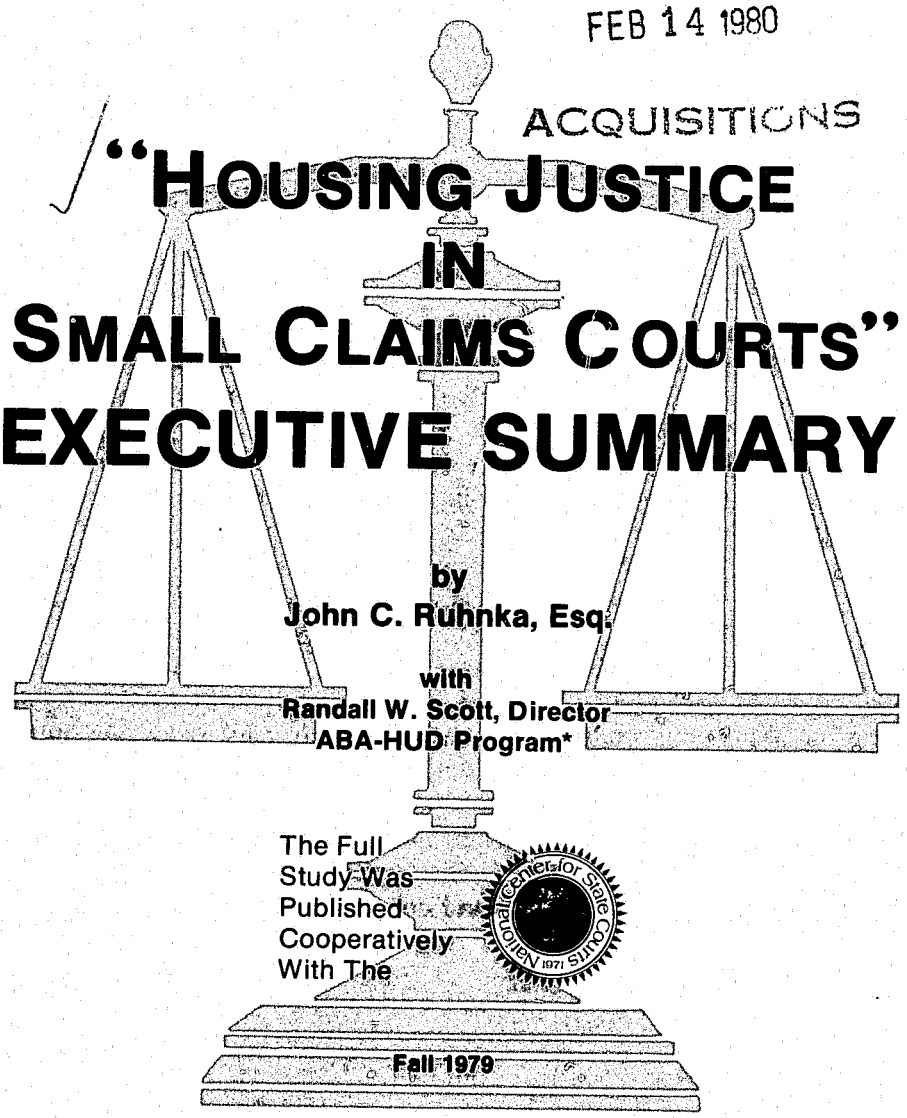
EXECUTIVE SUMMARY: HOUSING JUSTICE IN SMALL CLAIMS COURTS

ABA-HUD National Housing Justice and Field Assistance Program

"HOUSING JUSTICE IN SMALL CLAIMS COURTS" EXECUTIVE SUMMARY



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*NATIONAL HOUSING JUSTICE AND FIELD ASSISTANCE PROGRAM

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This publication draws on the data and research performed under an earlier study, which research work was supported by Grant No. APR. 75-07905 from the National Science Foundation, RANN Program, to the National Center for State Courts. This earlier study was published by the National Center for State Courts and copyrighted in 1978 as *Small Claims Courts: A National Examination.*

Preface

The American Bar Association's Special Committee on Housing and Urban Development Law is pleased to make available this *Executive Summary* of the study report, *Housing Justice in Small Claims Courts*, produced as part of the ABA-HUD National Housing Justice and Field Assistance Program. We are particularly appreciative of having had the cooperation of the National Center for State Courts, which permitted us to utilize background data from its landmark study, *Small Claims Courts: A National Examination*, and is the publisher of the full, book-length report here capsulized.

We hope that this study illuminates issues that will assist in evaluating our national court and dispute resolution apparatus as it relates to landlord-tenant and other housing matters. We learn from author John Ruhnka's informative study that housing matters are a significant amount of the caseload in small claims courts. Moreover, housing and landlord-tenant cases have special difficulties associated with them, at least as revealed by the national sample of fifteen geographically dispersed courts used for this study. As there are some unique issues associated with these types of cases, it may be necessary to introduce special innovations and approaches into small claims courts, in addition to the general reforms identified by the study, to ensure that "housing justice" is available in our local judicial systems.

The ABA-HUD National Housing Justice and Field Assistance Program began in mid-1978 and was planned to run for a total of 18 months. Several other studies and reports have been undertaken and are being produced for the public, as noted elsewhere in the *Executive Summary*, as part of the project. This Program follows a tradition of useful research performed by the Special Committee's staff and its members, liaisons, and national advisors in a succession of HUD-supported studies. All of the Special Committee members serve in a *pro bono* capacity, and in the current program, this has meant intensive and frequent meetings, extensive reading and review of draft materials, and even the preparation of papers and articles by the Special Committee's advisors and liaisons. Similar contributions were made in the Special Committee's three-year project for HUD, which resulted in the major reference work titled, *Housing for All Under Law* and its "Lawyers in Housing Program," which placed lawyers in eight major cities to provide technical assistance to local jurisdictions for the construction of federally subsidized housing.

The Special Committee on Housing and Urban Development Law looks forward to continued and active involvement in the fields of housing and urban development as we enter the 1980s and the fourteenth year of this Special Committee's work.

Laughlin E. Waters, Chairman
Special Committee on Housing
and Urban Development Law

Background

In mid-1978, the United States Department of Housing and Urban Development (HUD) awarded a contract to the American Bar Association to study the state of "housing justice" in the nation's courts. The ABA's Special Committee on Housing and Urban Development Law, which was given major oversight responsibilities, established the National Housing Justice and Field Assistance Program (part of the ABA's Division of Public Service Activities) to accomplish this combined ABA-HUD work. The Program's major focus for a one and a half year period was to study the innovations called "housing courts" and to report its findings to the public.

At the same time, both the ABA and HUD were impressed with a 1978 study of small claims courts in general. This study had been published as a book, *Small Claims Courts: A National Examination.* Thus, it was determined that as a part of the new ABA-HUD Program, small claims courts also should be examined as to the extent they handle housing matters, based on this 1978 study. It was felt that new comparative data might emerge.

The original small claims court study had been performed over a two year period by John C. Ruhnka and Steven Weller (then of the National Center for State Courts) under a grant from the National Science Foundation. Starting in late 1978, all of the original data was reanalyzed for the new ABA-HUD Program by Mr. Ruhnka and Mr. Weller from the standpoint of housing issues, as described further in this *Executive Summary.* The full results of this new work were published by the National Center for State Courts in the Fall of 1979, as a book titled, *Housing Justice in Small Claims Courts.*

These two books are commended to the reader. Many of the most important recommendations and innovations for small claims courts can only be found in the full texts. In fact, the two books are "tandem" volumes, and deserve use together if the reader intends to analyze his or her own local court system and to propose much-needed reforms. This short *Executive Summary* is less a summarization of the full 1979 report than it is a highlighting of a few of the specific data and other issues that we feel are most important.

Nor should the reader neglect the three other major studies of the ABA's National Housing Justice and Field Assistance Program. They are:

Housing Justice Out-Side of the Courts: Alternatives for Housing Dispute Resolution

This report focuses on more than 20 local programs that are non-judicial in nature. Important insights are offered on dispute resolution centers, mediation services, neighborhood justice centers, and court-satellite programs. (Available from the ABA in Washington, D.C.; Fall 1979.)

Urban Law Annual Volume 17–Special Symposium Issue

This book was produced in cooperation with the Board of Editors at

Washington University. It focuses on housing courts, with articles by the judges as well as local critics. There is additional treatment of some non-judicial programs as well. (Available from the Urban Law Annual in St. Louis; Fall 1979.)

Housing Justice in the United States: Recommendations for Change and Innovation in Our Courts

This is the final report of the ABA's Program, prepared by staff and the members and national advisors of the ABA's Special Committee on Housing and Urban Development Law (Release is anticipated in 1980, and it is expected that this will be published as a major hard-bound reference volume.)

Special thanks are extended to the reviewers of the full study, on which this *Executive Summary* is based, and particularly:

Judge James D. Rogers of Minneapolis and Judge Francis X. Smith of New York City, as well as Judge Paul G. Garrity of Boston, Judge Alan S. Penkower of Pittsburgh, Judge Richard L. Banks of Boston, Dr. Max R. Kargman of Boston, Mr. Dan N. Epstein of Chicago, and the Chairman, Judge Laughlin E. Waters of Los Angeles. Mr. Daniel L. Skoler, Division Director at the ABA, pointed the way for this new study of housing in small claims courts, and Katherine McG. Sullivan of the ABA aided in establishing and administering the overall Program.

Special thanks also go to Mr. Bob Rich and his staff at the National Center for State Courts, who provided significant additional expertise, as did Mr. Bernard Seward, Dr. Fred Eggers, and Mr. David Polatsek of HUD: all of whom provided very useful comments on the full study (which has been published independently, as mentioned above).

The editor of this *Executive Summary* assumes full responsibility for the editing and final presentation of the material herein, gratefully acknowledging the preparation of a more extensive and complete draft by the author of this major national study, Mr. John C. Ruhnka of Denver. Credit for the work is due him.

Any opinions expressed herein may be ascribed to the author/editor, and do not represent any views or positions of the ABA or of HUD.

Introduction: Small Claims Courts In General

The use of small claims courts in this country is wide-spread. Forty-two states currently use small claims courts for the resolution of smaller disputes, which include a wide variety of housing-related matters. Although the jurisdiction of small claims courts is limited by statute, both in dollar value of claims and the type of relief that can be provided, on an annual basis it is estimated that more than 100,000 persons seek justice for housing-related disputes in small claims courts.

These courts usually do not exist independently as a separate "court" in the physical sense. Rather, they represent a special and simplified procedure provided under statute to govern the adjudication of a specified range of smaller civil disputes (generally defined as a civil claim that can be settled in money damages below a specified dollar limit, averaging about $600 nationwide). The small claims trial docket usually constitutes a separate part or division of existing lower courts of general jurisdiction.

The adversary process is retained in small claims court in the sense that the plaintiff still bears the responsibility of proving his claim, and the defendant bears the burden of disproving or defending against the claim. By statute, small claims judges are given broad discretion to assist litigants at trial in bringing out relevant facts in a dispute and in identifying the legal issues involved. However, the overall process of court-provided assistance generally does not benefit defendants to nearly the same extent it does plaintiffs.

Although the great majority of small claims litigants do not use attorneys at trial, eight states prohibit the use of an attorney at trial in order to prevent the potentially unequal situation of a *pro se* litigant facing an attorney. The effect of this prohibition seems to cut against defendants more than it does plaintiffs.

Other legislative efforts to simplify, speed up, or reduce the expense of the small claims process include the elimination of jury trials in small claims proceedings in 33 states, and the elimination or restriction of appeals from small claims judgments in some states. In addition, several jurisdictions across the United States provide conciliation or arbitration resources as a supplement or alternative to a trial before a judge. (In the full report, *Housing Justice in Small Claims Courts*, other key distinguishing features of the small claims process are also set forth. The reader may wish to use this book as well as examine the findings about small claims courts "in general" as found in the companion book, *Small Claims Courts: A National Examination.*)

Housing disputes differ from other types of actions brought in small claims courts in a number of important respects. This *Executive Summary* outlines several of them.

Data Sources

The data for *Housing Justice in Small Claims Courts*, based on that in *Small Claims Courts: A National Examination*, involved the examination of 15 small claims courts: Bridgeport; Harlem; Manhattan; Washington, D.C.; Grand Rapids; Minneapolis; Des Moines; Omaha; Sioux Falls; Oklahoma City; Dallas; Cheyenne; Spokane; Eugene; and, Sacramento. These jurisdictions were selected to include examples of all major small claims procedural variations, including: different limits on access to small claims courts; prohibiting or permitting use of attorneys at small claims trials; the use of filing limits on small claims; various degrees of court-provided assistance to litigants; the option of a hearing before a lawyer-arbitrator as an alternative to trial before a judge; the use of lawyer-referees instead of judges; as well as various limitations on transfer and appeal.

In each of these 15 courts, 500 cases were randomly selected from the [last half of the 1975] caseload of each court for analysis: for a total of 7,500 cases. Detailed questionnaires were sent to each individual (as opposed to corporate) plaintiff and defendant in that data base. This procedure (after adjustment for missing case data) produced a data base of 7,218 cases from the 15 courts. Replies to the four page litigant questionnaires were received from 1446 plaintiffs and 593 defendants.

Of the 6,840 cases from the random survey of court records (7,500) where the subject matter of the claim could be accurately determined, 12% of the sample were landlord-tenant cases. Of the responses to the plaintiff questionnaires where the subject matter of claims could be accurately coded, 19% were plaintiffs in landlord-tenant cases; of the defendant questionnaires, 20% of the responses were defendants in landlord-tenant disputes. (The various data and statistical limitations are described in the full report, *Housing Justice in Small Claims Courts.*)

Subject Matter of Disputes

Before further summarizing the findings, the types of housing-related disputes that currently utilize small claims courts for resolution should be indicated. There are several limitations on small claims jurisdiction over these disputes. The first is the maximum dollar claim limit; this means that many housing-related cases do not come into small claims courts, but rather are filed elsewhere in the court system.

The second limitation is that most small claims courts exclude eviction actions. These actions constitute large caseloads in most local court systems. In many cities, eviction actions outnumber the caseloads found in the small claims courts. These types of cases are separately analyzed in the other reports (mentioned earlier) of the ABA-HUD National Housing Justice and

Field Assistance Program. Thus, a landlord may have to bring an eviction action in civil court and then sue separately for rent due or for property damages. These suits for rent or damages are often brought in small claims court, since judgments can be obtained more quickly and more inexpensively than in regular civil court.

A third broad category of housing-related disputes that do not appear in small claims courts is housing, safety, health, or building code violations. These are usually handled in criminal and sometimes, civil courts or before specialized administrative agencies. The court systems in a minority of cities are specially organized for such complaints, which are brought by city agencies or by citizens directly. Several of these "housing courts"—such as those in Pittsburgh, Baltimore, and Chicago—are analyzed extensively in the other reports (mentioned earlier) of the ABA-HUD Program. Still other cities—such as Boston, Springfield, New York City, and Hartford—have "comprehensive" housing courts that handle both code violations and eviction matters, as well as complex counterclaims and small claims. (All of these are also evaluated in the ABA-HUD Program's reports.)

Table 1 presents a breakdown of five major categories of small claims subject matter in each of the 15 courts examined. The percentage of landlord-tenant cases averaged about 12% (see also 15% total, below).

A more detailed analysis of small claims caseloads (the 7,218 cases) shows that in landlord-tenant cases, about equal percentages of landlords (6.8%) and tenants (5%) were plaintiffs. This compares with consumer goods and

TABLE 1

Distribution of Small Claims Litigation by City[1]

City	Landlord-Tenant	Consumer Plaintiff	Seller Plaintiff	Property Damage	Other
Sacramento	21%	7%	35%	11%	26%
Harlem	17	29	11	25	16
Omaha	17	23	24	21	15
Grand Rapids	16	8	59	5	12
Eugene	15	9	39	10	26
Des Moines	15	4	55	10	16
Spokane	14	10	44	17	14
Minneapolis	13	5	53	9	18
Oklahoma City	11	5	56	10	18
Manhattan	10	23	24	17	25
Sioux Falls	9	6	55	17	11
Washington, D.C.	7	4	53	11	25
Cheyenne	5	1	86	2	6
Dallas	3	3	81	6	8
Bridgeport	3	3	73	6	15

[1] Random sample of 6,840 cases from 15 courts.

services cases where about five times more sellers (over 24%) were plaintiffs than were the buyers or consumers (4.4% to 5.3%). (Recall, however, that eviction actions are excluded in 12 of the 15 small claims courts studied. Thus, landlords file a great many "housing-related" cases in the other courts.)

The term "landlord-tenant case" is used here as shorthand for a dispute involving rental housing where a landlord or a tenant was a plaintiff. Not all of the housing-related cases (in small claims courts) are in this category, however. Although roughly 12% of the caseload of the 15 court sample was landlord-tenant matters, this figure with few exceptions does not include the broader universe of housing-related disputes. Such disputes include construction disputes, property sale transactions, real estate brokerage or commission disputes, real estate financing, mortgage collections, housing rehabilitation or conversion transactions, or home owner warranty claims. These other types of housing-related claims, if they are filed in small claims court, are distributed among the other small claims subject matter categories indicated in Table 1. It is estimated that this "other" housing-related caseload would add perhaps 2% to 3% to the 12% represented by landlord-tenant disputes. Thus, about 15% of small claims caseload (in the national sample for this study) represents housing-related disputes.

Since small claims court records provide no more information about the exact nature of a dispute than appears in the plaintiff's brief statement of claim in his complaint, the landlord-tenant responses to the litigant questionnaires were analyzed. As to the study sample, this gives a better idea of the subject matter of the landlord-tenant disputes in small claims courts. Three specific types of disputes–rent due on residential property (35.7%), return of tenants' security or damage deposit (23.8%), and damage to rental housing by tenant (13.2%)–represented almost three-quarters of the subject matter of these cases.

Another interesting result was the broad variety of disputes encompassed within the landlord-tenant category. These other types of disputes included: tenant rent strikes (0.2%), actions by tenants for damages resulting from defective or non-habitable premises (surprisingly, only 3.8%), evictions and rent due (4.7%, only), bad checks (1.5%), unpaid utility bills (1.3%), as well as disputes between co-tenants (1.1%). Still others included: return of prepaid rent (6.4%), termination before lease term (2.6%), tenant property left on premises (1.3%), rent due on commercial property (0.9%), labor on house (0.9%), overcharge on rent (0.6%), dispute with seller of property (0.4%), dispute with real estate agent (0.4%), landlord withheld property of tenant (0.4%), default on agreement to rent (0.4%), damages resulting from eviction action (0.2%), and mortgage on property (0.2%).

An analysis of the dollar amount of landlord-tenant claims indicated that

the most frequent claim amount was usually at the upper dollar limit for small claims jurisdiction in each court. While this result may in some instances indicate that litigants were claiming the highest damages possible in small claims court, it more often indicates that a potential claim for damages exceeding the small claims limit had been reduced to the small claims maximum in order to take advantage of the shorter wait for trial, lower costs and *pro se* representation possible in this forum. (Conversely, as the dollar amount of average rentals and security deposits rises, small claims courts with very low claim limits become increasingly useless as a forum for resolving such disputes.)

The mean claim amount as well as the cluster of most frequent claim amounts by tenants were at lower levels than landlord claims.

Counterclaims

Interviews with small claims judges among the 15 courts revealed that a number of judges felt that when a tenant sued for return of his or her security deposit, many landlord-defendants would automatically counterclaim for damages to the rental premises. A few judges felt that landlord counterclaims in such cases were fraudulent or were made to intimidate tenants or to induce them to drop their claim. As compared with all other types of small claims where counterclaims were filed in only 1.8% of these cases, landlord-defendants filed claims in 12.5% of all landlord-tenant cases (tenant-defendants filed counterclaims in only 3.5%).

One problem with such counterclaims is that in 13 of the 15 courts examined, a counterclaim in excess of the statutory small claims dollar limit results in the transfer of the case to the regular civil court. The device of filing an excess counterclaim to cause such a transfer can be used to delay or frustrate a small claims plaintiff, who may face a delay of one year or more until trial and usually will need an attorney to continue. (Moreover, it may be next to impossible for the tenant to prove certain facts then, such as the condition of the apartment when he or she vacated it.)

To compound the matter of counterclaims, in eight of the courts studied, a counterclaim could be asserted for the first time at trial; in six of the courts a counterclaim could be raised five or less days before trial. This often leaves the tenant with little or no time to prepare a defense to a landlord's counterclaim for property damages, unless a continuance is granted at the trial.

Use of Attorneys

The use of attorneys in landlord-tenant disputes is significant not only because of the effect on case outcomes (as will be reported further on), but

also because it to some degree reflects the litigants' perceptions of the complexity or difficulty of proving, or defending against, small claims.

Over the entire 15 courts examined, 34% of all plaintiffs and 41% of all defendants in all types of small claims cases "consulted" an attorney about their claim (these percentages do not necessarily mean that the litigant was represented at trial by an attorney). Moreover, as claim amounts increased, both plaintiffs and defendants more often sought attorney advice.

Plaintiffs and defendants in landlord-tenant cases had a slightly higher propensity to seek attorney advice (36% and 47%) than did plaintiffs in other types of small claims cases. Interestingly, while tenant-plaintiffs (39%) contacted an attorney more often than did landlord-plaintiffs (34%), 59% of the landlord-defendants sought attorney advice as compared with only 40% of tenant-defendants. Since the average size of landlord-tenant claim amounts is about the same amount as for other types of small claims, this propensity may reflect a perception that these cases are more "difficult."

Another contributing factor may be that landlord-tenant disputes often involve more hostility than other types of small claims cases. This may be because the tenant's "home" is also the landlord's "property"; landlords may have a lower interest in maintaining a tenant as a "customer"; and, the quasi-service organizations that currently represent landlord and tenant interests may serve to exacerbate the potential hostility. Another causal factor of this propensity to seek attorney advice is that landlord-tenant disputes often involve more legal issues and more difficult problems of proof than other types of small claims.

A very common "return of security deposit claim," for example, involves at least the lease provisions as to security deposit, the lease term, provisions as to notice to vacate, as well as proof of payment of the deposit by a canceled check or receipt. Additionally, state law provisions may also apply as to the payment of interest on the security deposit, special demand or notice provisions, and provisions for double or triple penal damages after the tenant has made a formal notice and demand on the landlord. In contested security deposit cases, a landlord will typically claim offsetting damages by the tenant, defective notice to vacate, a defective demand for security deposit, or other violations of the lease terms. Too, the tenant is usually at a severe disadvantage in proving his case (for example, the condition of the rental premises when he left). The judge in turn is often placed in the uncomfortable position of having to decide whom to believe.

Finally, since tenants and landlords are involved in roughly equal numbers as plaintiffs and defendants in small claims courts, the lower use of attorneys when landlords are plaintiffs and the higher use of attorneys when they are defendants may reflect the greater prior experience of landlords in such cases.

Litigants In Disputes

A random sample of all 6,840 cases from the 15 courts was tabulated by the legal status of the plaintiff. Of the total plaintiffs in this case sample, 42% were individuals, 33% were non-corporate businesses, 23% were corporations, and 2% were governmental agencies. When this was broken out by subject matter categories, however, the individual versus corporate or business status of plaintiffs varied widely . . . as between "consumer-sues" cases and "seller-sues" cases, for example (see the full report for details).

In landlord-tenant disputes, 76% of the plaintiffs (which includes both landlords and tenants) were individuals. Most of the remainder were businesses (19%) in the form of sole proprietorships or partnerships, rather than corporations (3%).

Over 800 landlord-tenant cases contained in the above sample were further sorted. 97.9% of the tenant-plaintiffs were individuals, rather than businesses or corporations (in part because the maximum claim limit in most small claims courts is low enough to exclude most commercial rental property disputes).

What may be surprising is that 59.4% of the landlord-plaintiffs were also individuals. This finding tends to contradict a prevalent public perception that the vast majority of such cases are brought by businesses (32.3%) or corporations (6.5%). (Government agencies were plaintiffs in 1.9% of the cases; no cases in this sample showed them as defendants.)

An analysis of demographic data for the landlord-tenant respondents to the litigant questionnaires revealed several interesting findings. In terms of age, it was found that tenants who used small claims courts tended to be a good deal younger than the landlord-plaintiffs; most were in the 21 to 45 year old age range. Landlord-plaintiffs, on the other hand, tended to be more evenly distributed in age, and almost 20% of them were over 62 years of age. With respect to defendants in landlord-tenant cases, almost the inverse seemed to be true. On the average, tenant-defendants were older than were landlord-defendants; and, younger landlords seemed to be sued more often than their older counterparts.

The distribution of marital status of landlord-tenant litigants is also interesting. 10.7% of landlord-plaintiffs were widowers. (This result, when considered in conjunction with the finding that almost 20% of the landlord-plaintiffs were over the age of 62, may suggest that significant numbers of landlords are elderly or retired persons.) It is also significant that 13.2% of the tenant-defendants were also widowers, which may indicate difficulties in this group in keeping up with rent increases on single social security or other retirement incomes. ("Widowers" as used here is without regard to sex.)

Male/female data was as follows: tenant-plaintiffs in the sample were

equally divided between men and women. On the other hand, two-thirds of the tenant-defendants were male. Three-quarters of the landlord-plaintiffs in the sample were male; and, landlord-defendants were almost equally divided between males and females (at least among this sample of respondents).

The race of landlord and tenant respondents was analyzed. The results were unremarkable except that they indicated that black landlords seemed less likely to sue in small claims court than did their white counterparts, while black landlords were sued with relatively greater frequency.

As to the occupation of landlord-tenant respondents, relatively high numbers of professionals were among tenant-plaintiffs, as well as relatively high numbers of tenant-plaintiffs who were either students or unemployed. On the other hand, it is perhaps significant that almost 20% of all landlord-plaintiffs indicated their primary occupation as "worker" and almost 12% indicated that they were retired. This may tend to indicate that rental housing was a secondary or part-time occupation for this group of landlords.

In analyzing the income distributions of landlord and tenant litigants, landlord-plaintiffs tended to be of higher income than did tenant-plaintiffs, as might be expected. However, tenant-defendants were generally of higher income than were landlord-defendants (almost 43% of all landlord-defendants reported annual family incomes of less than $8,000).

To some extent, these results may be biased by self-selection in questionnaire responses. It is also reasonable to expect that landlord-plaintiffs would not bother to sue low income tenants if they felt the chances of subsequently collecting their judgments were remote. The relatively low incomes reported by many landlord-defendants may, however, accurately reflect the fact that a large population of low income landlords does in fact exist. This latter hypothesis matches with the educational levels reported by landlord-tenant litigants, which indicated that, on the average, landlord litigants reported lower levels of formal education than did tenant litigants.

While this demographic data does not provide definitive answers as to what the real population of landlords and tenants looks like due to sampling problems, this data does seem to indicate the existence of large numbers of elderly, retired, or working-class persons of relatively low incomes and education who rent one or two apartments in order to supplement their incomes. A number of these elderly landlord litigants reported that they had experienced problems in small claims courts due to the use of obsolescent lease forms, their ignorance of applicable statutory provisions, or because they had proceeded under oral lease agreements that they were subsequently unable to enforce in court.

Moreover, most in-court assistance is presently geared almost exclusively to helping plaintiffs; and, small, low income, low education, or elderly

landlord-defendants generally cannot qualify for legal aid or other legal assistance because of their property ownership.

Case Outcomes

The following analysis of outcomes in landlord-tenant cases uses two primary measures: victory rates (a measure of who won and who lost) and awards as a percentage of claim. The former tends to indicate whether or not the plaintiff was able to establish the liability of the defendant; the latter tends to give some indication of the difficulty of proving damages in a particular case. Thus, a 100% award as a percentage of claim tends to indicate that a plaintiff was able to prove the entire amount of damages he or she claimed, whereas a lower award as a percentage of claim tends to indicate either that the defendant was able to put on proof which diminished the amount of the plaintiffs's claimed damages, or that little proof was produced at trial on the exact amount of damages and the judge tried to strike a fair balance between conflicting proof.

Case disposition is a more inclusive measure than who won or who lost, since it indicates every possible result after the filing of a claim, including those claims that for one reason or another were not resolved by the court. Table 2 contrasts case dispositions in all other small claims cases with the dispositions for tenant-plaintiff cases and for landlord-plaintiff cases.

Looking at the last line of the table, where there was no disposition of the case, it is apparent that landlords had "no disposition" more often than tenants. (This usually results from the fact that the plaintiff was unable to have a summons and complaint served on the defendant, the basic prerequisite to give the small claims court jurisdiction over the dispute.) The caption

TABLE 2

Small Claims Case Dispositions From Court Record Survey

	All S/C Except L&T[1]	Tenant-Plaintiffs[2]	Landlord-Plaintiffs[3]
Plaintiff won at trial	33.2%	49.4%	36.4%
Plaintiff won default	33.6	10.2	30.1
Defendant won at trial	4.6	11.4	3.5
Defendant won default	0.2	3.3	0.6
Dismissed with prejudice (Plaintiff did not appear)	2.4	3.6	3.7
Dismissed without prejudice	3.8	4.2	4.5
Neither side appeared (Settled before trial)	3.1	4.5	2.6
No disposition (No service on defendant)	18.9	13.5	18.6

[1] N = 5,954 [2] N = 334 [3] N = 462

"neither side appeared" usually indicates cases where the dispute was settled between the parties before trial. The next item, "cases dismissed without prejudice," usually indicates situations where a plaintiff came to trial without sufficient proof, but with enough evidence to convince the judge that potential liability or potential damages did exist. Default judgments are awarded by courts where the plaintiff appears at trial, but the defendant does not.

The default judgment rate of 30.1% when landlords are plaintiffs was about the same as the default judgment ratio for all other types of small claims cases. However, the default rate of 10.2% when tenants were plaintiffs was substantially lower. This may tend to indicate that landlord-defendants were more diligent about appearing at trial after a suit was filed than were other types of small claims defendants, including tenant-defendants. It also should be noted that this default judgment rule is not usually evenly applied as between plaintiffs and defendants (where the defendant appears on trial day but the plaintiff does not, many judges only dismiss these cases without prejudice).

One other significant statistic in Table 2 is that generally, defendants rarely win at trial. Defendants did so in only 4.6% of all other small claims cases. In suits brought by tenants, however, landlord-defendants won in 11.4%. (This discrepancy may reflect the relatively greater prior experience of most landlords in small claims litigation, and may reflect the fact that landlord-defendants tend to file counterclaims more often than tenants.)

The "combined victory rate" (including both winning at contested trials–36.4% and the award of default judgments–30.1%) of 66.5% for landlord-plaintiffs was almost identical to the combined victory rate of 66.8% (33.2% and 33.6%) for all other types of small claims plaintiffs. The combined victory rate of 59.6% (49.4% and 10.2%) for tenant-plaintiffs was lower than either of these.

When victory rates for all types of small claims plaintiffs were further separated by "individual" versus "business or corporate" status, the combined victory rates were 58% and 72%, respectively. This same result holds true in landlord-tenant cases: business/corporate-plaintiffs tend to win more often than do individual plaintiffs.

When questioned about this, small claims judges reported that these statistics reflected the fact that most business/corporate claims are usually well-documented collection cases for payments owed; and, that the liability of the defendant is almost always fairly clear-cut and the amount owed is usually clearly substantiated by supporting documentation. (In contrast, individual plaintiff claims tend not to involve the collection of payment, but include a broad variety of alleged faulty repairs, defective products, personal injuries, property damage, breach of oral agreements, and other claims where

liability is often not nearly so well established, and the damages may be uncertain [all this in terms of small claims "in general"].)

Small claims judges were also of the virtually unanimous opinion that business/corporate-plaintiffs tended to bring "better" cases than did individual plaintiffs, in the sense that businesses usually did not go to the trouble or expense of filing a claim unless the liability of the defendant was fairly certain.

A different way of analyzing this data is the "win-lose" ratios reported by all the plaintiff respondents to the litigant questionnaires. (This ignores all other possible dispositions and focuses only on contested cases where both sides have appeared at a trial.) Tenant and landlord "win" rates are virtually identical at 82% and 83%, respectively. Both are slightly lower than the "win" rate of 85.6% reported by plaintiffs in other types of small claims cases. This might indicate that, on the average, liability may be slightly more difficult to prove in landlord-tenant cases than in other types of small claims cases.

It was also found that the individual "win" rates were 81% versus business/corporate "win" rates of 89%. This 8% difference in landlord-tenant cases was lower than in any other major type of small claims litigation. This lower difference seems to indicate that landlord-tenant claims are almost as difficult for businesses or corporations to prove as they are for individual litigants, compared with other types of small claims litigation.

The effect of attorney representation at trial on victory rates was also examined. Tenants as plaintiffs did slightly worse (74.1%) when they used an attorney at trial than when they had no attorney (86.7%). Landlords as plaintiffs did slightly better (83.3%) when they used an attorney at trial than when they did not (72.0%).

Victory rates for both tenant and landlord plaintiffs were sorted by whether or not they had had previous experience in small claims court. As expected, both tenants and landlords who reported previous experience did slightly better at trial than their inexperienced counterparts. However, landlords with prior experience did no better than tenants with prior experience.

The effect of the level of education reported by landlord-tenant plaintiffs, and their levels of income, was investigated as to ability to win at trial. Both of these factors, surprisingly, had no significant effect.

Next was the measure of trial awards as a percentage of the original claim amount. This as previously suggested, tends to indicate the difficulty of proving damages in particular types of small claims litigation. It is apparent that landlord-tenant disputes are among the more difficult types of small claims cases in which to prove damages. Moreover, as between individuals as

plaintiffs and businesses or corporations as plaintiffs, the rates were 71% and 74%, respectively.

When award as a percentage of claim reported was analyzed by tenant-plaintiffs' and landlord-plaintiffs' levels of education, family income, and race, there were no statistically significant differences caused by any of these factors. One exception was that Hispanic plaintiffs seemed to have more difficulty in proving their damages than did white, black or Asian plaintiffs. This may indicate difficulties in communication between the court and Spanish-speaking, and points out the need for court-provided interpreters in all small claims jurisdictions with significant numbers of these litigants.

From actual observation of landlord-tenant trials, it was found that most landlords generally relied on documentary evidence such as producing copies of the lease and account books to show non-payment of rent, or bills for painting and other repairs supplemented by their personal testimony to prove damage claims. Tenants, on the other hand, reported many more difficulties in producing physical proof at trial. A tenant usually relied on his own testimony supported in some instances by the testimony of witnesses on his behalf, or photographs.

Another important point is that many states recognize outstanding building, safety, or health code violations as a valid defense to eviction actions or claims for back rent, or recognize an implied warranty of habitability for rental housing. Obviously then, proof of outstanding code violations should be highly relevant in cases of this type. However, often even if such an inspection had taken place at a tenant's instigation, a copy of the inspection report was not usually sent to the tenant; as a result, proof of outstanding code violations usually is not available to either tenant litigants or to the small claims judges at trial.

This entire set of issues—relating to code violations as defenses and the doctrine of warranty of habitability—is highlighted in the other ABA-HUD program reports (mentioned earlier). These issues go beyond mere "proof" problems and present serious questions as to how well courts are handling these matters in practice. Reform and innovation are much needed in this area.

Effect of Attorney Representation

As discussed previously in this *Executive Summary*, tenants tended to use attorneys in roughly equal numbers whether they were plaintiffs or defendants; landlords tended to use attorneys more often when they were defending against a claim than when they were plaintiffs. Yet, both landlords and tenants as plaintiffs—who either consulted an attorney about their claim or who used an attorney at trial—did not do significantly better at winning

their cases than their counterparts who had not consulted an attorney or used an attorney at trial. The same result held true for effects on awards as a percentage of claims.

These findings, however, did not take into account whether or not the defendants in these same cases were represented by an attorney at trial. Plaintiffs did equally well in winning their cases against unrepresented defendants, whether plaintiff did (92%) or did not (91%) use an attorney at trial. If, however, defendants were represented by an attorney at trial, defendants successfully defended against claims in 32% of the cases against unrepresented plaintiffs and in 13% of the cases against represented plaintiffs. (This compares to a win-rate of only 8% to 9% for defendants who were not represented by an attorney at trial.)

In award as a percentage of claim, plaintiffs who used an attorney at trial received higher awards as a percentage of claim (92%) when facing an unrepresented defendant than did unrepresented plaintiffs facing unrepresented defendants (80%). The effect of defendant use of an attorney at trial on award as a percentage of claim was even more striking. Defendants using an attorney were able to reduce the plaintiff's award as a percentage of claim to an average of 58% in those cases where the plaintiff was unrepresented, and to 66% in those cases where the plaintiff also used an attorney.

Further "use of attorney" analysis is contained in the full report. Suffice it to say that the defendant having an attorney at trial significantly improved his or her ability (both landlords and tenants) to defend against liability and to reduce the amount of the damages. Interestingly, in landlord-plaintiff cases (where the defendant was usually a tenant), the use of an attorney at trial by the defendant had the greatest effect: landlord-plaintiffs won only 68.6% of these cases.

Use of an attorney at trial by tenant-defendants, then—at least in this national study sample—seems to play an important role in whether or not tenants are able to effectively assert defenses to liability. There are several explanations for this result (which are explored in the book, *Housing Justice in Small Claims Courts*). One possible conclusion is that attorneys probably should be permitted at trial in small claims courts (at least for the present) in order to help preserve a balance between plaintiffs and defendants. This should be done at least until such courts are able to provide full trial preparation assistance as well as knowledgeable judges who are able to assist defendants to the same extent as the assistance currently provided plaintiffs.

Default Judgments

Almost as many small claims judgments are awarded by default as are awarded after contested trials. And, of the 15 jurisdictions studied, quite a

few courts did not require the same degree of proof of liability of the defendant, or proof of damages, in default cases as was required at contested trials. Some even awarded default judgments with no proof at all: simply on the basis of the plaintiff's sworn complaint. The procedure with the best safeguards for defendants is to treat a default situation exactly the same as a contested trial: to require the plaintiff to prove both the liability of the defendant, and that the damages claimed are accurate or reasonable.

In addition, many courts seemed to operate under the assumption that because the defendant did not appear to contest the case, he or she did not contest liability for the claim. Yet, the defendant may not have received notice. Not all courts indicate a specific trial date on the defendant's copy of the summons and complaint, and many of these complaints are confusing as to exactly when the defendant is required to appear for trial in order to avoid a default.

Another danger is the one inherent in the concept of *prima facie* liability (where supporting documents are attached to the complaint): it tends to gloss over questions of whether relevant statutory requirements or preconditions to liability have been met.

In the national study sample, individual and business or corporate plaintiffs won 94% to 97% of their claims in default actions, as compared to 71% to 74% in contested trials. These differences are so large that it tends to support the observation that damages in default cases are not examined nearly as carefully as in contested cases. One cure is to require the "proving-up" of all defaults, including verification of proper service, verification of the defendant's liability, and proof of claimed damages through either documentary evidence or witnesses: just as in contested trials.

Assisting Pre-Trial Settlements

Several types of "pre-trial" settlements can be differentiated. 5% to 6% of all small claims are presently voluntarily resolved out of court. About 20% of all trial judgments represent terms worked out by the litigants (rather than imposed by the judge) once they have come to court.

One potential problem area is that substantial numbers of small claims judges were found to routinely urge litigants to "go out in the hall and arrive at a figure that you both think is fair." This practice has the potential for producing injustice for a number of reasons that are explored in the full report. But the problem is not isolated to small claims courts. It even exists in "housing courts," which have been specially organized to ensure better justice and equity. For a discussion of these matters, see the other reports of the ABA-HUD Program (mentioned earlier). Suffice it to say that a better way of assisting litigants in working out settlements, once they have come

for trial, is for the judge (or mediator or housing specialist, where this alternative is provided [as it is in some "housing courts"]) to actively assist the litigants in working out a fair settlement.

An important benefit of voluntary settlements—whether arrived at between the parties or by a judge, etc.—mediator, or arbitrator, is that 98.4% of the plaintiffs in settled cases were able to collect their settlements. This compared with about a 73% collection rate for judgments after contested trials, and a roughly 30% collection rate for default judgments.

Collection of Judgments

Plaintiffs in the sample reported whether they were able to collect at least a portion of their small claims judgment (in most cases this meant all of it). Overall, about three-quarters of all judgments after contested trials were able to be collected; this compared with only about a one-third collection rate for default judgments.

As might be expected, collection was much more difficult against individual defendants, whether after a trial judgment (65.5%) or default judgment (25%), than against business or corporate defendants. (This compared with business-defendant rates of 81% and 73%, and corporate defendant rates of 86% and 50%, respectively.)

Attorney use by plaintiffs in collection did not significantly increase their ability to collect trial judgments (72% versus 71%), but did improve their ability to collect default judgments: an increase to 60% over 34%.

Next was analyzed the percentage of winning plaintiffs who reported that they were able to collect their small claims judgments with no difficulty. 63% of tenant-plaintiffs reported no difficulty (only 46% for all other types of small claims plaintiffs), compared with only 22% for landlord-plaintiffs. This striking disparity in difficulties with collection reported by tenants and landlords is explored at length in the full report, along with recommendations.

It is clear that a small claims judgment that is not paid (in the case of a money judgment) or which is not carried out (in the case of equitable relief) does not provide an effective resolution of disputes. This problem occurs in small claims and other (including housing) courts. Improving the collection or enforcement of judgments, then, can no longer be avoided by judicial systems, which have traditionally held themselves aloof from any active involvement in the collection process. (One of the more far-reaching proposals is for small claims judges, after judgment and while the parties are still under oath, to arrange a judgment satisfaction plan and to enter a provisional writ of execution.)

TABLE 3

Problem Areas for Plaintiffs
(Percentage of Total Plaintiffs Responding Who Indicated Specific Problem Areas)

	Tenant-Plaintiffs	Landlord-Plaintiffs	All Small Claims Plaintiffs
Serving the Complaint	22%	35%	24%
Getting Evidence or Witnesses	23	24	13
Understanding Legal Rights	21	23	18
Understanding Court Forms	7	10	7
Finding the Court	8	7	5

Problem Areas for Defendants
(Percentage of Total Defendants Responding Who Indicated Specific Problem Areas)

	Tenant-Defendants	Landlord-Defendants	All Small Claims Defendants
Getting Evidence or Witnesses	17%	44%	19%
Understanding Legal Rights	14	23	18
Understanding the Complaint	6	17	12
Finding the Court	3	8	4

Litigant Problem Areas

Table 3 indicates a ranking of problem areas in the small claims process by all small claims litigants and by landlord and tenant litigants. These findings must be viewed with some caution, however. Since landlords in general had more prior experience in small claims courts than did tenants, they might be expected to be more aware of proof problems.

Also, differences in difficulties reported by landlord and tenant defendants may result from differences in the typical claim asserted against these groups. The most frequent claim against a tenant-defendant in the sample was for rent due, where in most instances liability is clear-cut (unless the tenant alleges nonhabitable premises) and the sole issue of proof is likely to revolve around whether or not payment was timely made. In contrast, the most frequent claim against a landlord-defendant in the sample was for return of a tenant's security or damage deposit, where both sides face more difficult problems of proof.

Most of the landlord-tenant respondents wrote specific comments about their experiences in small claims courts. Fairly substantial numbers of landlords complained that they felt small claims judges were biased against landlords as a group, or at least tended to favor tenants in landlord-tenant

disputes because of their poor understanding of the apartment rental business.

Tenants, by contrast, tended to report complaints about specific things that had happeneed to them at trial. There were many complaints about the unequal position of tenants in being able to produce physical proof of the condition of rental housing at trial. Many tenants also reported that they had no idea that they should have asked the landlord to verify that their apartment was in good condition before they turned over their keys and vacated, and as a result they were surprised by the landlord's counterclaim for property damage.

Another problem mentioned by individual litigants was that small claims judges in some courts did not give any explanations as to who won, who lost, and why. The practice of not announcing small claims decisions at trial tends to only add to the confusion of litigants as to why a particular result was reached in their case. This repeatedly occurs in many courts, in addition to small claims. Surprisingly, as the full ABA-HUD Program reports suggests, even in many eviction matters the tenant is unaware of "what happened" to him or her. And, in code enforcement cases in some courts, the defendant is left confused by the legal jargon that the judge uses in announcing his or her decision . . . unless time is taken to clearly explain the judgment(s).

In addition, several tenant-plaintiffs reported that the landlord-defendant had transferred their small claims case to regular civil court (which is possible in most jurisdictions). This caused them to drop their suits because of delays and the additional expense required for lawyers to continue their suits in that forum.

By far, the greatest number of complaints received from both landlords and tenants involved problems experienced in collecting their small claims judgments. Many reported that they felt cheated because the court did not explain to them what they would have to do to collect their judgment at trial, or that the court staff did not assist them in finding out what they had to do when the judgment was not paid.

The questionnaires also asked all respondents to rank their choices among several widely-suggested reform proposals (Table 4 presents these results).

Finally, there were responses to the question, "Were you basically satisfied with your experience in small claims court?" 71% of all small claims plaintiffs reported that they were basically satisfied with their court experience, regardless of whether they won or lost. As could be expected, only 26% of all small claims defendants reported they were basically satisfied, regardless of whether they won or lost.

Tenant-plaintiffs and landlord-plaintiffs reported levels of satisfaction similar to that reported by other small claims plaintiffs. However, tenant-defendants and landlord-defendants reported much higher levels of satisfac-

TABLE 4

Plaintiff Choices Among Small Claims Reform Proposals
(Numbers indicate rank order)

	All Small Claims Plaintiffs	Tenant-Plaintiffs	Landlord-Plaintiffs
Pre-trial advisors	1	1 (88%)	1 (76%)
Court in evenings	2	2 82	2 68
Informal trial surroundings	3	5 54	3 57
Neighborhood small claims office	4	4 66	4 51
Court on weekends	5	3 70	6 50
No lawyers at trial	6	6 40	5 49

Defendant Choices Among Small Claims Reform Proposals
(Numbers indicate rank orders)

	All Small Claims Defendants	Tenant-Defendants	Landlord-Defendants
Pre-trial advisors	1	1 (71%)	1 (92%)
Court in evenings	2	2 63	2 86
Informal trial surroundings	3	3 61	3 79
Court on weekends	4	4 52	5 54
Neighborhood small claims office	5	6 38	4 58
No lawyers at triall	6	5 47	6 31

tion (53% and 51%, respectively) than the 26% level of satisfaction reported by other small claims defendants.

In an effort to understand why landlord and tenant defendants seemed to be more satisfied with their experience in small claims courts than did other defendants, the landlord and tenant satisfaction data were further broken down by case outcomes. It was found that landlord-plaintiffs reported slightly lower levels of satisfaction than did tenant-plaintiffs whether they won at trial, settled the case, or lost at trial. Landlord-defendants, on the other hand, were less satisfied than were tenant-defendants if they won at trial or settled the case; yet, they were slightly more satisfied in those cases when they lost at trial.

Several possible reasons exist for the lower level of satisfaction reported by landlords, whether as plaintiffs or defendants. Quite a few landlords feel small claims judges are often biased against landlords and favor tenants. While the analysis of landlord-tenant case outcomes does not directly support this perception (equal numbers of tenant and landlord plaintiffs "won" in contested trials), landlord-plaintiffs experience substantially more problems than tenant-plaintiffs in getting service on defendants. In addition, 30% of all landlord claims were resolved by default judgments as compared with only 10% of tenant claims. Since much lower collection of judgments

was reported in default cases than in contested cases or settlements, it stands to reason that landlords in general experience many more problems in serving tenants and in collecting judgments than vice-versa.

It should also be noted that the other ABA-HUD reports speak to this same general issue. In various courts where eviction actions are heard and where the plaintiff-landlord is allowed to ask for a money judgment (for back rent) as well, many do not do so. Landlords in interviews have suggested "why bother?" in those instances where they know they won't collect. Thus, in these courts as well, landlords having "won" [possession] are "dissatisfied with the system." This dissatisfaction after "winning" is often aggravated by: delays resulting from tenant legal tactics; costs in terms of lost rent; costs in terms of processing fees and time spent in court; costs in terms of legal fees (and bitterness over free aid to the tenant); a feeling that the tenant is getting a "free ride"; a sense that the courts are slow and only "rubber-stamp bad laws"; and, other assorted reasons that reflect serious complaints about "the system".

Additional Improvements

Several recommendations—mentioned earlier, as well as below (and at length in the full report)—may help both to avoid unnecessary landlord-tenant disputes and to reduce existing tenant and landlord problems with the small claims process.

Perhaps more than any other type of dispute presently handled in small claims courts, landlord-tenant disputes seem in many instances to be caused by a lack of understanding by one or both sides of what their respective rights and duties are under applicable laws governing their relationship. Reducing legal misconceptions that produce landlord-tenant disputes provides the potential for reducing these conflicts at least as great as improving the resolution of these disputes once they reach the judicial process.

One of the problems is that in most jurisdictions, residential lease forms do not clearly indicate the reciprocal rights and obligations of the landlord and tenant, are almost totally unregulated, tend to be produced by landlord-dominated organizations, contain extensive self-serving boilerplate regardless of whether or not these provisions are actually enforceable under the case law or statutes of a particular jurisdiction, and are legalese-laden and not designed to be comprehensible to laymen. One solution lies in the development of standard lease forms approved as to clarity, format, content, and comprehensiveness. Other changes in leasing and rental property management approaches include: walk-through inspections and signed "check lists" of problems existing in an apartment, both at inception and termination of the lease; readable additional material on special issues (as security

deposits and maintenance for tenants); etc. (see the several reports of the HUD-ABA Program, including *Housing Justice in Small Claims Courts*, for further development of these reforms).

Many tenants currently experience difficulties (particularly in return of security deposit cases) in proving that they left the premises in good condition. In addition, suits for back rent by landlords or for rent abatement suits by tenants often turn on the question of whether an effective notice to terminate, or notice of nonhabitable or unsafe conditions, was given by the tenant. Many of these problems could be avoided if the required, "removable forms" for such common actions were attached to each residential lease (for details, see the full report).

Many housing-related disputes revolve around the question of the physical condition of a house, apartment, or rental property, and it is often difficult to prove a relevant prior condition by the time a dispute reaches trial. What may be needed, particularly in the case of tenants, is an impartial public fact-finder who could be called to verify the condition of an apartment upon its being vacated. (As to nonhabitable or unsafe conditions in the event of inaction by a landlord, see the various full reports of the ABA-HUD Program, especially re code enforcement issues.)

There are a number of areas where small claims courts need to improve their assistance to litigants in housing-related actions. Many tenants reported difficulties in naming the correct defendant when they filed small claims actions. This might be alleviated by either requiring the posting of the name and address of the property owner in all rental housing or by specifying in residential leases that the property manager or person accepting the rent payments is the official agent for service. Another solution would be to make information on record owners of rental properties available in small claims court for use by tenant-plaintiffs, in order to save them additional trips to various record offices in the city in order to secure this information. (It is also suggested that information on outstanding housing code violations should be available in small claims court for the use in trial of eviction or back rent cases, where outstanding code violations can constitute a valid legal defense.)

Landlord-plaintiffs, in particular, reported difficulty in serving small claims complaints on tenants who had vacated rental premises. This problem could be alleviated through lease provisions requiring the tenant to either notify the landlord of a forwarding address, or else acknowledge that the old address is sufficient for service. Personal service on tenants might also be able to be improved by using special court officers for this purpose (see other ABA-HUD reports).

The fairly extensive assistance with trial preparation presently provided by most small claims courts tends to primarily benefit plaintiffs rather than

defendants. Several ways exist in which this imbalance can be corrected. One simple step would be to clearly indicate on the defendant's copy of small claims complaints that court-provided assistance in preparing for trial was available, and to indicate a telephone number and an office address where the defendant could call or visit to receive help or ask questions.

Where landlord-tenant disputes do reach small claims court, it is essential that a judge, arbitrator, or referee in announcing his decision take the brief time necessary to explain to both sides the applicable rights and duties that apply to their dispute and which determined his ruling. This should help to reduce the incidence of litigants repeating past mistakes that are based on legal misconceptions.

Other problems include locating evasive judgment debtors or collecting from low income or judgment-proof defendants. While this is largely beyond the reach or control of the court, it is suggested that small claims courts can no longer hold themselves aloof from active involvement in, and supervision of, the process of collection of judgments (some details were spelled out earlier; others are in the full reports of the ABA-HUD Program).

Substantial evidence exists from both judicial and litigant comments that significant numbers of small claims judges (as well as other special court personnel) are inconsistent or are not up-to-date on recent statutory provisions, case law, or other procedures that apply to landlord-tenant disputes. An unfamiliarity by judges with these provisions tends to cut against those tenants who do not know enough to assert these defenses at trial. The failure to consistently apply applicable protective provisions to housing-related disputes means that these protections are not being effectively applied or enforced in these instances.

Moreover, as observed in courts that handle other types of housing matters, there is the problem of inconsistency as among judges in their case decisions as to law and as to standards for proof or even, money judgments (as in rent reduction). Likewise, specialized clerks and housing specialists may be giving litigants inconsistent opinions or applying different standards.

One solution to this problem lies in providing all judges, referees, and mediators or specialists in small claims courts with bench book and other guides organized by subject matter, and containing check lists of relevant statutory and case law provisions that may apply to specific types of housing-related disputes. These loose-leaf and periodically updated materials should be supplemented by regular, required seminars highlighting legal developments for all judicial personnel (including the small claims clerks who assist or advise litigants).

The findings of this study suggest that the modified adversary system used in small claims trails may not in many instances be well suited to the effective resolution of landlord-tenant disputes. A number of factors about

housing-related disputes, and landlord-tenant disputes in particular, cause these disputes to often be more emotionally loaded or cause more polarization of the disputants than is the case in other types of small claims actions.

This leads to the suggestion that small claims courts experiment with providing pre-trial/in-court counseling, mediation, or arbitration resources. This can be done at the time of filing of the complaint, or at trial either at the election of the parties or as a compulsory preliminary step to trial before a judge (but without any additional delay if the litigants are unable to reach a mutually agreeable, mediated solution).

It is also important that negotiated trial settlements be reviewed by a judge for legal correctness and even-handedness. These should also be adopted by the court so that they can be enforced by the legal remedies available for collection of judgments in the event of subsequent nonpayment or noncompliance.

As a corollary to the provision of non-judicial resolution resources in small claims court, there needs to be more emphasis that the role of a small claims judge and special court staff includes active involvement in assisting litigants to work out settlements. These settlements must square with relevant legal provisions and which both sides can agree to. (The prevalent practice of directly urging unsupervised "out in the hall" settlements has the inherent danger of unfairly disadvantaging inexperienced or unrepresented litigants.)

These suggestions for improving the resolution of housing-related disputes in small claims courts are not radical. Almost all of them are currently being used in some small claims jurisdictions or exist in other areas of the judicial process (and especially, in the new "housing courts").

While some of these recommendations will add to the public costs of our small claims system, the potential to reduce disputes that presently end up in court may provide some off-setting reductions in caseloads. Further (and particularly since average judicial system costs for achieving resolutions in small claims disputes are extremely low when compared to almost any other area of our judicial process), the added expense nonetheless should lead to providing better dispute resolution . . . at still acceptable levels of public cost.

The main goal must be served: that is, providing a fair opportunity for the equitable, effective, and yet efficient resolution of housing-related disputes. The judicial systems that we create and operate should further these goals. Where they do not, or do so inadequately, reform and innovation must be undertaken . . . in order to do justice as well as appearing to do justice.

Postscript

In the area of housing justice, small claims courts are but one part of the judicial systems in which disputes appear for resolution. They are an important part, and reflect the tribulations of litigants who have been unable to resolve their disputes personally and in the first instance.

But we must also look to the influx of millions of cases on a yearly basis in American cities: in other courts and in other forums. Evictions are a massive problem in most urban areas. Too, code compliance and code enforcement programs present very serious dilemmas in terms of housing stock deterioration, urban decay, and the disappearance of viable urban centers with adequate housing opportunities and decent shelter.

These are issues that are analyzed, in part, in still other reports of the ABA-HUD National Housing Justice and Field Assistance Program. Initial analyses of the major dispute resolution mechanisms are presented in these other studies. Serious students of the judicial process and of non-judicial dispute resolution should turn to these reports as well. While incremental reform is desirable, even more so is a comprehensive review of the opportunities for change—as they relate to housing—throughout our local dispute resolution systems. These other ABA-HUD studies are commended to the reader to help serve this purpose.

We must recognize that we are only beginning to make in-roads on understanding existing systemic difficulties and on encouraging dispute resolution experimentation in these fields. Much remains to be done. We must set about to understand the problems and to accomplish much-needed change . . . before "housing justice" can become more of a reality in our communities.

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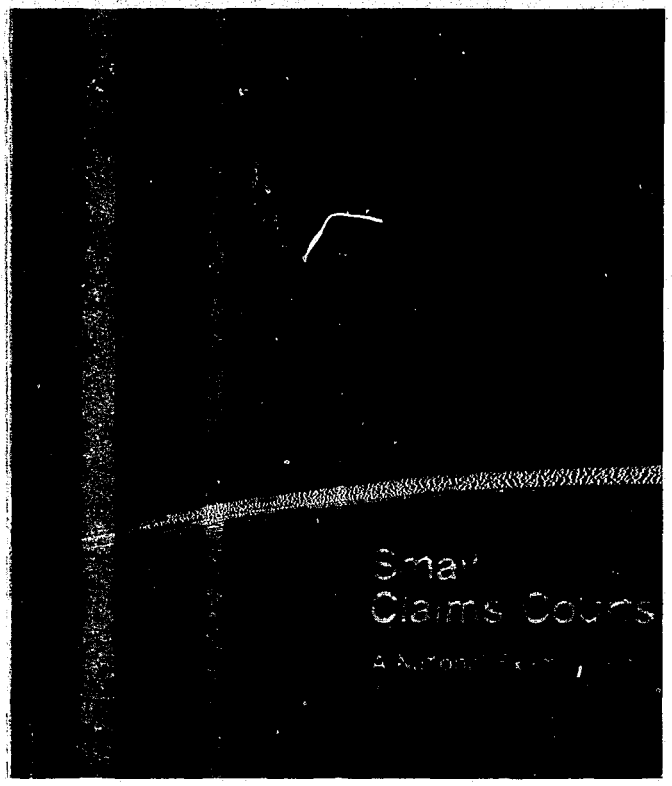
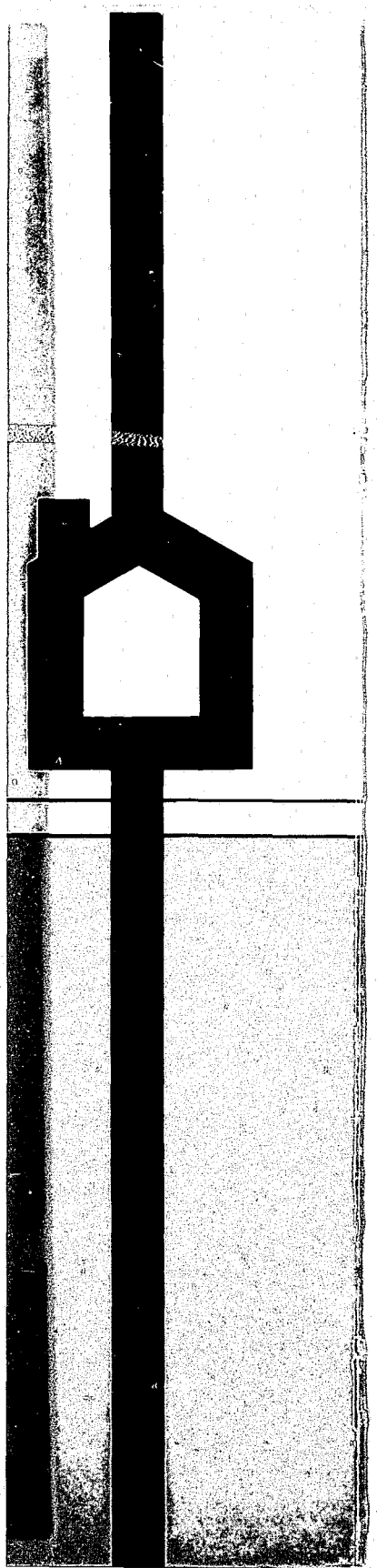


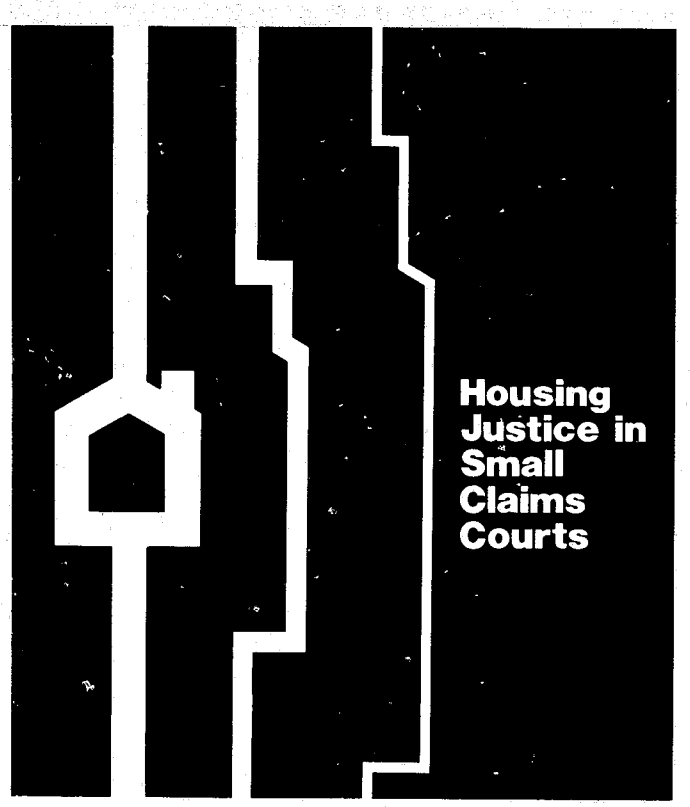
HOUSING JUSTICE IN SMALL CLAIMS COURTS

This is the first nationwide examination of how landlord-tenant disputes fare in the small claims courts of our country. The book discusses the results of a major study by John C. Ruhnka for the American Bar Association's Special Committee on Housing and Urban Development Law, funded by the U.S. Department of Housing and Urban Development.

The study expands on, and reanalyzes from the standpoint of housing justice, extensive data from a two-year nationwide examination of small claims courts conducted by the National Center for State Courts under a research grant from the National Science Foundation. Findings from the initial study were announced in the book *Small Claims Courts: A National Examination*, published in November 1978 by the National Center for State Courts. This companion volume points out a host of important differences between landlord-tenant cases and other disputes brought to small claims courts. The book answers—and raises—many questions vital to those concerned about housing justice.

- How are small claims courts being used by landlords and tenants?
- Do outcomes seem to favor landlords or tenants and in what ways?
- Are burdens of proof and better procedures needed in default and counterclaim cases?
- What factors affect the ability of landlords and tenants to win in small claims court?
- What are the costs to litigants, including attorneys and personal time?
- What do litigants in landlord and tenant cases see as particular problem areas in court?
- Do the judges, referees, or arbitrators find special problems with this type of case?
- What are the the reported levels of satisfaction of the litigants compared with other small claims?
- What choices among proposals for reforms do the litigants make, and what do they include?
- What operational or procedural changes can be made in small claims courts that could improve the handling of landlord-tenant disputes?





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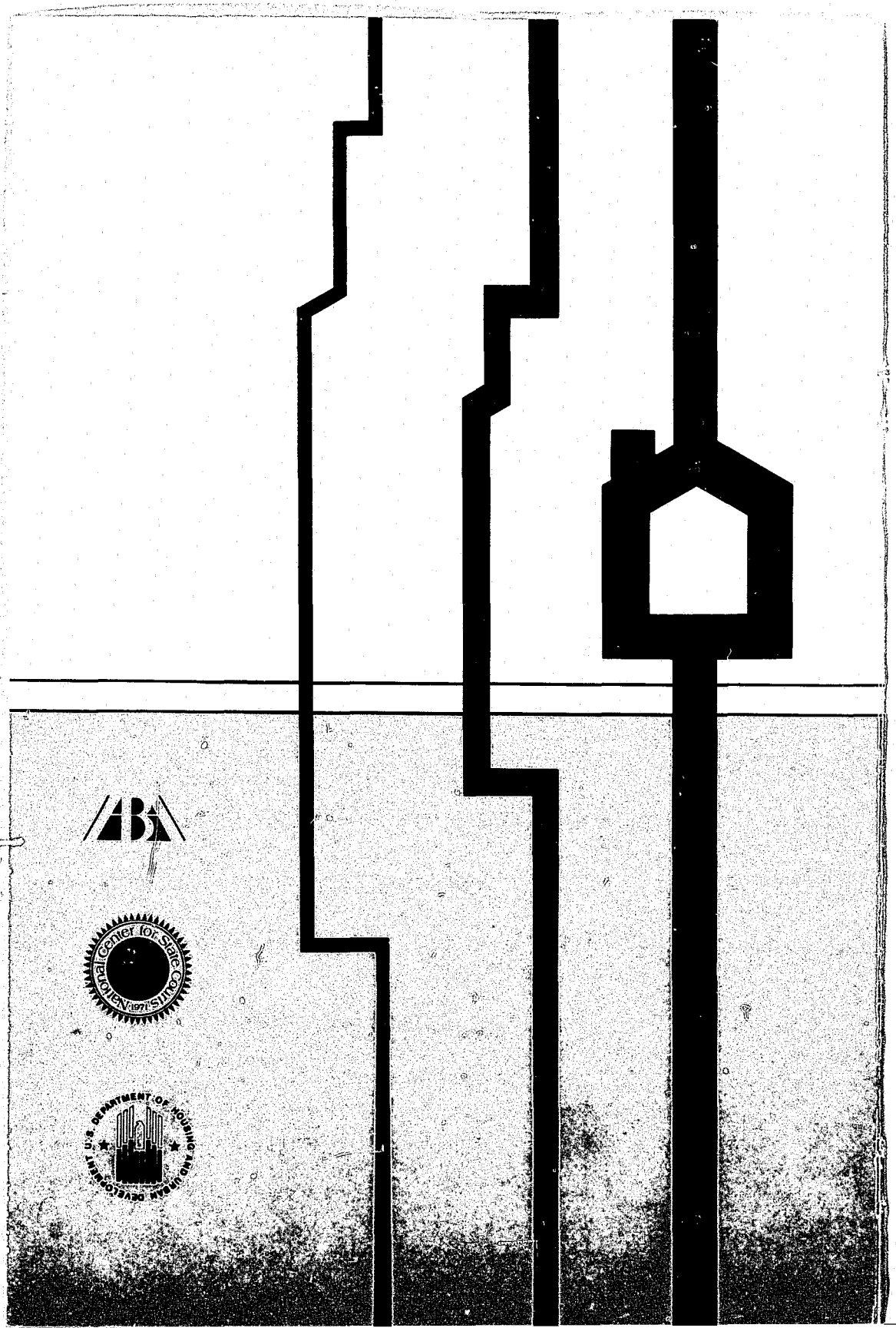
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