
The Value of Counsel: 20 Years of Representation before a Public Housing Eviction Board

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Research into the effects of legal representation is rare because in many settings in which people might have lawyers, legal representation is either so common or so unusual that it cannot serve as a variable. Moreover, such research as exists is often poorly controlled or otherwise methodologically deficient. Our data set, derived from the case files of a public housing eviction board, allows us to overcome most of the difficulties that plague prior studies because it is relatively large and unusually rich in information about individual cases. We model the effects of various tenant and case characteristics on lawyer involvement as well as the effects of legal representation on case outcome. We find that lawyers tend to handle more difficult cases and that the likelihood that legal representation will aid a tenant depends on case type and changes over time. Our results, though likely to be context dependent, suggest how the effects of legal representation may be studied in other settings and the kinds of variables that may condition such effects.

At least since Carlin's (1962, 1966) and Smigel's (1964) path-breaking portraits of different segments of the legal profession, the study of lawyers has been an important part of both the sociology of law and the sociology of the professions (see, e.g. Rueschemeyer 1973; Katz 1982; Nelson 1988). Various facets of the lawyer-client and lawyer-society relationship have been examined. O'Gorman (1963) studied the special problems that confronted New York lawyers dealing with matrimonial cases; Heinz and Laumann (1982) looked at the Chicago bar and the distribution of prestige within it; Zemans and Rosenblum (1981) examined legal education, and Rosenthal

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(1974) investigated the extent to which active client involvement affected tort recoveries, to give just some examples.

Within this vast literature, however, one is hard-pressed to find more than a few articles that take seriously whether lawyers make a difference to individual clients. When this question is addressed, it is seldom addressed by students of the legal profession. More often it is addressed in the course of research on some other problem or institution that sometimes involves the use of lawyers. Thus Ross (1970), in a study of auto accident claims processing, observes that legal representation usually helps and almost never hurts claimants, not only because it increases the threat value of their claims, but also because insurance companies typically raise offers to represented claimants by at least the amount of claimants' attorney fees. Similarly, Nonet (1969), in his study of the California Industrial Accident Commission, argues that unrepresented workers were hurt by the increasing formalization of commission procedures, but those with lawyers probably benefited from formalization. More recently Rolph and associates (1985) and Hammitt (1985), each working with data from insurance company files, found that automobile accident claimants with attorneys were more likely than those without to recover general damages (pain and suffering), and they tended to recover larger amounts for such damages. As Hammitt (1985:62–66) notes, however, represented claimants generally had to wait longer than unrepresented claimants to receive payments, and in severe cases with high medical expenses, they may have received less after attorneys' contingent fees were deducted.

The question whether lawyers make a difference occurs to those who study institutions other than formal courts because they often encounter situations in which legal representation is a variable. Thus some people negotiating with insurance companies have lawyers and others do not. The situation is similar for defendants in juvenile court, parties before some small claims courts, and those prosecuting or defending claims before a variety of administrative tribunals. Researchers who study these institutions are right to ask whether lawyers matter in such circumstances because it is not clear that they should; indeed, lawyers often appear before tribunals, like the California Industrial Accident Tribunal, that originally were designed with the unrepresented party in mind.

It is also interesting to ask whether lawyers aid clients in the paradigmatic situation of legal representation: the serious criminal or the large-stakes civil trial. Here, however, it is difficult to proceed empirically because there is almost no variation.¹ Virtually every client in these settings has a lawyer. The

¹ There may be variation in the pretrial or negotiation stage. Here the few studies that exist suggest that represented clients do better than those without lawyers. Ross

most we can ask is whether the type (public defender or retained counsel) or the quality of representation matters. Thus, if we are to investigate whether people who seek to mobilize the law or are subject to legal action do better with lawyers than without, we must look to settings other than full-blown formal trials.

Most studies that examine the consequences of representation in nontrial settings are plagued by methodological difficulties. For example, a number of studies, mostly done in England, discuss the effects of representation before welfare benefit tribunals of various types (Hill & Mercer 1987; Lister 1974; Flockhart 1976; Genn & Genn 1989; Lewis 1976; Milton 1976; Popkin 1977). In most of these settings, however, so few people have lawyers that adequate statistical analysis is impossible. Some of these studies simply rely on investigator or interviewee judgments about whether lawyers are useful. In studies that do present statistics associating legal representation with outcomes, statistical tests generally have little power and even bivariate relationships are often nonsignificant. The most sophisticated of these studies is Genn and Genn's (1989) recent work. By including nonlawyer representatives as well as lawyers, the Genns were able to conduct a multivariate analysis of the effects of representation before various informal English tribunals, although they did not study the effects of representation by individuals with specifically legal training.

Another group of studies examines the utility of counsel in juvenile courts (Aday 1986; Clark & Koch 1980; Duffee & Siegel 1971; Feld 1989; Ferster et al. 1971; Platt et al. 1968; Stapleton & Teitelbaum 1972). Many of these studies find that if cases proceed to hearings, unrepresented youth are more likely than those with counsel to secure dismissals and/or non-custodial or in-home dispositions (Aday 1986; Clark & Koch 1980; Duffee & Siegel 1971; Feld 1989). Although the authors of these studies attempt to control for certain relevant variables such as offense seriousness, there are obvious selection and process-related problems that only some of them recognize and none deals with adequately. Clark and Koch, for example, note that prosecutors are present whenever juveniles have counsel but only occasionally otherwise, yet they do not control for the presence of a prosecutor when they evaluate the effects

(1970), e.g., reports that represented tort claimants negotiate more favorable settlements than unrepresented claimants, and King (1976), looking at British data, reports that legal representation reduces guilty pleas and increases the frequency of bail. More generally the theoretical literature on dispute transformation (Mather & Yngvesson 1980–81; Felstiner et al. 1980–81) posits that lawyers change the nature of disputes brought to them, but these studies do not pass judgment on whether the client is made better or worse off by the transformation the lawyer brings about. For an empirical study of how lawyer-client interaction in divorce cases redefines the nature of a dispute, see Sarat & Felstiner (1986).

of counsel. No author modeling outcomes at the final disposition stage among cases that survive dismissal examines whether estimates are biased by nonrandom selection at earlier stages.² Nor does any study model the process by which counsel come to be assigned to or acquired by juveniles in the first instance, although Aday notes that in one of the two courts he studied, there was a tendency to assign counsel for cases in which intrusive court intervention was more likely.

The best study of the effects of counsel in juvenile court, and perhaps the best study of this question in any setting, is the experiment Stapleton and Teitelbaum describe in their book *In Defense of Youth* (1972). The investigators randomly either allowed youths access to a lawyer specially trained for juvenile defense work or left them to their own devices.³ They found that in one jurisdiction they examined, experimental subjects were more likely to have their cases dismissed and less likely to be committed than those in the control group. In the other court there was no statistically significant difference in outcome, although the proportion of the experimental group committed was almost double the proportion in the control group. Stapleton and Teitelbaum argue that differences in court procedure and judicial style explain the differential value of project attorneys to youth arrested in the two jurisdictions. In a later study of two juvenile courts, Aday (1986) also found that the relationship between counsel and outcome depended on court type.

The research done to date suggests two cautions for those who would investigate the effects of counsel on case outcomes. First, any such investigation must consider how clients acquire or fail to acquire counsel, for outcomes apparently associated with counsel may in fact be consequences of factors that led to the acquisition of counsel. As Hammitt (1985) and Rolph et al. (1985) point out, for example, the presence of lawyers may be associated with higher automobile accident recoveries merely because more seriously injured victims seek out lawyers and lawyers refuse cases when they think recoveries will be small. Second, the effects of counsel are likely to be tribunal dependent and, among tribunals of the same generic type (e.g. juvenile courts), may be affected by features peculiar to the tribunal studied. Thus no single study can yield a general answer to the question of whether legal representation makes a difference. It can only describe whether lawyers make a difference in the tri-

² See Berk (1983) and Heckman (1979) for discussions of selection bias.

³ Most of the experimental group took advantage of the offer of representation by project attorneys, although some retained other attorneys or went unrepresented. A majority of control-group youths went unrepresented. The authors contrasted outcomes for all youths in the experimental and control groups, which probably attenuated the estimated effects of representation because each group included some represented and some unrepresented youths.

bunal studied and point to features that may contribute to a more general theory of the consequences of representation.

Public Housing Evictions in Hawaii, 1966–1985

We study the public housing eviction process as it operates on the island of Oahu in Hawaii. The process includes two levels of hearings. The first, or trial-level, hearing occurs before the Hawaii Housing Authority's eviction board (in recent years called the "hearing board"), a lay panel that has much in common with the various welfare benefit tribunals that have been studied in Britain. The eviction board is charged with deciding whether to evict tenants from public housing projects administered by the Authority on Oahu (which includes the city and county of Honolulu). The second, or appellate-level, hearing is held before the Authority's Board of Commissioners, which is ultimately responsible for all the Authority's business. Only tenants dissatisfied with the judgment of the hearing board—in practice only those who are evicted—can appeal to the commissioners; the Authority never appeals.⁴

This study covers the period from 1966 through 1985, during which time eviction actions were commenced against 1,268 tenants, 108 of whom acquired lawyers or paralegals at some stage in the eviction process, although 9 of the represented tenants never had a hearing and 12 of them acquired lawyers only after exhausting their right of appeal within the Authority. We consider both lawyers and paralegals as "lawyers" because those paralegals who represented tenants worked along with and under the general supervision of attorneys for the Legal Aid Society of Honolulu (LASH) and were trained in the law relating to housing evictions and in welfare law more generally.

Throughout the period we study, the eviction board has been composed of citizens who are formally independent of the Authority, including, since 1969, two public housing tenants. During this time the eviction process, the board, and lawyers' activities have changed in various ways (Lempert 1989). At one point, for example, legal aid attorneys questioned the eviction board's legitimacy and sought to bring test case litigation; at another point the Authority reorganized and rationalized the eviction process, and at several points the Authority changed prosecutors, with concomitant changes in the messages the board received. Thus we have divided our time series into six periods chosen to capture important substantive changes.

The hearings at both trial and appellate levels are informal

⁴ After a fruitless appeal a tenant can also make a plea to the Authority's executive director (its chief operating officer), who on very rare occasions has consented to reopen a case and ask the commissioners to reconsider an eviction.

by custom and since 1980 in the case of the trial-level hearings,⁵ by administrative rule. Although the Authority's prosecutor (called the "hearing officer") has since 1982 been an attorney, the Authority's case is not presented to the eviction board in legalistic fashion. Instead the project manager is invited to explain the reason she seeks eviction, and the tenant is allowed to respond in open-ended fashion. In most cases the tenant does not dispute the manager's contentions but instead attempts to explain or excuse her behavior. It is reasonable to expect that these informal procedures, coupled with the fact that the Authority's basic case is usually uncontroverted, obviate the need for lawyers. This expectation appears to be supported by outcomes, for over the years most unrepresented tenants have been allowed to stay in housing, usually contingent on certain conditions—most often that rent be paid up and kept current.

Nevertheless, many tenants seek lawyers—most often from LASH. Not all tenants who want lawyers acquire them, for LASH has limited resources and sets priorities that, particularly in recent years, tend to exclude those with more routine actions. If legal aid is not available, tenants are unlikely to have the funds to retain private counsel. Over the years about 80% of represented tenants have been represented by LASH.⁶ When tenants do acquire lawyers, they do not always acquire them in time to be aided at the hearing. Many are galvanized into seeking law-

⁵ From now on we will refer to trial hearings as simply "the hearing." Appellate-level hearings will be "the appeal." When we speak of having a lawyer on appeal, we will be referring not just to having a lawyer at an appellate hearing but to having a lawyer who, according to the case file, at any time after the trial hearing attempted to intervene with the Authority to aid in making a case for appeal. At one time appeals were rare and all cases in which appeals were entered had hearings before the commissioners unless the tenant departed before the appeal could be heard. In a few cases, there was a rehearing before the eviction board instead. Since 1980 appeals have become more common.

During recent years, however, appeals have had to be based on "new facts and evidence" that emerged after the hearing. Thus appellate hearings took the form of a decision by the Board of Commissioners as to whether new facts and evidence had been presented and, if this determination was positive, a hearing on the merits. Since the "new facts and evidence" were usually the fact that rent owing had been paid, the hearing on the merits of the appeal was generally perfunctory. In the most recent time period we identify below, determining whether there were sufficient new facts and evidence to justify an appeal was delegated to the Authority's executive director, who in most cases informally subdelegated it to lower-level officials. Thus, when allowed, appeals were almost certain to be successful, but many appeals were not allowed.

During this last period legal representation on appeal virtually disappeared. According to legal aid attorneys, most tenants who sought their help were charged with nonpayment of rent. These tenants were advised that to successfully appeal, they had to pay back their rent debt and were told what to expect after they had done this. They were then left to face the commissioners alone. No record of such legal aid advice appears on any records available to us, nor would the Authority or its commissioners know that legal advice had been sought unless a tenant volunteered this fact.

⁶ The proportion represented by LASH was somewhat higher in the earlier years of our time period, perhaps because during the later years LASH alumni occasionally represented tenants.

yers only after they have been evicted and are considering requesting a rehearing or an appeal, and some who go to LASH before the hearing may be refused representation but be told to come back if they are evicted.

Data

The data for this study come from an examination of case files for every tenant subpoenaed to appear before the eviction board between 1966 and 1985. For most tenants these files yield information about the existence, timing, and type of legal representation; the cause of action; the amount of rent owed if the action is for nonpayment; the entire course of the case including significant intermediate outcomes; dates of significant stages in the process; and various characteristics of the tenants themselves. An important advantage of this data set is the amount of information available about tenants and their cases, which allows us to control for a number of variables that may confound an assessment of whether lawyers help tenants. Except for cause of action, such variables are seldom accounted for in other studies of the effects of legal representation.

For most of our analyses, we use a data set that includes all cases for the period 1969–78 and random (within years) samples of cases for the years 1979–85, a period when caseloads were rising dramatically. In addition, we added to this data set the cases in which a lawyer was present that did not fall into our sample and for which information was available on other necessary variables. These included five cases in which tenants were represented by lawyers or paralegals during the hearing stage and six cases in which tenants were represented on appeal. (In two of these cases, the tenant had counsel at both hearing and appeal.)⁷ Including the additional lawyer cases, this data set has 799 cases which had hearings and 151 cases in which tenants appealed evictions to the HHA's Board of Commissioners. Forty-seven tenants were represented by a lawyer at the hearing and 32 were represented on appeal. Unless otherwise noted, all estimates are weighted to reflect the composition of the overall sample of all cases brought up for eviction between 1969 and 1985.⁸ Information on a reduced set of variables was

⁷ The additional lawyer cases were added only to the analyses for the stage at which a lawyer was present. Thus if a case involved representation on appeal but not at the hearing stage, that case was not used in the analysis for the hearing stage.

⁸ This larger set of cases may be thought of as a "population," but we prefer to think of it as a sample because we are interested here in the social process (the workings of the eviction board) generating the observations, not the eviction cases per se. We are studying a sample of decisions made by a particular tribunal, not a sample of tenants. If the board had encountered a somewhat different mix of eviction cases, its decisions presumably would have been somewhat different. Thus, although we study all decisions made by the board in a particular period, we are also studying a sample from the infinite set of all decisions possibly made by the board in that period.

recorded for cases that did not fall into the full information sample, and some of the statistics reported below are based on all eviction cases. In this article we first examine the effects of various case and tenant characteristics on the likelihood that tenants will have lawyers, and we then investigate the effects of legal representation on outcomes at hearings and on appeal. Finally, we consider some variables that may help explain the effects of lawyer involvement that we find.

Table 1 describes the variables we used. The outcome variables for both the hearing and the appeal distinguish between tenants who are allowed to stay and those who are not allowed to stay, even though tenants allowed to stay are often technically evicted. This is because in nonpayment cases the usual disposition when a tenant is allowed to stay is for the board to issue an eviction order but to withhold service of the order on the condition that the tenant clear past rent and keep future rent current for six months or a year. If the tenant complies with these conditions, the eviction order is canceled; if she does not comply, the order may be executed or she may be given another chance to stay, subject to a similar set of conditions. Conditional evictions are also sometimes voted in cases other than nonpayment, where the condition might be, for example, the removal of a pet or no further involvement in fights. Although tenants occasionally win outright acquittals—as when a tenant is found not responsible for starting a fight or a case is dismissed because a crucial witness does not show up—such tenant victories are too rare for their occurrence to serve as a dependent variable. Moreover, both tenants and project managers regard evictions on conditions (called “conditional deferrals”) as tenant victories.

We coded lawyer involvement separately for the hearing and appeal stages. Although lawyers or paralegals representing tenants who lose at the hearing usually do not desert their clients if they decide to appeal, many tenants, as we noted above, do not acquire counsel until after they have been evicted at a hearing. About 5% of tenants having a hearing and about 17% of tenants who appealed were represented by lawyers. We also coded a variable for style of representation, which we discuss in greater detail below. Tenants occasionally appear with relatives, friends, or social workers rather than lawyers, but we did not code these representatives as lawyers because they lack legal training. In any case, there are too few of them to make much difference.

In addition to the outcome variables, lawyer involvement variables, and some process-related variables discussed later in this article, the variables consist of characteristics of the case likely to influence the decision, characteristics of tenants, the history of tenant-Authority interaction, and the time period in

Table 1. Abbreviations and Descriptions of Variables

Abbreviation	Description
Outcome	Coded 1 if tenant was evicted, 0 if tenant was allowed to stay (including cases in which tenant was technically evicted but enforcement of the order was stayed)
Period	Time period: 1=1966–74, 2=1975–77, 3=78–79, 4=Hearing Officer A, 5=Hearing Officer B, 6=Hearing Officer C
<i>Case characteristics</i>	
Reason	Reason for subpoena: 1=nonpayment, 2=falsification, fraud, or miscellaneous, 3=guests, 4=pets, 5=other trouble behavior
Rentowed	Natural log of constant 1982–84 dollars owed at the time of subpoena
Percentpaid	Percentage of rent debt at time of subpoena paid before the hearing
Paidinfull	Coded 1 if tenant paid in full before appeal hearing; 0 otherwise
<i>History of tenant-Authority interaction</i>	
Appearance#	No. of eviction actions brought against tenant, including the current appearance
Rent delinquency	Any rent delinquency; coded 1 if tenant has history of rent delinquency, 0 otherwise
Rentde12yr	Substantial rent delinquency; coded 1 if tenant has more than 2 years of rent delinquency history, 0 otherwise
Mgr workwith	Manager's effort to work with tenant to resolve problem; 1=some effort, 2=moderate or great effort, 3=no record of effort
<i>Tenant characteristics</i>	
Children	No. of children living with tenant
NCdependents	Nonchild dependents; coded 1 if tenant has any non-child dependents living in the unit, 0 otherwise
Invalid	Coded 1 if family income information is not missing, 0 if it is missing
Income	Natural log of family income (in constant 1982–84 dollars)
Finanprob	Financial problem index: no. of financial problems in family; occurrence of unemployment, substantial debt, illness, or garnished wages each add 1 point to the index
Samoan	Coded 1 if family is all or part Samoan, 0 otherwise
Nospouse	Marital status; coded 1 if tenant is not living with a spouse, 0 if tenant is living with a spouse
Malehead	Coded 1 if family is male headed or two spouses are present without information on headship, 0 if female headed
Retired	Coded 1 if family head is retired, 0 otherwise
Area1	Coded 1 if tenant lives in project area 1, 0 otherwise
<i>Representation</i>	
Lawyer	Lawyer involvement; coded 1 if tenant was represented by a lawyer or paralegal during the stage in question, 0 otherwise
Lawyer style	Style of representation used by lawyer; 1=legalistic style, 2=tenant or service style, 3=style information missing
Paralegal A	Coded 1 if tenant was represented by paralegal A, 0 otherwise
<i>Process variables</i>	
Delay	Natural log of days of delay between subpoena and hearing
Attend	Coded 1 if tenant attended the hearing, 0 otherwise

which the hearing occurred. Lawyers, particularly LASH attorneys, who must ration a scarce resource, consider the likelihood of success when they decide whether to represent tenants. Thus representation is unlikely to be orthogonal to variables that influence board decisions, and it is important to control for such variables in models estimating the effect of representation on the probability of eviction. It is also possible that lawyers tend to help tenants more in some kinds of cases or in some time periods than in others. The case characteristic and time period variables allow us to test for these interactions.

Case Characteristics

The most frequent reason for an eviction action was nonpayment of rent, with about three-quarters of the docketed cases brought for this reason. In nonpayment cases the Authority's evidence was almost always indisputable. This was also true for cases in which the tenant was accused of falsely or fraudulently concealing information about income, although tenants could sometimes make a credible claim that income-reporting requirements had not been adequately explained or understood. The Authority's claims were most often disputed when the charges involved keeping pets (invariably dogs), allowing unauthorized guests in the unit (usually lovers or former spouses), or other trouble behavior (such as fighting). When nonpayment and some other violation were charged together, the case was coded under the other violation on the theory that if the nonpayment charge alone were sufficient to guarantee an eviction, the Authority would not have gone to the effort to charge a harder-to-prove violation.

The other case characteristics indicate the severity of nonpayment and falsification/fraud cases. We have measured rent debt in constant 1982–84 dollars.⁹ Because the effect of each additional dollar owed is likely to decline as the total amount owed increases, we use the natural log of this variable in the models reported here.¹⁰ For models of hearing outcome we also use the percentage of the debt repaid by the time of the hearing. For the appeal stage we do not have information on the exact amount paid, so we instead use a dummy variable indicating whether the tenant had paid all the debt before the appeal hearing.

⁹ In most of the Authority's projects for most of the period of the study, rent for nonwelfare tenants was set at a proportion of the family's annual income. This proportion increased in accordance with federal policy from 20% to 25% to 30% over the period of our study. Welfare rent was usually a negotiated rent based on the number of bedrooms a family occupied, and the family would receive an increment to the basic welfare allowance to cover that rent.

¹⁰ Logging the amount owed also decreases the influence of a few outlying cases in which large sums of money were owed.

Tenant Characteristics

Tenant characteristics include number of children, the presence of nonchild dependents, family income, and a financial problem index. These characteristics are likely to influence board decisions because they influence the nature of excuses that tenants can offer and the prospects that problems will continue. We also noted whether tenants were of Samoan ancestry because Samoans seemed to be distinguished from other ethnic groups in the minds of many of those involved in the eviction process.¹¹ In interviews, both project managers and eviction board members characterized Samoans as problem tenants, and several engaged in derogatory stereotyping. There are also cultural reasons why Samoans seem to have special problems complying with housing rules and regulations (Lempert & Monsma 1992). Often the older generation—those renting the units—speaks English poorly or not at all, and the Samoan conception of property has a communal component that some board members rejected. There is no particular reason to think that the other tenant characteristics—project area, marital status, family headship, and whether the family head was retired—are related to outcome, but they may influence the probability of legal representation. We use them as instrumental variables in a simultaneous equation model of lawyer involvement and hearing outcome.

History of Tenant-Authority Interaction

Variables indicating the history of tenant-authority interaction include the number of times the tenant has been brought up for eviction, two indicators of the tenant's prior history of rent delinquency, and a variable categorizing the degree of effort the manager has made to work with the tenant to resolve the problem prior to the subpoena. Having a prior history of both eviction actions and rent delinquency may cause the board to view the tenant as incorrigible and thus is likely to increase the probability of eviction. It is also possible that the board was more likely to evict when a manager had tried to work with a tenant but the problem persisted. Thus several board members commented that when one manager, known for working with tenants, brought a case, they knew there would be little choice but to evict.

¹¹ Samoan ancestry was coded from tenant names by a research assistant born in Hawaii and familiar with Hawaiian culture.

Time Periods

The nature of the eviction board, its procedures, and its propensity to evict changed over time. We use time period as a surrogate for these changes in institutional context that might have affected the consequences of representation. The periods are substantively defined. The first period was one in which virtually all nonpayment tenants and most other tenants were allowed to stay. During the second period, LASH brought some important test case litigation, including one case that halted all eviction actions for several months. More than two-thirds of the eviction actions commenced during this period were resolved without a hearing. During the third period, the Authority was trying to recover from a backlog of eviction actions left unresolved in the second period, and was under considerable pressure from the Hawaiian office of the U.S. Department of Housing and Urban Development to improve rent collections and to make its eviction process more effective. The fourth period was marked by the hiring of a full-time eviction specialist (hearing officer A) and the creation of a second panel of the eviction board so that hearings could be held every week rather than every other week. The fourth period also saw an effort to change the board's style of dealing with tenants by legislative and rulemaking reform, a formal training session, and the recruitment of board members whose occupations (e.g., real estate manager) suggested they would not be swayed by sympathy for tenants. The fifth period began when hearing officer B took over several months after hearing officer A left. B was the first attorney and only woman to serve as an Authority hearing officer.¹² The sixth period began when C took over several months after B left. Impelled by housing management C tried, with considerable success, to establish the precedent that any tenant brought before the board owing money should be evicted, subject to her right to an appeal, which would ordinarily be allowed if the tenant fully paid her debt.¹³

Models for Lawyer Involvement

To secure legal representation, a tenant must first decide to seek an attorney's help and the attorney must then agree to represent the tenant. Although tenants were occasionally represented by private attorneys, the great majority of those who represented tenants were legal aid lawyers, whose time is a

¹² Another female attorney served as a replacement for C on several occasions. When C left the Authority (after the period for which we have data), she handled cases before the board on a more regular basis.

¹³ For more detailed justification of this periodization see Lempert 1989; Lempert & Monsma 1988.

scarce resource allocated to those the lawyers think will benefit most. Thus an undetermined number of tenants who sought the help of a lawyer received advice but were not represented. Unfortunately, we do not know who these tenants were, so we cannot separately model decisions of tenants to go to lawyers and decisions of lawyers to represent tenants. We can only model the outcome of this sequential process, which we do by examining the effects of variables that might be expected to influence either or both of these decisions.

Three general variables may be related to the probability of representation: the probability of eviction without a lawyer (evictability), the cost of eviction for the tenant, and the relevance of lawyerly skills to the case.

It is reasonable to expect that tenants were more likely to seek lawyers when they were in greater danger of eviction. On the other hand, conversations with legal aid informants suggest that the propensity of lawyers to represent tenants may be curvilinearly related to evictability, with lawyers declining to represent both those they think will win without their help and those they see as hopeless cases. Because the great majority of tenants brought before the eviction board are permitted to stay, it probably takes a relatively high level of evictability (relative to the other cases) for a lawyer to decide that a case is hopeless. Thus we expect that, in most cases, tenants who are in greater danger of eviction are both more likely to seek representation and more likely to find that lawyers agree to represent them.

Tenants for whom the cost of eviction is greater (e.g., they will have a harder time finding private housing or are less able to pay for it) are also presumably more likely to seek representation. The degree of hardship potentially resulting from eviction may similarly increase a lawyer's willingness to represent tenants.

Finally, lawyers may be more likely to represent tenants in cases in which they think their legal skills might make more of a difference; that is, in cases in which the facts and evidence or interpretations of law are open to dispute.

In general, one can say that case characteristics and the history of tenant-authority interaction tend to influence evictability and that tenant characteristics tend to influence the costs of eviction for the tenant. However, some of the variables in these categories may influence both evictability and the potential hardship caused by eviction. The relevance of lawyerly skills may be influenced by variables in any of the three categories of independent variables.

Only about 5% of tenants had lawyers at the hearing stage, but about 17% of those appealing had lawyers. This is consistent with the idea that those in greater danger of eviction were more likely to go to lawyers and that lawyers were more willing

to represent them—those who had been evicted at the hearing and were appealing this decision were clearly in greater danger of being evicted in the end.

Table 2 presents probit models predicting lawyer involvement at the hearing and appeal stages.¹⁴ The models assume an underlying continuous dependent variable. If this unobserved underlying variable is greater than 0, the observed dependent variable is 1; otherwise it is 0. The probit model predicts values of the underlying dependent variable. The error is assumed to be normally distributed with a mean of 0 and a variance of 1. In Table 2 the underlying dependent variable is an untidy combination of tenant propensity to seek representation and lawyer propensity to represent tenants who come to them. If this variable is greater than 0, the tenant has a lawyer; otherwise she does not.

A probit coefficient can be interpreted as the number of standard deviations of change in the underlying dependent variable associated with a one-unit increase in the independent variable or, in the case of nominal independent variables, with membership in one category rather than another. For example, the coefficient of about $-.65$ for the nonpayment category of reason for action in model 1 means the predicted value of the underlying dependent variable is about $.65$ of a standard deviation less for nonpayment cases than it is for cases in the reference category (“other trouble”).¹⁵

With the exception of “period,” which is used as a general control for institutional context, we dropped nonsignificant variables from the hearing stage equations in Table 2.¹⁶ We then used the same variables to predict lawyer involvement at the appeal stage. Only one tenant appealing in the final period was represented by a lawyer, so the model for lawyer involvement on appeal does not include cases from the final period.

¹⁴ We use a probit rather than an OLS specification because we have binary dependent variables. Some readers will be more familiar with logit models, which can be used in many of the same situations in which probit models are appropriate. The two methods usually yield similar results. We use probit models here because the econometric literature on them and computer programs for estimating them are more developed. Thus we have been able to use a widely available statistical package (LIMDEP) to produce maximum-likelihood estimates for probit selection models and bivariate probit models such as that discussed in Appendix A.

¹⁵ All nominal variables used in the probit models are dummy (1,0) coded. Nominal variables with more than two categories, such as reason for action, are entered in the models as a series of dummy variables with the last category excluded. The coefficient for each included category is thus the contrast between that category and the excluded, or reference, category. The pseudo R^2 we use for probit models in this article is $1 - L_{\text{model}}/L_{\text{null}}$, where L_{model} is the log likelihood for the model in question and L_{null} is the log likelihood for a model fitting only a constant (Pindyck & Rubinfeld 1981:312).

¹⁶ When the other variables in the equations are controlled for, we find that tenants at both the hearing and appeal stages were most likely to have lawyers during the second period, which was when legal aid was challenging the legal foundations of Hawaii's eviction process.

Table 2. Probit Models Predicting Lawyer Involvement at Hearing and Appeal

Independent Variables	Hearing		Appeal	
	1	2	1	2
Constant	-.6223 (-1.521)	-.5339 (-1.300)	-1.253 (-1.181)	-1.282 (-1.176)
Period				
1. 1969-74	.05497 (.162)	.02471 (.071)	.7184 (1.159)	.8218 (1.254)
2. 1975-77	.7725 (1.648)	.6564 (1.380)	1.797 (1.798)	1.818 (1.746)
3. 1978-79	-.7576 (-1.427)	-.8100 (-1.505)	-.5961 (-.977)	-.9475 (-1.434)
4. Hearing officer A	.1798 (.634)	.1669 (.574)	.4736 (1.199)	.4566 (1.147)
5. Hearing officer B	.01038 (.036)	-.3134 (-1.105)	^a	
(6. Hearing officer C)				
<i>Case characteristics</i>				
Reason				
1. Nonpay	-.6467 (-1.788)	-2.029 (-2.373)	-1.591 (-3.077)	-4.980 (-2.422)
2. Falsification, fraud, etc.	-.8335 (-2.014)	-2.167 (-2.255)	-.8658 (-1.437)	-4.838 (-2.009)
3. Guests	-.03937 (-.120)	-.08077 (-.243)	.6690 (.783)	.6059 (.689)
4. Pets	-.1224 (-.364)	-.1392 (-.411)	-.006749 (-.008)	-.05629 (-.066)
(5. Other trouble)				
Reason1-2*Rentowed		.2409 (1.908)		.5310 (1.757)
<i>Tenant-Authority history</i>				
Rent delinquency	-.6794 (-1.965)	-.7962 (-2.240)	.5907 (.943)	.6179 (.909)
Mgr workwith				
1. Some	.4972 (2.256)	.5116 (2.275)	1.036 (2.416)	1.149 (2.508)
2. Mod/great	-.07036 (-.235)	-.08313 (-.274)	.5782 (1.211)	.6545 (1.291)
(3. None)				
<i>Tenant characteristics</i>				
Finanprob	.2338 (1.847)	.2098 (1.651)	.1933 (1.036)	.2509 (1.293)
NCdependents	.3764 (1.680)	.4117 (1.806)	.7596 (1.646)	.8315 (1.745)
Invalid	3.284 (1.814)	3.831 (2.064)	-3.173 (-.870)	-2.005 (-.536)
Invalid*Income	-.3753 (-1.900)	-.4354 (-2.148)	.3701 (.950)	.2329 (.580)
Nospouse	-.6897 (-2.434)	-.7440 (-2.579)	-.5383 (-.690)	-.6155 (-.796)
Malehead	-.6916 (-2.553)	-.7815 (-2.778)	-.3635 (-.479)	-.3882 (-.508)
Retired	.5902 (2.131)	.6973 (2.432)	-1.055 (-1.009)	-1.082 (-.935)
Area1	.4651 (2.217)	.5077 (2.356)	.8961 (2.333)	.9564 (2.379)
Likelihood ratio χ^2	110.05	115.86	47.85	51.63
Pseudo R ²	.308	.325	.352	.380
df	20	21	19	20
N	793	793	118	118

NOTE: Cases are weighted. Lawyer coded 1 if tenant was represented by a lawyer, 0 otherwise; *t*-ratios are in parentheses. Reference categories for nominal variables with more than two categories are given in parentheses.

^a The data for the appeal stage do not include the final period, so period 5 is the reference category for the period variable in the models for representation on appeal.

There were only 118 appeal cases during the first five periods. Thus most coefficients in the appeal equation are imprecisely estimated, which is reflected in their large standard errors (and small *t*-statistics).

Factors Affecting Legal Representation

Looking at model 1 we see that at both stages, the effect of case type on legal representation was strong, with tenants subpoenaed for nonpayment or falsification/fraud less likely to be represented than tenants charged with behavioral violations (guests, pets, or other trouble).¹⁷ Behavioral cases are the kinds of cases with the greatest potential for disagreement over facts, so tenants and lawyers may have seen a special role for lawyers in these cases. The greater likelihood of representation in behavioral cases may also be because such cases were more likely than other cases to result in eviction.

The second model for each stage also includes the interaction of the log of constant dollars owed with a dummy variable for nonpayment and falsification/fraud cases. This is a way of investigating the effect of the amount owed in nonpayment and falsification/fraud cases.¹⁸ Those who owe more money are in greater danger of eviction. They presumably are more likely to seek representation and, except in extreme cases, more likely to find that lawyers are willing to represent them. Among the financial-debt cases, the amount owed is positively associated with the likelihood of lawyer involvement, although the coefficient for the appeal stage is nonsignificant.

The strong and highly significant negative effect of a history of rent delinquency on the likelihood of representation at the hearing stage may be due to a tendency for lawyers to think of tenants with a history of nonpayment as having unwinnable cases. Alternatively, legal aid lawyers may think such tenants are irresponsible and less deserving of their help. For the appeal stage, however, this coefficient is positive, although nonsignificant.

As noted above, tenants may also be more likely to seek representation if eviction would cause them greater hardship, and lawyers may be more likely to agree to represent tenants in such cases. Lack of money is presumably the greatest constraint on the ability of most tenants in public housing to move. The index of financial problems is positively associated with the

¹⁷ Model 1 excludes the interaction of reason for action and the amount of money owed so that we can compare the effects of different reasons for action.

¹⁸ The amount of rent owed is legally irrelevant in guest, pet, and other trouble cases, and in the great majority of such cases no money was owed. By including only a term for the interaction of a financial-debt case dummy variable and rent owed, we have constrained the effect of rent owed to be zero among the nonfinancial cases.

probability of lawyer involvement at both the hearing and appeal stages, although the coefficient for the appeal stage is non-significant. The log of family income is negatively associated with representation at hearing, as expected, but the corresponding coefficient for the appeal stage is nonsignificant (and positive).

The number of children had no significant effect on the probability of representation at either stage and so was dropped from the equations. The presence of other dependents, however, is positively associated with the likelihood of representation at the hearing stage. For the appeal stage, the corresponding coefficient is also positive, although nonsignificant. The presence of nonchild dependents may influence a tenant's propensity to seek representation because such dependents are ordinarily adults, especially parents and other older relatives, who are harder to move than children. Similarly, retired tenants were more likely to have lawyers at the hearing stage. This may be due to their greater difficulty of moving, a special sympathy lawyers feel for the aged, or older persons' greater experience with lawyers (the retired have not necessarily had low incomes during their working years). The estimated effect of being retired at the appeal stage, however, is nonsignificant and slightly negative. The negative effect on representation of being in a male-headed household (nonsignificant for the appeal stage) may reflect the more difficult economic situation of most female-headed households.¹⁹ On the other hand, the negative effect, net of the headship variable (and the other variables in the equation), of not being currently married (and living together) seems inconsistent with the idea that the potential hardship of eviction leads to representation. The greater likelihood of lawyer involvement among married tenants may instead be due to a tendency for married couples to be more committed to staying in their current home or to the fact that in a couple there are two people rather than one who might take the initiative to seek legal assistance.²⁰

The degree to which the manager has worked with the tenant to resolve the issue in question is associated with representation at both hearing and appeal. Tenants whose managers had worked with them to some degree were more likely to be represented than those whose managers had either worked with them a moderate to great amount or had not worked with them at all. The curvilinear nature of this relationship may reflect different loci of decisionmaking. Tenants with whom man-

¹⁹ Married and living-together tenants were coded as male-headed households, unless the woman was clearly the principal wage earner, in which case the household was coded as female-headed.

²⁰ A term for interaction of the two family status variables is nonsignificant for both the hearing and appeal stages.

agers have worked a great deal may be highly evictable by the time they are subpoenaed because the managers have given them every chance to correct problems.²¹ Thus they may find it difficult to persuade legal aid lawyers to represent them. Tenants with whom managers have worked to a lesser extent may have cases of more intermediate evictability that lawyers think they can help. Tenants with whom managers have not worked at all may be hostile toward, or avoid encounters with, authority, and they may be unlikely to seek out legal help in the first instance.

Finally, those who live in administrative area 1 were more likely to have lawyers at both the hearing and the appeal stages, probably because this area is located closer to the central legal aid offices than the other areas. It is also an area with a particularly high population density (the Authority's only low-income high rise is located here) and a disproportionately Samoan population. It may be that cultural affinity or population density leads to more communication about the availability of lawyers.²²

Substantive Implications

This investigation of lawyer involvement has interesting substantive implications. Though most lawyers who represent tenants in the eviction process do not charge for their services, it appears that the lack of an economic market does not undercut the rationality of the lawyer allocation process. Rather, the data suggest that the decisions of tenants and attorneys combine to allocate lawyers to serious cases in which more is at stake. Tenants appear prone to seek representation in cases where the likelihood of eviction seems relatively high. This includes cases in which behavioral violations such as fighting or housing unauthorized guests are charged, nonpayment cases in which large sums of money are owing, and cases of all types that are lost at the hearing and must be appealed. In addition, tenants seem more likely to go to lawyers if eviction would cause greater hardship for them. Tenants tend not to retain lawyers in open-and-shut cases in which the way to resolve the problem is clear (i.e., the typical nonpayment case).

²¹ In some eviction hearings tenants complain that managers did nothing to help them, and in other cases board members will point out to the tenants the lengths that management has gone to help them with their problems. Also, board members comment in interviews on the efforts that managers do or do not make. One manager, whose tenants when brought before the board were usually further behind in their rent than tenants brought by other managers, was praised by board members for his efforts to work with tenants. Several made comments to the effect that, "When [manager] brings up a case, you know there is no choice but to evict."

²² However, the Samoan dummy variable had no significant effect on the probability of lawyer involvement.

Our data provide no evidence that lawyers who are willing to represent tenants engage in “cherry picking.” Rather than take cases that are likely to generate a record of success, attorneys tend to take the tougher cases, although they turn down cases they think are hopeless. The cases lawyers accept disproportionately include cases in which there is room for more traditional lawyering because factual allegations are open to dispute and must be proved by the Authority in the course of the hearing. The data are consistent with what LASH informants told us about their reaction to typical nonpayment cases. They tell tenants who seek their aid the same thing the Authority does—if they want to stay in housing they should pay the rent they owe—and then, in most instances, they provide a description of the eviction process but otherwise leave tenants on their own.

Factors Affecting Hearing Outcomes

Table 3 presents probit models for the effect of lawyer involvement on hearing outcome. These models control for time period, case characteristics, tenant-authority history variables, and tenant characteristics that affect board decisions. If we did not control for variables affecting evictability, estimates of lawyer effects on outcomes would be biased because the perceived likelihood of eviction influences tenant propensities to seek representation and lawyer decisions to represent them. The first model in Table 3 tests the global effect of lawyer involvement at the hearing stage. The other two models add interaction terms to test whether the effect of representation was different for different periods and different case types.

In model 1, the estimated effect of lawyer representation on the likelihood of eviction is negative although nonsignificant.²³ This estimate is misleading, however, if lawyers helped tenants more under some circumstances than under others. Model 2 includes terms for the interaction of period and lawyer presence. Taken jointly, these terms are nonsignificant ($\chi^2=4.58$; 2 df), but the contrast between the first three periods and the final period is significant at the .05 level. The difference in the lawyer effect across periods is also monotonic, with lawyers

²³ We focus our discussion on the implications of legal representation for hearing outcomes. The interested reader may draw from the table information about other factors that affected the fate of tenants brought before the eviction board. For example, compared to tenants charged with miscellaneous kinds of troublemaking, tenants charged with nonpayment of rent were more likely to be allowed to stay; large numbers of children seem to provide some protection against eviction, and Samoan tenants seem to fare worse than tenants of other ethnic backgrounds. Interaction terms not involving “lawyer” are included to allow us to measure the effects of variables that should just affect financial debt cases (reasons 1 and 2) only in those cases and to deal with the fact that income-relevant information is missing in about 16% of the financial-debt cases.

Table 3. Probit Models Predicting Outcome at Hearing

Independent Variables	1	2	3
Constant	.2752 (1.014)	.3390 (1.234)	.2913 (1.057)
Period			
1. 1969-74	-.7792 (-3.192)	-.9182 (-3.596)	-.9232 (-3.603)
2. 1975-77	-.4006 (-1.218)	-.5123 (-1.533)	-.4593 (-1.369)
3. 1978-79	-.6932 (-2.622)	-.7564 (-2.835)	-.7562 (-2.830)
4. Hearing officer A	-.2222 (-1.305)	-.2747 (-1.576)	-.2804 (-1.609)
5. Hearing officer B	-.6639 (-4.118)	-.7122 (-4.318)	-.7146 (-4.333)
(6. Hearing officer C)			
<i>Case characteristics</i>			
Reason			
1. Nonpayment	-3.382 (-5.113)	-3.434 (-5.175)	-3.356 (-5.042)
2. Falsification, fraud, etc.	-.6993 (-1.688)	-.7243 (-1.734)	-.6419 (-1.532)
3. Guests	-.1901 (-.677)	-.1846 (-.656)	-.2104 (-.747)
4. Pets	-.2774 (-1.042)	-.2871 (-1.064)	-.2799 (-1.031)
(5. Other trouble)			
Reason1*Rentowed	.4598 (5.080)	.4626 (5.100)	.4667 (5.131)
Reason2*Rentowed	.1118 (2.190)	.1115 (2.172)	.1189 (2.302)
Reason1-2*Percentpaid	-.01112 (-6.394)	-.01111 (-6.357)	-.01109 (-6.319)
<i>Tenant-Authority history</i>			
Appearance#	.4229 (3.962)	.4313 (4.009)	.4266 (3.961)
Reason1-2*Rentdel2yr	.3810 (2.264)	.3886 (2.296)	.3907 (2.296)
<i>Tenant characteristics</i>			
Children	-.08650 (-2.468)	-.08580 (-2.434)	-.08705 (-2.449)
Reason1-2*Incvaild	5.082 (4.578)	5.096 (4.580)	5.085 (4.547)
Reason1-2*Incvaild*Income	-.5344 (-4.551)	-.5350 (-4.545)	-.5370 (-4.540)
Finanprob	-.08353 (-.909)	-.08660 (-.940)	-.08795 (-.950)
Period1-3*Finanprob	-.5667 (-2.840)	-.5482 (-2.762)	-.5599 (-2.780)
Samoan	.3419 (2.590)	.3295 (2.487)	.3157 (2.374)
<i>Representation</i>			
Lawyer	-.1946 (-.852)	-1.207 (-1.820)	-1.003 (-1.388)
Periods 1-3*Lawyer		1.643 (2.057)	1.906 (2.199)
Periods 4-5*Lawyer		.9839 (1.382)	1.083 (1.403)
Reasons 1-2*Lawyer			-1.312 (-2.070)
Likelihood ratio χ^2	200.61	205.19	210.34
Pseudo R^2	.204	.208	.214
df	21	23	24

NOTE: $N=767$. Cases are weighted. Outcome coded 1 if tenant was evicted, 0 otherwise; t -ratios are in parentheses.

more likely to help tenants in later periods. Lawyers may also have influenced outcomes more in some types of cases than in others. Model 3 includes a term for the interaction of lawyer presence and financial-debt (nonpayment or falsification/fraud) reasons for action. The coefficient for this term is negative and significant. Lawyers were more likely to help tenants subpoenaed for financial debts than tenants subpoenaed for behavioral violations.

To interpret these interactions, we have used model 3 to estimate probabilities of eviction at the means of the control variables for tenants who were and were not represented by lawyers within categories formed by the cross-tabulation of period and case type.²⁴ Table 4 shows the estimated probabilities. The combined effects of the lawyer by period and lawyer by case type interactions are such that the estimated effect of lawyer involvement on the probability of eviction for behavioral cases in the first three periods is actually positive. In other words, the estimates indicate that, controlling for the other variables in the equation, those tenants subpoenaed for pets, guests, or other trouble in the first three periods were more likely to be evicted if they had a lawyer than if they did not. In the fourth and fifth periods, the estimated probabilities of eviction are about the same for represented and unrepresented tenants in these kinds of cases. Only in the final period is the estimated probability of eviction in behavioral cases clearly lower for represented than for unrepresented tenants. These results are particularly interesting in light of the fact that legal representation was much more likely in cases involving trouble behavior than in cases with nonpayment or falsification/fraud reasons for action. Only 18.0% of all cases having a hearing were guest, pet, or other trouble cases, yet these were the charges in 60.8% of the cases with lawyers at the hearing stage. The fact that tenants were more likely to be represented in the kinds of cases in which, during the first five periods, lawyers were as or more likely to hurt than to help may explain the impression of most board members that lawyers generally tended to hurt tenants (Lempert & Monsma 1988:166).

In nonpayment and falsification/fraud cases, however, our estimates indicate that lawyers tended to help tenants in all periods, with the contrast between the likelihood of eviction with a lawyer and the likelihood of eviction without a lawyer increasing over time. Indeed, net of the other variables, the estimated probability that unrepresented tenants in nonpayment and falsification/fraud cases would be evicted increased over time,

²⁴ The probability corresponding to each predicted value z_i of the underlying dependent variable is the value of the standard normal cumulative distribution function at z_i .

Table 4. Estimated Probabilities of Eviction at Hearing by Period and Case Type

	Period		
	1-3	4-5	6
Financial debts:			
Lawyer	.051 (-1.634)	.041 (-1.742)	.011 (-2.299)
No lawyer	.110 (-1.224)	.305 (-.5101)	.507 (.01679)
Behavioral:			
Lawyer	.543 (.1072)	.500 (-.001130)	.289 (-.5576)
No lawyer	.213 (-.7954)	.468 (-.08133)	.672 (.4456)

SOURCE: Model 3, Table 3.

NOTE: "Financial debts" includes nonpayment and falsification/fraud. "Behavioral" includes guests, pets, and other trouble. Probabilities evaluated at the means of the other variables. Predicted values from the probit equation are in parentheses.

whereas the corresponding probability for represented tenants in these kinds of cases decreased over time.

The difference between financial-debt and other cases may exist because there are a variety of arrangements that tenants can make to repay money, but some behavioral cases can be resolved as easily without lawyers as with them, while others admit of no resolution short of eviction or acquittal. In debt cases lawyers may help tenants obtain assistance from welfare agencies, help them plan arrangements for repayment, and help convince the board that arrangements for repayment are viable. But a lawyer is not needed to help a tenant get rid of a pet, and no arrangements are likely to be acceptable when a tenant has tried to hit a member of the project staff or endangered the life of a fellow tenant.

The increasing effectiveness of lawyers over time may be due to the fact that the board was most informal in its approach to cases during the first three time periods. In behavioral cases in particular, informality may, as our data suggest, have made legal representation counterproductive. In a pet case, for example, what the board wanted was for the tenant to get rid of her pet. While tenants occasionally argued against the pet rule in principle, they would learn in their give-and-take with the board that such arguments would get them nowhere. Attorneys also argued against the rule. When they did, they would justify their client's recalcitrance and might thus fortify her resistance to the board's efforts to persuade her to get rid of her pet. Moreover, an attorney interested in the possibility of testing the rule might encourage a client to persist in claiming a right to keep pets in order to appeal an adverse ruling to the commissioners or, potentially, to the circuit court.

In cases of fighting between neighbors (probably the most common type of trouble case), attorneys might similarly interfere with informal processes that would give a tenant a second chance. In fighting cases claims of being falsely accused or self-defense were common. A typical lawyer's approach in these circumstances would be to challenge the accusation through the client's testimony, the testimony of other friendly witnesses, and the cross-examination of the accuser and other witnesses for the Authority. However, even with an able attorney accused tenants were unlikely to prevail in such circumstances, for the Authority was reluctant to bring trouble cases unless they were factually strong. Thus in fighting cases project managers or their staff had themselves often witnessed some of the events or police reports were available that put the blame on tenants. The unrepresented tenant, on the other hand, might also argue that she was falsely accused but without the insulation provided by an attorney might apologize to the complainants or otherwise express remorse sufficient to induce the board to give her another chance, perhaps conditioned on the tenant moving to another unit. The tenant without a lawyer might also talk directly to her accuser, who might agree that an accommodation was possible.

It should also be noted that the early years were associated with the legal aid militancy of the War on Poverty days. Some of the legal aid attorneys who served during this period recall the eviction process as a horror from a due process standpoint. Their scorn for the board might have been visible and is unlikely to have helped their clients. Moreover, the concern for a due process hearing may have distracted attorneys' attention from the possibility that a tenant's expression of remorse might induce the board to allow another chance. In financial-debt cases, on the other hand, the factual basis of the Authority's case was almost always indisputable, so due process in fact-finding was seldom an issue. In these circumstances even militant legal aid lawyers knew their cases were formally unwinnable, and they could only serve their clients by negotiating arrangements that would allow them to stay.

Finally, during the first three periods when a tenant had a lawyer in a trouble case, the Authority would sometimes ask the state attorney general to provide a lawyer to handle its side of the case. In these situations, both sides may have pressured the board to engage in legalistic rather than accommodative decisionmaking. Since the Authority's case was usually strong on the facts and soundly rooted in law, it was very likely to prevail.

Beginning in period 4 the Authority took a series of steps designed to routinize its eviction procedures and to move the board toward more legalistic decisionmaking. By period 6 these goals seemed to have been largely obtained. The impor-

tance of board-tenant interaction diminished and the issues on which cases turned were usually clear (Lempert 1989). Thus it appears that as the board's approach to cases grew less informal and more legalistic, the benefits from legal representation increased, which is what one might expect when legal formality increases. Nonet (1969) made a similar observation about the California Industrial Accident Commission.

An alternative, but by no means mutually exclusive, explanation for the increase in lawyer effectiveness over time is that it reflects the increasing experience of legal aid lawyers with the eviction board. In the early years, the eviction board was an unfamiliar forum for LASH lawyers, and different cases were handled by different lawyers. In the later periods first one paralegal and then another handled most cases; thus they gained the advantage of being repeat players before the board.

If All Tenants Had Lawyers

While the estimates in Table 4 are the best we can generate for the effect of legal representation on what we might call "tenant evictability," they may overestimate the gains tenants in financial-debt cases would have realized had there been a right to appointed counsel in all cases, a policy that some poverty lawyers once strongly advocated. We can use our data to estimate an upper bound on the proportion of tenants who would have been helped had all tenants had lawyers who performed like the lawyers in our sample. To generate this estimate, we assume that the appointment of counsel could not have helped those who won their cases without lawyers and was unnecessary for those who managed to acquire lawyers without a right to appointed counsel. Focusing on the remaining financial-debt cases, that is, on those tenants who were unrepresented and evicted, we reversed the coding of the lawyer dummy variable (and all interactions involving this variable) and generated counterfactual estimated probabilities of eviction for these tenants. When these cases are counterfactually "given" lawyers, the weighted average of their estimated probabilities of eviction is .1360. This figure of .1360 or 13.6% *underestimates* the proportion of the 195 evicted tenants whose fate would not have been changed by legal representation because those who were actually evicted are likely to have had characteristics favoring eviction not captured in our model.²⁵

Using "1-.1360" to estimate the proportion of the 195 evicted financial-debt tenants who might have been allowed to stay had they had an attorney leads to the expectation that 168

²⁵ In other words, the average error among these cases is positive. The errors are also negatively correlated with predicted evictability.

tenants would have been so aided, an *upper-bound* estimate that is a generous maximum.²⁶ The figure 168 is 27.8% of the 605 financial-debt tenants without lawyers. It is 27.1% of all financial-debt tenants and 21.9% of all tenants, whatever their cause of action. At the very most, then, slightly more than a fifth of the tenants facing eviction would have been helped had the state provided an attorney to all of them.²⁷

Alternatively, if we ignore the fact that the average error among those who are evicted is positive, we can generate an expected figure for those helped by lawyers by taking the difference between the actual average estimated probability of eviction for the 195 tenants we are examining, which is .5148, and the estimate of .1360 we get when these tenants are counterfactually given lawyers. This difference, which is .3788, translates into 74 tenants and amounts to 12.2% of the 605 financial-debt tenants without lawyers, 11.9% of all financial-debt tenants, and 9.6% of all tenants, whatever their cause of action. The true proportion of tenants who would have been helped had lawyers like those in our sample been provided all tenants is probably somewhere between this estimate of 9.6% and our upper bound estimate of 21.9%.²⁸

This estimated range speaks directly to what was once an important debate in policy and legal circles. It should be obvious, however, that the fact that it appears that only a minority of tenants would have been better off had counsel been universally appointed does not tell us whether the costs of universal appointment would have outweighed the benefits. Moreover, because of the small number of lawyer cases we had to work with, our estimate is imprecise, and counsel might be far more important in other welfare settings where facts are not as often indisputable and decisionmaking not so bound by routines (Lempert 1992).

One threat to the validity of these results merits particular attention. Because case characteristics influence whether lawyers agree to represent tenants, it is possible that there are unobserved variables that affect both the chance that a tenant will have a lawyer and the chance that the tenant will be

²⁶ Had there been no lawyer effect in our data, our estimation procedure would have yielded an upper-bound estimate of 95 tenants aided.

²⁷ Our calculations assume that unrepresented tenants charged with guests, pets, or other trouble behavior would, like most represented tenants facing these charges, have not been helped by legal representation. In fact, our data suggest that tenants facing such charges fared worse on the average with lawyers than without. Thus, even as an upper bound, our estimate of 21.9% tenants aided is probably too high.

²⁸ The 9.6% estimate could conceivably be high rather than low, but since our 195 cases all involve tenants past the threshold of evictability, we should, compared to a random sample drawn from our data set, have an unusual number of cases just beyond the evictability threshold who would have been pushed below it had they had lawyers. For this reason, among others, the 9.6% estimate is likely to err on the low rather than on the high side.

evicted, which would bias the estimated lawyer effects. A simultaneous probit model for hearing outcome and lawyer involvement that tests for error correlation is presented and discussed in Appendix A. The estimated error correlation is relatively weak and nonsignificant, indicating that it is not a major source of bias.

Appeal Outcome

Appeals of decisions by the eviction board were generally heard by the HHA Board of Commissioners, which also proceeded informally in deciding cases. Only one tenant appealing in the final period was represented by a lawyer, so cases in the final period are excluded from the analysis of lawyer influence on appeal outcome. After excluding period 6 cases and cases missing values for some of the variables used, the remaining sample consists of 105 cases. Lawyers represented tenants at the appeal stage in 30 of these cases.

We estimated a probit model for appeal outcome that includes the interactions of lawyer involvement with both period and reason for action. This model is similar to model 3 in Table 3. Most of the control variables are the same as variables used for the hearing outcome models, but, to preserve degrees of freedom, several nonsignificant variables have been dropped from the equation.²⁹

The estimated coefficient for the lawyer by period interaction at the appeal stage is consistent with the corresponding result for the hearing stage, with the lawyer effect more strongly negative for periods 4 and 5 than for periods 1–3, although the estimate is nonsignificant.³⁰ The estimated coefficient for the lawyer by case type interaction is strongly negative (–2.809) and significant ($t = -2.38$). This indicates that, as at the hearing stage, lawyers were more likely to help tenants in non-payment or falsification/fraud cases than in other cases.

Table 5 shows estimated probabilities of eviction on appeal for tenants with and without lawyers within categories formed by the cross-tabulation of case type and period, evaluated at the means of the other variables in the equation. Table 5 is analogous to Table 4 although not strictly comparable because the estimated model for the appeal stage does not include all the control variables included in the model for the hearing stage. Table 5 indicates that lawyers at the appeal stage, like those

²⁹ The independent variables in this equation are “Period,” “Reason, Reasons1–2*Rentowed,” “Paidinfull,” “Appearance#,” “Finanprob,” “Lawyer,” “Periods1–3*Lawyer,” and “Reasons1–2*Lawyer.” The period variable has been simplified by combining periods 1–3 into one category. A dummy variable indicating whether the tenant had paid all the money owed by the time of the appeal is used here instead of the percentage paid, for which information is not available.

³⁰ Recall that only 105 cases were available with which to estimate this model.

Table 5. Estimated Probabilities of Eviction at Appeal by Period and Case Type

	Period	
	1-3	4-5
Financial debts:		
Lawyer	.298 (-.5304)	.014 (-2.207)
No lawyer	.905 (1.313)	.704 (.5345)
Behavioral:		
Lawyer	.663 (.4202)	.104 (-1.257)
No lawyer	.293 (-.5450)	.093 (-1.323)

SOURCE: Probit model predicting appeal outcome (not shown).

NOTE: "Financial debts" includes nonpayment and falsification/fraud. "Behavioral" includes guests, pets, and other trouble. Probabilities evaluated at the means of the other variables. Predicted values from the probit equation are in parentheses.

involved at the hearing stage, were more likely to hurt than to help tenants in guest, pet, and other trouble cases during the first three periods, and that lawyers made little difference in these kinds of cases during periods 4 and 5. The table also indicates that, as at the hearing stage, lawyers were consistently more likely to help than to hurt tenants in nonpayment and falsification/fraud cases.³¹

The estimates for the appeal stage replicate our findings for the hearing stage. The fact that the estimated effects of lawyer involvement are so similar for tribunals comprised of two sets of individuals with different roles in the Authority and different backgrounds reinforces the credibility of these findings.³²

³¹ The minuscule estimated probability of eviction for represented tenants in financial-debt cases during periods 4 and 5 probably reflects the fact that in such cases the terms of successful appeals were ordinarily negotiated in advance and later embodied in "stipulated agreements." Lawyers who negotiated such agreements might attend the appeal to explain the terms of stipulated agreements to their clients and ensure that everything went smoothly. Lawyers who could not negotiate such agreements (usually because their clients could not pay all or a substantial portion of the amount owing) had no reason to believe their presence at the hearing could make a difference and so probably seldom showed up. In these circumstances our data would show legal representation only if the case file noted some posthearing contact between the lawyer and the Authority. Unlike lawyer presence at the appeal, such contacts were not routinely recorded. Thus Table 5 no doubt exaggerates the influence of representation on appeals in financial debt cases during periods 4 and 5.

³² As at the hearing stage, the estimates for the appeal stage are potentially vulnerable to both selection bias and bias caused by correlation between the errors for lawyer involvement and appeal outcome. There is no compelling reason to think that the estimated lawyer effect is biased by sample selection, but selection bias cannot be ruled out because the appeal sample has passed through several filters. For an appeal to occur, a tenant has to have a hearing, be evicted, and decide to appeal the eviction. At the appeal stage lawyers are likely to take on cases they think they can win just as they are at the hearing stage, although, in behavioral cases in particular, this may be counterbalanced by a tendency to stick with clients who were represented at the hearing and lost despite the best the lawyers could do.

How Do Lawyers Help Tenants?

Delay

The data include some information that may help explain how lawyers influenced the outcome of cases at the hearing stage. One possibility is that lawyers secure delays that allow clients the time needed to resolve their problems. Nonpayment tenants may value delay because they need time to muster the resources that will allow them to repay their rent debts and remain in housing. With enough time, interruptions in income caused by illness, injuries, or unemployment may end. On the other hand, delay can also increase the chances of eviction for tenants who owe money because their debts may increase during the time their cases await a hearing, so they may appear to have more hopeless cases.³³

Lawyer involvement in the HHA eviction process was strongly associated with delay. Table 6 shows, controlling for case type, the median number of days between subpoena and hearing, between subpoena and final action, and between hearing and final action for cases with and without legal representation at the relevant stage. In both case types, the median for all three measures of delay is higher for lawyer cases than for other cases.³⁴

In the eviction setting lawyers might attempt to delay matters intentionally because they need extra time to prepare cases or because they see delay as being in their clients' interest; or delay may inevitably accompany legal representation because lawyers engage in actions, like filing motions, that unrepresented clients would not engage in; or the Authority may respond to legal representation by taking more time to prepare its own case. We see evidence for each of these sources of delay in the case files. Delay may also increase if cases with lawyers tend to proceed to further stages. For example, represented tenants may appeal board eviction orders when unrepresented tenants would move out. In short, it appears that lawyers delay

³³ Delay in itself often benefits tenants who are evicted. They gain, at a minimum, additional time in subsidized housing and additional time to look for another dwelling. Tenants subpoenaed for nonpayment may already have ceased paying rent entirely, or they may stop when a subpoena issues. In such cases, delay translates into free housing. The problem with stopping rent payments, of course, is that it greatly increases the chances of eviction for those who otherwise would be allowed to stay, so delay may allow some tenants to temporarily gain free housing at the later cost of being forced to move to more expensive private housing.

³⁴ The fact that not all cases had hearings, and that delay is generally short in such cases, explains how in some categories the interval between the subpoena and final action is shorter than the interval between the hearing (in cases that had hearings) and final action.

Table 6. Median Days of Delay within Categories of Case Type

	Interval		
	Subpoena to Final Action	Subpoena to Hearing	Hearing to Final Action
Financial debts:			
Lawyer	401.5 (50)	49.0 (19)	340.0 (29)
No lawyer	174.0 (841)	36.0 (790)	189.0 (700)
Behavioral:			
Lawyer	236.0 (41)	49.0 (30)	269.0 (22)
No lawyer	88.5 (144)	34.0 (145)	69.0 (129)
Total <i>N</i>	1,076	984	880

NOTE: Based on the full data set, so cases are not weighted. Number of cases from which median was calculated is in parentheses. The number of cases varies across intervals because not all cases had hearings and the date of final action is missing for some cases. "Lawyer" means a lawyer was present during the interval in question. Date of final action is the date a case was closed.

eviction decisions because they tend to act like—lawyers, and even informal tribunals may allow them to act this way.³⁵

Table 7 builds on the probit models for hearing outcome in Table 3 by including variables that may explain how lawyers are able to help tenants. If these variables intervene between representation and outcome, we will have some clues regarding the processes by which lawyers help tenants. Model 1 in Table 7 includes the log of days of delay between subpoena and hearing as well as the interaction of this variable with a dummy variable for nonpayment or falsification/fraud reasons for action. The estimated coefficients indicate that delay may slightly improve the prospects of tenants subpoenaed for behavioral violations, but it is more likely to hurt than to help those subpoenaed for financial debts. This is probably because rent debts often increase while tenants wait for their hearings. Controlling for delay causes little change in the estimated lawyer effects. Thus, the effect of lawyer involvement on hearing outcome cannot be attributed to the delay caused by lawyers.

³⁵ The delay we find associated with lawyers is probably not tribunal or cause of action specific. Hammitt (1985:64), for example, finds in his study of automobile accident cases that among cases involving tort claims for bodily injuries, the median time before an accident victim receives payment from an insurance company is about twice as long for represented victims in cases in which no suit is filed as it is for unrepresented victims. If suit is filed, even if no trial ensues, the median time to first payment more than doubles again.

Table 7. Probit Models Predicting Outcome at Hearing, Including Variables That May Help Explain Effects of Lawyer Involvement

Independent Variables	1	2	3	4
Constant	1.147 (1.614)	2.124 (2.751)	2.007 (2.566)	1.994 (2.548)
Period				
1. 1969-74	-.8914 (-3.436)	-1.613 (-5.583)	-1.625 (-5.608)	-1.623 (-5.601)
2. 1975-77	-.4992 (-1.486)	-1.245 (-3.479)	-1.246 (-3.478)	-1.243 (-3.470)
3. 1978-79	-.8018 (-2.973)	-1.215 (-3.970)	-1.216 (-3.968)	-1.215 (-3.966)
4. Hearing officer A	-.2932 (-1.675)	-.4688 (-2.440)	-.4742 (-2.464)	-.4759 (-2.471)
5. Hearing officer B	-.7400 (-4.447)	-.7488 (-4.175)	-.7475 (-4.166)	-.7466 (-4.162)
(6. Hearing officer C)				
<i>Case characteristics</i>				
Reason				
1. Nonpayment	-5.293 (-5.164)	-4.542 (-4.166)	-4.395 (-4.005)	-4.383 (-3.993)
2. Falsification, fraud, etc.	-2.540 (-2.928)	-1.986 (-2.139)	-1.826 (-1.947)	-1.816 (-1.936)
3. Guests	-.2373 (-.838)	-.2768 (-.951)	-.3179 (-1.077)	-.3008 (-1.010)
4. Pets	-.2440 (-.889)	-.1953 (-.702)	-.1778 (-.631)	-.1748 (-.620)
(5. Other trouble)				
Reason1*Rentowed	.4732 (5.186)	.4442 (4.626)	.4452 (4.634)	.4452 (4.632)
Reason2*Rentowed	.1143 (2.192)	.1328 (2.373)	.1309 (2.340)	.1316 (2.350)
Reason1-2*Percentpaid	-.01116 (-6.281)	-.01163 (-5.908)	-.01167 (-5.925)	-.01167 (-5.920)
<i>Tenant-Authority history</i>				
Appearance#	.4380 (4.024)	.4108 (3.502)	.4155 (3.540)	.4170 (3.548)
Reason1-2*Rentdel2yr	.3619 (2.106)	.4486 (2.446)	.4410 (2.404)	.4427 (2.412)
<i>Tenant characteristics</i>				
Children	-.08336 (-2.333)	-.08809 (-2.316)	-.08781 (-2.293)	-.08864 (-2.312)
Reason1-2*Invalid	5.036 (4.470)	4.312 (3.552)	4.309 (3.544)	4.312 (3.547)
Reason1-2*Invalid* Income	-.5371 (-4.512)	-.4415 (-3.438)	-.4410 (-3.430)	-.4413 (-3.433)
Finanprob	-.09440 (-1.015)	-.007532 (-.076)	.02268 (.227)	.02270 (.227)
Period1-3*Finanprob	-.5447 (-2.663)	-.4745 (-2.171)	-.4857 (-2.216)	-.4866 (-2.219)
Samoan	.3078 (2.296)	.3543 (2.499)	.3447 (2.418)	.3421 (2.397)

Table 7 (continued)

Independent Variables	1	2	3	4
<i>Representation</i>				
Lawyer	-.9929 (-1.378)	-1.096 (-1.509)		
Lawyer style				
1. Legalistic			-.3160 (-.350)	-.2614 (-.286)
2. Tenant/service			-1.160 (-1.539)	-1.147 (-1.517)
3. Style missing			-.8873 (-1.029)	-.9214 (-1.060)
Paralegal A				-.2734 (-.427)
Periods 1-3*Lawyer	1.824 (2.090)	2.347 (2.668)	1.818 (1.872)	1.797 (1.837)
Periods 4-5*Lawyer	1.216 (1.566)	1.204 (1.538)	.8470 (1.034)	.9583 (1.114)
Reasons 1-2*Lawyer	-1.553 (-2.355)	-1.563 (-2.280)	-1.590 (-2.238)	-1.593 (-2.251)
<i>Process variables</i>				
Delay	-.2450 (-1.311)	-.2879 (-1.512)	-.2463 (-1.268)	-.2468 (-1.269)
Reasons 1-2*Delay	.5395 (2.493)	.4935 (2.201)	.4424 (1.940)	.4431 (1.942)
Attend		-.6636 (-2.067)	-.7027 (-2.166)	-.6910 (-2.119)
Reasons 1-2*Attend		-.9533 (-2.720)	-.9252 (-2.622)	-.9359 (-2.642)
Likelihood ratio χ^2	219.35	320.76	322.87	323.05
Pseudo R^2	.223	.326	.328	.328
df	26	28	30	31

NOTE: $N = 767$. Cases are weighted. Outcome coded 1 if tenant was evicted, 0 otherwise; t -ratios are in parentheses.

Attendance

Another way in which lawyers may help tenants avoid eviction is by impressing on them the importance of attending hearings. Tenants who fail to show up for their hearings or do not offer a credible excuse for their failure are ordinarily evicted. Of tenants with lawyers, 88.2% attended the hearing, whereas 78.6% of those without lawyers attended.

Model 2 in Table 7 includes a dummy variable for attendance at the hearing and the interaction of this variable with the financial-debt dummy. Attendance is clearly related to outcome, with those attending the hearing less likely to be evicted. This relationship is much stronger among nonpayment and fraud cases than among other cases.³⁶ The effect of lawyer involvement on hearing attendance cannot, however, explain the

³⁶ Perhaps this is because working out arrangements for repayment and for prompt future payments is important to tenant success in nonpayment and falsification/fraud cases, and it is not possible to make such arrangements if the tenant does not attend the hearing. Also, the Authority's financial records typically provide a strong prima facie case when money owed is in issue, but witnesses of perhaps questionable credibility may appear in behavior problem cases even if the tenant does not show up.

relationships between lawyer involvement and hearing outcome because controlling for attendance does not weaken the lawyer coefficients.

Styles of Representation

It is also possible that lawyers using some styles of representation are more effective than lawyers using other styles. From our reading of case files, we identified three styles of lawyer representation. One, which we call the legalistic style, involves technical objections to board or Authority procedures as well as, less often, attempts to impose legal rules of procedure on board hearings. Lawyers using the second style, which we call the tenant style, make arguments that parallel the kinds of excuses and promises of reform that tenants often make. A third style, called the service style, involves some service that the lawyer performs for the tenant that does not directly relate to the eviction process but that then allows the lawyer to argue that the problem has been corrected. Examples are securing a divorce when a tenant is threatened with eviction because of violent acts by her husband or acquiring money wrongfully withheld by welfare that allows the tenant to pay her rent debt.

Lawyers employing all three styles occasionally appear to make a difference for tenants. Those who use the legalistic style may secure a ruling which leads the Authority to drop its case, as when a successful objection is made to the adequacy of the notice given a tenant. Tenant-style arguments are often used in situations where tenants might have made the same type of argument to the same effect, but it appears that the board occasionally accepts an excuse or promise to reform only because a tenant's lawyer had vouched for her by arguing on her behalf. Service-style approaches are the least common but may be the most effective because they often change the tenant's situation in ways that promise to resolve the problems that gave rise to the eviction action in the first instance.

Table 8 shows the percentage of lawyers using each style of representation by period in those cases for which we were able to code style. Over time the legalistic style of representation appears to have become somewhat less common and the tenant style distinctly more so. Too few lawyers use the service style for a trend to be identified. The shift toward tenant-style arguments may reflect Legal Aid's increasing use of paralegals to represent tenants. It may also reflect increasing experience with eviction cases. Not only did LASH as an institution gain experience, but the same LASH paralegal represented at least 14 HHA tenants during the last three periods. Growing experience with the HHA eviction board probably taught LASH's lawyers and paralegals to use forms of argument different from those that are ordinarily made in court.

Table 8. Styles of Representation by Period

Style	Period				All Periods
	1-3	4	5	6	
Legalistic	52.4%	33.3%	45.5%	30.0%	41.0%
Tenant	23.8	50.0	50.0	60.0	44.6
Service	23.8	16.7	4.5	10.0	14.5
Total	100.0%	100.0%	100.0%	100.0%	100.1%
<i>N</i>	21	30	22	10	83

NOTE: Includes lawyers representing tenants at any stage in the eviction process; based on the full data set, so cases are not weighted. Cases for which style information was not available are excluded. Not all percentages add to 100% due to rounding.

In Model 3 of Table 7 the lawyer involvement dummy variable is divided according to style of representation. Three separate dummy variables categorize lawyers using a legalistic style, those using either a tenant or a service style, and those for whom there was not sufficient information available to code style.³⁷ Dividing the lawyer variable this way does not lead to a significant increase in the likelihood ratio χ^2 for the equation ($\chi^2=2.11$; 2 df), but the difference between the coefficient for legalistic lawyers and that for tenant- or service-style lawyers is suggestive nonetheless. The estimated negative effect of lawyer involvement on the chances of eviction is stronger for tenant- and service-style lawyers than for legalistic lawyers.

This may be because, as some board members report, legalistic procedural maneuvers irritate the board and counterbalance any good the lawyers may do for their clients. It may also be because lawyers employing tenant-style arguments, excuses, and promises are able to make these claims more effectively than most tenants could on their own. Thus a tenant who spent her rent money on medical care may simply assert that fact; a lawyer representing the tenant may provide the board with a set of medical bills. The board may also take arguments, excuses, and promises more seriously when they are made by a lawyer. For example, a tenant who says that when her brother is paid in two weeks, he will lend her money to pay the rent may or may not be believed by the board; a lawyer who vouches for this, particularly one who has established credibility as a repeat player, is more likely to be believed. The service style may be the most effective of all, because the lawyer obtains benefits that allow the tenant to argue that the cause of the problem has been removed. Unfortunately, there are too few service-style cases to model the effect of this style separately.³⁸

³⁷ Because there are so few service style cases and because we expect the largest contrast to be between the consequences of the legalistic style and the other styles, we have coded tenant- and service-style cases together for purposes of this analysis.

³⁸ These results are consistent with what board members said in interviews about

Explaining Changes over Time

The coefficients for the lawyer by time period interaction are somewhat weakened when style is included in the equation, indicating that the changing mix of lawyer styles accounts for some but not all of the increasing effectiveness of lawyers over time.

It is also possible that much of the change over time in the lawyer effect is due to the one LASH paralegal mentioned above (here called paralegal A) who represented at least 14 tenants in the later periods. Paralegal A may have been particularly effective because he gained familiarity with board procedures. He also may have developed a good working relationship with the Authority's prosecutor and the board. To test this possibility, the fourth model in Table 7 includes a dummy variable for representation by paralegal A. The estimated effect of paralegal A is nonsignificant and relatively weak. Controlling for the presence of this paralegal also has little effect on the other lawyer coefficients. The period by lawyer interactions, therefore, cannot be accounted for by A's increasing experience in handling eviction cases. To the extent that increasing lawyer effectiveness over time can be accounted for by a process of learning through experience with the board, it must have been learning that was shared among legal aid lawyers, not just the knowledge of one who appeared many times. LASH as an organization can be seen as a repeat player in the HHA eviction process.³⁹

The change over time in lawyer effectiveness may also be due in part to changes in eviction procedures. After LASH challenged the legality of the eviction process in period 2, the board and the Authority became more conscious of the need to adhere to standard procedures ensuring due process. Moreover, in the last two periods, the Authority's prosecutor was a lawyer and the prosecutor in the fourth period, while not legally trained, believed he should act like a lawyer. Eviction cases in the first three periods were prosecuted by the Supervising Public Housing Manager (SPHM), who did not see himself as a lawyer (Lempert 1989).⁴⁰ The lawyer by period interaction

the consequences of different styles of representation (Lempert & Monsma 1988: 165–67).

³⁹ We also checked for the influence of two other variables that might help explain the pattern of lawyer effects: whether the lawyer or the unrepresented tenant called a witness and whether the lawyer or tenant disagreed with the Authority on the facts or on interpretations of the law, HHA regulations, or leases. Both events almost never occurred in financial-debt cases, so these variables cannot explain the influence of lawyers in those kinds of cases. In behavioral cases lawyers were more likely than unrepresented tenants both to call witnesses and to disagree with the Authority. However, when we modeled the effects of these variables on hearing outcome among behavioral cases, neither estimate was significant.

⁴⁰ Indeed, in behavior problem cases during the first three periods when the tenant had a lawyer the Authority often asked the state attorney general's Office to furnish

may reflect the fact that lawyers were better than tenants in negotiating or otherwise dealing with legally oriented counterparts but had no advantage in dealing with the substantively oriented SPHM. Over time there seems to have been a convergence between lawyer style and eviction procedures, with lawyers increasingly using substantive arguments and the board becoming somewhat more legalistic.

Finally, and perhaps most important as an explanation of the period by lawyer interaction is the changing pattern of board decisions (Lempert 1993). In the first three periods tenants charged with nonpayment of rent were almost always allowed to stay if they said they would repay the rent owing. Thus for most tenants threatened with eviction, lawyers could do no better than tenants did for themselves, and lawyers might have done worse if they did not make the kinds of arguments that usually worked for unrepresented tenants. This situation changed commencing with period 4 as the board became more concerned with tenants' actual prospects of repayment and less moved by what tenants said they would do. Lawyers' skills may have been useful for convincing the board that repayment plans were viable. In behavior cases during the first three periods the outcome was more problematic, but a board oriented toward giving tenants substantive justice was, for reasons we have already noted, probably more receptive to the expressions of regret and promises of reform that unrepresented tenants made than it was to lawyers' attempts to raise procedural arguments or to question the credibility of the Authority's witnesses.

Conclusion

We said at the outset that the effects of legal representation might well be context-dependent, and the strong period by lawyer interaction we found suggests that even within the confines of this study, that is the case. Thus we cannot be sure that our results will generalize to other informal tribunals, much less to somewhat more formal tribunals like the juvenile court. Nevertheless, we believe that our research has implications for those who study lawyers in other contexts. First, it is important to note when clients select lawyers and vice versa. Case and other characteristics may suppress or distort the relationship between legal representation and case outcomes. Second, it is important to examine whether lawyers help clients in some

them with a lawyer-prosecutor. The aggressive prosecutions that occurred in such cases may be one reason why defense counsel did so poorly in that period. Another reason may be that in periods 1 and 2 defense counsel often challenged evictions on procedural grounds. Such challenges are unlikely to have persuaded a substantively oriented board of lay decisionmakers.

kinds of cases and not in others and whether the consequences of representation change over time. Third, there are various outcomes or aspects of outcomes that might be examined. Delay, for example, often has a value (positive or negative) to one or both parties. Even when legal representation does not affect a tribunal's decision, it is likely to affect the time it takes to reach it. Fourth, lawyers may act in different ways in representing clients; the style of representation may be as or more important than the fact of representation in affecting outcomes. Finally, the finding that lawyers, on average, aid litigants in informal tribunals does not mean that large numbers of litigants would be aided by universal representation. This is an issue that must be examined separately.

We believe we have shown that legal representation made a difference before the tribunal we examined, a public housing eviction board, although lawyers helped tenants more in some kinds of cases and some time periods than in others. Tenants were more likely to be represented in cases brought for behavioral reasons (guests, pets and other trouble) than in cases brought because of debts to the Authority (nonpayment and falsification/fraud). Lawyers were most likely to help tenants, however, in financial-debt cases, and actually seem to have hurt tenants in behavioral cases during the earlier periods. We think lawyers were more likely to be present in behavioral cases because the chances of eviction were greater (at least compared to the chances of eviction in nonpayment cases) and because there was more disagreement on the facts in behavioral cases. Both tenants and lawyers may have believed that the factual uncertainties in these kinds of cases provided occasions for skilled lawyering.

From the standpoint of the eviction board, and perhaps also from that of the Board of Commissioners, the salient distinctions between behavioral and financial-debt cases are probably somewhat different. Behavioral violations directly affect the quality of life for other tenants in the projects, whereas financial debts to the Authority do not. In addition, while debts may be unequivocally cleared, promises to reform are always suspect. These are probably the reasons why tenants are more likely to be evicted for behavioral violations, and board members and commissioners intent on evicting problem tenants may view legal maneuvering, cross-examination of witnesses, and the like as obstructionism. More important, they may think that the points such tactics make do not go to the core issue, which is the likelihood that the behavior that gave rise to the action will persist into the future. In nonpayment and falsification/fraud cases, there is less of an opportunity for traditional lawyering because the facts are generally clear. Lawyers can, however, help tenants who owe money present their excuses

more persuasively, help them make arrangements for repayment, and help convince the board or the commissioners that these arrangements are viable. In addition to the general rhetorical skills of lawyers and their ability to resolve legal problems contributing to a tenant's financial straits, it is possible that board members and commissioners are more inclined to believe educated professionals than public housing tenants.

We have also found that lawyers tended to be more effective in later time periods, which we think is partly due to the increasing experience that legal aid as an institution gained over time with this initially unfamiliar forum. This implies that lawyers may help clients appearing before a variety of informal tribunals if they have sufficient direct or vicarious experience with the particular tribunal to learn how their skills can be used most effectively. It is, however, possible that experience with particular informal tribunals allows representatives without legal training to be just as effective as lawyers and paralegals.

The increasing effectiveness of lawyers over time appears also attributable to the increasing legalization of the eviction process. When lawyers first began to represent tenants before the board, they argued that the eviction hearings should hew more closely to legal procedures, and the Authority's later efforts to secure a more legalistically oriented board may in some measure have been a response to the presence of defense counsel at eviction hearings and the legalistic challenges they made (Lempert & Monsma 1988). The irony is that, in helping to create a forum where lawyers could make more of a difference for their clients, lawyers contributed to a situation in which most tenants fared worse than they had in the earlier periods (Lempert & Monsma 1988; Lempert 1989).

If lawyers affect outcomes in informal tribunals like the eviction board, it is likely, despite our cautions about context dependence, that they affect outcomes in other informal and more formal tribunals as well. Indeed most studies of legal representation report that representation makes a difference, and in most cases representation appears on balance to help clients. Yet, while painting a generally positive picture, these studies often identify certain situations, conditions, or respects in which the presence of counsel has no effect or an apparently detrimental one. (See, e.g., Ferster et al. 1971; Genn & Genn 1989; Hill & Mercer 1987; King 1976; Platt & Friedman 1968; Platt et al. 1968; Popkin 1977; Stapleton & Teitelbaum 1972; Vinson & Homel 1973.) We suggest that when judges or others with outcome control regard the presence of lawyers as a challenge to their authority or see them as emphasizing issues that are beside the point, lawyers do not help clients or even systematically harm them. If, as seems likely, traditional juvenile court judges often hold such attitudes, this explanation fits not

just the context of the eviction board but juvenile courts as observed by Stapleton and Teitelbaum (1972) and others (Aday 1986; Feld 1989). It remains to be seen in how many other settings lawyers, even if they ordinarily help clients, may also have a boomerang effect.

Appendix A

Two criteria are likely to guide lawyers in deciding whether to represent tenants who come to them: whether tenants need legal help and whether, with legal help, cases appear winnable.⁴¹ Although the available data include a substantial amount of information regarding evictability, they include less information on the ability and willingness of tenants to make arrangements that will resolve the problems for which they have been threatened with eviction. At a given level of evictability, the latter are the sorts of variables most likely to influence whether the tenant is evicted or given another chance. Depending on the cause of action, lawyers deciding whether to represent tenants are likely to ask them if they can borrow money to pay what they owe, if they are willing to get rid of pets, if they are willing to make boyfriends move out, or if they can control the behavior of teenage sons. Thus there may be unobserved variables that are positively associated with the probability of representation by a lawyer and negatively associated with the chances of eviction. In other words, the error in the lawyer variable may be negatively correlated with the error in the hearing outcome, which would produce a negative bias in estimates of the lawyer effect that do not take this correlation into account.

It is possible to address the issue of the possible correlation between the errors for lawyer involvement and hearing outcome by simultaneously estimating probit equations predicting lawyer involvement and hearing outcome. Maximum likelihood estimates for such a model (using unweighted data) are presented in Table A1.⁴²

Because the objective here is to take account of the error correlation, not to estimate the most elegant model for lawyer involvement, the equation for lawyer involvement includes all the variables in the hearing outcome equation except for percent paid, which cannot be causally prior to lawyer involvement.⁴³ For this model to be identified, the equation for lawyer involvement should also include at least one variable associated with lawyer involvement but unrelated, by theoretical criteria, to hearing outcome (see Maddala 1983:122–23). The equation for lawyer involvement used here includes four

⁴¹ It is less clear that a tenant's perceived need for legal help will be strongly related to the aid a lawyer can actually provide. Tenants may have a poor sense of when a lawyer's help is necessary for victory (legal aid lawyers report turning down numerous nonpayment tenants who are likely to do as well without their help as with it), and they may be especially likely to seek an attorney's aid when they have used attorneys in other settings or known others who have used attorneys, conditions not likely to be associated with the merits of their eviction actions.

⁴² The simultaneous equation model presented here was estimated with the bivariate probit routine in LIMDEP. This kind of model differs from the conventional bivariate probit model because one of the dependent variables (lawyer involvement) appears as an independent variable in the other equation, but LIMDEP can still be used to estimate it (William Greene, personal communication).

⁴³ The estimated coefficients for the equation predicting lawyer involvement are not shown in Table A1.

Table A1. Bivariate Probit Models Predicting Outcome at Hearing (Using Unweighted Data)

Independent Variables	Reference Model		Bivariate Model	
	Estimates	<i>t</i> -ratios	Estimates	<i>t</i> -ratios
Constant	.3313	(1.214)	.2358	(.683)
Period				
1. 1969-74	-.8133	(-3.476)	-.7909	(-3.097)
2. 1975-77	-.4228	(-1.374)	-.4343	(-1.237)
3. 1978-79	-.7243	(-2.848)	-.6942	(-2.451)
4. Hearing officer A	-.2469	(-1.411)	-.2556	(-1.393)
5. Hearing officer B	-.6730	(-4.127)	-.6667	(-3.941)
(6. Hearing officer C)				
<i>Case characteristics</i>				
Reason				
1. Nonpayment	-3.418	(-5.143)	-3.328	(-5.456)
2. Falsification, fraud, etc.	-.7035	(-1.750)	-.6335	(-1.302)
3. Guests	-.2050	(-.743)	-.2360	(-.822)
4. Pets	-.2476	(-.952)	-.2379	(-.857)
(5. Other trouble)				
Reason1*Rentowed	.4644	(5.038)	.4604	(6.211)
Reason2*Rentowed	.1078	(2.105)	.1052	(1.874)
Reason1-2*Percentpaid	-.01117	(-6.216)	-.01111	(-6.152)
<i>Tenant-Authority history</i>				
Appearance#	.4189	(3.811)	.4175	(3.622)
Reason1-2*Rentdel2yr	.3808	(2.231)	.3838	(2.162)
<i>Tenant characteristics</i>				
Children	-.09290	(-2.645)	-.09177	(-2.441)
Reason1-2*Incvlid	4.852	(4.323)	4.837	(4.150)
Reason1-2*Incvlid*Income	-.5107	(-4.284)	-.5072	(-4.063)
Finanprob	-.09455	(-.995)	-.1032	(-1.041)
Period1-3*Finanprob	-.5543	(-2.942)	-.5564	(-2.549)
Samoan	.3356	(2.514)	.3392	(2.454)
<i>Representation</i>				
Lawyer	-.1748	(-.792)	.2959	(.318)
<i>r</i> (lawyer, outcome)			-.2634	(-.503)
Log-likelihood	-386.99		-517.09	

NOTE: *N* = 767. Outcome coded 1 if tenant was evicted, 0 otherwise. Cases are not weighted.

such variables, which are dummy variables for whether the tenant lived in project area 1, was not married with spouse present, was in a male-headed household, and was retired. These variables are also empirically unrelated to hearing outcome, as none of them are significant when included in the equation predicting hearing outcome.

The estimated correlation between the errors of the two equations is negative, as expected, but nonsignificant. Taking this correlation into account changes the estimated effect of lawyer representation somewhat. This coefficient changes its sign from negative to positive, going from about -.17 to about .30, although it remains nonsignificant. The nonsignificance of the estimated error correlation may be due to the small number of cases with lawyers, but it is quite likely that the errors are in fact only weakly correlated, if they are associated at all.⁴⁴ If there actually is a negative correlation between the error for lawyer involvement and the error for hearing outcome, the esti-

⁴⁴ In their study of representation before informal English tribunals, Genn and Genn (1989) estimated a similar model and also found no significant error correlation.

mated lawyer effect on the chances of eviction should be slightly more positive across all periods and case types, although the lawyer by period and lawyer by case type interactions should not change.⁴⁵

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⁴⁵ We estimated another version of a bivariate probit model to check whether nonrandom selection into the sample of tenants having a hearing biased the results. (About 20% of the subpoenaed tenants had their hearings canceled because they either settled the matter in question or moved out before the hearing.) Taking account of this form of selection has almost no effect on the estimated lawyer coefficient.

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