you some basic questions about your background. If you feel any of these questions is too personal, you can decline to answer it. But just as a reminder, all of this information is confidential, and you will never be identified as a part of this study.

15. Personal characteristics (Write in):

q. Race: _____

r. When were you born?

s. Gender identity: _____

Workers' Rights and Wage Theft Interview Protocol

(Government Actors)

Thank you for agreeing to meet with me and participate in this interview. It's part of a project designed to learn about the workplace experiences of people in Washington, DC My questions today will focus on your experiences as an employee of the DC government over the last few years, and the experiences you've had with DC's laws regulating the workplace. Your participation is completely voluntary, and you should feel free to refuse to answer questions or stop the interview at any time. With that said, I will do everything in my power to protect and respect your privacy, and to ensure that your identity will not be revealed when this research is published. There are no "right" or "wrong" answers to any of these questions. Please just answer as best as you can. Before we begin, do you have any questions for me?

[Informed consent form must be signed before proceeding]

Interview ID number: _____

Group designation: G

I'd like to begin with some basic questions about you and the work you do as so I can learn more about you.

I. Basic information/Current job

3. Where are you from? What brought you to DC?

4. How would you describe the work that you do?

How long have you been doing this kind of work?

How did you get into this kind of work?

5. What are some things you like about your job?

Do you feel as though you're making a difference? Why do you say that?

6. What are some things that you find frustrating, or that you don't like about this job?

II. Legal Issues

The primary purpose of this project is to examine the experiences of low-wage workers with employment-related issues. As part of that effort, I want to know what people like you think about that topic.

7. Do you think that the government does enough or too much to protect the rights of workers in Washington, DC, with regard to employment-related legal issues? Why do you say that?

Do you think the government does enough or too much to protect the rights of

employers in Washington, DC, with regard to employment-related legal issues? Why do you say that?

8. With regard to employment, what do you think are some of the biggest problems faced by low-wage workers?
9. Are you familiar with the term “wage theft”? [Either way, define as: When wages or benefits that an employee is legally entitled to are denied to her; give examples of unpaid overtime, paying less than was promised, unlawful deductions]

If yes: How did you learn about this term?

10. How much of a problem do you think wage theft is? What makes you say that?
11. Do you think that the government has responded to the issue of wage theft in an appropriate way? What makes you say that?

Is there anything you think the government should do more of? Less of?

12. As you may have heard, DC recently began raising its minimum wage. What do you think of these minimum wage increases?
13. As you may know, DC now has a law guaranteeing a certain amount of paid sick leave for most workers. Have you heard about this law? Do you think it’s been helpful? Why do you say that?
14. Do you think that workers who have problems with wage theft are able to get the support and help that they need? What makes you say that?
15. Generally speaking, how helpful do you think the legal system is for low-wage workers with employment-related disputes?

If you think there are problems with the legal system in this regard, then what would you say are the biggest ones, and why?

16. Do you think that the legal system is able to fairly and effectively deal with employment disputes between employees and employers? Why do you say that?
17. There’s been a lot of debate over what should be done about the problem of wage theft. One idea is to make employers who commit wage theft face jail time; another is to make it so that workers who sue their employers and win should be able to recover more money; still another is to require employers to do a better job at keeping records.

Thinking about your own experiences, what do you think the government should do about this problem, if anything? Why do you say that?

18. Are there any other ways that you think wage theft can or should be addressed other than what we've discussed today?

Finally, I'd like to ask you some basic questions about your background. If you feel any of these questions is too personal, you can decline to answer it. But just as a reminder, all of this information is confidential, and you will never be identified as a part of this study.

19. Personal characteristics (Write in):

- a. Race: _____
- b. When were you born?
- c. Gender identity: _____