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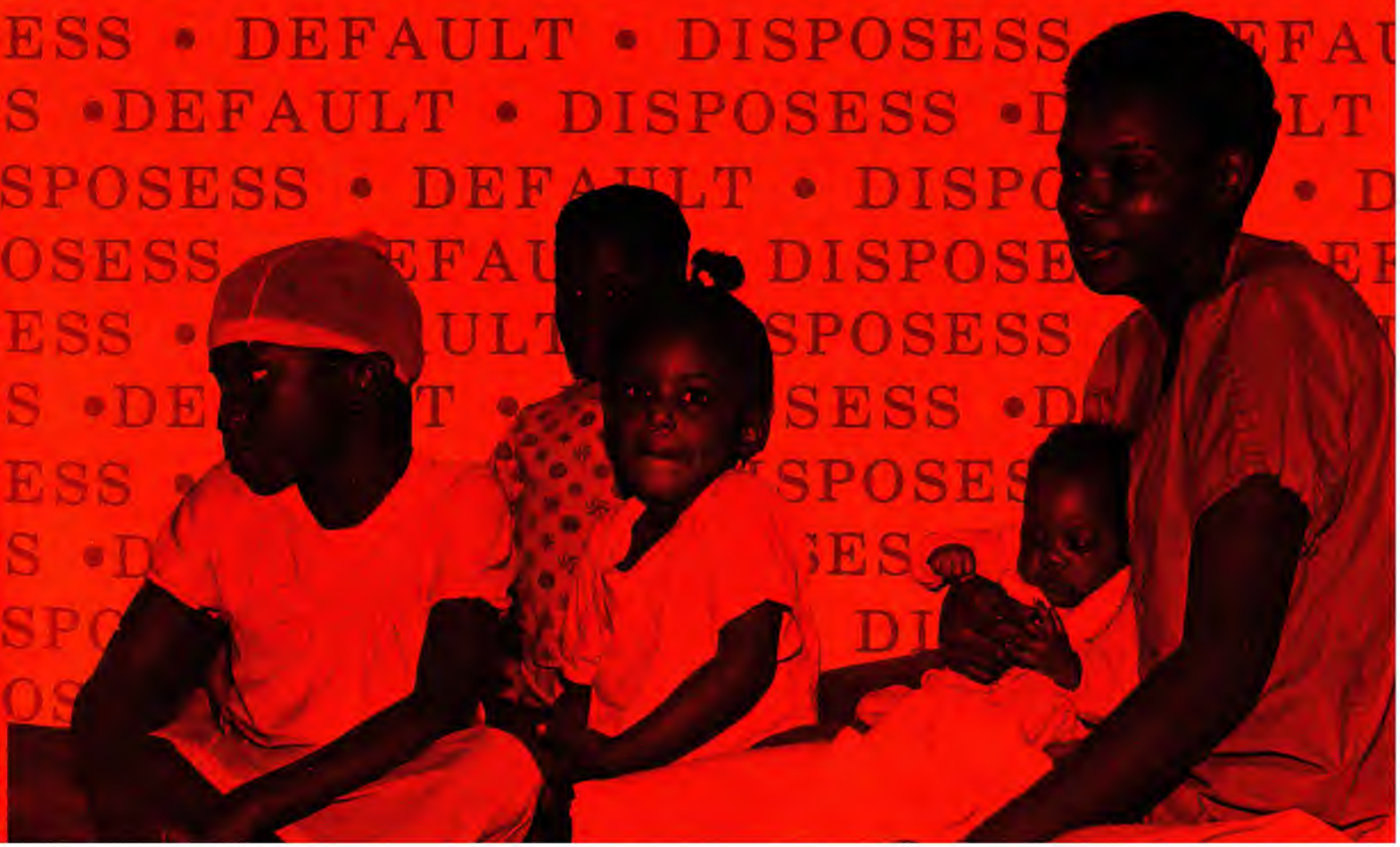
Public Policy Report

JUSTICE EVICTED

An Inquiry into Housing Court Problems

Access to Justice Project, Jerome L. Reide, Coordinator



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American
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Preface

1987 marks the 200th anniversary of the United States Constitution. As originally drafted, the Constitution left much to be desired. By the time it was ratified, however, it had been dramatically altered by an agreement to add a Bill of Rights.

The Bill of Rights established fundamental liberties by setting strict legal limits upon government power. Several of the amendments sought to guarantee fundamental fairness by establishing strict procedural guidelines to limit government actions. But the compromise that permitted slavery to continue in the South fatally flawed the new document, exempted the states from the Bill of Rights, and allowed state and local officials to violate rights that the federal government was not permitted to violate.

It was not until after the Civil War, three-quarters of a century later, that a new amendment was passed – the Fourteenth – to apply to the Bill of Rights to the states and to guarantee fundamental fairness for all in state and local proceedings.

But for nearly a century after the Fourteenth Amendment became part of our Constitution, it remained more of a promise than a reality. It was not until the 1960's that the U.S. Supreme Court systematically ruled that the Bill of Rights did indeed apply to the states. Increasingly, in that decade, and in the years since, state and local agencies have been required to utilize fair procedures in dealing with citizens and others within their jurisdictions. The rights to due process of law and to equal protection by the law have at last begun to be a reality, and not just an empty promise.

But for many the promise remains unfulfilled. Equal access to justice, to fairness, even to the laws themselves often does not exist, not only for the very poor, but also for the middle-class and lower middle-class, who cannot afford high legal fees and the often exorbitant costs of litigation, and who as a consequence cannot navigate through the bureaucratic maze that often confronts them, when fundamental interests are at stake.

This report examines this problem in the context of Housing Courts. Focusing primarily on New York City, the report measures these courts against fundamental standards of fairness, and finds them wanting to a shocking degree.

The consequences of unfair procedures are not trivial. In New York City alone, Housing Courts issue 28,000 eviction orders a year. Nearly one of every three homeless people seeking refuge in city shelters were in fact evicted by the city. How many of these evictions were wrongly ordered as the result of unfair procedures is hard to measure. But it is not hard to measure how unfair housing court procedures are. Among the findings in this report are the following:

- Nationally between 71% and 80% of landlords have lawyers in Housing Court while only 5% to 10% of tenants are represented.
- Most tenants throughout the U.S. have no knowledge of their rights when they go to Housing Court. And 71% of tenants are unfamiliar with the Housing Court system compared to 11% of landlords.
- Sixty-five percent of Legal Services offices that responded to our questionnaire reported that, as a result of budget cuts, they see fewer than 1,500 people a year on housing matters.
- In New York City, where the affected population includes a high proportion of language minorities, translators are insufficently available and explanations of Housing Court procedures are given only in English 67% of the time.
- Landlords and tenants in New York City can consent to have their cases heard by a mediator who is not a judge or a lawyer if they so choose. But the mediation process is explained as voluntary 37% of the time, as mandatory 23% of the time, and 27% of the time it is not explained at all.
- When housing cases in New York City are settled without a trial by agreements between the parties, in 46% of the agreements observed, the judge did not explain the legal consequences of non-compliance. Only 1% of the landlords and 38% of the tenants were even asked if they understood the agreement they had just signed, and in 27% of the cases neither party was asked.

These and other findings paint a picture of a court where the probability of fair adjudication, particularly for tenants, is low and where people often get moved – shoved would be a more accurate word – through a process they neither understand nor can hope to affect. Whatever fundamental fairness means, it must at least include reasonable and specific notice of the charges against you, a fair

opportunity to tell your side of the story and defend against those charges, an orderly process, and a reasonable right to appeal. Too frequently, as a practical matter, none of these elements of fairness were available.

The report concludes with a detailed set of specific recommendations. Among these are:

- Appointed counsel should be provided to litigants faced with eviction who cannot afford to retain counsel.
- Plain language legal forms should be provided in the major languages spoken in the jurisdiction.
- Instruction booklets that explain how to use Housing Court should be provided.
- Interpreters should be provided to give verbatim translation of Housing Court proceedings to all non-English speaking litigants.

None of these recommendations is impossible, or excessively visionary. We believe they are the prerequisites for fundamental fairness. A society devoted to the rule of law can afford no less.

Ira Glasser
Executive Director

Acknowledgements

As the Access to Justice Project represents the ACLU's first encounter with the New York City Housing Courts, it was essential that the many groups working toward reform in this area be consulted throughout the course of the study. Collectively and individually, the members of these groups have made an invaluable contribution to the Project. The Coordinator gratefully acknowledges the assistance and support provided by those listed below.

The community of Legal Services Corporation attorneys practicing in the Housing Part provided essential information and conscientious guidance – both in terms of court practices and procedures, and regarding the problems and perspectives of represented and pro se tenants. Many other housing advocate groups also provided vital information concerning the specific areas of the system in which litigants have difficulty participating. Chief among these was the City-Wide Task Force on Housing Court.

Similarly, members of the Rent Stabilization Association, Small Property Owners of New York and the American Property Rights Association were extremely helpful in detailing the access problems faced by landlords and, particularly, small property owners.

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Alan Jenkins, who is currently a student at Harvard Law School, was the original coordinator for the project and was largely responsible for research, design and project organization.

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The court monitors' findings and the results of the mailed surveys and questionnaires were analyzed by Graham Kerby, Ph.D., computer consultant, who used SPSSPC+ (Statistical Package for the Social Sciences, Personal Computer Plus). Dr. Kerby also prepared cross tabulation tables from the Legal Services questionnaires and the stipulation agreement data.

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This inquiry also benefitted from the recommendations in "Five Minute Justice or Ain't Nothing Going On But The Rent," a report by the City Wide Task Force on Housing Court, New York, 1986; and the research on evictions by the New York City Chapter of the National Lawyers Guild.

The Access to Justice Project's Advisory Committee members: Naimah A. Ali, Esq.; Professor Oscar Chase; Cheryl Edwards, Esq.; Hon. William Erlbaum; Ellen Feingold; Hon. Kristin Booth Glenn; Alan Jenkins; James Lee, Esq.; Laura Monroe, Esq.; the Rev. Leroy Ricksey; Loren Siegel, Esq.; Norman Siegel, Esq. and Professor Nadine Strossen were instrumental in formulating the research concept and design. Hon. Kristin Booth Glenn and Rob Levy, Esq. provided editorial assistance in restructuring the original report draft.

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The HRA grant will enable the Brooklyn Legal Services Corporation A to provide increased representation to tenants faced with eviction.

The report and its cover were designed by Deborah H. Payne of D.H.P. Graphics, the cover photo was taken by Pat Gross, photographer of a family on public assistance housed at a "welfare hotel."

Arlene Goodman line edited the report. Karen D. Taylor, of the Written Word, proofread and copy edited the report.

Special thanks to Cheryl Anderson of Ladyfingers Word Processing Specialists for inputting and revising several drafts of Justice Evicted.

Jerome L. Reide
May 30, 1987

Introduction

The Access to Justice Project was created by the National Office of the American Civil Liberties Union in August, 1985, to identify and encourage the methods by which individuals may be afforded greater and more meaningful participation in the American legal system.

This inquiry is a field study which seeks to establish what meaningful participation by litigants requires in the context of Housing Court.

To that end, public policy recommendations are offered based on our findings.

A glossary of Housing Court terms is also offered to familiarize the reader with the language used in Housing Court.

This initial inquiry of the Access to Justice Project was conducted with a view towards developing methods to study access to justice in other areas in addition to housing.

An earlier ACLU study, "No Justice for the Poor," indicates that poor people are denied access to the nation's courts.

In the preface to "No Justice for the Poor,"[1] Ira Glasser, executive director of the ACLU, observes, "On their face, our laws apply equally to the wealthy and the poor. But, as everyone knows, laws mean little without a lawyer. And lawyers are expensive...Much of the middle class cannot afford adequate legal assistance, and the poor, until very recently in our history, have been shut out almost entirely."

After extensive discussions with its advisory committee the Access to Justice Project, which is funded by the American Civil Liberties Union Foundation, initiated an inquiry into Housing Court practices.

Housing Court was selected because it is frequently a forum for the defense of legal rights by involuntary participants and it is also an arena for the affirmative enforcement of legal rights.

The access to justice issues in Housing Court often result in unrepresented litigants, plaintiffs and defendants who are not safeguarded against the loss of the procedural due process protections which the United States Constitution mandates.

Professor Norman Dorsen, president of the ACLU, describes due process as a guarantee which, "prevents government from imposing sanctions against individuals without sufficiently fair judicial or administrative proce-

dures.... Whatever the context, civil liberties requires that individual interests of liberty and property not be sacrificed without a process that determines facts and liability at hearings that are fairly established and conducted."[2]

The physical, economic and procedural problems of Housing Courts make many of them virtually inaccessible to unrepresented litigants. The consequences which often flow from this lack of access are potentially severe to litigants. Appeals from Housing Court judgments are not always practical or possible.

The extent of accessibility to Housing Courts turns on four key issues:

- Is notice to the litigants reasonably calculated to notify them of the issues in contention, how they should respond to protect their rights and precisely where they should appear?
- Do litigants have an opportunity to be heard in Housing Court and to adequately present their defenses and evidence?
- Is the proceeding an orderly, logical progression which leads to the determination of legal issues in light of the severity of cases and controversies in Housing Court?
- Can litigants perfect appeals of their judgments expeditiously when appeals are mandated by specific statutes?

To determine the extent of access to the legal process, the Access to Justice Project conducted an inquiry into Housing Courts from July to October, 1986.

The primary research methods of the inquiry were court monitoring, with observation surveys, questionnaires and participant interviews.

The secondary research methods utilized were a review of Housing Court literature (*i.e.,* news articles, reports, treatises, and journals), and analysis of court records.

Approximately 100 court monitors, including tenants, landlords, undergraduates, law students and housing activists were trained by the Access to Justice Project staff, practicing attorneys and other legal activists.

The monitors' training sessions in New York City and Connecticut included an introduction to the goals of the Access to Justice Project, an overview of Housing Court issues and procedures, non-interventional and non-confrontational court monitoring (with observation surveys), and a review of a glossary of Housing Court terms.

The Housing Parts in three New York City boroughs – Manhattan, the Bronx, and Brooklyn – were chosen for study because of their proximity to the Access to Justice Project's staff and its advisory committee.

Practices in the Housing Part of the New York City Civil Court which were observed include:

- Calendar call.
- Motion calendar call.
- Landlord-Tenant Stipulation agreements.

No attempt was made to monitor trials in front of judges because Housing Court trials are a rarity and the court monitors did not have advanced legal training.

The "HP" part which oversees court ordered repairs and levies fines for building code violations was not observed because an analysis of court records showed most court ordered repairs were not made and most fines go uncollected.

The Connecticut Small Claims Court in Bridgeport, Norwalk, and Stamford and their Housing Part were observed to provide a perspective on Housing Court disputes which are resolved in Small Claims Court as opposed to a seperate and specialized Housing Court such as New York City's.

Questionnaires were mailed to 150 plaintiffs and 150 defendants who had litigated in the Bridgeport, Norwalk, and Stamford Small Claims Courts.

Fifty Housing Part plaintiffs and 50 Housing Part defendants in Bridgeport also received questionnaires.

The responses from the Connecticut questionnaires are not reported here, as insufficent data was obtained to draw conclusions.

To document national Access to Justice problems, the Project sent questionnaires to 300 urban and rural offices of the Legal Services Corporation, which provides free legal representation to low-income litigants on civil matters such as housing disputes.

Legal Services attorneys were asked to give their opinions on landlord and tenant access to the courts and to document the effects of budget cuts which began in 1981 by the Reagan administration, which reduced their budget by 25% from $321 million to $241 million.

The respondents to the New York City litigant interviews, the Connecticut questionnaires and the Legal Services questionnaries were "self-selected." That

is, they voluntarily consented to give their opinions. Thus, these responses are indicative of this self-selected population and not necessarily of all of the Housing Court litigants and attorneys.

Intensive examination of the variables and frequencies in this limited data base will hopefully provide useful insights from which national trends in access to Housing Courts can be gleaned.

The totals of each form and questionnaire reported follows:

Form	Base
Calendar Part Observation Form	103
Motion Calendar Observation Form	73
Landlord/Tenants Stipulation Observation Form	387
Litigant Interview Form	52
General Effects of Budget Cuts on Legal Services Questionnaire	77
Effects of Cuts on Housing Litigation Questionnaire	71
Landlord/Tenant Access Problems Questionnaire	72

The analysis of the quantitative survey data in narrative form should be viewed as facilitating the qualitative analysis of access to Housing Court issues.

Future inquiries which the Access to Justice project is considering include:

- Due process in entitlement hearings (*e.g.*, Supplemental Security Income, Social Security disability benefits, Aid to Families of Dependent Children and unemployment insurance benefits).
- Assistance by pro se clerks for litigants in Federal Court.
- Fairness in the adjudication of debtor-creditor disputes.
- Informed consent for women prisoners who are sterilized.
- Backlogs in administrative tribunals (*e.g.*, the New York State Division of Human Rights).
- Awards for attorneys fees.
- The ratio of convictions and indictments in rape cases.
- Obstacles to group legal insurance coverage.

- Judges' opinions on procedural due process in their jurisdictions.
- The rate of convictions for vehicular homicide of drunk drivers.

Identifying the institutional bars in the legal system which prevent litigants and potential litigants from meaningful participation in it and recommendations to remove them are the ultimate goals of the Access to Justice Project.

Jerome L. Reide, Coordinator
Access to Justice Project, ACLU

1.0. A Functional Definition of Access to Justice

The right of a litigant in the United States to judicial process is commonly called either access to the courts or access to justice. The question of whether the citizen is being deprived of this right frequently arises when the government is using an administrative system or commencing judicial process against an individual citizen. This question is whether the government must provide a meaningful hearing to an individual it may deprive of life, liberty or property.

The access to justice issue has arisen in several contexts in the cases cited below (they are cited to define the context the issue has arisen in, not the propositions they are precedents for):

- When individuals cannot pay fees required for use of the courts to file for a divorce as in **Boddie v. Connecticut**, 401 U.S. 371, 28 L. Ed 2d 113, 91 S. Ct. 780 (1971), mandate conformed 329 F. Supp. 844 (1971).

- When transcripts are not provided to indigent defendants so they can perfect appeals in criminal proceedings, as in **Mayer v. Chicago**, 404 U.S. 189, 30 L. Ed. 2d 372, 92 S. Ct. 410 (1971).

- When attorneys are not provided for indigent defendants in their initial appellate effort, as in **Douglas v. California**, 372 U.S. 353, 9 L. Ed. 2d 811, 83 S. Ct. 814 (1963) rehearing denied 373 U.S. 905, 10 L. Ed. 2d 200, 83 S. Ct. 1288 (1963).

- When a "summary" system is created allowing eviction of tenants for non-payment of rent with no opportunity to assert the defense of landlord's breach of duty, it is not *per se* violative of due process which was decided in **Lindsey v. Normet**, 405 U.S. 56, 31 L. Ed. 2d 36, 92 S. Ct. 862 (1972).

- When the mandated fees are beyond the means of the litigant, such as the requirement of a $50 filing fee for those who seek voluntary bankruptcy, as in **U.S. v. Kras**, 409 U.S. 434, 34 L. Ed. 2d 626, 93 S. Ct. 631 (1973).

- A mandatory $25 filing fee for appellate court review of welfare eligibility determinations, decided in Ortwein v. Schwab, 410 U.S. 656, 35 L. Ed. 2d 572, 93 S. Ct. 1172 (1973) rehearing denied 411 U.S. 922, 35 L. Ed. 2d 315, 93 S. Ct. 1551 (1973) (per curiam).

These cases have turned on whether or not fundamental constitutional liberties were involved. Many due process protections are illusory, as in practice, the protections afforded are meaningless to litigants without legal counsel.

Meaningful participation in judicial resolution of legal disputes has two legs: first, the defense of legal rights by involuntary participants, and second, the affirmative enforcement of legal rights.

Due process, which includes notice and opportunity to be heard and to defend, orderly proceedings adapted to the nature of the case and controversy and, when required by statute, an appeal, is the threshold requirement of access to justice.

Yet, due process does not occur in a vacuum. The procedures, required by the due process clause of the Constitution, depend on a variety of factors which impact on the specific individual deprivation at stake. This, in turn, depends on whether the dispute is resolved by an administrative agency, a civil court or in a criminal court.

The complexity of litigating in the particular forum as well as the severity of the consequences of a negative outcome for a litigant are two other critical factors which must be considered in determining what due process safeguards a litigant is entitled to.

To determine whether litigants were being denied access to the courts, this inquiry sought a legal forum where litigants use the court to defend their legal rights in involuntary proceedings and affirmatively enforce their legal rights, in a particular statutory scheme, with a particular type of notice, a particular opportunity to be heard, in an orderly proceeding adapted to the peculiar nature of the case and controversy, with an opportunity for appellate review. Both criminal proceedings and landlord-tenant disputes meet these criteria, however, criminal procedures issues are widely litigated while civil procedure issues such as housing disputes are not.

The issue required that the inquiry concentrate on discerning the disparities between the written procedures designed to insure due process and the actual

practices in the legal forum. Actual practices often render the due process protections meaningless.

The initial level of inquiry focused on what would constitute fair procedures, which are not biased in favor of either party. The second level focused on whether the actual practice of the legal forum was fair: was it equitable, impartial and consistent with the discretion inherent in the exercise of judicial authority? The third level focused on what procedures and reforms will ensure meaningful participation in judicial proceedings if, in fact, litigants are not receiving the process they are due. Finally, to give form to these questions, an appropriate legal arena was needed.

Housing Court was selected for two reasons. It met the criteria of a legal forum which is used defensively and affirmatively: some Housing Courts have statutory schemes which created them and govern their operation. There are also specific types of notice (*e.g.*, dispossess, petition and notice of petition), particular opportunities to be heard and to defend, proceedings adapted to the potentially disastrous outcome of housing litigation (*e.g.*, homelessness), as well as some appellate avenues required by statute.

1.1. Three Fundamental Requirements of Due Process

This inquiry was concerned with three elements which are fundamental requirements of due process: notice, meaningful opportunity to be heard and to defend, an orderly proceeding adapted to the nature of the case and controversy.[3] The issue of appeal (when appeals are mandated by statute) must also be considered.

1.2. The Purpose of the Requirements

The general purpose of these requirements is to provide Housing Court litigants with an appropriate legal forum for the adjudication of housing disputes, an arena where legal rights are both defended and asserted with the procedural

safeguards mandated by the U.S. Constitution.

The particular purpose of these procedures is to provide judicial resolution of housing disputes in accordance with state law.

2.0. Observations of New York City's Housing Part

Sections 2.1 through 2.6 are introductory and the issues will be discussed in greater detail in the following sections.

2.1. Notice

New York State's Real Property Law, Art. 7 §731 (a), states that:

> 1. The special proceeding prescribed by this article shall be commenced by service of petition and a notice of petition. A notice of petition may be issued only by an attorney, judge or the clerk of the court; it may not be issued by a party prosecuting the proceeding in person.
>
> 2. Except as provided in section 732, relating to a proceeding for non-payment of rent, the notice of petition shall specify the time and place of the hearing on the petition and state that if respondent shall fail at such time to interpose and establish any defense that he may have, he may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

The statute's stringent notice requirement has been upheld in case law such as **Adina 74 Realty Corp. v. Hudson**, 104 Misc. 2d 634, 428 NYS 2d, 977 (Civil Court of the City New York 1980) where the court held that notice could be served by the landlord's attorney and by a process server who appeared at the tenant's door at 8:30 a.m.

2.2. Opportunity to be Heard and to Defend

The opportunity to be heard and to defend would seem to require the full benefit of the law which implies knowledge of it or representation by competent counsel because of the complexity of the litigation and the density of the legal theories involved and the evidentiary rules and exceptions.

2.3. Orderly Proceeding Adapted to the Nature of the Case and Controversy

A higher standard of due process is required in Housing Court than in other inferior courts (*e.g.*, Traffic Court) because of the consequences of losing a housing dispute. Landlords can lose a significant portion of their income and the use and possession of rental property. Tenants may become homeless or be compelled by circumstances to live in substandard housing.

2.4. Appeal

A clear appellate avenue which offers the expeditious review of Housing Court judgments, would seem appropriate in light of the serious nature of the disputes. Lack of an adequate remedy in a higher court may leave litigants deprived of important property and the substance and sum of procedural due process.

2.5. Assumed Practice Versus Actual Practice

The basic assumption of due process is that litigants are entitled to their day in court in front of an impartial judge who will apply the controlling law in the jurisdiction in question to the facts of their particular disputes. This inquiry's findings indicate that in actual practice the three fundamental requirements of due process do not always prevail.

Through the analysis of the data in this inquiry steps to ensure due process for Housing Court litigants will be underscored. The defensive use of the law by involuntary Housing Court litigants implies knowledge of the appropriate defenses, the capacity to gather evidence to substantiate the defenses and the ability to present this evidence in a manner conducive to its admission into evidence by the court. The affirmative enforcement of legal rights requires the airing of the moving party's allegations on the record in open court and an impartial judicial decision rendered after a duly notified respondent has had an opportunity to be heard and present his or her defenses. These elements are necessary to ensure meaningful participation by litigants in Housing Courts.

2.6. Statutory Assumptions

The New York State Legislature created the Housing Part of the Civil Court of the City of New York (Judiciary Law, NYCCA §110 (a) (1972)), to expedite the hearing and resolution of matters pertaining to landlord and tenant relationships and the right to occupancy of real property.

The legislative intent in enacting the statute is stated with exactitude and precision:

> [T]he court shall be devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code of the administrative code of the city of New York.

Thus, the preservation of New York City's housing stock by enforcement of laws and codes is the underlying public policy which led to the creation of Housing Court.

Although the legislature created the Housing Part which attempts to preserve the city's housing stock through the enforcement of laws and codes, that same court also was specifically created to resolve landlord-tenant disputes which may or may not directly affect the housing stock itself. The process of dispute resolution in the Housing Part of the Civil Court is dictated by the requirements of the New York State Constitution which mandates, "In any trial in any court whatever the party accused shall be allowed to appear and defend in person with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him.... No person shall be deprived of life, liberty or property without due process of law." McKinney's Const. Article 1 § 6; as well as the due process clause of the United States Constitution which states:... [N]or shall any state deprive any person of life, liberty or property, without due process of law..." U.S.C.A. Const. Amend. 14 § 1.

Despite the creation of the Housing Part to help preserve the city's housing stock, the vast majority of proceedings commenced in that court are initiated by landlords, not for the preservation of the housing stock, but rather to seek the eviction of tenants based upon alleged violations of the landlord-tenant relationship.

The Manhattan Housing Part showed a 25% increase in "eviction" cases between 1983 and 1984 a total increase of 6,276 proceedings more than 1982 to 1983. Brooklyn's Housing Part had an 8% increase during the time period – an increase of 5,974 cases in which landlords were trying to regain possession of apartments which they had rented to tenants.[4] These figures indicate the growing use of Housing Court for the collection of rent and the eviction of tenants rather than for the preservation and maintenance of the city's housing stock as required by the legislature. The issues of housing stock maintenance and preservation are usually only raised as defenses to the main action which usually seeks rent money or eviction or both. Thus, the avowed purpose of the Housing Part has become secondary to the predominantly pecuniary nature of most affirmative litigation initiated in the Housing Part.

Tenants rarely use the Housing Part to affirmatively enforce their legal rights. Housing Part officials estimate that only 3% of the actions commenced in Housing Court are initiated by tenants who seek repair and maintenance of

conditions deemed to be in violation of the housing laws and codes. While less than 40% of the stipulations (which are apparently the most frequent method of resolving housing disputes, although the Housing Part clerk's office keeps no official court of stipulations) actually require repairs and correction of violations, only 53% of those repairs are actually completed and only 16% of the court orders require rent abatements to compensate tenants who have lived in unlawful conditions.[5]

A Civil Court judge observed that in New York's Family Court the length of time spent on equitable distribution hearings, is often several weeks. In contrast, little time was spent in court on the housing stipulation agreements observed by this inquiry's court monitors.

TABLE 1: LENGTH OF TIME SPENT

0 — 2 minutes	52%
2 — 5 minutes	21%
5 — 10 minutes	14%
10 — 20 minutes	10%
20 + minutes	3%
Base	(297)

Over half of the cases consumed less than two minutes and almost 75% of the cases used five minutes or less.

The qualifications listed in the Housing Court Act are: "training, interest, experience, judicial temperament and knowledge of federal, state and local housing laws and programs by the advisory council for the housing part." (Judiciary Law, NYCCA §110 (f) (1972)). The Housing Court is a center of dispute resolution which requires specialized hearing officers.

3.0. The Defense of Legal Rights
3.1. Service of Process

The purpose of notice is to: let the litigants know the legal issues in dispute; indicate how to respond to the legal papers they receive notifying them of the commencement of an action; and exactly where to respond.

The Housing Court Act provides for three types of service on litigants: personal; nail, mail, and file service* and substitute service. (Judiciary Law, NYCAA §110 (m) (1-6) (1972))

The Legislature's prescribed methods of service differ from the actual practice according to New York's Attorney General Robert Abrams and four other city and state officials who charge that "sewer service" (where litigant's papers are not actually served but dumped by the process servers) is "rampant" in New York City and "continues to strike at the very heart of our judicial system".[6]

The officials launched an undercover investigation of 37 process servers and discovered that 95% of them had engaged in "sewer service," and then filed allegedly fraudulent affidavits of service.

"We conservatively project that there are over 48,000 default judgments entered annually in NY City Courts in cases in which there are instances of 'sewer service'," the officials said. This actual practice juxtaposed with assertions by Civil Court officials that approximately 114,716 default judgments were entered in the Housing Court in 1985 indicates that a significant number of Housing Court litigants are deprived of their day in court as they are not notified of the proceedings against them. They have no opportunity to be heard and to defend.

3.2. Language as a Notice Barrier

When litigants receive legal papers written in technical legal terms it is often difficult for them to understand if they are lay-people not well versed in the intricacies of landlord-tenant law. Legal forms which litigants must fill out to defend their legal rights or to assert them affirmatively, are not written in plain language

*See glossary.

but in legalese. A standard notice of petition form for a non-payment action published by AILT INC. in 1980 contains the following language:

> "...TAKE NOTICE also that WITHIN FIVE DAYS after service of this Notice of Petition upon you, you must answer, either orally before the Clerk of this Court at (address of the Housing Court)... or in writing by serving a copy thereof upon the attorneys for the petitioner and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim you may have against the petitioner unless such defense or counterclaim is precluded by law or prior agreement of the parties. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than 3 nor more than 8 days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for FIVE days from the date of such judgment."

Interpreters for non-English speaking litigants are also necessary to assist litigants in filling out legal forms in the clerk's office and to facilitate meaningful participation for them in court.

There are 14 interpreters for the entire NY Civil Court according to Jack Baer, Deputy Chief Clerk of the Civil Court. Of these, one is assigned to the Housing Court Clerk's Office in each of New York City's five boroughs – Queens, Staten Island, Manhattan, Brooklyn and the Bronx. The other nine interpreters float throughout the entire Civil Court. In addition, the Civil Court has a pool of seven interpreters hired on a per diem basis, who are assigned to courtrooms and clerk's offices on an "as needed basis."

Mr. Baer explains that the full time interpreters only speak Spanish. Per diem interpreters are hired to translate for other languages on an "as needed basis."

Permanent interpreters are hired by the Office of Court Administration and must meet NY State Civil Service qualifications, to wit: a high school diploma or a general equivalency diploma, fluency in English and Spanish, and a passing score on a reading and writing test in Spanish.

Therefore, litigants who do not speak English, do not always have the services of an interpreter. However, some judges ask litigants who do not have an interpreter to sign stipulation forms, or to participate in trials.

The coordinator observed a litigant who spoke only Spanish and was visibly intoxicated. He was asked to sign a stipulation agreement without an interpreter and when he refused, a trial in front of the same Housing Court judge was held fifteen minutes later without an interpreter.

Non-English speaking litigants who are denied an interpreter, often do not receive adequate notice of the legal issues in contention and have a less than adequate opportunity to be heard and to defend in Housing Court.

3.3. Assistance in the Clerk's Office

In Manhattan, the main directory at 111 Centre Street does not list the Housing Part. Small signs outside the door of the Housing Part indicate its location.

This inquiry found that the average wait for litigants on lines in the clerk's office in the NY Housing Parts it observed was between 15 to 30 minutes, while some litigants waited as long as three hours.

After locating the clerk's office (which is at the opposite end of 111 Centre Street) and waiting in line to see a clerk, litigants speak to clerks who are supposed to ask them for a copy of their petition and help them fill out their forms. This inquiry observed a practice where litigants were told to fill out the forms themselves with the aid of typewritten mock-up forms which are taped to the wall.

This practice differs somewhat from the Legislature's explicit intent, which is stated in the Housing Court Act:

> There shall be a sufficient number of pro se clerks of the housing part to assist persons without counsel. Such assistance shall include, but need not be limited to providing information concerning court procedure, helping to file court papers, and where appropriate, advising persons to seek administrative relief. (Judiciary Law, NYCCA §110 (0) (1972)).

There are four areas observed by the inquiry's monitors in which the clerks appeared to provide less assistance to litigants than the Legislature intended:

- Tenants are supposed to be asked by clerks if a 72-hour notice has been filed. Twenty-six percent (12) of the respondents interviewed reported that clerks actually did. When evictions had been scheduled, 13% (6) of the clerks who spoke to the inquiry's respondents asked the notice question. When tenants had already been evicted, the notice question was asked

by clerks of 17% (8) of our respondents. Some 26% (44) of the respondents had their defenses listed.

- Clerks are supposed to list tenants' defenses: full payment, partial payment, lack of repairs, improper service of process, and/or lack of registration with the NY State Division of Housing and Community Renewal. Forty-four percent (20) of the clerks actually listed the respondents' defenses according to the respondents.

- Clerks are supposed to ask tenants if they have any counterclaims. Fifteen percent (7) of the inquiry's respondents were asked if they had counterclaims.

- In addition, various rubber stamps were used to make notations on the legal papers of litigants in 35% (18) of the cases the Project's court monitors observed. The stamps were used without discussion with the litigants in 67% (12) of these cases.

- (One of the rubber stamps used by clerks in the motion part reads, "traverse waived." This means that if the tenant was a victim of "sewer service," but managed to learn of the pending case, he or she relinquishes the defense of inadequate service of process and cannot contest the court's personal jurisdiction.)

- Twenty-one percent (11) of the litigants the inquiry interviewed were not given follow up instructions by the clerks as to the appropriate next steps they should take in the litigation process.

Such practices, or lack of same, raise questions as to whether litigants receive the assistance the Legislature intended for them to have and whether they are brought within the personal jurisdiction of the Housing Part of the Civil court by service of process within the state.

When litigants are denied notice of the case or controversy they do not receive the due process protection enunciated in **Greene v. Lindsey**, 456 U.S. 444, 72 L. Ed. 249, 102 S. Ct. 1874 (1982).

There the court said:

> "The fundamental requisite of due process of law is the opportunity to be heard." **Grannis v. Ordean**, 234 US 385, 394, 58 L. Ed. 1363, 34 S. Ct. 779 (1914). And the "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest," Mullane, *supra*, at 314, 94 L. Ed. 865, 70 S. Ct. 652.339 U.S. 306.

3.4. An Opportunity to be Heard and to Defend

The following events were observed by the coordinator one September morning in the Calendar Part in Manhattan and is provided here to give a sense of how the Calendar Part actually operates and the manner in which instructions, typically, are given to litigants. All names have been changed.

Tenants, landlords, and attorneys begin filing into the Manhattan Housing Part Calendar Part at 111 Centre Street at 9:25 A.M. from Monday to Friday. They are, immediately, asked to sit down, refrain from talking and directed to clear the aisles and put newspapers away, by court officers.

The parties enter near the judge's bench and the clerk's desks. There are ten rows divided by a long aisle in the middle of the courtroom.

Handwritten signs over the clerk's desk indicate the rooms of the various hearings and trial parts. Directly across from the main entrance door is another door which leads to the mediation rooms. The entrance door opens and closes about every twenty seconds, letting in or out a stream of tenants, landlords, and lawyers.

A door behind the judge's bench opens and a stocky court officer calls out, "ALL RISE. THE CALENDAR PART OF THE HOUSING COURT IS NOW IN SESSION, THE HONORABLE JUDGE 'H' PRESIDING."

The judge walks in from his chambers and is seated. The clerk begins reading instructions. He explains to the parties how to answer when their names are called, how to request a trial instead of mediation, and how to request an adjournment.

The clerk begins to call the Calendar. "Crystal Jackson v. Milton Wing." The answers are simultaneous.

"Tenant."

"Respondent has an application your honor."

The judge instructs the clerk to mark the case, "application," and instructs the parties to step up to the bench. The court is packed now. The doors swing

as people mill in and out. The Calendar call is continuous and as the answers are staccato it takes a trained ear to hear both parties answer. The court officer's commands pepper the proceedings, yet despite their admonishments, there is a low murmur in the court and a cacophony of noise from the hall.

Two more cases are called.

"Fechner v. Hexlerder."

"Landlord ready."

The tenant in Fechner v. Hexlerder is not present. The clerk says, "Final judgment for the petitioner, three days stay," and punctuates his remarks by rubber stamping "default," on the case's papers.

An eviction judgment has been entered against the tenant for not appearing in court. Unless the judgment is successfully challenged by the tenant, he will be evicted in three days.

The court officer says, "Quiet please, go outside if you want to talk."

"Unit 23, come in please," is heard along with the static from a court officer's walkie talkie.

"Valerie Mackey v. Harry Cambell," the clerk calls.

"Tenant."

Neither the landlord nor her lawyer is present. The clerk says, "Dismissed."

"David Rudys v. Robert Betrach."

"QUIET!" A court officer says to two whispering attorneys.

"Seven twenty-four," the tenant says.

"Seven twenty-four on consent," the landlord's lawyer's respond.

"Marked seven twenty-four consent both sides," the clerk says.

"HAVE A SEAT!" a court officer says loudly.

"Cathy James v. Preserve Harlem, Inc."

"PUT THE NEWSPAPER AWAY," a court officer instructs a young woman.

"Dismissed, no appearance," the clerk says. He then calls the next case.

"684 Riverside Drive v. Evanston."

"Refer to Judge S."

"358 Riverside Drive v. George Smith."

"Eight eighteen on consent," the landlord's attorney says.

"55th Estates Co. v. Jocelyn Cayuga."

"Both sides ready."

"Part O," says the clerk, directing the parties to the trial room. Fourteen more cases are called and defaults, adjournments, and mediations are ordered.

During the thirteen minutes since the Calendar call started, three tenants have had eviction judgments entered against them. This will lead to their eviction unless the procedure is interrupted.

The mediation process was explained as "voluntary" in 37% (38) of the Calendar Part instructions observed in this inquiry, as "mandatory" in 23% (24), and not at all in 27% (28). (The remainder of the responses did not indicate the type of explanation.)

The right to request an adjournment was explained in 60% (60) of the instructions observed; it was not explained in 26% (27), and not recorded by the monitors in 14% (14) of the Calendar calls observed.

The procedures were explained in Spanish by an interpreter in 28% (29) of the observed Calendar calls: no interpreter was provided in 67% (69) of the Calendar calls observed. In 5% (5) of the Calendar calls observed, the monitors did not record whether an interpreter provided instructions in Spanish.

In 1% (1) of the 103 Calendar calls observed, instructions were given in a language other than English or Spanish. In 91% (94) of the cases observed, this did not occur, and in 8% of the observed Calendar calls there was no record of whether instructions were given in any other language.

In the Calendar calls observed by this inquiry, a second Calendar call, where the names of parties were called who did not answer on the first call, only occurred in 17% (17) of the observed Calendar calls. The tenant in this case was one of the 27,000 tenants a year the Housing Part enters eviction judgments against.[7]

One third of the tenants in homeless shelters operated by the city were evicted by the Housing Part.[8]

This inquiry observed that the frequent lack of consistently clear explanations regarding the mediation process, adjournments, and the lack of bilingual instructions observed during the Calendar call, raises questions as to the extent of the litigant's opportunity to be heard and to defend.

It is impractical if not impossible for involuntary litigants to assert their defenses without knowledge of them. Earlier, we indicated that the majority of the tenants the inquiry interviewed were not asked by the clerks what their defenses were and the majority of the tenants interviewed did not have their defenses listed for them by the clerks.

One such defense, which requires knowledge to raise, is the implied warranty of habitability, which guarantees tenants the right to minimum standards of decent housing and that they will not have to pay for essential services or decent

housing when they do not receive them. This is a contractual guarantee which is implied by law in rent agreements: the landlord must provide safe, sanitary and habitable housing. This warranty is codified in New York Real Property Law §235 (b) (McKinney 1972).

For example, a tenant who receives no heat in the winter is receiving less than the habitable housing the Legislature mandates that the landlord provide. To establish this defense, the tenant must make a record of the temperature in his or her apartment for several days and report this information to the Central Complaint Bureau of the New York City Department of Housing Preservation and Development so they can establish a record. Alternatively, the tenants record of the temperature in the apartment can be admitted into evidence in the Housing Part as past recollection of evidence.

Other breaches of the warranty must also be established (*e.g.*, photos of rats, roaches, silverfish, and leaking ceilings), and properly admitted into evidence.

Tenants who lack knowledge of these procedures are at a disadvantage in affirmatively enforcing their legal right to a habitable housing unit or in using the implied warranty defensively or as a counterclaim.

Litigants who received inadequate service of process, inadequate assistance in the clerk's office and inadequate explanation of court procedures in the Calendar part frequently do not receive the benefit of an inquest, a procedure which requires a hearing when one party does not appear before a judgment is entered.

This inquiry scrutinized the Calendar records of three Housing Part judges (judges A, B, and C) on three separate days. Of the 538 cases called in front of the three judges, only eight resulted in inquests; 18 resulted in defaults. Another judge was investigated by a judicial watchdog commission because she frequently orders inquests* in non-payments and holdovers before entering default judgments.[9]

The scrutiny revealed an average of 179 cases called a day. This inquiry found this number to be a representative average for the city's Housing Part. This volume of cases (538) limits litigants' opportunity to be heard and to defend.

Judge "A" defaulted 20% (5) of the adjourned non-payments and none of the new holdovers. That is, 20% of the tenants sued for overdue rents had judgments entered against them because they did not show up in court.

Judge "B" did not default any litigants.

Judge "C" defaulted 26.5% (13) of the adjourned non-payments, 34.9% (44) of the new non-payments and 2.7% (1) of the new holdovers.

*See glossary.

While the proceedings, in the Housing Part are almost always generally summary proceedings, governed by statute, all the rules of the New York Civil Court, the rules of the Housing Part, and New York's evidentiary rules and exceptions apply. There are also more than 100 administrative directives issued by the Chief Administrative Judge and the judge-in-charge of each borough.

Familiarity with these rules and procedures requires a substantial degree of legal training for litigants to adequately avail themselves of the opportunity to be heard and to defend, or alternatively, counsel.

Table 2 displays who was represented by counsel in the motion part proceedings which this inquiry observed.

TABLE 2: WHO IS REPRESENTED IN THE MOTION PART

	Tenant Represented?					
Landlord Represented?	% Yes	(No.)	% No	(No.)	% Total	(No.)
Yes	86	(12)	59	(29)	67	(41)
No	14	(2)	41	(20)	33	(22)
Base	100%	(14)	100%	(49)	100%	(63)

The primary finding here is the wide disparity between landlords who were represented (67%) and tenants (33%). Further, in 29 of sixty-three cases (46% of all cases), the landlord was represented while the tenant was not. In only two cases of 63 (3%) did the opposite situation occur. Clearly, the landlords are represented more frequently than the tenants.

Table 3 indicates representation for tenants among the litigants this inquiry interviewed.

TABLE 3: REPRESENTATION FOR TENANTS IN LITIGANT INTERVIEWS

Litigant

Represented?	% Tenant
Yes	17
No	83
Base	100% (42)

In Table 3, we consider legal representation for tenants only. As can be readily seen, less than one quarter of the tenants were represented.

TABLE 4: ETHNIC GROUP BY REPRESENTATIVE FOR TENANTS IN LITIGANT INTERVIEWS

Ethnic Group

Representation?	% White	% Black	% Hispanic	% Total
Yes	17	12	25	15
No	83	88	75	85
Base	100% (6)	100% (26)	100% (8)	100% (40)

In Table 4, we see that roughly equivalent percentages of each ethnic group are represented, but it is also obvious that 65% of the tenants in this section are Black (26 out of 40 tenants).

TABLE 5: GENDER GROUP BY REPRESENTATION FOR TENANTS IN LITIGANT INTERVIEW

Gender

Representation?	% Male	% Female	% Total
Yes	14	16	16
No	86	84	84
Base	100% (7)	100% (25)	100% (32)

From Table 5, we see that roughly equal percentages of males and females are represented. However, the larger finding is that 78% of the tenants are female (25 out of 32).

TABLE 6: GENDER BY ETHNIC GROUP FOR TENANTS IN LITIGANT INTERVIEWS

Ethnic Group

Gender Group	% White	% Black	% Hispanic	% Total
Male	20	21	22	21
Female	80	79	66	79
Base	100% (5)	100% (23)	100% (6)	100% (34)*

Table 6 shows that the majority of the tenants in each ethnic group are female. From the previous four tables, the finding is that 53% of all tenants observed in Manhattan, the Bronx, and Brooklyn Housing Court were Black females (18 of 34 tenants).

Table 7 addresses the issue of opportunity to be heard and to defend by juxtaposing landlord representation by tenant representation in a special format.

*Rounded percentage total

TABLE 7: LANDLORD REPRESENTATION BY TENANT REPRESENTATION FOR STIPULATION AGREEMENTS (SPECIAL FORMAT)

Landlord Representation?	% Yes		% No		% Total	
Yes	16	(57)	68	(237)	85	(294)
No	02	(07)	13	(45)	33	(52)
Base	18%	(64)	82%	(282)	100%*	(346)

*Rounded percentage total

In Table 7, a slightly different format is used so that the actual relationships between landlord's and tenant's representation may be understood. Immediately, it can be observed that while 85% of the landlords had representation, only 18% of the tenants did. In fact, the most common situation was that of a landlord with a lawyer facing a tenant without one. In 68% of the stipulation agreements, the inquiry observed this was the case.

To determine the relationship of race on representation, Tables 8-10 display landlord ethnic group by landlord representation, and tenant ethnic group by tenant representation for stipulation agreements.

TABLE 8: LANDLORD ETHNIC GROUP BY LANDLORD REPRESENTATION FOR STIPULATION AGREEMENTS

Landlord Representation?

Landlord Ethnic Group	% Yes	% No	% Total
White	60	18	49
Black	31	59	39
Hispanic	9	23	2
Base	100% (122)	100% (44)	100% (166)

Table 8 shows that almost half of the observed landlords were White and that well over half of the represented landlords were White. Glancing along the bottom row totals, it can again be seen how frequently the landlords are represented.

TABLE 9: TENANT ETHNIC GROUP BY TENANT REPRESENTATION FOR STIPULATION AGREEMENTS

Tenant Representation?

Tenant Ethnic Group	% Yes	% No	% Total
White	34	13	16
Black	47	65	62
Hispanic	19	22	22
Base	100% (53)	100% (287)	100% (340)

Table 9 illustrates that the majority (65%) of the unrepresented cases were Black tenants.

TABLE 10: TENANT ETHNIC GROUP BY TENANT REPRESENTATION FOR STIPULATION AGREEMENTS (SPECIAL FORMAT)

Tenant Ethnic Group	% Yes	% No	% Total
White	5 (18)	11 (36)	16 (54)
Black	7 (25)	55 (187)	62 (212)
Hispanic	3 (10)	19 (64)	22 (74)
Base	15% (53)	85% (287)	100% (340)

By using the special format we can see that, in addition to the vast majority of cases involving Black litigants, the most common cases were that of an unrepresented Black person facing a represented landlord who, usually, was White. (See Table 8.)

One indication of the effect of legal representation on litigant's opportunity to be heard and to defend, which the inquiry tested for, was the length of time a case was before a judge in the motion part, as observed by the inquiry's monitors. Tables 11 and 12 provide this data.

TABLE 11: HOW LONG CASES WERE BEFORE JUDGES BY LANDLORD REPRESENTATION IN THE MOTION PART

	Landlord Represented?		
Number of Minutes	% Yes	% No	% Total
0 — 2	38	37	37
2 — 5	47	63	53
5 — 10	3	0	8
10 — 20	2	0	2
Base	100% (32)	100% (19)	100% (51)

Table 11 demonstrates that none of the cases where the landlord was not represented lasted more than five minutes.

TABLE 12: HOW LONG CASES WERE BEFORE JUDGES BY TENANT REPRESENTATION IN THE MOTION PART

	Tenant Represented?		
Number Minutes	% Yes	% No	% Total
0 — 2	27	40	37
2 — 5	45	56	54
5 — 10	18	4	7
10 — 20	10	0	2
Base	100% (11)	100% (43)	100% (54)

Table 12 yields essentially the same findings as Table 11: only 4% of the cases where the tenant was not represented lasted more than five minutes.

Taken together, the two tables seem to show that when landlords and tenants have legal representation they receive approximately equal amounts of time

before a judge. When landlords and tenants are not represented they both receive less time before a judge than members of their class who are represented.

Other factors which appeared to have a direct bearing on the litigant's opportunity to defend and to be heard include:

- The requirement that litigants must appear in court to defend and be heard despite repeated adjournments that often require working landlords and tenants to take time off from work and require working mothers to make provisions for childcare -there is none provided in the Housing Part.
- Litigants are presumed to speak English, as under New York State law there is no absolute right to an interpreter, even in criminal cases. **People v. Rivera**, 477 NYS 2d 732, Supreme Court Appellate Division Third Department (1984).

Earlier, we discussed the number of interpreters in the Civil Court, as well as their training requirements.

3.5. An Orderly Proceeding Adapted to the Nature of the Case and Controversy

The United States Supreme Court delineated three key factors which must be weighed in determining the process due to litigants in civil proceedings: the individual's private interest, the government's interest, and the risk of error if counsel is not provided.[10]

In **Matthews v. Eldridge**, the court reasoned that given the nature of the property or liberty interest at stake, the process provided by state law is fundamentally fair if it adequately guards against arbitrary or unlawful taking of those interests.

In assessing the individual's private interest, the tenant's loss of his or her housing unit, when the vacancy rate for rental housing in New York City is 2%, is substantial property interest.[11]

As we have previously discussed, 27,000 tenant families have eviction judgments entered against them annually by the Housing Part. One third of evicted

families end up in homeless shelters operated by the City.[12]

Due to the low rental housing vacancy rate and the state's deficit of 444,000 units of newly built or substantially renovated housing,[13] eviction is likely to result in temporary or prolonged homelessness, which adds to the growing homeless population. The hard numbers and significant characteristics of the homeless population are relevant to the individual's interest at stake. In New York City, estimates of the number of homeless people range from 50,600[14] to 60,000.[15]

In the past, the homeless population has been portrayed as mainly substance addicted or mentally ill people. However, today's homeless population has different characteristics.

Homeless faces began to change in the 1970's, a time of economic stagnation, rising unemployment, and frozen incomes. Homeless New Yorkers are no longer predominantly found in the Bowery but are now spread throughout the City. A younger homeless population has emerged, with women and Blacks beginning to constitute a larger portion of it.

Sixty percent of the homeless were found to have been evicted from their last residence, either by friends, relatives or landlords.[16] The New York State Department of Social Services concludes: "The homeless transient, the wandering loner who may be alcoholic or mentally disabled, is no longer typical of the great majority of people without shelter. More...include parents or children whose primary reason for homelessness is poverty or family disruption."[17]

Today's homeless comprise two primary populations. The first population, the singles, is somewhat reflective of early stereotypes. Initially, New York City's Mayor Edward I. Koch, reported that the majority of the homeless single people in New York City are mentally ill, alcholics or drug addicts.[18] The next day, Mayor Koch retracted his initial statement and said he had incorrectly added homeless statistics. The retraction was issued in Press Release #546 on December 31, 1986.

Families make up the other population and are more illustrative of the current trend in homelessness.[19] As many as 60% of New York City's homeless are families.[20] Further, almost 10,000 children are housed in one of five family shelters or in one of 55 "welfare hotels."[21]

The number of homeless families seeking shelter in New York City increased by 24% in the 12 month period ending in July of 1982. This figure doubled the following year.[22]

In 1984, the families forced "through no fault of their own"[23] to reside in New York City shelters remained there an average of 7.3 months. Four hundred and fifty-one families stayed in shelters for more than two years.[24]

The Village Voice reported in January of 1986, that New York City was spending $200 million per year in public funds to house the homeless in shelters and welfare hotels. It asserts that this figure constitutes $9,000 a year for every homeless person, which is $750 a month. (This is more than the price of many two bedroom apartments in all of the city's boroughs except Manhattan.)

Members of New York's homeless population are predominantly Black, twice as likely to be Hispanic, and only half as likely to be White.[25] Statistics of a 1984 New York State report indicated that approximately 90% of the sheltered homeless family population are people of color (approximately 95% in New York City) and approximately 70% of the single sheltered homeless adults are people of color (approximately 80% in New York City).[26]

These facts underscore the gravity of the individual's private interest in an orderly proceeding adapted to the nature of the case and controversy in legal housing disputes.

The state's interest in this has been codified in statutes which recognize tenants' interest in retaining their homes:

- The Rent Control Law 274 §4 (5) (1946) which empowers a state agency to regulate rents, renting and eviction practices.
- The Rent Stabilization Code §23 (A) (1969) responded to the need to regulate and control residential rents and evictions by guaranteeing each tenant the right to renew his or her lease.
- The Omnibus Housing Law ETPA §1 (1983)
- The Housing Maintenance Code NYCAC Chapter 26 and the Building Code Executive Laws §370 (1981) which are intended to preserve the existing housing stock.

There are several areas in Housing Part litigation which increase the risk of an erroneous decision if the litigant is not represented by counsel.

For example, a complete and articulate answer to a petition or a notice of petition must be filed; evidence must be marshalled, recognized and investigated; evidence must be presented to the court in a manner conducive to its admission

into evidence; witnesses must be cross-examined; inadmissible evidence must be objected to; persuasive legal arguments must be presented; and, finally, the facts of the case must be synthesized into legal arguments. The risk of an erroneous decision when litigants (particularly tenants) do not have counsel is high.[27]

The facilities of the Housing Part are a factor in assessing whether the proceedings are orderly. The courtrooms of the Housing Part were described as "still disgraceful and totally inadequate," by the 1984 Annual Report of the Advisory Council of the Housing Part.

The "overcrowding" and "pedestrian gridlock" in New York City's Housing Part has been described as "reminiscent of a bazaar of Calcutta,"[28] by the Honorable Sol M. Wachtler, Chief Judge of the New York State Court of Appeals.

The absence of the usual decorum found in U.S. courtrooms has led one of Manhattan's Housing Part judges to describe the Housing Part as "an orchestrated zoo,"[29] another called it "a circus."[30]

This lack of decorum results in an occasional fist fight.[31] A recent fist fight in the Manhattan Housing Part between a tenant's attorney and a landlord's son led to the lawyer being disqualified by the judge.[32]

Recently the heavy volume of cases in the Housing Part created a backlog in the issuance of eviction papers in the Brooklyn Housing Part which created favorable conditions for a bribery ring of thirteen city marshalls, lawyers, landlords and other court personnel to flourish until the arrest of the suspects on May 29, 1985.[33]

As previously discussed, stipulation agreements, "voluntarily" entered into by both parties, are the method by which the majority of the 135,000 cases which are sent into the trial part are adjudicated.

This practice raises the issue of whether litigants who enter into stipulations and thereby waive judicial proceedings, make the waivers based on knowledge and intelligence. Or do they stipulate because they lack knowledge of their defenses or because the stipulation agreements and their legal implications are not thoroughly explained?

These stipulatons are often negotiated in the judge's chambers, out of earshot of observers. Some stipulations are supervised by mediators or court clerks who are not attorneys.

Of the stipulations observed, the majority 67% (258) were entered into off the record. This inquiry's monitors noted recording devices visibly in operation in 16% (61) of the stipulations observed. This practice continues in conflict with

a July, 1985 directive from Eugene R. Wolin, Judge-in-Charge for New York County which states:

> "It is extremely important that Judges fully explain to litigants the pros and cons of every stipulation entered into between landlord and tenant in which the Judge has 'So Ordered' the stipulation. Any remarks to a pro se litigant whether he or she be a landlord or a tenant should be on the record so that there is no question that the terms of the stipulation were in fact explained. If a Judge does not explain the probable or possible consequences of a stipulation on the record, a notation should be made on the jacket as to why such an explanation was not made."

Was the full stipulation read to parties?

	No.	%
Yes	32	34
No	54	57
Unknown	1	1
No Response	7	7
Total	94	100%*

*Sums to 99 because of rounding

Was the stipulation summarized by judge?

	No.	%
Yes	41	44
No	43	46
Unknown	2	2
No Response	8	9
Total	94	100%*

*Sums to 101 because of rounding

Were litigants asked to explain terms?

	No.	%
Landlord	3	3
Tenant	12	13
Both	5	5
Unknown	62	66
No Response	12	13
Total	94	100%

It would appear that in the majority of cases the stipulation was not read to the parties: in only 34% of the cases was the stipulation read to both parties compared to 57% of cases in which it was not read. Also of concern is the further fact that in about one out of two cases the stipulation was not summarized by the judge.

In the few cases where observations could be made it would appear that tenants were more likely than landlords to be asked to explain terms.

Was noncompliance explained by judge?

	No.	%
Yes	34	36
No	43	46
Unknown	6	6
No Response	11	12
Total	94	100%

Noncompliance reveals the same pattern of neglect. In only 36% of cases was noncompliance explained by the judge. It was not explained in 46% of the cases.

Did the judge ask if stipulation read?

	No.	%
Landlord	2	2
Tenant	30	32
Neither	34	36
Unknown	8	9
Both	12	13
No Response	8	9
Total	94	100%*

*Sums to 101 because of rounding

The study reveals judges to be quite erratic and unsystematic in the questions they ask of the parties to a stipulation. It was quite common for the judge not to ask if the stipulation was read. In 36% of the cases neither the landlord nor the tenant were asked if the stipulaton had been read. In 32% of the cases the tenant but not the landlord was asked if the stipulation had been read. This corresponds to a figure of 2% of cases where the landlord but not the tenant was asked if the stipulation had been read. In only 13% of cases were both the landlord and the tenant asked if they had read the stipulation.

Did the judge ask if stipulation was understood?

	No.	%
Landlord	1	1
Tenant	36	38
Neither	27	29
Unknown	3	3
Both	20	21
No Response	7	7
Total	94	100%*

*Sums to 99 because of rounding

In nearly a third of the cases neither the landlord nor the tenant were asked if they understood the stipulation. The judges made more of an effort to determine if the tenant rather than the landlord understood the stipulation. In 38% of cases the tenant but not the landlord was asked if he or she understood the stipulation that had been signed. Hardly any landlords alone—1% in fact were

asked if they understood the stipulation. In only a fifth of the cases were both landlord and tenant asked if they understood the stipulation.

Did the judge ask if stipulation was agreed?

	No.	%
Landlord	2	2
Tenant	17	18
Neither	46	49
Unknown	3	3
Both	19	20
No Response	7	7
Total	94	100%*

*Sums to 99 because of rounding

A similar pattern obtains with regard to the question of agreement. In one out of two cases neither party to a stipulation was asked if they had agreed to the stipulation. A mere 2% of landlords alone were asked if they had agreed to the stipulation compared to 18% of cases in which the tenant alone was so asked. In only 20% of the cases were both landlord and tenant asked if they had agreed to the stipulation. As in the question of the understanding of the stipulation the judge once again showed more interest in the tenant than in the landlord.

Did the judge ask if stipulation was signed?

	No.	%
Landlord	0	0
Tenant	9	10
Neither	56	60
Unknown	2	2
Both	14	15
No Response	13	14
Total	94	100%*

*Sums to 101 because of rounding

Judicial passivity was even more evident in the question of the signing of the stipulation. In three out of five cases neither the tenant nor the landlord was

asked if the stipulation had been signed. Both parties were asked if they had signed the stipulation in only 15% of the cases. In none of the cases was the landlord but not the tenant asked if the stipulation was signed.

Did the judge sign the stipulation?

	No.	%
Yes	76	81
No	3	3
Unknown	5	6
No Response	10	11
Total	94	100%

Where did litigants sign the stipulation?

	No.	%
Before Judge	15	16
Elsewhere	52	55
Unknown	19	20
No Response	8	9
Total	94	100%

In at least four out of five cases the judge signed the stipulation. However, the study also found that in only 16% of the cases did the litigants sign the stipulation before a judge. In 55% of the cases the stipulations were signed elsewhere. For the remaining cases it was not possible to determine where the stipulation was signed.

Was the landlord asked how much rent was owed?

	No.	%
Yes	21	30
No	42	59
Unknown	3	4
No Response	5	7
Total	71	100%

Was the landlord asked if refused access?

	No.	%
Yes	7	10
No	54	76
Unknown	6	9
No Response	4	6
Total	71	100%*

*Sums to 101 because of rounding

Was the landlord asked why he agreed to the stipulation?

	No.	%
Yes	3	4
No	56	79
Unknown	8	11
No Response	4	6
Total	71	100%

Questions were rarely asked of landlords. In only 30% of the cases was the landlord asked how much rent was owed compared to 59% of the cases in which it was possible to establish that this question was not asked. In the remaining cases it was not possible to determine if this question had been put to the landlord. In even fewer cases were landlords asked if they had been refused access and why they agreed to the stipulation. The figures were 10% and 4% respectively.

Was the tenant asked if he could make payments?

	No.	%
Yes	33	47
No	27	38
Unknown	4	6
No Response	7	10
Total	71	100%*

*Sums to 101 because of rounding

Was tenant asked if the apartment need repairs?

	No.	%
Yes	19	27
No	40	56
Unknown	5	7
No Response	7	10
Total	71	100%

Was the tenant asked why he signed the stipulation?

	No.	%
Yes	7	10
No	46	65
Unknown	10	14
No Response	8	11
Total	71	100

The judges appear to be once again somewhat more inquisitive about the tenants than they were about the landlords. In nearly one in two cases the tenant was asked if he could make payments. However, in 27% of the cases did the judge inquire if the apartment in question needed repairs. As with the landlords, little interest was shown in why the tenant had signed the stipulation. In only 10% of the cases was this question asked of the tenant.

To assess the adequacy of litigants' understanding of stipulation agreements, Table 13, displays the frequencies of follow up questions not asked by judges in stipulation agreements.

TABLE 13: FOLLOW-UP QUESTIONS NOT ASKED BY JUDGES BY TENANT REPRESENTATION FOR STIPULATION AGREEMENTS

	Tenant Representation?			
Judges Failed to Ask	Yes	(No.)	No	(No.)
About a lease	46%	(24)	64%	(83)
How many units	41%	(24)	63%	(83)
Alternative apartment	33%	(24)	66%	(83)
How long tenant lived in unit	38%	(24)	69%	(83)

Table 13 suggests that legal representation has a direct bearing on whether judges ask follow up questions when reviewing in stipulation agreements. Judges were nearly twice as likely to fail to ask about alternative apartments and how long the tenant lived in the unit if the tenant had no counsel.

Table 13 indicates that judges seemed far less likely to ask questions when the tenant stood before the bench alone.

Further, the lack of consistent questioning by judges in the stipulation agreements which the monitors observed raises questions as to whether the stipulations were entered into by the litigants on the basis of adequate knowledge and information.

3.6. Appeal of Judgments

Due process safeguards do not include an automatic right to appeal. Where it exists, the right to appeal is a creation of statute. New York's CPLR § 5501-5532 provide for appeals from the Housing Part to the Appellate Term of the Supreme Court. However, several factors limit the effectiveness of appellate relief.

A default judgment or a stipulation cannot be appealed. The default judgment or stipulation agreement must first be vacated. To adequately lay a foundation for a meaningful appeal a pro se tenant (one who is not represented by a lawyer) must file an Order to Show Cause, and without legal training, he or she may not be able to include everything needed in the papers to lay a proper appellate foundation.

Second, for the appeal to be meaningful, the tenant must obtain a stay of eviction pending an appeal because if the tenant is evicted before the Appellate

Term renders its decision, the appeal will be meaningless. As a matter of course, the Appellate Term requires the tenant to deposit money equal to the amount of the final judgment as a condition of obtaining the stay. This is not always possible. Thus, here is a great likelihood that the tenant will be denied the stay even if the basis for their allegation was that they did not owe the money.

Since the bulk of the Housing Part's cases are nonpayment cases, and the posting of money can be problematic in cases in which the tenant needs to appeal, the appellate avenue loses some of its meaning.

Next, even if the tenant obtains a stay, they may not be able to perfect the appeal without an attorney as it entails:

1. After the tenant loses, he or she must submit a proposed order to the court and have it entered in the clerk's office.
2. The tenant must serve and file a Notice of Appeal and pay a fee of $15.00 to do so.
3. The tenant must then prepare a very complicated Order to Show Cause, for which there are usually no forms available, to the Appellate Term, which sets out the basis for the appeal and requests a stay.
4. The Order to Show Cause must be signed and served. If the stay is denied, the tenant has no further recourse. The tenant may also need to seek poor person's relief to have the court pay for the cost of the appeal as well as transcription expenses.
5. The recorded proceedings must be transcribed and then a motion must be served on the other side, and an agreement reached between parties that the transcript is acceptable.
6. The tenant must then research and write a brief following a general format and file some other forms as well.
7. When the tenant receives an answering brief, he or she must file a reply brief.
8. If the tenant wishes to argue the appeal he or she must read the New York Law Journal everyday to find out when their case is scheduled and where, and then go and argue at the appointed time.

A record of the proceedings in the Housing Part is a prerequisite to a litigant perfecting an appeal. New York State law requires that:

- Unless a party requests a manual stenographic record by filing a notice with the clerk two working days prior to the date set for an appearance before the court, hearings shall be recorded mechanically. A party may request a transcript from a mechanical recording.

- Any party making a request for a copy of either a mechanically or manually recorded transcript shall bear the cost thereof and shall furnish a copy of the transcript to the court, and to the other parties. (Judiciary Law, NYCCA §110 (k) (1972)).

The monitors observed recording devices in operation in the Motion Part 1% (1) of the time, noted their absence in 84% (61) of the cases and in 15% of their observations, did not know if the recording devices were in operation. Stenographers were absent 95% (69) of the time in the observed Motion Part proceedings.

Further, while the notations of default judgments are made on the court papers there is no mechanical or stenographic record made of default judgments.

4.0. Affirmative Enforcement of Legal Rights

Landlords make affirmative use of the court to enforce their legal rights in housing disputes. Their stake is money to provide maintenance services for their housing units and income for themselves as well as dominion and control of housing units which they rent to provide living space.

According to the Rent Stabilization Association, 30% of rental property owners in New York City have household incomes of less than $20,000 and 9% have incomes of less than $10,000. Fifty four percent of property owners have incomes between $10,000 and $40,000. The average rent for all rental housing in New York City is $322.90.[34]

As discussed earlier, there is a growing trend for landlords to bring actions for possession.

Previously, this inquiry reported that tenants rarely make use of the Housing Part to enforce their legal rights. Some significant factors contributed to this phenomenon:

- Tenants often lack knowledge of their legal rights vis-a-vis landlords and therefore cannot assert them.

- Tenants who want repairs made often withhold rent from the landlord until the repairs are made. Frequently, this results in the landlord initiating a non-payment action against the tenant.

- Litigation in the Housing Part can be frustrating (due, in part, to the lack of enforcement of court ordered repairs and the rare collection of fines as previously discussed) and time consuming for tenants, reports Andy Scherer, coordinating attorney in housing law, Community Action for Legal Services in Manhattan.

- The average income for residents of rented occupied units in New York City is $15,294.[35] Income has direct bearing on how much tenants can afford to pay attorneys to represent them and how many days of work they can afford to miss to appear in the Housing Part to affirmatively enforce their legal rights.

In addition to possession and use of housing units, tenants have a vested interest in decent housing as defined by the Legislature in the health and housing codes. In addition to functioning utilities such as heat, electricity and cooking gas the health of tenant families is also at stake. Health questions include: whether lead-based paints were used in apartments inhabited by children; whether there are appropriate window guards in apartments to prevent children from falling out and injuring themselves; whether the housing unit is infested with vermin such as rats, roaches, and silverfish; whether hallways are sufficently lighted to prevent accidents and muggings; and whether doors and locks are adequate security against break-ins.

Under the legislative scheme for housing disputes, the Legislature intended to enforce the Housing Code through private causes of
action. This statutory scheme assumes a certain level of knowledge of legal rights and procedures which is apparently lacking for a significant number of litigants.

5.0. National Access to Justice Problems in Housing Courts

To identify national access to justice problems in Housing Courts, this inquiry mailed questionnaries to three hundred Legal Services Corporation offices (and to Legal Aid offices in jurisdictions which do not have Legal Services Corporation offices). The respondents are "self-selected," as the introduction explains. However, Legal Services attorneys are in a position to observe the operation of Housing Court as Legal Services offices represent low-income litigants in civil matters such as housing disputes. Thus, their opinions are probative of access problems in housing disputes.

Table 14 displays the geographical diversity of the respondents.

TABLE 14: LEGAL SERVICES RESPONDENTS BY STATE

State	Legal Services Respondents to Questionnaires
Alaska	Alaska Legal Services Corporation
Arkansas	Legal Services of Northeast Arkansas
California	San Francisco Neighborhood Legal Assistance Foundation
Connecticut	Neighborhood Legal Services
Florida	Jacksonville Area Legal Aid Inc.
	Legal Services of Greater Miami, Inc.
Georgia	Atlanta Legal Aid Society, Inc.
Illinois	Land of Lincoln Legal Assistance Foundation, Inc.
	Prairie State Legal Services
Iowa	Legal Services Corporation of Iowa
Kansas	Kansas Legal Services, Inc.
Kentucky	Legal Aid Society, Inc.
Louisiana	North Louisiana Legal Assistance Corporation
Maryland	Legal Aid Bureau, Inc.
Massachusetts	Volunteer Lawyers Project
Michigan	Lakeshore Legal Services
	Legal Aid of Central Michigan
	Legal Services of Eastern Michigan
	Legal Services Organization of Southcentral Michigan

Table 14: LEGAL SERVICES RESPONDENTS BY STATE (Continued)

State	Legal Services Respondents to Questionnaires
	Legal Services Southeast Michigan
	Michigan Migrant Legal Assistance Project
Minnesota	Judicare of Anuka County, Inc.
Missouri	Legal Aid of Southwest Missouri
	Legal Aid of Western Missouri
	Legal Services of Eastern Missouri
	Meramec Area Legal Aid Corporation
Nebraska	Legal Aid Society Inc.
	Western Nebraska Legal Services
New Jersey	Somerset Sussex Legal Services
	Union Co. Legal Service
	Warren County Legal Services
New Mexico	Legal Aid Society of Albuquerque
	Southern NM Legal Services, Inc.
New York	Chautauqua City Legal Services
	Chemung County Neighborhood Legal Services Inc.
	Farmworker Legal Services of New York
	Legal Aid Society of Northeastern New York Services
	Legal Services of Central New York Inc.
	Mid-Hudson Legal Services Inc.
	Mid-Mohawk Legal Services Inc.
	Neighborhood Legal Services Inc.
	North County Legal Services
	Oak Orchard Legal Services Inc.
Ohio	Central Ohio Legal Aid Society Inc.
	Legal Aid Society of Dayton
	Ohio State Legal Services Association
	Rural Legal Aid Society of West Central Ohio
	Stark County Legal Aid Society
Oklahoma	Legal Services of Eastern Oklahoma Inc.

Table 14: LEGAL SERVICES RESPONDENTS BY STATE (Continued)

State	Legal Services Respondents to Questionnaires
Pennsylvania	Blair Company Legal Services
	Keystone Legal Services Inc.
	Legal Aid Inc.
	Montgomery County Legal Aid Services
	Neighborhood Legal Services Association
Rhode Island	Rhode Island Legal Services Inc.
South Carolina	Neighborhood Legal Assistance Program
	Palmetto Legal Services
	Piedmont Legal Services Inc.
Texas	East Texas Legal Services Inc.
	Gulf Coast Legal Foundation
	Legal Aid Society of Central Texas
	North Central Texas Legal Services Foundation
Virginia	Blue Ridge Legal Services Inc.
	Charlottesville Albemarle Legal Aid Society
	Legal Aid Society of Roanoke Valley
	Penninsula Legal Aid Center Inc.
	Rappahannock Legal Services Inc.
	Southwest Virginia Legal Aid Society
	Tidewater Legal Aid Society
	Virginia Legal Aid Society
West Virginia	Legal Aid Society of Charleston
	North Central West Virginia Legal Aid Society
Wisconsin	Western Wisconsin Legal Services
TOTAL 29	73

5.1. National Notice Problems in Housing Court

This inquiry has identified service of process as a national access to Housing Courts problem on the basis of responses it received from Legal Services attorneys. Table 15 displays the responses to the question, "Is improper service a problem?"

TABLE 15: IS IMPROPER SERVICE A PROBLEM?

	No.	%
Always	1	1
Frequently	14	19
Sometimes	38	54
Rarely	14	19
Never	1	1
No Answer	4	6
Base	72	100%

Table 15 indicates that improper service of process would seem to be a considerable problem in the housing courts nationally. While only 1% said it was "always" a problem, 19% reported that improper service was "frequently" a problem. Another 53% said that improper service was "sometimes" a problem compared to 19% who said it was "rarely" a problem and only 1% who said it was "never" a problem.

5.2. National Problems in Litigants' Opportunity to be Heard and to Defend

As this inquiry has already established, representation by counsel has a direct bearing on tenants' opportunity to be heard and to defend. Table 16 displays Legal Services attorneys' estimates as to how many tenants are represented in Housing Courts in their jurisdictions.

TABLE 16: TENANTS REPRESENTED?

	No.	%
Less than 5%	24	33
5 — 10%	24	33
11 — 15%	5	7
16 — 20%	7	10
21 — 25%	4	6
36 — 45%	1	1
46 — 55%	1	1
More than 85%	1	1
No Answer	5	7
Base	72	100%*

*Sums to 99% because of rounding

Table 16 indicates that the Legal Services respondents reported that very few tenants are represented. Thirty-three percent of the respondents said that fewer than 5% of the tenants were represented. A total of 66% said that fewer than 10% of tenants were represented. Few respondents reported that more than one half of tenants were represented.

Several factors including manpower affect the determination of which housing cases the Legal Services offices are able to accept. Table 17 displays the respondents' perceptions of those factors.

TABLE 17: FACTORS DETERMINING ACCEPTANCE OF HOUSING CASES

	No.	%
Emergency/Immediate need	57	80
Available staff	44	62
Chance of winning high	33	46
Office takes this kind of case	29	41
Elderly/children involved	22	31
First come, first served basis	9	13
Accepts all housing cases	8	11
Cost	8	11
Other	7	10
No Answer	3	4
Base	220	(Respondents were able to make more than one response.)

Table 17 indicates that the most important factor determining acceptance of a case was that of immediate need or an emergency. This factor was cited by 8% of the respondents. The other factors most often cited were: available manpower (62%), chance of winning high (46%), office takes this kind of case (41%), elderly/children involved (31%).

Few of the respondents cited such factors as: first come, first served (13%), accepts all housing cases (11%), and cost (11%).

Thus, available staff is a major factor in determining which housing cases are accepted. To assess the impact of the Reagan administration's budget cuts on available staff for housing cases, Table 18 displays changes in the number of housing litigation lawyers since the budget cuts began in 1981.

TABLE 18: CHANGES IN THE NUMBER OF HOUSING LITIGATION LAWYERS

	No.	%
Number of lawyers has decreased	31	44
Number of lawyers has increased	8	11
Number of lawyers is unchanged	14	20
No Answer	18	25
Base	71	100%

Table 18 indicates that 11% of the respondents reported an increase in the number of housing litigation attorneys. In contrast, nearly half of the respondents (44%) experienced a decrease in the number of housing litigation attorneys.

These figures have additional significance when compared with the overall figures on the changes in the number of Legal Services attorneys which are displayed in Table 19.

TABLE 19: CHANGES IN THE NUMBER OF LEGAL SERVICES ATTORNEYS

	No.	%
Number of lawyers has decreased	62	81
Number of lawyers has increased	8	10
Number of lawyers is unchanged	6	8
No Answer	1	1
Base	77	100%

Table 19 shows that the majority of the respondents have experienced cuts in the number of lawyers on their staffs since the budget cuts: 81% of the respondents reported a decrease in the number of lawyers on their staff since the budget cuts compared to only 10% who experienced an increase.

Another element which contributes to litigants' opportunity to be heard and to defend in Housing Court is the extent to which information is provided by the clerks's office. Table 20 displays the respondents' perceptions of the information litigants receive.

TABLE 20: INFORMATION PROVIDED BY THE CLERK'S OFFICE

	No.	%
Answer basic questions	43	60
Provide phone number of Legal Services Office	41	57
Answer specific questions	8	11
Helpful post-judgment	5	7
Other	4	6
Nothing	11	15
No Answer	3	4
Base	72	(Respondents were able to make more than one response.)

Table 20 seems to indicate that the clerk's offices in the respondent's jurisdictions provide little information for litigants. Sixty percent of the respondents reported that in their experience, clerks would answer basic questions and 57% said that the clerks would provide litigants with the number of Legal Services. Only 11% said that clerks would answer specific questions and only 7% reported that they would give helpful post-judgment information. Eleven percent of the respondents said that the clerks would do "nothing" to provide litigants with information.

Another element in ligitants' opportunity to be heard and to defend is the availability of Housing Court legal forms in languages other than English. Forms are available only in English in 85% of the respondent's jurisdictions.

5.3. National Problems Related to an Orderly Proceeding Adapted to the Nature of the Case and Controversy

As previously discussed, the individuals' interest, the state's interest and the risk of an erroneous decision if the litigant is not represented are factors which must be weighed in determining whether a litigant is afforded due process when life, liberty or property may be taken from him or her. As in New York, the individuals' interest at stake in Housing Courts is often the tenant's interest in a housing unit. Again, homelessness is the most severe consequence when tenants are deprived of their housing units.

Newark, New Jersey officials estimated that it had 4,000 to 7,000 homeless people last year. New Haven, Connecticut had 116 families in emergency housing as of October – even before winter set in. Atlanta, Georgia has about 5,000 homeless people but shelter facilities for only 1,800. Kansas City, Kansas has between 7,000 and 12,000 homeless. Philadelphia's homeless shelter population has multiplied 400% from 3,000 in 1981 to 13,000 in 1986. Los Angeles' homeless population is more than 40,000 which is equivalent to the population of Atlantic City, New Jersey.[36]

A Housing and Urban Development telephone survey of 184 shelters nationwide found that in 1984, roughly one third of America's homeless were women and family members. The representation of minority groups was also disproportionately high in the homeless population.[37]

Thus, the nature of the case and controversy seems to require stringent due process protections, especially for tenants in eviction proceedings.

In contrast to the unitary Housing Part in New York City, many jurisdictions, observed in this inquiry such as Bridgeport, Norwalk and Stamford, Connecticut, which this inquiry observed, adjudicate housing cases in small claims courts. Some jurisdictions resolve housing disputes in other inferior courts which are not devoted exclusively to housing issues. These practices raise several questions as to the orderliness of the proceedings in light of the nature of the case and controversy.

Randall W. Scott, the former director of the American Bar Association-Housing and Urban Development, National Housing Justice and Field Assistance Program observes:

> "Close examination would disclose that housing litigation is fragmented in its distribution among courts, often unnecessarily. Administrative and legislative action should be undertaken to correct these deficiencies. Otherwise, the results of the justice system can be absurd. In many cities, the landlord must go to a summary proceedings court to evict the tenant and also may be forced into a separate small claims court action to collect back rent. Moreover, the tenant may have to go to a small claims court to obtain a refund of his or her security deposit. If the tenant initiates the action, the landlord may choose to counter with claims beyond the jurisdiction of the small claims court; this causes the case to be escalated to a regular civil court, instead."[38]

This inquiry found that housing litigation is often fragmented among several courts as Table 21 displays.

TABLE 21: COURTS HANDLING HOUSING CASES

	No.	%
Divided Among Several Courts	68	94
Municipal/Civil Court	25	35
District Court	25	35
Small Claims	18	25
County court	15	21
Separate Housing Part	7	10
Other	6	8
No Answer	4	6
Base	168	(Respondents were able to make more than one response.)

Table 21 indicates that 94% of the respondents reported that housing cases were divided among several courts. Thus, the results Mr. Scott discussed may lead to complex litigation, which again underscores litigants' need for representation by competent counsel.

5.4. National Appellate Problems

This inquiry has identified appeal of judgments as a problem which limits litigants' access to the Housing Courts. As Table 20 indicates only 7% of the respondents indicated that clerk's offices provided "helpful" information to litigants after judgments.

5.5. The Need for Further Research Into National Problems in Access to Housing Courts

The problems which this inquiry has identified, with its limited resources, indicate that further research, along the lines of the National Center for State Courts' 1979 study *Housing Justice in Small Claims Court*, would be helpful in documenting access to justice problems in the nation's Housing Courts.

6.0. Recommendations for Meaningful Participation in and Access to Housing Courts

6.1. To Improve Notice of Cases and Controversies to Litigants

6.1.A. All summonses, disposses and forms in Housing Court should be written in plain language to facilitate comprehension of their content.
RATIONALE: Providing legal pleadings and forms for Housing Court litigants in plain English should reduce the amount of assistance litigants require to defend their legal rights in involuntary proceedings and to affirmatively enforce their rights in Housing Courts.

6.1.B. Legal pleadings and forms should be provided in the major languages spoken in the jurisdiction.
RATIONALE: In jurisdictions such as New York and California where there are large segments of the population which are non-English speaking or bilingual, legal forms provided in foreign languages should facilitate meaningful participation in Housing Courts. A notice in the third languages of the jurisdiction should indicate that interpreters in these languages (*i.e.*, Chinese, Korean, etc.) are available and how they can be contacted.

6.1.C. Personal service of process and "nail, mail and file" service of process should be performed by bonded process servers, certified by the Housing Court.
RATIONALE: Due to the prevalence of service of process problems, as discussed in this inquiry's findings, process servers should be bonded for at least $50,000 and certified by the Housing Court in their jurisidiction.

6.1.D. Inquests should be required before the entry of any default judgment in holdover and nonpayment cases.
RATIONALE: By requiring landlords to substantiate their allegations on the record in open court, the number of "bad faith" evictions and evictions in which tenants are not given adequate notice should be reduced. Inquests are required by some jurisdictions for the taking of comparable property rights (e.g., no contest divorces in New York require inquests prior to equitable distribution of the marital assets).

6.1.E. Second Calendar calls should be required before the entry of a default judgment in holdover and nonpayment cases.
RATIONALE: Due to the severity of the consequences of the eviction proceedings in metropolitan areas, such as New York, second Calendar calls should be mandatory to give litigants every opportunity to be heard and to defend.

6.1.F. Pro se clerks should be provided in Housing Courts to assist unrepresented litigants.
RATIONALE: Pro se clerks should be provided because of the imbalance of power between the represented landlord and the unrepresented pro se litigant: and the limits on litigants' opportunity to be heard and to defend when they are not provided with adequate procedural information (*e.g.*, none of the clerks in New York City's Housing Part have been specifically

trained for the position of pro se clerk as described by the Legislature, therefore, the steps in the litigation process and tenant's defenses are not consistently, fully explained).

6.1.G. Signs which indicate the location of the Housing Part, its Calendar, motion, trial parts and its clerk's offices should be displayed prominently in the buildings where they are located.
RATIONALE: Litigants should be able to locate the exact room they are scheduled to appear in by consulting the directory in the lobby of the court building. This should reduce the confusion often involved in locating the apporpriate court room.

6.1.H. Instruction booklets which explain how to use Housing Court to defend a litigant's legal rights in involuntary proceedings and how to affirmatively enforce a ligitant's legal rights should be provided to all Housing Court litigants.
RATIONALE: Plain English instruction booklets for Housing Court litigants, such as those provided to litigants on request in the Connecticut Small Claims Court, should facilitate litigants' use of Housing Courts and provide notice of Housing Court litigation procedures.

7.0. Recommendations to Facilitate Litigants Opportunity to be Heard and to Defend

7.1. To Facilitate Meaningful Participation in Housing Court Litigation

7.1.A. Appointed counsel should be provided to litigants faced with evictions who cannot afford to retain counsel.
RATIONALE: Housing Court proceedings are formal legal proceedings

which require legal training or representation by competent counsel to adequately litigate housing disputes.

This inquiry has documented the individual's interest and the state's interest in housing disputes as well as the risk of an erroneous deprivation of litigant's rights when he or she is not represented. Further, the Legislatures of many states have grafted defenses *e.g.*, implied warranty of habitability, onto the substantial body of landlord-tenant law. These defenses can best be asserted by competent counsel.

Due to the particular severity of the consequences of holdover proceedings *i.e.*, homelessness, indigent litigants should be appointed counsel.

7.1.B. Interpreters should be provided to give verbatim translation of Housing Court proceedings to all non-English speaking litigants.
RATIONALE: It is extremely difficult for non-English speaking litigants to assert and defend their legal rights. Interpreters should provide verbatim interpreters to non-English speaking litigants to ensure that they receive notice of the case and controversy; have an opportunity to be heard and defend; can participate in the court proceedings and avail themselves of appellate remedies.

8.0. Recommendations to Ensure Orderly Proceedings Adapted to the Nature of the Case and Controversy

8.1. To Improve Housing Dispute Resolution

8.1.A. Prior to signing any Housing Court stipulations, judges should be mandated to explain to tenants that the landlord has the burden of proof, that the tenant does not have to sign and that the tenant is entitled to a trial in which his or her defenses and counterclaims are presented.

RATIONALE: Due to the inadequacy of explanations and follow-up questions in many of the stipulation agreements this inquiry observed, formal explanations, similar to charges by judges in jury trials should be given to all Housing Court litigants before they enter into stipulated agreements.

8.1.B. Stringent civil and criminal penalties should be leveled against landlords who fail to honor stipulations, make court ordered repairs or fail to pay Housing Code and Building Code fines.
RATIONALE: This inquiry has identified enforcement of Housing Court judgments as a significant problem in New York's Housing Court and in the Housing Part of the Connecticut Small Claims Court. Failure to enforce Housing Court judgments undermines the litigants' faith in the U.S. judicial system and frustrates their due process protections which are mandated by the U.S. Constitution. Treble damages should be awarded for code violations as the Legislature intended to enforce them through litigants' private causes of action. Treble damages would provide a material incentive for code enforcement.

9.0. Recommendations to Facilitate Appellate Review of Housing Court Judgments

9.1. To Expedite Appellate Relief

9.1.A. Recording of all Housing Court proceedings should be mandatory.
RATIONALE: This inquiry has identified the inconsistent recording of Housing Part proceedings in New York City as a significant problem. Records of Housing Court proceedings are a prerequisite to litigants perfecting appeals.

9.1.B. Rubber stamps, such as "traverse waived," which limit litigants due process safeguards issues should not be used. Waivers which throughly explain

the rights which litigants are relinquishing should be provided and signed by the litigant in question.
RATIONALE: This inquiry's monitors documented a practice in New York City's Housing Part in which clerks frequently used rubber stamps with legal implications with no explanation in many of the cases they observed. Written waivers, signed by litigant should facilitate their waiving legal rights on the basis of knowledge and intelligence.

9.1.C. Inquest records should be provided before default judgments are entered in all summary proceedings.
RATIONALE: In light of the prevalence of service of process problems, inquest records would provide an appellate avenue for litigants who have default judgments entered against them without having received actual notice.

9.1.D. Requirements for rent deposits before an order to show cause as granted by some judges, should be prohibited.
RATIONALE: Requiring rent deposits before granting an order to show cause in excess of the $20.00 filing fee needed to initiate an action in the New York Housing Part is an undue hardship on tenants who seek to defend their legal rights.

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Housing Court Glossary

ACCESS (AND PROVIDING ACCESS):
An agreed upon time for the landlord and/or his workers to go to the tenant's apartment, usually to make repairs.

ADJOURNMENT:
Postponing a case.

ANSWER:
An oral or written reply containing the defenses to the landlord's charges. It includes the reasons the tenant believes that he or she should win.

APPEARANCE:
The process of agreeing that the court should hear a case, either by a written notice or by actually showing up in court, in person or through an attorney.

APPLICATION:
A request to the court for a postponement or some other relief. When the court calendar (see Calendar Call) is read, people responding "Application" are indicating that they would like a postponement.

ARGUMENT:
Oral discussion on a Motion before a judge.

ATTORNEY'S FEES (LEGAL FEES):
Charges added on because the other side hired an attorney.

BOND:
A guarantee, secured by the promise to pay a sum of money, that the parties to a case will appear again if the case is adjourned or if the court orders a postponement or a cancellation of an eviction.

BY THE COURT:
A request that a case by heard by a judge rather than by a mediator (see Mediator).

CALENDAR CALL:
The calling out by a judge or clerk of the list of cases for the day. As cases are called they are sent to smaller courtrooms for trial if all parties to the case are present.

CALENDAR PART:
The main courtroom in which the calendar is called.

CLERK'S OFFICE:
The office in which the court's paperwork is done and files are kept. All court papers in a case should be filed in the clerks office under the case index number.

CONFERENCING:
Discussing the case before a judge sets it for trial. It is an informal process to attempt to settle a case at an early stage.

CONSENT:
An agreement on an issue between both parties such as a new court date.

DEFAULT JUDGMENT:
The failure of a party to come to court when required. A default judgment is issued followed by a judgment against the absent party.

DEPOSIT:
Rent money given to the court to hold.

DISCONTINUE:
When the party who initiated a case voluntarily ends it.

DISPOSITION:
Any final resolution of a case. Dispossession order to make an appearance in court on a housing dispute which does not mean the tenants must leave.

DSS (NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES):
The city agency responsible for inspecting buildings, taking landlords to court, managing city-owned buildings, taking tenants in city-owned buildings to court and making repairs.

EVICTION:
Removing a person or people from an apartment. Legal evictions must be conducted through Housing Court and the tenant is supposed to be given an opportunity to be heard and to defend.

HOLDOVER:
A proceeding in which the landlord's primary objective is to evict the tenant which is not based on non-payment of rent.

HPD (NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT):
The city agency responsible for inspecting buildings, taking landlords to court, managing city-owned buildings, taking tenants in city owned buildings to court and making emergency repairs.

INQUEST:
A hearing to present testimony in support of claims made by the party who is present in which one side, usually the tenant, is not present. This is done to make sure that the claims of the other party can be established on the record.

INSPECTION:
An examination of the tenant's apartment by the city (see HPD).

INTERPRETER:
A translator assigned by the court to help people who do no speak English well.

JUDGMENT:
The court order which ends a case. The judgment states who wins and what they win (eviction, money, etc.).

LEASE:
The agreement by which a landlord rents an apartment to a tenant.

LITIGANT:
A party to a lawsuit. In Housing Court, the litigants are usually the landlord and the tenant.

MEDIATION:
A process in which a third party known as a mediator tries to help the two litigants in a case to reach an agreement without seeing a judge. Cases are sent to mediation at the Calendar Call.

MOTION:
A formal request to a judge for an order directing or permitting some action. The party making the request is the "Moving Party." In Housing Court, motions are usually heard in the Motion Part.

NAIL, MAIL AND FILE:
RPAL Section 735 allows service to be made by attaching a copy of the notice and petition on the entrance door on the premises at issue, mailing the petition to the respondent by registered or certified mail and by regular first class mail, the notice of petition, or order to show cause, and petition together with proof of service must be filed with the court or the court clerk within three days of mailing the papers to the respondent.

NONCOMPLIANCE:
The failure to carry out an obligation such as a provision of an agreement or court order.

ORDER TO SHOW CAUSE (OTSC):
A court order requiring that party appear and give the reason why court should not take a certain action requested by the Moving Party. In Housing Court, the OTSC is usually brought by the tenant who is seeking to stop or delay his or her eviction.

PART:
A room in the Housing Court.

PARTY:
Someone participating in a lawsuit. In Housing Court usually the landlord and the tenant.

PETITION (AND PETITIONER):
The court paper initiating certain lawsuit including eviction proceedings in Housing Court. The party bringing the lawsuit, usually the landlord, is the petitioner.

RECORDING DEVICE:
A tape recorder for recording court proceedings.

RENT ABATEMENT:
A reduction in rent owed ordered by the judge and based on the landlord's failure to provide services and/or make necessary repairs.

RENT CONTROL:
A program regulating the amount of rent paid by many long-term tenants in New York City and the conditions under which a landlord may evict a rent-controlled tenant are also regulated.

RENT STABILIZATION:
A program similar to Rent Control which applies to many tenants in New York City buildings with six or more units regulating the amount of rent to be paid and the conditions under which tenants may be evicted.

REPRESENTATION:
The use of an attorney to present a person's case in court. Although an individual has the right to present his or her own case and obtain free advice from anyone he or she wishes, only an attorney may "represent" him or her before a judge.

RESERVE DECISION (OR DECISION RESERVED):
Notification by a judge who has been unable to make an immediate decision on a case (or a part of a case) at the end of court proceedings that the parties must await decision.

RESPONDENT:
The person being sued in Housing Court cases, *i.e.*, the defendant. In the nonpayment and holdover cases, the tenant is the respondent.

SERVICE:
The particular method required by law to deliver or send court papers to a person, notifying him or her that he or she is being sued and has the right to come to court and defend his or her interests. A person is properly "served" with court papers when the method of delivery required by law is followed. Otherwise, the person being sued may claim "Improper Service." Improper service may occur even if the person being sued actually receives the court papers but not in the manner required by law.

SETTLEMENT:
When the parties to a lawsuit reach an agreement about the way to resolve the case without asking a judge to decide it. A settlement in Housing Court is a jointly written statement signed by both parties.

STIPULATION:
A written agreement or settlement (See Settlement) which is signed by the parties in a Housing Court case. The stipulation is then signed by a judge.

TRAVERSE:
A proceeding in which a person contends that he or she was not sent ("served") court papers in the exact manner required by law.

TRIAL:
The state of a court case at which the parties present evidence to a judge to permit him or her to decide the facts of a case. A written or taped record should be made of the trial. A trial is held when the parties involved cannot agree on the facts or otherwise settle a case.

TRIAL PART:
A room in the courthouse where judges preside over trials.

UNITS:
Apartments in a building.

WAIVE:
The act of giving up a potential legal right.

WITHDRAW:
The act of retracting a request that a judge order a specific act or take specific action. (for example: Motion Withdrawn).

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