



RACIAL JUSTICE &
EQUAL ECONOMIC
OPPORTUNITY PROJECT

NATIONAL CONSUMER LAW CENTER

The Color of Debt: Racial Disparity in Debt Collection Lawsuits

December 1, 2015

Paul Kiel

Reporter, ProPublica

April Kuehnhoff

Staff Attorney, National Consumer Law Center

Odette Williamson,

Staff Attorney, National Consumer Law Center

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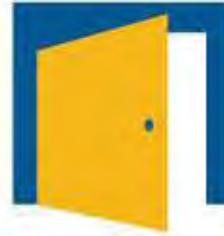
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Racial Justice and Equal Economic Opportunity



The project on Racial Justice and Equal Economic Opportunity seeks to address the abusive and exploitative practices in the marketplace that have decimated the finances of communities of color.

<http://www.nclc.org/issues/racial-justice.html>

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Presenter – Paul Kiel

- Paul covers consumer finance for ProPublica and recently his focus has been on debt collection. His work in 2014 was honored as a finalist for a Gerald Loeb Award, a Scripps Howard Award, and a Best in Business Award from the Society of American Business Editors and Writers.
- Paul's work in 2013 on high-cost lending was honored as a finalist for a Gerald Loeb Award and his work on the foreclosure crisis was featured in The Best Business Writing 2013.





Presenter – April Kuehnhoff

- April is a staff attorney at the National Consumer Law Center whose focus includes fair debt collection. From 2009 to 2010 she was a Fellow at Cambridge and Somerville Legal Services office of Greater Boston Legal Services.
- Prior to law school, April worked as a member of the Project on Global Working Families at the Harvard School of Public Health and at the Wellesley College Center for Work and Service. April is a graduate of Wellesley College and Harvard Law School.





Moderator – Odette Williamson

- Odette has been a staff attorney at NCLC since 1999. Prior to this she was an Assistant Attorney General in the Massachusetts Office of the Attorney General where she concentrated on civil enforcement actions against individuals and businesses for violation of consumer protection and other laws. As an AAG she also served on the Elder Law Advocates Strike Force to combat unfair and deceptive acts against elderly citizens. She attended Tufts University and Boston College Law School.

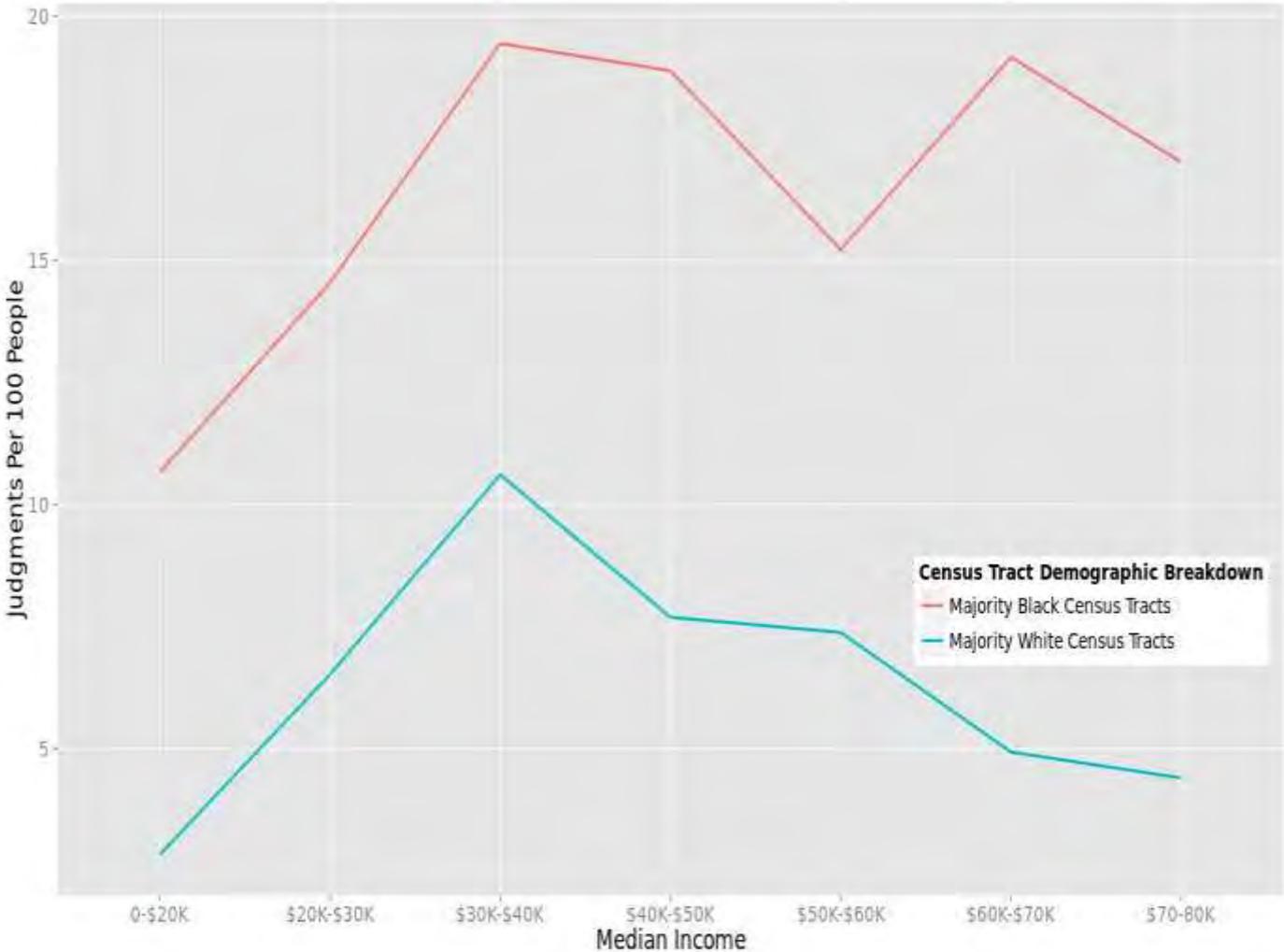


The Color of Debt

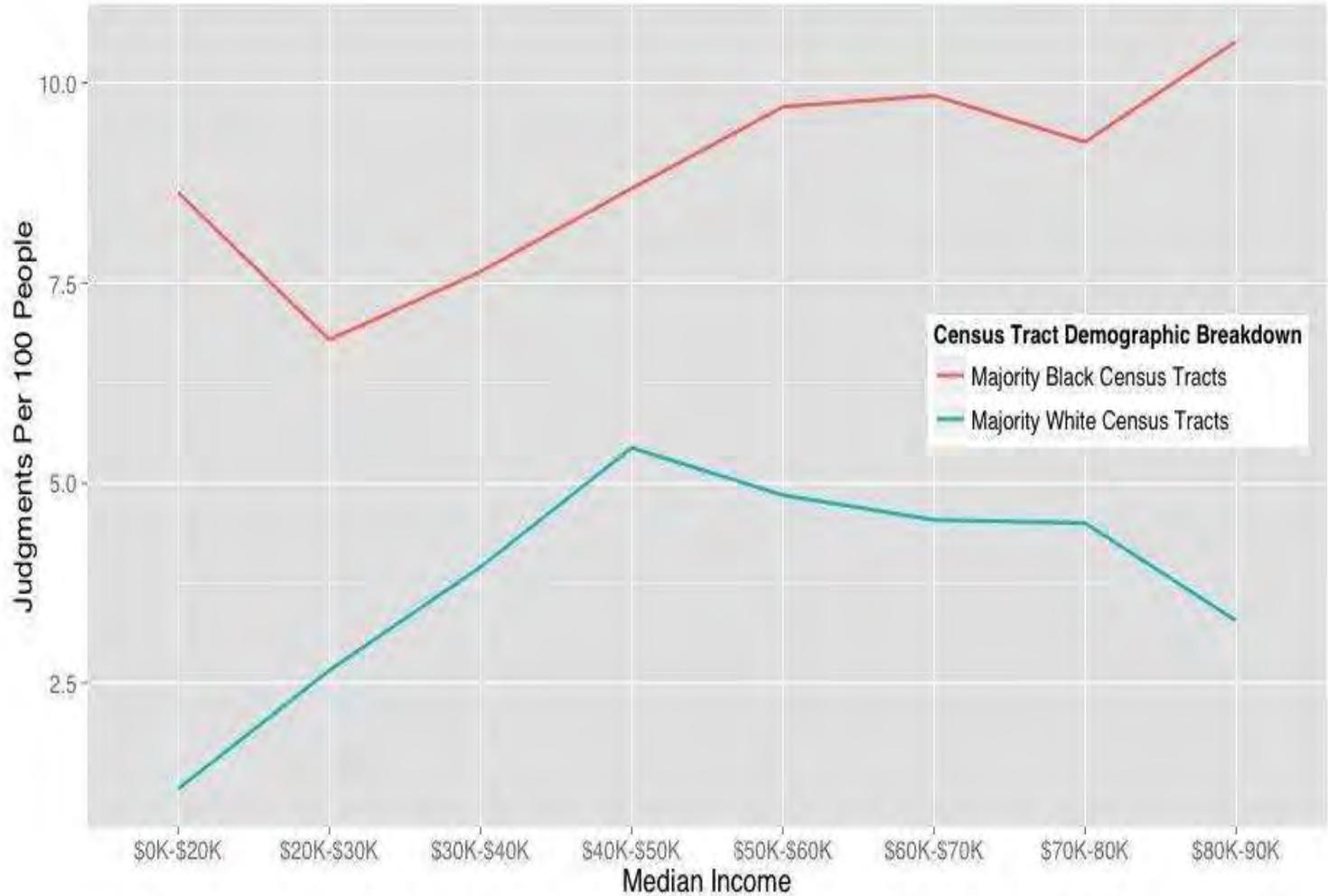
How Collection Suits Squeeze Black Neighborhoods



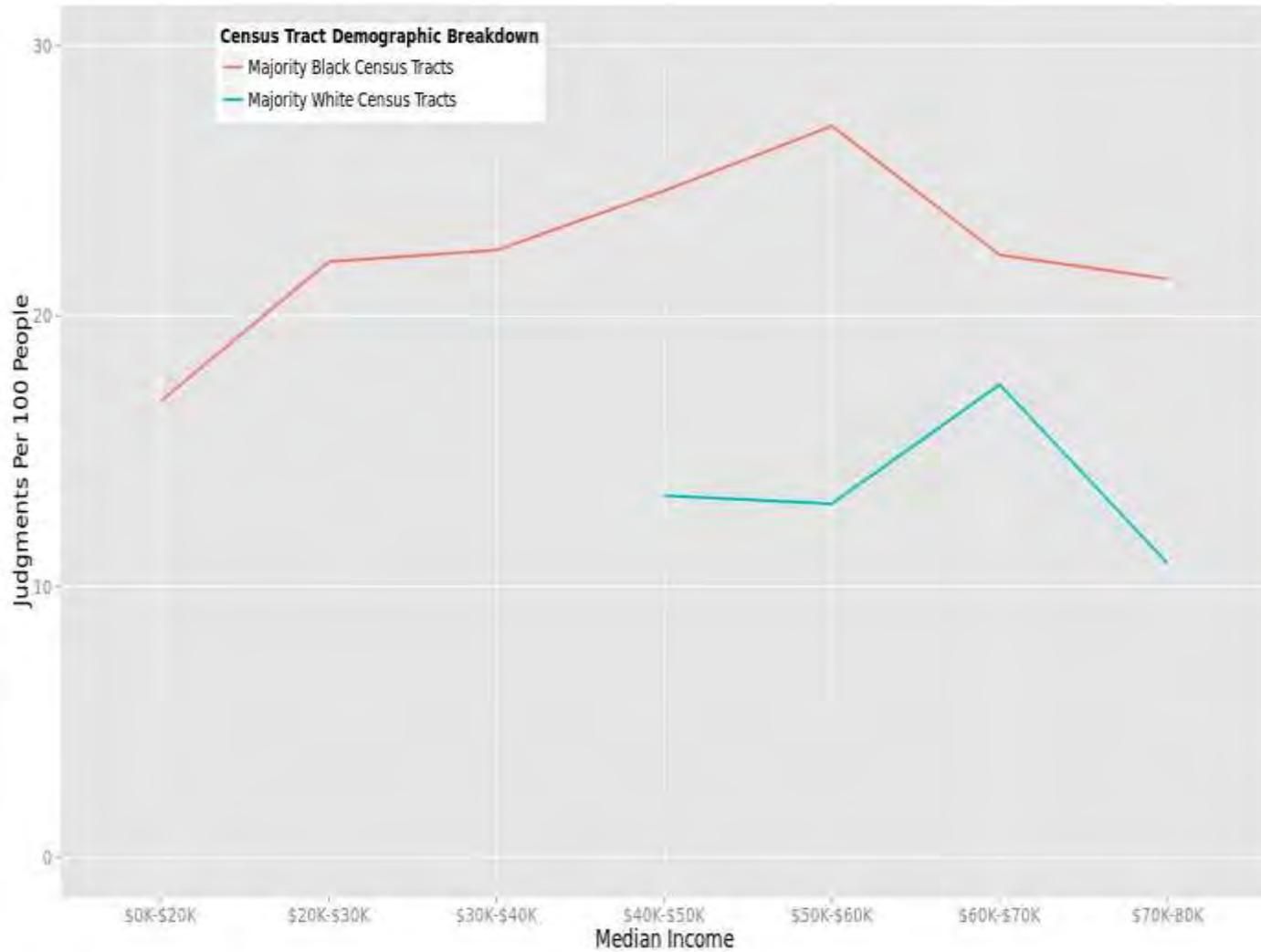
Average Judgments Per Median Income In St. Louis County and City, MO



Average Judgments Per Median Income In Cook County, IL (Chicago)

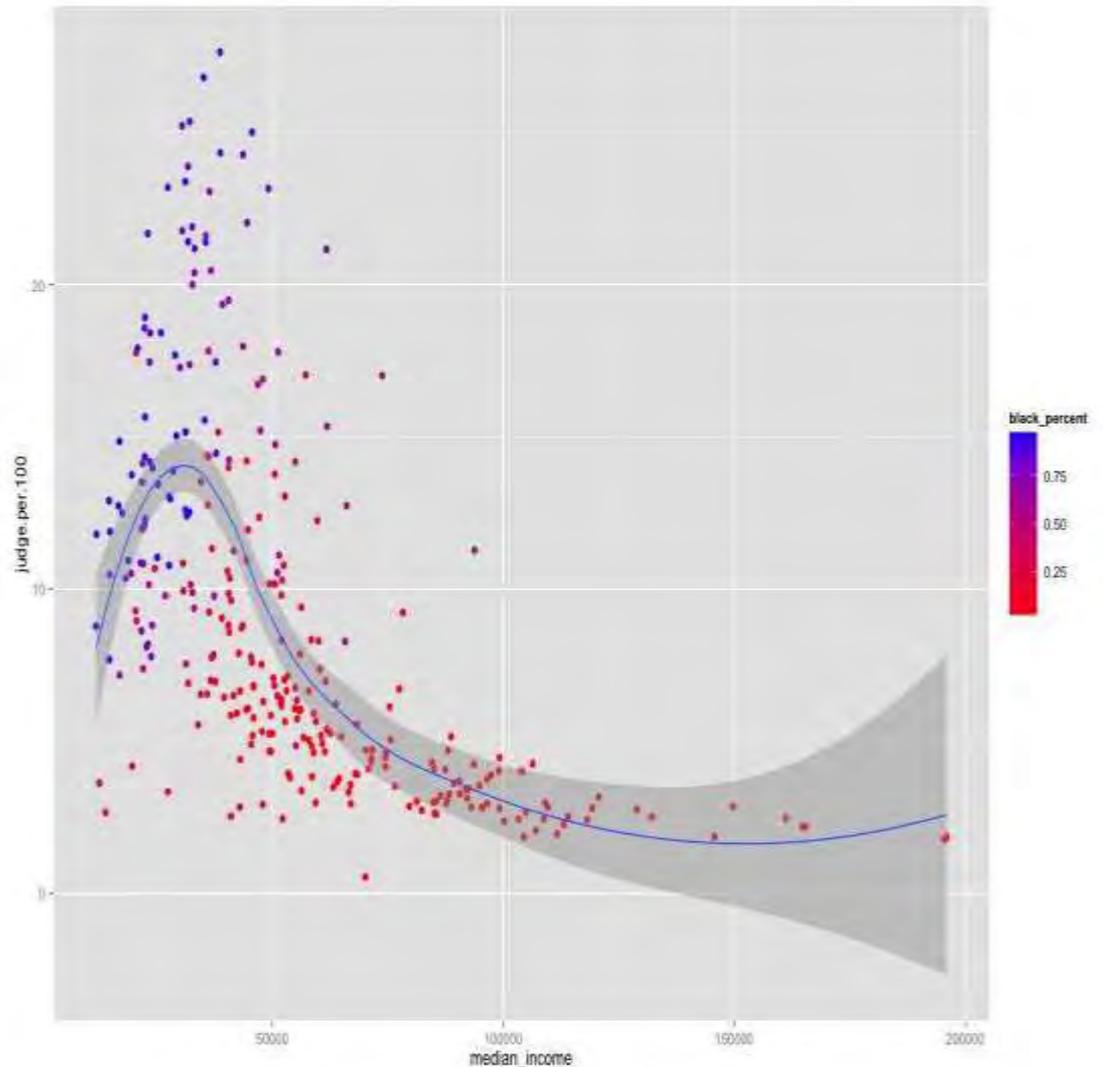


Average Judgments Per Median Income In Essex County, NJ (Newark)



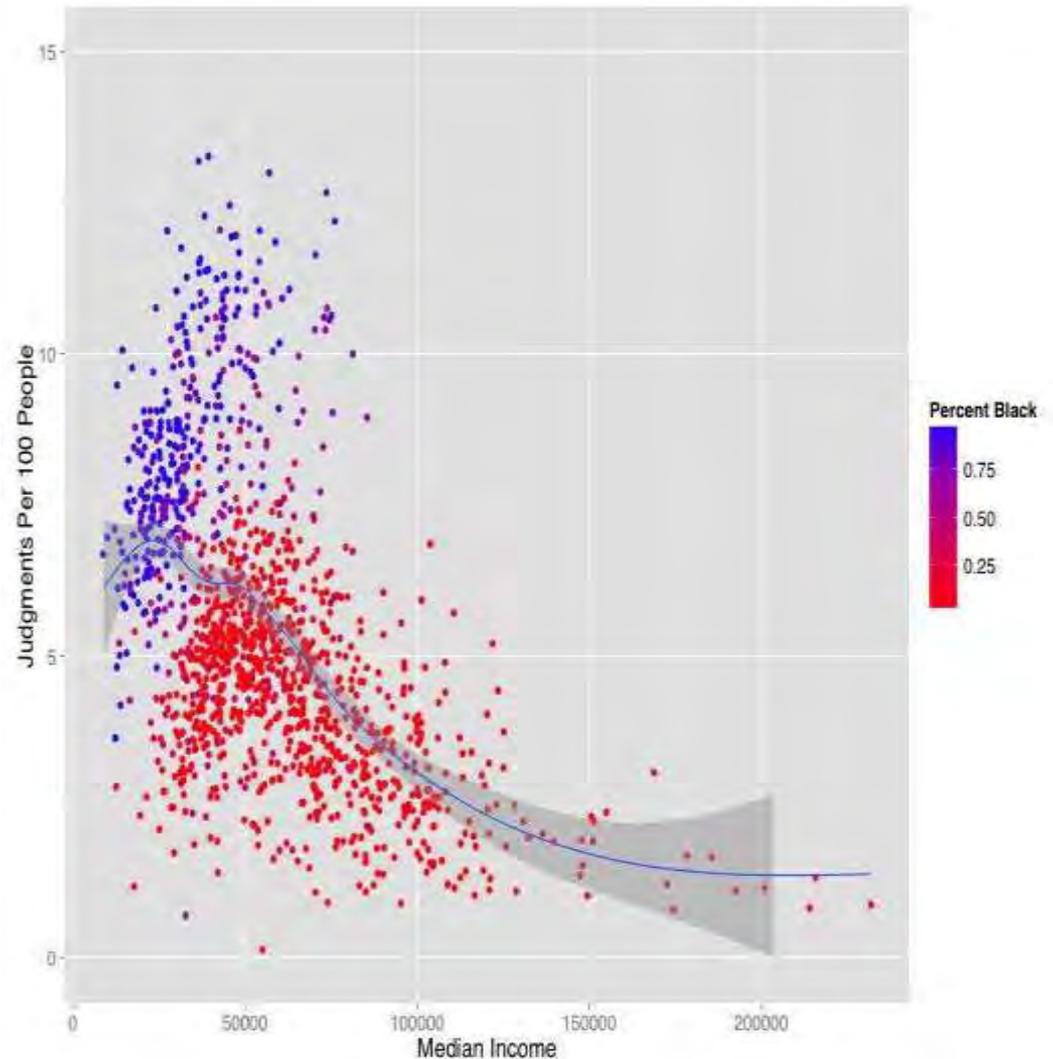
ST. LOUIS CITY AND COUNTY

- There is a clear economic and judgment rate difference between majority white and majority black census tracts.
- The chart shows that the peak of judgments occurs around a median income of around \$30,000, with the majority black census tracts exposed to higher judgment rates.
- We found that the risk of judgment was more than twice as high (a relative risk ratio of 2.24) in majority black census tracts as majority white census tracts, holding income constant.



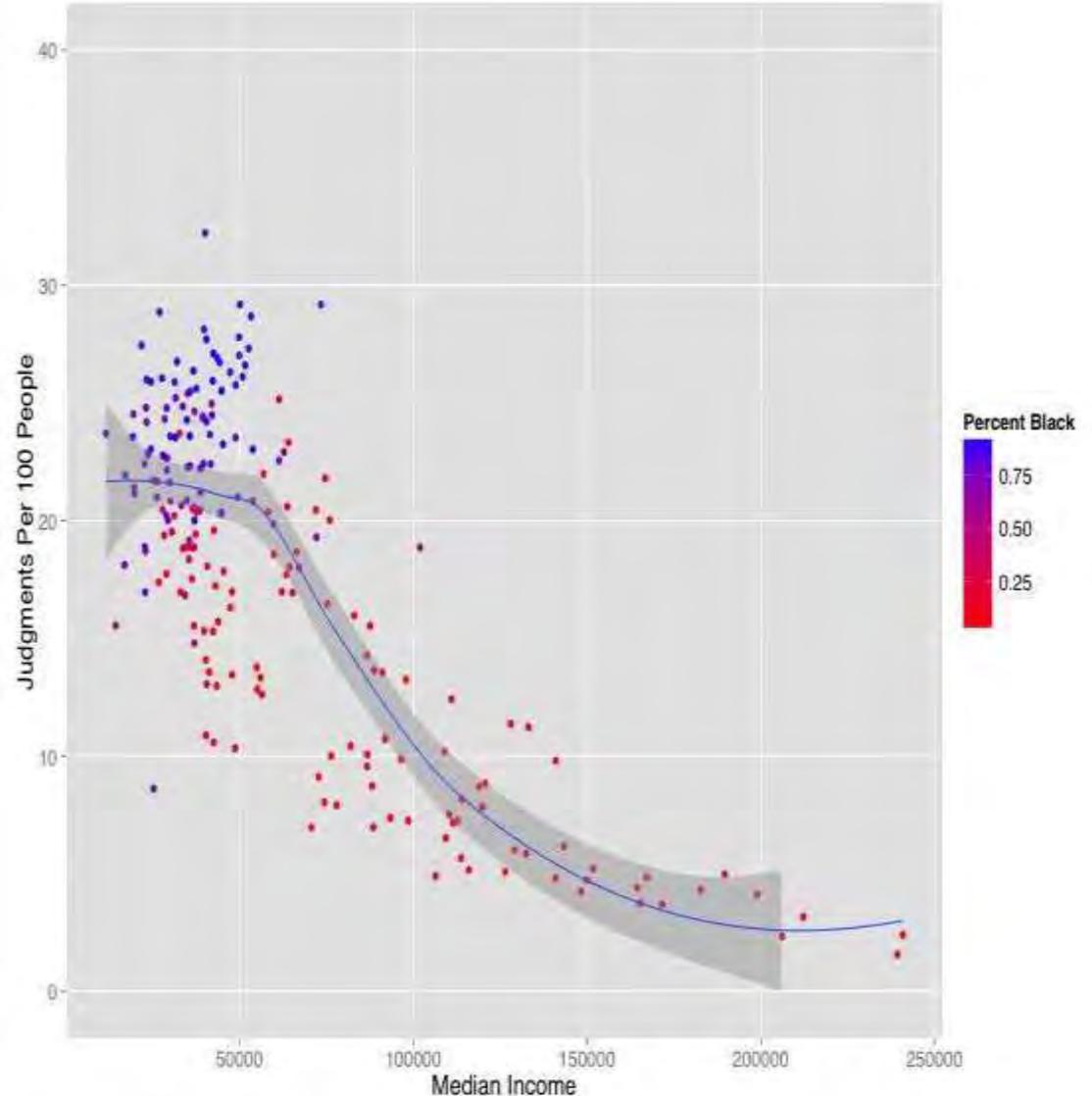
COOK COUNTY (Chicago)

- There is a clear clustering of black and non-black census tracts that not only shows an economic difference, but also a difference in judgment rate.
- The chart shows that the peak of judgments occurs around a median income of around \$25,000, with the majority black census tracts exposed to higher judgment rates.
- We found that the risk of judgment was twice as high (a relative risk ratio of 2.09) in majority black areas compared to majority white areas, holding income constant.



ESSEX COUNTY (Newark)

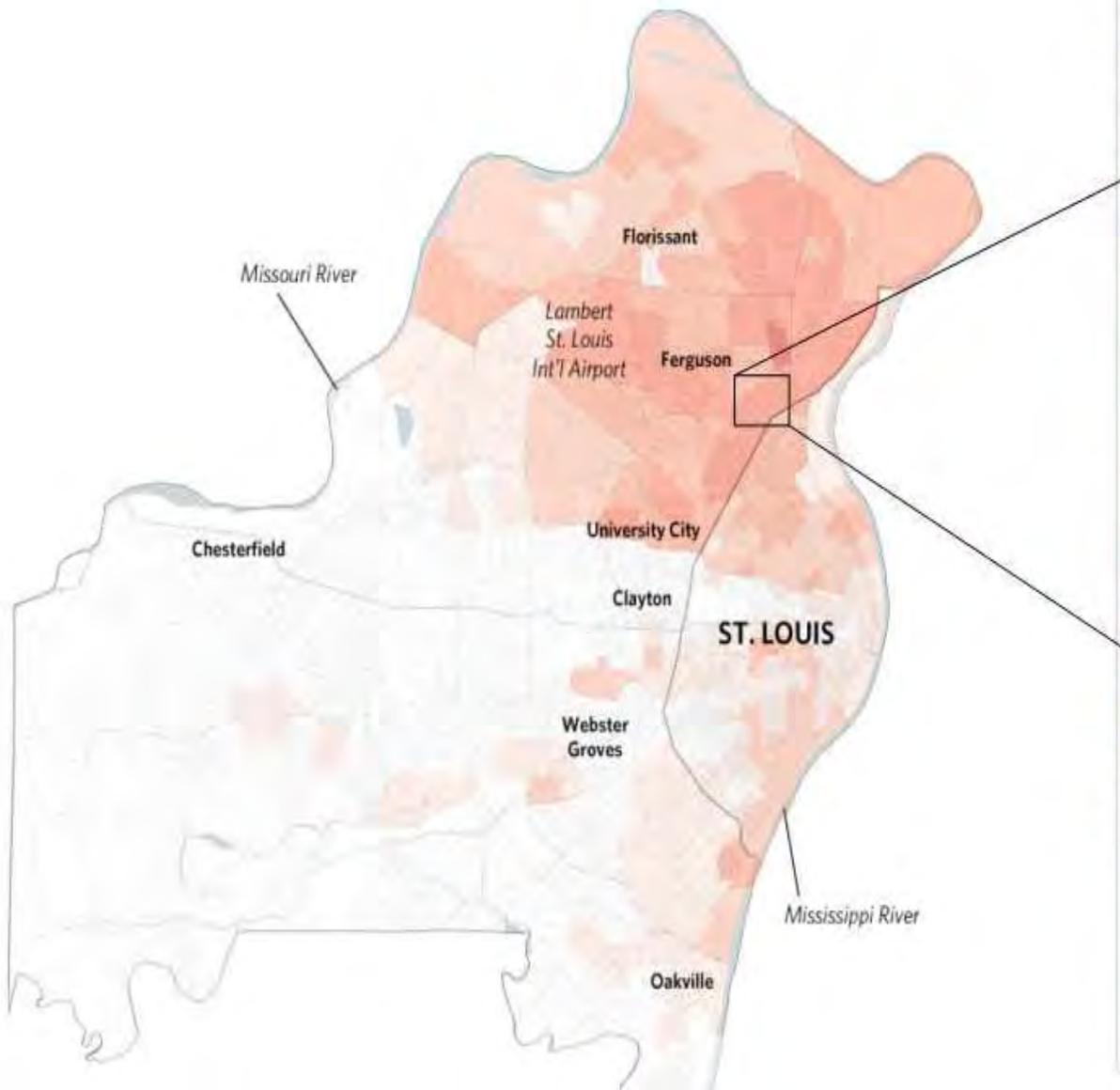
- Although we have fewer data points, we continue to see a clustering of black and non-black census tracts that not only shows an economic difference, but also a difference in judgment rate.
- The chart shows that the peak of judgments occurs around a median income of around \$25,000, with the majority black census tracts exposed to higher judgment rates.
- We found that the risk of judgment was nearly twice as high (a relative risk ratio of 1.81) in majority black census tracts as majority white census tracts, holding income constant.



Jennings

Median Household Income	<u>Judgments Per 100 Residents</u>	Black Pop.
\$27,409	23.2	88.2%

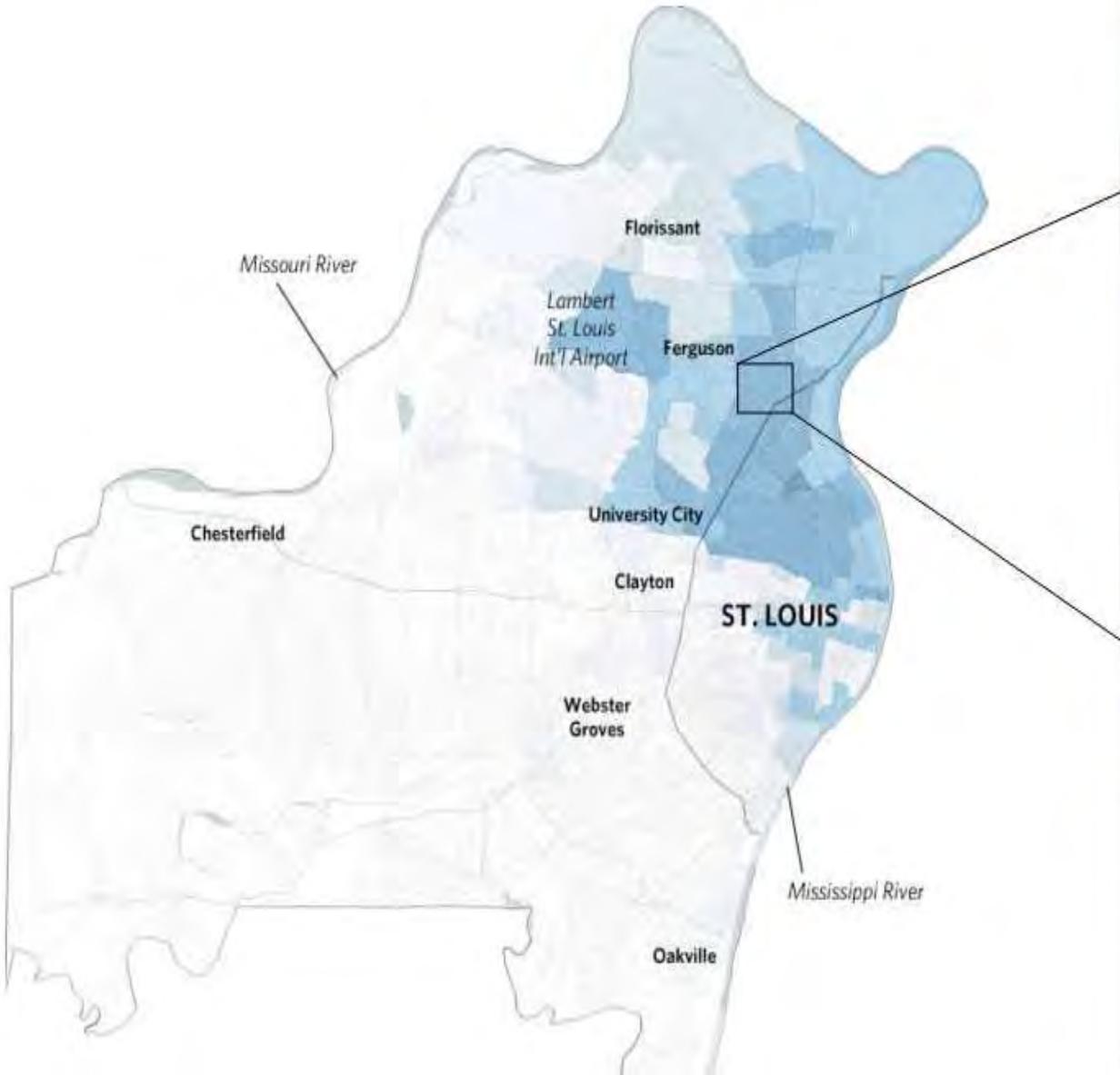
Jennings was [sued earlier this year for jailing people](#) who are unable to pay traffic tickets and court fines for minor offenses. The area also had the highest number of judgments from high-cost lenders in the St. Louis area.



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Incidence Risk Ratios

Incidence Risk Ratio: The per-capita judgment rate of these plaintiffs in majority black census tracts versus the per-capita judgment rate in majority white tracts.

Type of Plaintiff	All Tracts	Low Income	Middle Income	High Income
All Cases	2.98	2.20	2.55	4.46
Utility	5.36	3.56	4.20	10.19
Medical	4.25	2.63	3.85	7.66
High-Cost Lender	5.37	2.59	3.62	5.83
Auto	5.36	3.31	3.47	6.69
Debt Buyer	2.58	1.98	2.24	3.95
Misc. Lender	2.16	1.79	2.10	4.93
Other	2.33	1.87	2.08	3.54
Major Bank	1.82	1.45	1.73	3.15

Table 8: St. Louis County and City Black-To-White IRR For Each Plaintiff Type.

Incidence Risk Ratios

Name of Plaintiff	Type	All Tracts	Low Income	Mid. Income	High Income
All Cases	-	2.98	2.20	2.55	4.46
Christian Hospital	Medical	11.10	27.35	8.97	55.77
Metropolitan St. Louis Sewer District	Utility	5.49	3.79	4.31	10.49
Modern Finance	High-Cost Lender	5.87	3.15	4.19	5.44
AAA Checkmate/Brother Loan	High-Cost Lender	6.38	2.86	4.03	7.44
General Credit Acceptance	Auto	6.71	4.68	3.92	5.49
Midwest Acceptance	Auto	5.69	2.76	3.92	9.45
Credit Acceptance	Auto	5.17	6.56	3.37	12.87
Lou Budke's Arrow Finance	Auto	5.70	2.54	3.03	6.69
Encore Capital Group	Debt Buyer	2.87	2.10	2.45	4.57
Sherman Financial Group LLC	Debt Buyer	2.64	2.15	2.25	3.83
Household Finance / Beneficial / HSBC	Major Bank	2.19	2.19	2.24	3.06
Portfolio Recovery Associates	Debt Buyer	1.95	1.75	2.11	3.15
Asset Acceptance	Debt Buyer	2.09	1.54	1.92	2.88
Capital One	Major Bank	2.17	1.53	1.87	3.49
FIA Card / Bank of America	Major Bank	1.86	2.80	1.73	2.63
Citi	Major Bank	1.13	1.00	1.40	1.49
Discover	Major Bank	0.90	0.84	1.05	2.36
St. Anthony's Medical Center	Medical	0.27	0.11	0.15	0.38

Table 9: St. Louis County and City Black-To-White IRR For Top Plaintiffs.

Name of Plaintiff	Type	All Tracts	Low Income	Mid. Income	High Income
All Cases	-	2.12	2.21	2.01	2.72
Credit Acceptance	Auto	18.32	18.74	14.31	14.38
Asset Acceptance	Debt Buyer	2.88	3.14	2.39	2.70
HBLC - JRSI	Debt Buyer	2.36	2.23	2.23	2.48
Sherman Financial Group LLC	Debt Buyer	2.45	3.31	2.18	4.18
Encore Capital Group	Debt Buyer	2.28	2.92	2.10	3.45
Capital One	Major Bank	2.08	1.74	1.88	2.77
Portfolio Recovery Associates	Debt Buyer	1.96	1.78	1.80	2.57
FIA Card / Bank of America	Major Bank	1.64	3.48	1.43	1.95
Citi	Major Bank	0.89	0.94	1.01	1.65
JPMorgan Chase	Major Bank	0.88	0.79	0.96	1.42
Discover	Major Bank	0.82	1.09	0.87	1.23

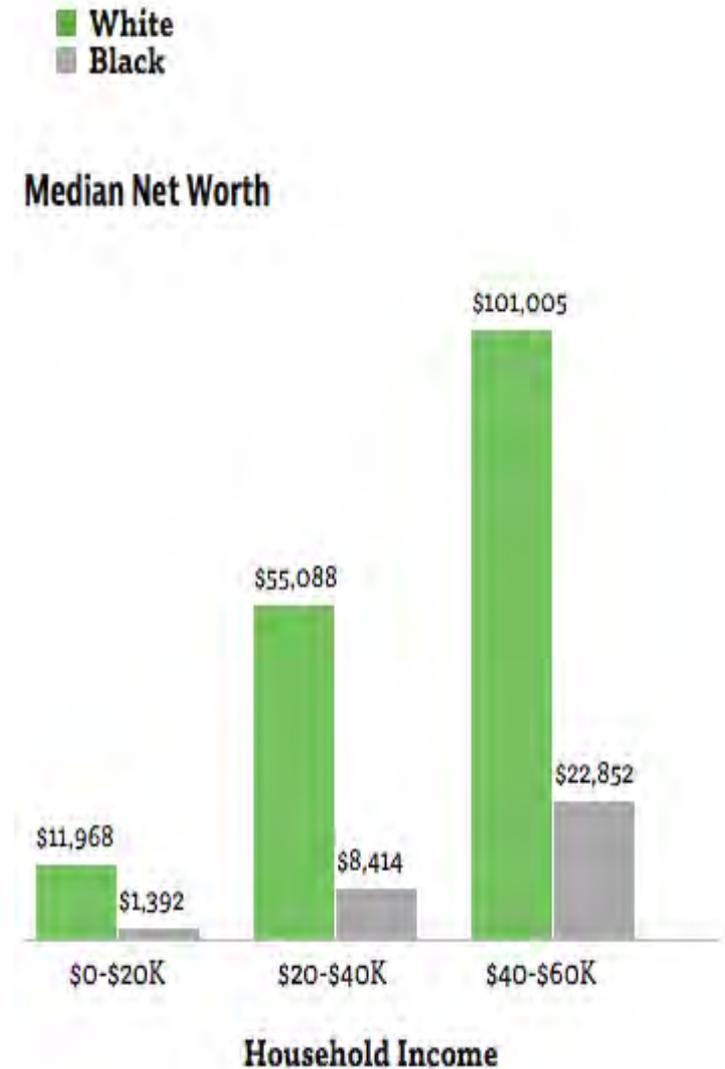
Table 11: Cook County Black-To-White IRR For Top Plaintiffs.

Name of Plaintiff	Type	All Tracts	Low Income	Mid. Income	High Income
All Cases	–	2.69	–	1.74	1.78
Palisades Collection	Debt Buyer	7.97	–	4.11	2.24
Encore Capital Group	Debt Buyer	3.47	–	2.11	2.20
New Century Financial Services	Debt Buyer	3.77	–	2.09	2.02
Asset Acceptance	Debt Buyer	3.24	–	2.03	1.75
Sherman Financial Group LLC	Debt Buyer	3.20	–	1.83	2.36
Capital One	Major Bank	2.74	–	1.74	1.95
Portfolio Recovery Associates	Debt Buyer	2.41	–	1.45	2.36
FIA Card / Bank of America	Major Bank	2.00	–	1.44	3.46
Fein Such Debt Buyer*	Debt Buyer	2.66	–	1.40	2.05
Citi	Major Bank	1.20	–	0.96	2.62
Discover	Major Bank	1.07	–	0.92	0.92
JPMorgan Chase	Major Bank	0.83	–	0.59	1.18

Table 13: Essex County Black-To-White IRR For Top Plaintiffs. *"Fein Such Debt Buyer" represents different debt buyers associated with the law firm Fein, Such.

Wealth Asset Gap

Federal survey data shows that there is a wide gap between the financial resources of white and black families, even when examining families with similar income.

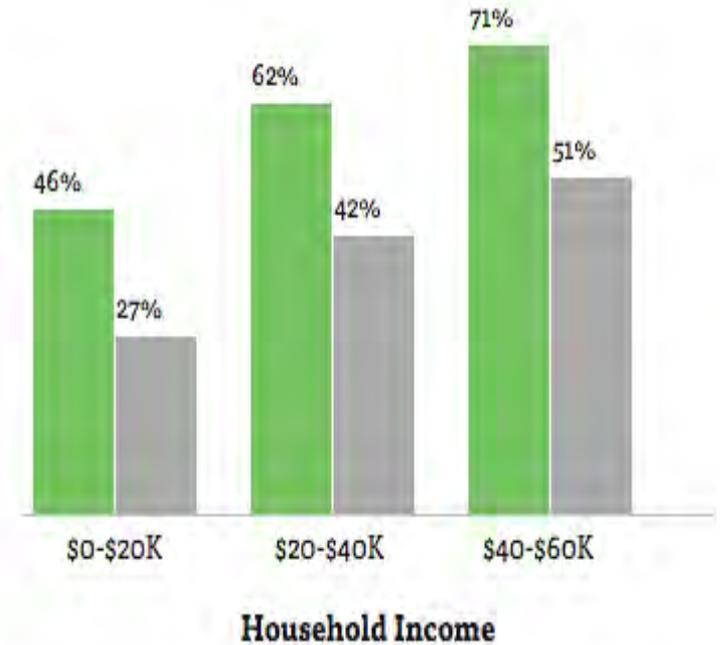


Wealth Asset Gap (cont.)

Liquid Assets (Available Cash)



Ability to Borrow \$3,000 From Family or Friends in an Emergency



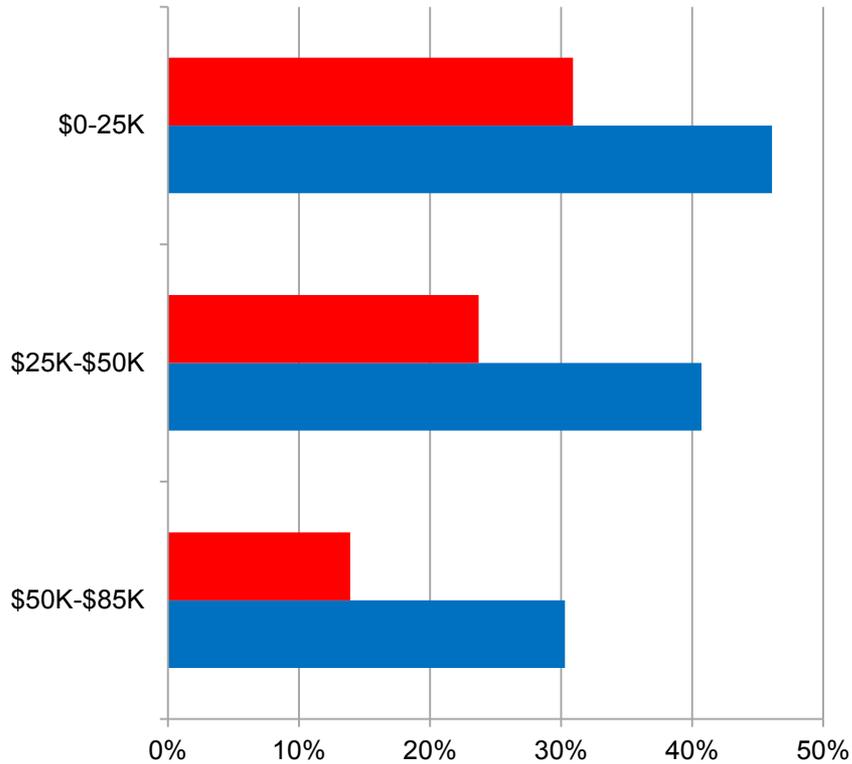
Source: Federal Reserve, 2013 Survey of Consumer Finances, ProPublica analysis.

Smaller Balances

Examining tracts in the same range of median household income, we found that residents of mostly black tracts were, on average, sued over debts that were significantly smaller.

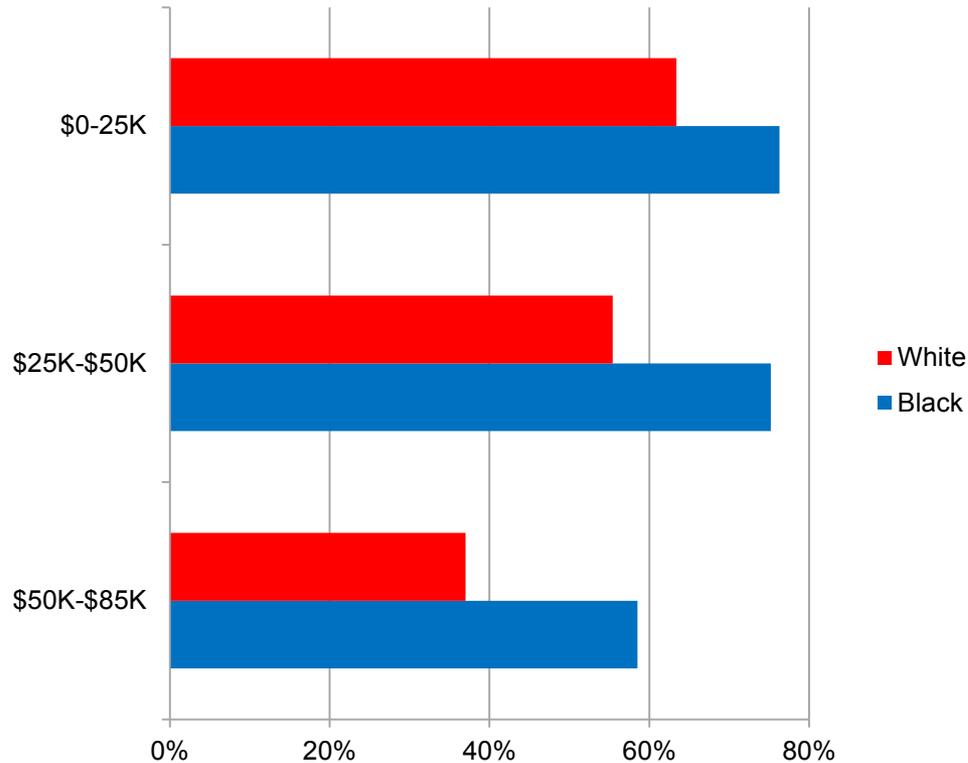
Income Level	County	Average Demand Amount		
		Mostly Black	Mostly White	Black-to-White Amount Ratio
Low Income	Essex	\$2,583	N/A	N/A
	Cook	\$4,648	\$5,741	81%
Middle Income	Essex	\$2,628	\$3,466	76%
	Cook	\$4,973	\$6,414	78%
High Income	Essex	\$3,145	\$3,751	84%
	Cook	\$5,682	\$7,798	73%

Households Reporting Inability to Pay a Bill



- To the question of whether they have been late on a bill or could not pay in full in the past 12 months, far more black households responded affirmatively -- even at the same income level.
- Source: Pew Charitable Trusts, 2015.

Financial Shortfall – When Financial Shock



- To the question of whether the respondent had experienced a material hardship because of a lack of money, far more black households responded affirmatively -- even at the same income level.
- Examples of material hardship include missing bill payments, but also forgoing medical care, taking out an emergency loan, etc.
- A financial shock is a sudden, unexpected expense or drop in income.
- Source: Pew Charitable Trusts, 2015.

Group Subset	Cases resulting in:			Cases where no defendant attorney was listed
	Default Judgment	Consent Judgment	All Judgments	
Low Income Majority Black	44.99%	21.09%	69.13%	96.02%
Low Income Majority White	36.17%	17.75%	58.23%	92.84%
Mid Income Majority Black	46.09%	21.03%	69.29%	94.44%
Mid Income Majority White	40.40%	15.84%	59.06%	91.22%
High Income Majority Black	46.90%	17.43%	66.22%	91.91%
High Income Majority White	36.83%	13.00%	52.83%	86.22%

Table 18: Based on an analysis of all suits in St. Louis area in our dataset. The income range for the low-income group in St. Louis was \$22,000 through \$33,000; middle income was \$33,000 through \$68,000; and high income was \$68,000 through \$99,000. “All Judgments” also accounts for suits that were contested but resulted in a judgment.



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The Color of Debt: How States Can Fight Racial Disparities in Debt Collection Judgments

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April Kuehnhoff
akuehnhoff@nclc.org

Improve Notice of Lawsuits

Problem: Many consumers don't receive proper notice of debt collection lawsuits or do not understand the notice they receive

Solutions:

- Ensure compliance with existing notice rules
 - Crack down on sewer service
- Reform notice rules
 - Require plain language summons ([VT summons](#))
 - Require search for new address (MFFPA 1-107(a))
 - Mail additional notice from court (N.Y. Ct. Unif. Rules § 202.27-b)

Increase Legal Representation

Problem: Only 1-2% represented by attorneys

Solutions:

- Create simplified pro se forms and procedures
- Increase state funding for legal services
 - Use filing fees in collection cases to fund debt defense work
- Allow recovery of attorney's fees if consumer wins
 - Based on a percentage of the debt (MFFPA 1-110(c))
 - Reciprocal fee statutes: CA, CT, FL, HI, MT, NH, NY, OR, UT, WA

Increase Filing Requirements

Problem: Up to 90% of collection lawsuits end in default judgments

- Collectors don't have to prove the debt

Solutions:

- Require debt collectors to file basic documentation of debt with lawsuit (N.C.G.S.A. § 58-70-115, MFFPA 1-106)
- Don't allow default judgments when this documentation is missing (N.Y. Ct. Unif. Rules § 202.27-a, MD Rules § 3-306, MFFPA 1-108)



Improve Post-Judgment Protections

Problem: Wage and asset protections are inadequate and hard to access. Judgments are inflated with interest and attorneys' fees.

Solutions:

- Increase amount of wages exempt from garnishment (MFFPA 2-106)
- Increase protections for key assets like a car to get to work and cash in a bank account (MFFPA 2-105)
- Make exemptions self-executing so that consumers do not need do anything to trigger protections
- Decrease post-judgment interest rates; cap attorneys' fees (MFFPA 1-110)

Require Reporting

Problem: States lack basic data about debt collection lawsuits, garnishment, etc. and racial disparities in debt collections

Solutions:

- Require debt collectors to report data as a licensing condition
- Use civil investigative powers of Attorney General

Resources

- [NCLC Model Legislation](#)
 - Model Family Financial Protection Act
 - Statute of Limitations Reform Act
- [What Can Be Done Right Now to Fix the Legal System for Debt Collection](#)
 - Policy reform ideas from Paul Kiel, Pro Publica
- Center for Responsible Lending
 - State policy and advocacy support
 - Contact: Lisa Stifler,
 - lisa.stifler@responsiblelending.org



State Debt Collection Reforms

Successful Reforms

- 2009
 - NC Consumer Economic Protection Act
- 2011
 - MD Rule 3-306, Judgment on an Affidavit
- 2013
 - MN HF 80
 - CA Fair Debt Buying Practices Act
- 2014
 - NY Rules on Consumer Credit Collection Actions
 - NY DFS Rules, 23 NYCRR § 1
- 2015
 - ME LD 1092

Unsuccessful Reforms

- 2011: FL, GA, OR
- 2012: NJ
- 2013: CT, NH, WA, OR
- 2015: AL, DC, IL, OR

Proposed Reforms

- 2015: MA



Slide Credit: Lisa Stiffler, Center for Responsible Lending

Questions?





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