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The Making of a Courtroom: Landlord-Tenant Trials in Philadelphia's Municipal Court

Abstract

This dissertation analyzes Philadelphia's Landlord-Tenant Court (L-T Court) within organizational and policy contexts. It identifies the factors that influence the outcome of private landlord-tenant trials, describes people's experience of the courtroom from multiple perspectives, and analyzes the Municipal Court's intraorganizational and interorganizational dynamics that inform L-T Court's behavior. Housing courts have been mandated to prevent the deterioration of existing housing stock by protecting landlords' property rights and tenants' rights to a habitable dwelling. Landlords have long had the right to receive rent and to hold tenants responsible for property damage; recent changes in landlord-tenant law have established tenants' right to receive habitable, safe homes. It is only in the protection of both rights that these courts can help preserve affordable, adequate rental housing.

This study employs mixed method, single-case study design that utilizes quantitative, case study, and ethnographic methodologies. The combined methods establish a complementary, holistic approach that triangulates methods and data to derive convergent findings. Multiple regression of the judge's identity and actions, litigants' legal strategy, contest participant characteristics, and case characteristics on trial outcomes is based on trial transcript, in-court observation, and court administrative data. Case study analysis is based on interviews with trial participants, including landlords, tenants, attorneys, judges, and court staff and trial transcripts. Ethnographic analysis is based on informal discussions with and observations of disputants, judges, court staff, and others who interact with the court system that surrounds L-T Court. The study also employs a theoretical bundle comprised of autopoiesis, territoriality, paradox theory, and street level bureaucracy to analyze L-T Court's organizational behavior.

The study's central finding is that L-T Court propagates substantive and procedural policies that diverge from theoretically binding common law and basic jurisprudential expectations. This divergence can be explained by Municipal Court's organizational dynamics within a legal and regulatory environment. The study concludes that policies designed to strengthen the supply of affordable housing must incorporate the interests of both landlords and tenants. Policy recommendations address the legal representation gap between landlords and tenants, the weak court linkage with legal and administrative organizations, and other areas that prevent effective rental housing regulation.

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THE MAKING OF A COURTROOM: LANDLORD-TENANT TRIALS IN
PHILADELPHIA'S MUNICIPAL COURT

David L. Eldridge

A Dissertation

in

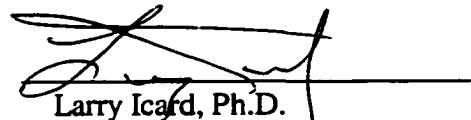
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Presented to the Faculties of the University of Pennsylvania, in Partial
Fulfillment of the Requirements for the Degree of Doctor of Philosophy

2001



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needed study breaks. I appreciate the full commitment my whole family has provided in bringing this project to fruition.

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ABSTRACT

THE MAKING OF A COURTROOM: LANDLORD-TENANT TRIALS IN
PHILADELPHIA'S MUNICIPAL COURT

David Eldridge

Kenwyn Smith

This dissertation analyzes Philadelphia's Landlord-Tenant Court (L-T Court) within organizational and policy contexts. It identifies the factors that influence the outcome of private landlord-tenant trials, describes people's experience of the courtroom from multiple perspectives, and analyzes the Municipal Court's intraorganizational and interorganizational dynamics that inform L-T Court's behavior. Housing courts have been mandated to prevent the deterioration of existing housing stock by protecting landlords' property rights and tenants' rights to a habitable dwelling. Landlords have long had the right to receive rent and to hold tenants responsible for property damage; recent changes in landlord-tenant law have established tenants' right to receive habitable, safe homes. It is only in the protection of both rights that these courts can help preserve affordable, adequate rental housing.

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Table of Contents

	Page
Acknowledgements.....	iii
Abstract.....	v
List of Tables.....	xiv
List of Figures.....	xvi
Preface.....	xvii
Section I.....	1
Introduction.....	2
Chapter 1: The Making of a Courtroom.....	5
Landlord-Tenant Law: Past and Present.....	5
Organizational Structure and Origins.....	10
Municipal Court I.....	14
Municipal Court II.....	20
Landlord-Tenant Court.....	22
Efficiency and Equity.....	26
Administrative Organizational Structure.....	28
Landlord-Tenant Case Life Cycle.....	30
Chapter 2: Literature Review.....	36
Previous Studies.....	36
Main Concerns.....	39
Explanations of Trial Outcomes.....	40
Philadelphia Housing Court Studies.....	41
Judicial Assignment.....	42
Legal Representation.....	44
Race and Gender.....	48
Hearing Type.....	49
Legal Strategy.....	51
Trial Outcomes.....	52
Trial Participants' Experience of Disputes, Trials, and Courts.....	56
Organizational Dynamics of Courts.....	59

	Page
Chapter 3: Methods.....	65
Quantitative Methodology.....	69
Research Question and Hypothesis.....	69
Research Design.....	70
Sample.....	71
Data Sources and Data Collection.....	72
Dependent Variable.....	74
Landlord Wins Hearing.....	74
Case Type.....	75
Admitted Liability.....	78
Independent Variables.....	80
Judicial Assignment.....	80
Legal Representation.....	81
Control Variables.....	82
Legal Strategy.....	82
Demographic Characteristics.....	84
Case and Hearing Types.....	84
Statistical Analysis.....	86
Validity and Reliability.....	87
Threats to Internal Validity.....	87
Selection Bias.....	87
Seasonality.....	89
History.....	90
Threat to External Validity.....	91
Reactivity.....	91
Reliability.....	91
Case Analyses.....	93
Sampling Matrix.....	94
Case Descriptions.....	96
Ethnography.....	98
Data Sources.....	99
Analysis.....	102
Chapter 4: Quantitative Analysis.....	105
Pre-trial Sample.....	106
Trial Sample.....	108
Dependent Variable & Case and Hearing Type.....	108
Case and Hearing Type.....	109
Dependent Variable.....	111
Independent Variables.....	113

	Page
Judicial Assignment.....	113
Legal Representation.....	116
Control Variables.....	119
Legal Strategy.....	119
Trial Participant Characteristics.....	125
Preliminary Models.....	127
Judicial Assignment and Behavior.....	127
Legal Representation and Attorney Behavior.	130
Hearing Type.....	131
Landlord Legal Strategy, Tenant Legal Strategy and Demographics.....	132
Final Model.....	135
Post-Hearing Data.....	139
Final Verdicts.....	139
Appeals.....	142
 Section II.....	 146
Introduction.....	147
Chapter 5: Case Analysis #1: <u>Singleton v. Zephyr Properties</u>	150
The Tenant: Albert Singleton.....	151
The Landlord Attorney: Barbara Doubleday.....	154
The Verdict.....	155
Legal Strategies, Housing Strategies.....	158
Themes.....	161
Low-income Landlords/High-income Tenants.....	161
Judicial Decision-making.....	163
Trial Participant Satisfaction.....	175
Pre-trial Dispositions.....	179
Defaulting Litigants.....	179
Settling Litigants.....	183
Mediating Litigants.....	183
Chapter 6: Case Analysis #2: <u>Pendleton v. Fortune</u>	187
The Landlord: Charles Fortune.....	187
The Tenant: Darcy Pendleton.....	188
The Verdict and Experiences of the Courtroom.....	190
The Relationship.....	196
Themes.....	198
Court Staff.....	198
Trial Participation.....	198

	Page
Statements about Landlords and Tenants.....	201
Administrative Court Staff Assistance.....	204
Landlord Decision-Making.....	208
Lead Contamination	209
Chapter 7: Case Analysis #3: <u>Sexton v. McGinnis</u>	215
The Landlord: Elaine Sexton.....	215
The Verdicts.....	216
The Judge: William Nemon.....	217
The Tenant Attorney: Gary Oxholm.....	219
The Tenant: Francie McGinnis.....	224
The Warrantee of Habitability and Eviction.....	226
Theme.....	229
The Department of Licenses and Inspections.....	229
Chapter 8: Case Analysis #4: <u>Dennis v. Yes Housing, Inc.</u>	234
The Tenant/Tenant Attorney: Henry Dennis.....	235
The Landlord Attorney: Larry Severeide.....	239
The Tenant Attorney: Mack Nelson.....	240
The Landlord: Nathan Twiname, II.....	245
The Relationship.....	248
Current Status.....	249
Theme.....	250
The Fair Housing Commission.....	250
Conclusion.....	251
Chapter 9: Ethnographic Findings: Political Parties, Organizational Accountability, and Social Welfare Agencies.....	254
Political Parties.....	255
A Municipal Court Judge's View.....	255
A Grand Jury Investigation.....	259
Organizational Accountability.....	262
Social Welfare Organizations.....	264
SSI and Homelessness Prevention.....	266
A Judge's Referral Efforts.....	270
Section 8.....	271
Legal Assistance.....	275

	Page
Section III.....	277
Introduction.....	278
A Common Law River.....	278
Chapters 10-12 Summary.....	279
Chapter 10: An Evolving Organizational Case: Autopoiesis At Work.....	282
Autopoiesis.....	282
Theory.....	282
Application.....	288
Interorganizational Dynamics.....	288
Intraorganizational Dynamics.....	290
Pursuing “Public” Data.....	290
Dissipative Structure.....	297
From Conflict to Dispute.....	299
Becoming an Attorney’s Client.....	303
Organizational Norms.....	306
Chapter 11: A Theoretical Bundle: Autopoiesis, Territoriality, Paradox Theory, and Street Level Bureaucracy.....	311
Territoriality.....	312
Theory.....	312
Application.....	315
Territoriality and Autopoiesis.....	317
Paradox.....	319
Theory.....	319
Application.....	321
Paradox and Autopoiesis.....	323
Street Level Bureaucracy.....	324
Theory.....	324
Application.....	325
The Theoretical Bundle.....	327
Application.....	328
An Autopoietic Framework.....	330

	Page
Chapter 12: Conclusion: Social Policy Implications.....	332
Policy Considerations.....	332
The Judiciary.....	332
Housing Court Evaluation.....	335
Municipal Court as a Regulatory Organization.....	339
Legal Assistance.....	344
Organizational Limits and Untapped Potential.....	345
Landlord and Tenant Education and Referral Center.....	348
Judicial Selection.....	350
Policy Recommendations.....	351
Methodological and Theoretical Considerations.....	352
Research Design.....	352
Theoretical Development.....	356
Future Research.....	357
Proposed Research Questions.....	358
Housing, Homelessness & Citizenship.....	359
Appendices.....	361
Appendix A: Code Book.....	362
Appendix B: Consent Form and Interview Protocols.....	372
Consent Form.....	372
Interview Protocols.....	374
Tenant Interview.....	374
Landlord Interview.....	376
Tenant Attorney Interview.....	377
Landlord Attorney Interview.....	378
Judge Interview.....	380
Appendix C: Ethnographic Themes.....	382
Data Collection Themes.....	382
Initial Themes.....	382
Working Themes.....	382
Evolving Themes.....	382
Case Participants.....	383
Write-up Themes.....	383
Case Analysis Themes.....	383
Ethnographic Themes.....	384
Appendix D: Field Interaction Protocols.....	385
Appendix E: Case Analyses Glossary.....	386
Appendix F: Communications With Municipal Court Administration.....	387

	Page
Appendix G: Trial Court Performance Standards & Measurement System.....	391
Appendix H: Philadelphia Bar Association Landlord/Tenant Court Task Force Recommendations.....	397
Appendix I: Grand Jury Recommendations.....	399
References.....	402

List of Tables

	Page
Chapter 1: The Making of a Courtroom	
Table 1: Landlord-Tenant Court Case Filings and Dispositions	11
Chapter 3: Methods	
Table 2: Trial Session Docket List.....	88
Table 3: Seasons of the Year.....	89
Table 4: Data Collection Hieroglyphics.....	92
Table 5: Legal Representation Permutations.....	95
Table 6: Case Analyses Description.....	97
Chapter 4: Quantitative Analysis	
Table 7: Trial Participant Identity.....	107
Table 8: Hearing Type.....	108
Table 9: Hearings Percentages.....	110
Table 10: Hearings Type and Outcome.....	112
Table 11: Judge’s Interactions with Litigants and Attorneys.....	113
Table 12: Judicial Legal Arguments.....	115
Table 13: Tenant Attorney Testimony.....	117
Table 14: Landlord Attorney Testimony.....	117
Table 15: Tenant Attorney Evidence.....	117
Table 16: Landlord Attorney Evidence.....	118
Table 17: Tenant Attorney Arguments.....	118
Table 18: Landlord Attorney Arguments.....	118
Table 19: <i>Pro se</i> Tenant Testimony.....	120
Table 20: <i>Pro se</i> Landlord Testimony.....	121
Table 21: <i>Pro se</i> Tenant Evidence.....	122
Table 22: <i>Pro se</i> Landlord Evidence.....	122
Table 23: <i>Pro se</i> Landlord Legal Arguments.....	123
Table 24: <i>Pro se</i> Tenant Legal Arguments.....	123
Table 25: Trial Participant Characteristics.....	125
Table 26: Regressing Judicial Assignment on Landlord Wins Case.....	128
Table 27: Regressing Judicial Behavior on Landlord Wins Case.....	129
Table 28: Regressing Legal Representation and Attorney Behavior on Landlord Wins.....	130
Table 29: Regressing Hearing Type on Landlord Wins Case.....	131
Table 30: Final Model.....	136

	Page
Chapter 5: Case Analysis #1: <u>Singleton v. Zephyr Properties, Inc.</u>	
Table 31: Judge Descriptions.....	156
Table 32: Post-Default Interviews.....	180
Table 33: Post-Settlement Interviews.....	182
Table 34: Post-Mediation Interviews.....	184
Chapter 9: Ethnographic Findings: Political Parties, Organizational Accountability, and Social Welfare Organizations	
Table 35: Tenant Subsidy Programs.....	266

List of Figures

	Page
Chapter 1: The Making of a Courtroom	
Figure 1: Administrative Structure: The First Judicial District.....	29
Chapter 10: An Evolving Organizational Case: Autopoiesis At Work	
Figure 2: Comparison Between Causal and Autopoietic Organizational Analysis.....	287
Figure 3: Interorganizational Analysis of Municipal Court and Landlord-Tenant Court.....	290
Appendix H: Trial Court Performance Standards & Measurement System	
Figure H1: TCPSMS Record of Access to Courtroom.....	396-7

Preface

In this dissertation I have integrated multiple methods, data sources, units of analysis, perspectives, and theories. This has resulted in a somewhat unconventional structure that deserves attention at the outset. The dissertation's twelve chapters are divided into three sections. Section I establishes the dissertation's analytical framework and will be familiar to most readers. Chapter 1 introduces Landlord-Tenant Court and the disputes it processes, Chapter 2 reviews literature relevant to this study's design, Chapter 3 describes the study's methods, and Chapter 4 presents the findings of the statistical analysis.

Section II presents case study and ethnographic analysis. Chapters 5 through 8 each present a single case study of a landlord-tenant case, and each is contextualized using ethnographic themes. The theme of interorganizational dynamics provides an overarching thematic framework for the case studies. Chapter 9 further explores this theme using additional ethnographic data. Though these five chapters are qualitative in nature, they are integrally linked with the statistical analysis presented in Section I.

Section III develops a theoretical framework that provides an additional source for policy conclusions drawn from the study as a whole. Chapter 10 applies autopoietic theory to the data presented thus far and introduces a final case that demonstrates the full utility of this theory in developing insight into Landlord-Tenant Court and its organizational context. Chapter 11 introduces three more theories that increase understanding of the statistical, case study, and ethnographic data presented in Sections I

and II. Finally, Chapter 12 presents policy recommendations, methodological considerations, and conclusions about the significance of this study's findings.

The introduction of theory in the final section may prove challenging to some readers. However, the linkage between method, data, and theory presented in Chapters 10 and 11 were sufficiently complex that introducing these theoretical constructs at an earlier stage appeared unwieldy. My effort has been to provide a thorough grounding in the operations of Landlord-Tenant Court and then present additional theoretical perspectives that provide enriched insight into the court's policy environment.

Section I

Introduction

The need for effective application of law to landlord-tenant cases is critical due to the importance of the private housing market in serving the nation's housing needs and the significant size of the landlord industry. This country depends on the private rental market to a much higher degree than other industrialized nations for its low-income housing (Sternlieb & Hughes, 1988). Tenants occupy over one third, or over 34 million, of the nation's residences (Goodman, 1999). Half of these tenant households (14 million, or 14% of all residences) are considered to face a lack of affordable housing. Approximately one million of these low-income households live in public housing units, leaving 13 million low-income tenant households, and 27 million of all tenant households generally, to pay their rent to private landlords in exchange for a place to live (Goodman, 1999).¹

This makes the relationship between tenants and landlords fundamental to the supply of low-income housing, and housing in general, for a large portion of the nation's population. It also makes the regulation of the housing market central to maintain the rental incomes of landlords, some of whom depend on this income for their livelihood. Housing courts are mandated to use judicial procedures and apply case law and statutory law to resolve disputes between two parties who have significant interests in this housing market. Analysis of housing courts, then, provides a window onto some of the most fundamental aspects of our social structure: housing markets, courts, and justice.

¹ This figure includes tenants who participate in public-private subsidy programs like HUD Section 8 who pay the unsubsidized portion of their rent directly to their landlords, which is determined by their income levels. This study does not include public housing tenancies.

This study of Philadelphia's Housing Court highlights four central concerns. First, there are significant gaps between our expectations of how the judiciary is supposed to function and how it actually functions. While any given legal procedure may be complex in the abstract, the way that procedure is realized multiplies its complexity. Second, law is fundamentally interorganizational in nature. All law is created and implemented by organizations that operate within a shared network of institutional affiliations and legal expectations. Third, legal institutions are constantly evolving, dynamic entities. Courts and courtrooms perpetually negotiate their boundaries with the external world while at the same time retaining behavioral patterns as their structure shifts and personnel changes. Finally, landlords and tenants are inextricably linked, and any effort made to address only one of the two group interests will be weaker than an effort focused on both groups. Landlords and tenants are bound by their mutual interest in property and home that is both conflictive and mutually beneficial.

This first chapter develops the policy background necessary to understand the organizational origins of Landlord-Tenant Court (L-T Court), and the last chapter presents policy recommendations designed to increase the court's effectiveness. However, to understand policy in action we have to engage with the everyday functioning of the court, the people who form it, and the people who use it to resolve disputes. To develop this understanding fully requires a multiplicity of methods, data, and perspectives. I have brought to bear on this effort quantitative and qualitative methods; extensive observational, interactive, and administrative data; and points of view from the many different groups that participate in L-T Court trials. My effort has been to develop

The Making of a Courtroom 4

a map that effectively guides the reader through the complex and richly textured landscape of one trial courtroom.

①

The Making of a Courtroom

Every day, Philadelphia's Landlord-Tenant Court processes dozens of disputes between landlords and tenants over various configurations of monetary damages, eviction and procedural matters. L-T Court, also known as "Housing Court," is one of seven different small claims courtrooms that is separated procedurally because it is the only one that hears cases about the possession of property (including residential and commercial properties). The housing court, like most courts, is public so that anyone is able to observe the disposition of the cases listed on the court's morning and afternoon dockets. There are typically 50 cases listed on the dockets for each of the morning and afternoon sessions, the vast majority of which are decided through various pre-trial procedures. Typically, only three or four of these cases actually go to trial before a Municipal Court Judge who is one of approximately a dozen judges who rotate through L-T Court on a weekly basis. The litigants of the handful of trials that emerge from docketed cases try their cases both with and without attorneys. The public nature of L-T Court provides the opportunity to study the behavior of a housing court and its impact on the lives of the landlords, tenants, and attorneys who bring their disputes before it.

Landlord and Tenant Law: Past and Present

Both the relationships between landlords and tenants and the legal structure governing this relationship have undergone dramatic changes in recent years. Until forty years ago, there was little to contest between landlords and tenants because landlords retained virtually complete control over their properties (Schoshinski, 1980).

Subsequently, common law and legislation have granted tenants rights that have raised a residential lease to the status of a contract whereby the tenant pays rent in exchange for a habitable dwelling. Disputes between landlords and tenants are often heard in small claims courts, which were established in the early part of the century as “poor people’s” courts for consumers and small businesses. Many of these courts, such as the Philadelphia Municipal Court’s L-T Court, have created specialized “housing courts” to address issues particular to landlord-tenant disputes, including eviction and the enforcement of housing codes.

The recent changes in landlord and tenant law accompanied the transition between a rural, agrarian economy in the nineteenth century to an urban, industrial economy in the twentieth century. In an agrarian economy, land-ownership was a condition for political enfranchisement and was unattainable for the vast majority of people in the nation. When landowners rented their land, their tenants had very few rights over the property that they inhabited (Schoshinski, 1980). Legally, the tenant was bound by the doctrine of *caveat emptor*², or “buyer beware,” in which the tenant’s only right was the decision to enter into an agreement to rent the property in the first place. This reflected a different basis for determining land values. In an agrarian economy, land values are based on the amount of arable land rather than on improvements, including housing, made on the land. Tenants were responsible for the upkeep of their houses because they were, in effect, renting land rather than housing. While the landlord could

² Technically, the more accurate term for landlord and tenant law (as opposed to law regarding property sale and ownership) is *caveat lessee* or “lessor beware”, but this term is not widely used.

hold the tenant responsible for paying rent and for making or paying for any repairs on the property, there was little for which the tenant could hold the landlord responsible (Schoshinski, 1980).

The landlord's monopoly on legal rights did not mean, however, that the landlord business was an easy one. Though landlords did not have to till their own land, their rental income was dependent on the harvest of their tenants. Landlords could evict tenants who were unsuccessful farmers and could not pay their rent with their agricultural income, but there were times when farming was unsuccessful for all farmers due to crop failure. In these circumstances, landlords could not be sure that their tenants' lack of payment was due to their inability as farmers or the systemic difficulty of farming during a poor harvest. Evicting and replacing them, therefore, was risky, and a landlord may have decided to waive some rent for their current tenants until a better harvest could raise both of their fortunes. Ultimately, the market for landlords has always been a tenant who is capable of paying their rent.

Both the function of rental property and the source of tenants' ability to pay rent changed via the process of industrialization and urbanization. In a modern urban rental property, value is based almost entirely on the shelter itself. Furthermore, the tenant cannot be expected to maintain such modern basic services as the provision of water, heat, and electricity. Rent became a portion of income gained from wage labor, and the property became a dwelling place that often had no actual land attached to it. For landlords, high-rise buildings generated greater housing and rental income for the same piece of land. This architectural innovation met the increasingly pressing low-income

housing needs brought about by immigration at the turn of the century. This combination led to the creation of the tenement, a multi-unit, multi-story apartment building rented to poor, low-wage urban workers. The dangerous and deplorable conditions of these apartment buildings gained the attention of Progressive Era reformers interested in improving the lives of tenants (Axinn & Levin, 1992; Reisch, 1998).

Much of the reformers' efforts to improve the tenements were regulatory in nature. Popple and Leighninger (1990) describe the coalescence of public health advocates, tenant advocates, and tenants into a movement to establish housing code regulations. New York City enacted the first set of municipal codes in 1867 and these were greatly strengthened in 1901 to become a model that was eventually copied by virtually all American municipalities (Heskin, 1983; Parrat, 1970). Housing advocates formed organizations, such as the National Housing Association, and debated strategies to upgrade and preserve the nation's housing stock. For example, at the National Housing Association's Sixth National Conference on Housing in 1917, the New York City housing advocate Lawrence Veiller (1917) issued a strong statement against using building departments, such as Philadelphia's Department of Licenses and Inspections, to regulate housing conditions. In Veiller's view, building departments were hopelessly tied to the building industry and housing codes were best regulated by health or fire departments that are accountable to the public rather than to industry.

Housing codes were difficult to enforce because they focused on the physical property rather than the tenant – tenants were supposed to enjoy safety in their apartments, but they did not have any specific rights ensuring them of that safety. In

spite of the detachment of tenancy from land, the advocacy of reformers and the creation of housing codes, the doctrine of *caveat emptor* persisted through the first half of the twentieth century.

In the 1960's, common law began to catch up with the realities of urban tenancy when a number of courts supported tenants' use of rent as leverage to force their landlords to maintain adequate housing. Wisconsin's Supreme Court was the first to render such a decision in 1961. The court wrote in Pines v. Perssion (1961):

Legislation and administrative rules, such as the safe place statute, building codes and health regulations all impose certain duties on a property owner with respect to the condition of his premises. . . . The need and social desirability of adequate housing for people in this era of rapid population increases is too important to be rebuffed by that obnoxious legal cliché, *caveat emptor*.

As indicated in the court's language, the change from *caveat emptor* to the implied warranty of habitability was unequivocal and placed squarely in the context of modern housing needs.

This decision, and similar decisions arrived at in other state courts in the two decades that followed, elevated the lease to the status of a contract in which the tenant paid rent for a habitable dwelling that the landlord had to maintain to specified standards. This new principle guiding landlord and tenant law is called the "implied warranty of habitability" because the contractual obligation to exchange rent for a habitable dwelling does not have to be specified in a lease to be legally binding. In spite of this development, at least five states have not yet abolished *caveat emptor* through common law or statutory law, and eight states have relatively weak statutory tenant protections (Schoshinski, 2000). The extent to which tenants have rights remains a point of

contention.

Organizational Structure and Origins

Today, disputes between landlords and tenants are most commonly heard in small claims courts, which manage complaints for relatively small sums of money (typically in the range of \$5,000-10,000). The first small claims court was established in 1913 at the beginning of a movement that sought to simplify complicated procedures for litigants who often did not have the money to hire an attorney. After tenants began receiving legal rights to a habitable rental unit, some small claim courts (as well as other civil and criminal courts) began to establish specialized housing or landlord-tenant courts in order to further adapt court procedures to meet the specific needs of landlords and tenants (Ruhnka, 1979). Housing courts make visible the extent to which tenants actually enjoy the legal rights they have been afforded.

Philadelphia's L-T Court (courtroom 4-B) functions as one such specialized small claims court. Like all housing courts, the court's structure is unique but also shares components with other housing courts. Landlord tenant complaints in Municipal Court actually have no cap on the complaint amount, though complaints exceeding the small claims limit of \$10,000 are rare. The court hears all cases between landlords and tenants whether or not they are landlord-tenant (L-T) cases that deal with a dispute over possession of the rental property or small claims (S-C) cases that deal only with money damages. L-T Court is one of two Municipal Court specialized courtrooms that, by some definitions, could be considered a housing court. The other courtroom is where housing code cases are heard (Courtroom 4-G). It could be considered a "housing court" because

it processes cases brought by the City's Department of Licenses and Inspections (L & I) against landlords for housing code violations. However, other code violation cases are also heard in this courtroom, which explains why the courtroom is known as "L & I Court." There is currently no institutionalized relationship between the L-T Court or L & I Court or between housing code enforcement cases and landlord-tenant cases, gaps that will be addressed later.

Municipal Court hears both criminal cases and civil cases, which are divided into landlord-tenant cases, small claims cases, and code enforcement cases. The following chart presents the number of private landlord-tenant case filings and dispositions between 1992 and 1999 and compares them to the average number of cases in this study's statistical sample:

Table 1: Landlord-Tenant Court Case Filings and Dispositions

Year	% of All Filings	# of Filings	% of Dispositions	# of Dispositions
1992	17%	21,709	17%	21,389
1993	21%	23,903	17%	19,943
1994	19%	23,659	20%	23,748
1995	17%	24,456	17%	24,314
1996	16%	24,430	17%	24,765
1997	14%	27,179	15%	25,249
1998	14%	23,235	14%	25,832
1999	15%	24,426	15%	24,300
Average	17%	24,125	17%	23,683
Study (1999-2000)	--	--	--	22,932

Note. These numbers have been adjusted because the report aggregates private and public housing landlord-tenant disputes. Disaggregation of the private housing figures from the combined public and private housing figures is based on the proportion between these two sets of cases during the study period. The figures from 1992-1996 are taken from the last Municipal Court Annual Report (Philadelphia Municipal Court, 1997). The figures from 1997-1999 are taken from annual reports of the First Judicial District of Pennsylvania (First Judicial District of Pennsylvania, 1998; First Judicial District of Pennsylvania, 1999; First Judicial District of Pennsylvania, 2000). The district was formed in 1996 to unify the court administration of all state courts within Philadelphia County. This unification process will be addressed further in this chapter.

The small differences between the number of cases filed and the number of cases

disposed of reflect an efficiency that the Municipal Court President Judge (Philadelphia Municipal Court, 1997) emphasizes as the key indication of the court's effectiveness. The vast majority of these cases were decided by default when the defendant did not enter an appearance in the roll call that preceded the hearing. A default verdict gives complainants the full amount of what they sued the defendant for as long as the complainant or their attorney appeared in L-T Court. This study's pre-trial and trial samples of cases heard in 1999 and 2000 and the total number of cases listed during the study period provide an estimate of these proportions. Approximately one third (7,500 cases) are decided by default per year, mediation or settlement by agreement resolved approximately one fifth (4,500 cases) per year, and other dispositions accounted for approximately two fifths (9,200) of the dispositions. Thus only seven percent (1,600 cases) are heard as contests in front of a judge.

L-T Court is a courtroom within the Municipal Court organization and a distinct legal forum. Its unique institutional nature is defined by the set of procedures that determine how landlord-tenant disputes are handled, a characteristic shared with housing courts in general (Ruhnka, 1979). Organizationally, Municipal Court rests at the foundation of Pennsylvania's court legal system such that appeals from any Municipal Court courtroom are first heard in Philadelphia County Court of Common Pleas, then, if appealed further, the Pennsylvania Superior Court, and finally the Pennsylvania Supreme Court. The state Supreme Court writes the rules of civil procedure for both Municipal Court and Court of Common Pleas courts that are both county courts (Philadelphia is both a municipality and a county). Perhaps the greatest significance of this judicial

framework is that although L-T Court renders decisions about Philadelphia, it was created by the state's legislature and is governed by the state judiciary. It is not, in short, directly accountable to any municipal law or agency even though it is mandated to apply all local as well as state laws.

A history of Municipal Court and L-T Court provides important insights into the current operations of both institutions. The behavior of L-T Court is inextricably linked to the behavior of Municipal Court, and both organizations are largely shaped by their histories as recorded by only a handful of sources. The only known evaluations of Municipal Court were written soon after the first court was established in 1913 (Shenton, 1930) and the second court in 1969 (Steadman, 1972-1973). Another study analyzed the Municipal Court's role in bringing about housing code compliance on the eve of Housing Court's establishment in 1981. Only two evaluations of Landlord-Tenant Court are available: one by the Housing Association of Delaware Valley of the original Housing Court (1988) and another by the Tenant Action Group of L-T Court (Eldridge, 1996). Finally, the Common Pleas Court and Municipal Court have published annual reports that contain information about the Municipal Court before and after the establishment of L-T Court.³

³ This history makes use of the historical descriptions contained within these five sources; I will also include some of these studies' findings in the next chapter's literature review.

Municipal Court I

Philadelphia has had two Municipal Courts, the civil divisions of which were designed to provide increased access to litigants pursuing claims of relatively small amounts of money. Although the first and second courts differed in some important ways, they both reflect efforts within the same jurisdiction to address the high number of small claims disputes with specialized procedures tailored to the needs of litigants prosecuting or defending against these claims. The two Municipal Courts were created within the same legal, legislative, and political network and their origins provide insight into the behavior of today's Municipal and Landlord-Tenant Courts.

The first Municipal Court was created in 1913 by the state legislature to ease the caseload of the existing county Court of Common Pleas by hearing claims up to \$5,000 (at that time still a considerable amount of money). It was the state's only statutory court – all other courts previous and subsequent have been created through constitutional amendment (Shenton, 1930). Claims for less than \$100 could not be brought in the Court of Common Pleas. The Municipal Court's acceptance of claims this small placed the court squarely within the small claims movement designed to create legal forums adjusted to the needs of low-income litigants and those suing over small amounts of money. The Municipal Court, however, was not the only court a small claims litigant could use: claims for \$100 or less could also be brought to one of 28 magistrate courts located throughout the city. This local court system had been in place throughout Pennsylvania since 1873 and divided each county into small districts, each with a court presided over by an elected official who was not required to have legal training. Though

the first Municipal Court had a specialized division to hear landlord-tenant cases, a Magistrate Court was fully authorized to hear landlord-tenant cases and use constables (also elected into office) to evict tenants as well as collect on other judgments (Steadman, 1972-1973).

The Municipal Court, then, overlapped with two existing courts because claims between \$100 and \$5,000 could still be brought to the Court of Common Pleas. The Municipal Court's organizational competition with the Court of Common Pleas made it a hotly contested organization during its formative years. Its creation by the state legislature was preceded by a great deal of debate between advocates for the court who thought it would expedite access to justice by small claims litigants and critics who felt it would take away needed resources from an already overburdened Court of Common Pleas. The structure of the first Municipal Court mirrored that of Common Pleas court, making them overlapping courts of general jurisdiction (Shenton, 1930).

Immediately after its founding and election of judges in 1913, the Municipal Court was taken to court. Some individuals opposed to the new court's founding filed a Common Pleas suit, Gerlach v. Moore (1914), against the county commissioners to prevent them from spending any public money on providing accommodations for the Municipal Court. The plaintiff's argument was that the legislature had exceeded its constitutional authority in creating this new court. The Common Pleas Court declined to issue a restraining order and plaintiffs appealed to the Pennsylvania Supreme Court.⁴ The

⁴ Appeals from the Court of Common Pleas are now heard by the Superior Court, which was placed between all county courts and the Supreme Court in 1980 as a part of an administrative unification process (Rodier, 2001).

Supreme Court affirmed the decision and the way was cleared for the start of the Municipal Court (Shenton, 1930). In short, the first legal matter the Municipal Court dealt with was its very existence. Those attempting to prevent the establishment of this new court found no remedy in the Court of Common Pleas that would become the Municipal Court's immediate supervisor, nor in the Supreme Court that eventually would administratively supervise both the Court of Common Pleas and the Municipal Court. Furthermore, the attempt to prevent the court's establishment essentially consisted of cutting off its rent. To become an institution, the Municipal Court had to lease space in City Hall. To this day, the Municipal Court is a tenant that pays its rent using city funds.

The Municipal Court's reliance on the state judiciary to authorize its basic structure continued into the beginning years of its operation. The court ended up embroiled in another state Supreme Court case only fifteen years after hearing its first cases, this time in a matter brought by the Municipal Court judges themselves. The original Municipal Court Act authorized the governor to appoint interim judges and the President Judge who oversaw and directed the business of the court. The third President Judge, Judge Glass, refused to step down after serving a partial term, and sued the Board of Judges that forced him out of the office. This case was also appealed up to the Supreme Court. The Supreme Court held that though Judge Glass's term had ended, the Board of Judges meeting that forced the end of his term was illegal and a new election had to be conducted. Thus, within two decades after its founding, the existence, leadership structure, and decision-making process of the court faced legal challenges only resolved by Pennsylvania Supreme Court decisions (Shenton, 1930 p. 13).

The Bureau of Municipal Research's (1930) portrayal of the organizational structure of the Municipal Court provides additional insight into the formation of this new institution. The court's position as a county agency under state authority serving the city with almost exclusively city funding stands out as an important theme in the evaluation. City law regulating civil services, including employment, dismissal and promotion did not apply to Municipal Court. The report concludes: "There have been numerous allegations of abuse of the court's power, and these, whether justified or not, have unquestionably made it necessary for the court to work in a less friendly public atmosphere than it would otherwise have enjoyed" (p. 18). The first Municipal Court had virtually no accountability to the jurisdiction it oversaw – the city – and little from the state government that created it.

The primary mission of the Municipal Court was to expedite the administration of justice, a goal generally shared by plaintiffs and defendants, business people and consumers, criminals and prosecutors. Clogged dockets harmed litigants with varied interests who found themselves tied up in litigation, sometimes for years. For the civil division, which heard cases involving different kinds of contractual disputes, both business people and advocates of the poor sought quicker relief in Municipal Courtrooms. However, the Municipal Court presented its mission primarily in terms of plaintiffs' access to justice rather than defendants'. The Municipal Court's first annual report of 1914 characterized itself as "born of the necessity voiced by small business men and the Credit Men's Association of the city of Philadelphia for the prompt arbitration of disputes involving comparatively small separate sums, but amounting to a vast sum in the

aggregate” (Shenton, 1930 p. 31). Speedy justice meant quicker access to verdicts awarding plaintiff with monetary damages.

The Municipal Court created an alternative to the magistrate system by creating the Conciliation, Small Claims, and Legal Aid Division in 1920. The functions of this office included the provision of legal advice and “actual assistance” (Bureau 1930, p. 22) to people unable to pay for legal services as well as the pursuit of out-of-court settlements (it is not clear if the assistance included actual representation in court or took another form, such as filing court papers). In its first seven years, the division reported securing 2,001 settlements “between parties under the direction of the office,” 1,056 settlements “made through the office,” and providing legal advice in 7,767 cases (p. 35). Though it is not clear what the distinction is between the two kinds of settlements, the first appears to resemble the mediated settlements and the second out-of-court settlements arrived at without a mediator.

The most creative attempt to adapt courtroom procedures to poor litigants was represented by Municipal Court’s “Poor People’s Court,” which lasted for only a few sessions in 1924. Cases brought before this forum originated with the City’s Bureau of Legal Aid and were characterized by “people whose claims were so insignificant that the cost of legal action was prohibitive, but who were willing to submit the claims to an arbitrator” (Shenton, 1930 p. 35). When both parties were convinced to pursue arbitration, they were asked to choose the President Judge as the arbitrator. Thus developed another curious legal arrangement:

While the arbitration procedure has a basis in the law of the state, the president judge actually had no greater authority as arbitrator than any

other citizen would have. Nevertheless he sat in a courtroom, duly robed, and attended by persons who in their official life were actual court attendants. The parties, thus surrounded by a certain amount of reassuring formality and dignity, presented their own cases and usually seemed well content with the decisions rendered by the 'judge.' Decisions of this sort were often unenforceable, or enforceable only with difficulty, but settlements on the spot were common (p. 35).

The lack of enforcement signaled the end of this experiment, and the Bureau of Municipal Research called for a reduction in court costs relative to the amounts claimed as a more effective manner of expanding poor litigants' access to the court.

Such experiments in informal adjudication were designed to address a central shortcoming of the Magistrate Courts that were characterized by "catch-as-catch-can justice." However, the Municipal Court immediately faced the prospect of burgeoning case loads which paradoxically created one of the undesired conditions of existing courts: an excessive case load and pressures to resolve cases speedily without thorough attention to the application of law. Lawyers characterized the Municipal Court as "congested" only two decades after its founding (Shenton, 1930). These criticisms may have combined with the formative struggle to start the court and the internal struggle over the President Judgeship to create an environment highly sensitive to the exposure brought by the researchers conducting the Bureau of Municipal Research report. Once the judge who had commissioned the study ended his President Judgeship, the new President Judge ordered a halt to the research, thus preventing completion of the study. Even the judge who commissioned the report balked at publishing the findings, and only agreed to it if he could preview the report before publication. The court had early on adopted a defensive posture to those interested in bringing attention to its operations.

The criticism of Municipal Court, however, paled in comparison with the criticisms leveled at the Magistrates Courts. In 1935, a grand jury indicted twenty-seven of the twenty-eight Magistrates and a decade later another grand jury indicted the Chief Magistrate who was exonerated only after a second trial. Magistrates invariably decided in favor of plaintiffs, and their constables sometimes sold their services to collection agencies. One evaluation found the Magistrate Courts cramped and the Magistrates often late and rude; Magistrates were even observed soliciting votes during hearings. A Pennsylvania Attorney General report concluded,

Among Philadelphians who do not know the 'judge,' a general feeling prevails that they cannot obtain justice in the magistrates' courts. Even those with means to afford an attorney to represent their interests do not bother to do so because they know that attendance at a magistrate's hearing will be a waste of time since no reasonable person can have any doubt as to the magistrate's decision (as quoted in Shenton, 1930, pp. 13-14).

The Magistrate courts were susceptible to economic and political corruption that prevented anything approaching the effective administration of justice.

Municipal Court II

In spite of its relative shortcomings, the magistrate system outlasted the first Municipal Court, but only by a few years. The Pennsylvania legislature repealed the Municipal Court Act in 1961, transferring all Municipal Court judges to the Court of Common Pleas Family Court division. Seven years later, a constitutional convention resulted in the end of the magistrate system throughout the commonwealth and the establishment of the second Philadelphia Municipal Court. This court, which has existed without interruption until the present, combined aspects of the first Municipal Court's

organizational structure with the personnel of the Magistrates' Courts. The new Municipal Court was centrally located in City Hall and had a President Judge who had administrative authority over certain court procedures but little authority over his or her peers. However, unlike its predecessor, the new court was also subject to extensive supervision by the Common Pleas President Judge. All sitting magistrates were appointed as judges, but non-lawyer judges were prevented from hearing civil cases, paid less, and could only seek election for one more term. One exception was made to the civil hearings provision: non-lawyer, former magistrates could still hear landlord-tenant cases.⁵

The special status of landlord-tenant hearings, like all aspects of the new court, was constitutionally mandated. The allowance for non-law trained judges to hear these cases directly contradicted the procedural attachment of landlord-tenant proceedings to the Landlord and Tenant Act of 1951. The Act was the first to codify limitations on landlord rights by clearly establishing some important tenant rights, such as the right to receive notice before eviction. The law was extensive and contained a significant amount of detail. These rights were significantly expanded in 1965 with an amendment to the Act known as the Rent Withholding Act. "The Rent Withholding Act is the General Assembly's only substantive break with the tradition of *caveat emptor* so deeply entrenched in Pennsylvania codified law. Although not adequate to insure that tenants of this state would reap the benefits of their bargains, the Act was revolutionary for its time"

⁵ Steadman and Rosenstein (1972-1973) strictly differentiate the first Municipal Court from the second. However, I feel that the organizational similarities and the on-going efforts by the first Municipal Court to displace the Magistrates Court point to important continuities between Municipal Court incarnations.

(Gould, 2000 p. 394). The Act essentially made rent strikes, the tenant strategy of withholding rent to leverage landlords into conducting repairs, legal.⁶ Still, if the tenant could meet these requirements and the landlord did not make the repairs necessary to remove the uninhabitable designation within a six month period, the tenant could keep all the escrowed rent money (Gould, 2000). For the first decade of the new Municipal Court's operation, some of the judges applying this new landlord and tenant law had formerly presided over courts that resembled collection agencies more than judicial forums and were not lawyers.

Landlord-Tenant Court

During this same period, a Philadelphia tenants rights movement generated considerable momentum. According to the Housing Association of Delaware Valley 1988 study, housing court was formed after almost ten years of "advocacy and investigation" that focused on improving the enforcement of the Philadelphia Housing Code.

In the late 70's, reports were issued and a lawsuit was settled revolving around the inadequate protection of tenants in Municipal Court against neglectful landlords, poor housing code enforcement by the City's Licenses and Inspection Agency (L&I), and the City's insufficient implementation of penalties and fine collection. Landlord/tenant conflict resolution was also a major area of concern; the American Bar Association completed its own investigation of landlord/tenant dispute resolution in the Municipal Court and concluded that change was necessary.⁷ These efforts culminated in late 1979 when negotiations between community

⁶ However, it did so with significant limitations: an apartment had to be declared uninhabitable by an authorized code enforcement agency (the Department of Licenses and Inspections in Philadelphia) and rent had to be escrowed with an approved escrow agent. An escrow account is a particular type of account that is in both the landlord's and tenant's names so that the funds cannot be withdrawn without the agreement of both parties.

⁷ Neither the Philadelphia Bar Association nor the Jenkins Public Law Library has any record of these reports.

groups, Municipal Court judges, L&I representatives, and others took place; almost two years later the Housing Court was formed (p. 1).

The major sources of the “history of decisions against tenants,” according to the report, were Municipal Court judges’ unfamiliarity with landlord and tenant law and the lack of specialized procedures for housing cases (p. 1). The Municipal Court actually heard three sets of housing cases: private landlord-tenant cases, public landlord-tenant cases brought by the Philadelphia Housing Authority, and housing code cases brought by the Department of Licenses and Inspection (L & I). Although especially the private landlord-tenant cases and L & I cases were closely related, neither they nor the public housing cases were administratively or legally coordinated. A joint American Bar Association/U.S. Department of Housing and Urban Development study conducted in 1978 characterized Philadelphia’s code enforcement system as “passive” (Howe, 1983). The report pointed to judges’ belief that housing code cases were insignificant, and found that the system as a whole was landlord-oriented. A significant portion of the Municipal Court cases were returned to L & I after incomplete service and recycled through the system – some cases took five years to achieve disposition.

The solution Housing Court presented was to unify all cases involving evictions, rent delinquencies and housing code violations into a single, customized forum. Housing Court was to “bring about a more efficient and equitable process for tenants, landlords, and the City” (p. 1). Tenants would benefit from careful application of law that was increasingly associating the tenant’s obligation to pay rent with the landlord’s obligation to provide decent living conditions. Landlords would benefit from more efficient procedures that prevented the lengthy delays in L & I cases of the kind described above.

The city would benefit from increased housing code enforcement effectiveness, to say nothing about the increased revenue generated from actively generated housing code violation fines. The Housing Court was established in an annex of City Hall and began hearing cases immediately upon its formation.

Housing Court was established just in time to apply even newer housing law. The same year (1979) that the negotiations that formed Housing Court took place, Pennsylvania did what the Rent Withholding Act did not do: abolish *caveat emptor*. The Supreme Court decision Pugh v. Holmes (1979) upheld a lower court's decision that *caveat emptor* was no longer an appropriate framework for the landlord-tenant relationship. The court affirmed the lower court's decision in favor of Eloise Holmes, a recipient of Aid to Families with Dependent Children with two minor children who was defending herself against her landlord, J. C. Pugh. Pugh had sued Holmes for back rent and eviction from the apartment she rented for \$60 per month. Holmes' defense was that she had notified Pugh of various code violations, including a leaking roof, lack of hot water, leaking pipes, and infestation by cockroaches, but he had failed to make the repairs. She withheld her rent to leverage these repairs, and deducted the costs of some other repairs she made herself. Because there was no explicit warranty of habitability in Pennsylvania law, the court asserted that the Holmes' lease, and all residential leases, contained an implied warranty of habitability. This implied warranty authorized the withholding and repair and deduct strategies, without requiring a formal escrow requirement. The strength of the Pennsylvania Supreme Court's establishment of the implied warranty of habitability, in theory, turned contests between landlords and tenants

from trials where one party had virtually all legal rights to trials where both parties had competing rights.

Though Housing Court centralized all housing dispute hearings, there is no evidence that the cases were operationally or legally linked in any way besides being heard in the same courtroom. The Housing Association of Delaware Valley (HADV) report in 1988 and the earlier Philadelphia Bar Association evaluations of Housing Court the HADV report referred to revealed no connection between housing codes and landlord-tenant cases.⁸ The HADV report concluded that the Housing Court emphasized efficient procedures over equitable adjudication. The caseload pressure towards efficiency continued to build. Shortly after the HADV report, the Municipal Court moved along with Family Court to a privately owned building two blocks away from City Hall. The Municipal Court is still a tenant of its building's owner.

When Municipal Court moved to its new location, it split Housing Court into two specialized courtrooms. This change may have resulted from Housing Court's own caseload pressures. Code enforcement cases actually constitute the plurality of cases processed by the court, according to its most recent annual report (Philadelphia Municipal Court, 1997): between 1992 and 1995 they averaged 46% of all Municipal Court case dispositions (the report did not disaggregate the non-housing cases). L-T Court continued to hear both private and public housing cases and continued to be known as "Housing Court." Housing code violations were assigned to a separate specialized

⁸ The Bar Association reports are unavailable, so I am relying here on the HADV report's interpretation of them.

courtroom, known as “L & I Court,” and were mixed in with other cases brought by the Department of Licenses and Inspections for enforcement of non-housing matters. When the only study to date of L-T Court (Eldridge, 1996) took place, five morning sessions a week were devoted to landlord-tenant hearings and one afternoon a week was devoted to public housing hearings (this report also found no association between housing code enforcement and landlord-tenant trials). By 1999, the Municipal Court had added four afternoon Landlord-Tenant Court sessions to process private landlord-tenant disputes.

Efficiency and Equity

The Municipal Court’s focus on efficiency in the face of ever-expanding docket lists is amply reflected in the Municipal Court’s Annual Reports. For example, the 1971 Annual report, which was for both the Municipal and Common Pleas Courts, focused most of its attention on the courts’ backlog. It described various efforts to reduce congestion in City Hall Courtrooms, including the rental of nearby office space, and gave a history of the backlog from the “post-war boom” in case filings that took place after WWII (Philadelphia Court of Common Pleas, 1971). In 1971, the number of cases in Municipal Court’s backlog totaled 17,000, of which 437 were landlord-tenant cases and 2,476 were small claims cases. The report concluded, “The members of Philadelphia’s judiciary have launched an attack on an antiquated justice system – a system which is long overdue in needed modern reform” (vii). The tone of the report was one of concern that the courts needed to do a better job educating the public about the nature of the problems they faced processing cases efficiently.

The tone of the Municipal Court's last independent annual report (Philadelphia Municipal Court, 1997), by contrast, is celebratory – the efficiency problem appears to have passed and the court is therefore operating at an optimal level. The report is infused with self-praise about the court's efficient operations. For example, the President Judge states in the report's introductory paragraph, "During the 1996 calendar year, our Court had over 200,000 filings and disposed of over 200,000 cases. I think we can all agree that this is an impressive accomplishment." The Court Administrator states, "Our Court has always had a fine reputation with the users of our system" and also emphasizes the achievement of handling 200,000 cases a year, which, by this measure, makes the Philadelphia's Municipal Court the fourth largest court in the country. The report also mentions the Differentiated Case Management system the court adopted in 1970 to reduce its backlog as key to the court's successful administration of justice.

When the latest Annual report does address equity, it does so in the context of the low filing fees and its mission statement. "The People's Court (Municipal Court) has reasonable filing fees and equal access to justice" (p. 12). According to the mission statement, equity issues dominate the court's efforts:

The charge of the Philadelphia Municipal Court is to work collaboratively with the other courts in the First Judicial District of Pennsylvania to provide the highest standard of justice possible to every citizen who has an interaction with our Court. We in the Philadelphia Municipal court do endeavor to provide our public with an access to justice in a timely and courteous manner with the public's confidence of receiving a fair and independent adjudication. We aspire to accomplish this by managing from the following Trial Court Performance Standards as set forth by the Bureau of Justice Assistance, the United States Department of Justice, and the National Center for State Courts: 1) Access to Justice, 2) Expedition and Timeliness, 3) Equality, Fairness and Integrity, 4) Independence and Accountability, and 5) Public Trust and Confidence (p. 11).

Only the second standard relates to efficiency, which, after all, is but one aspect of equity. Delayed justice often creates inequitable results, and efficiency is certainly a crucial dimension to effective administration of justice. However, an over-emphasis on efficiency can seriously curtail equity. The pursuit of just case outcomes arrived at in the context of legal deliberation is inherently time-consuming.

Administrative Organizational Structure

It was partly out of concern for efficient case management that the state Supreme Court created the First Judicial District (FJD) of Pennsylvania in 1996 to administratively unify all Philadelphia County state courts (First Judicial District of Pennsylvania, 2000). Each court (Court of Common Pleas, which includes Trial, Family and Orphan's Court Divisions; Municipal Court; and Traffic Court) retained its own administrative structure. The President and Administrative Judges of each court serve as representatives to an Administrative Governing Board, which has final authority over policy decisions concerning the administration of justice in Philadelphia. Also serving on the board are two state court administrators who coordinate the FJD's governance with other state judicial organizations. Between the board and the individual courts is the FJD's court administrator.

The administrative lines of authority between the Municipal Court and the Court of Common Pleas are parallel, but as we will see in the next section the Municipal Court rests below the Court of Common Pleas in the appellate organizational system. The shaded boxes represent the four types of cases the Municipal Court distinguishes within their dockets and are less organizational components of the court than different sets of

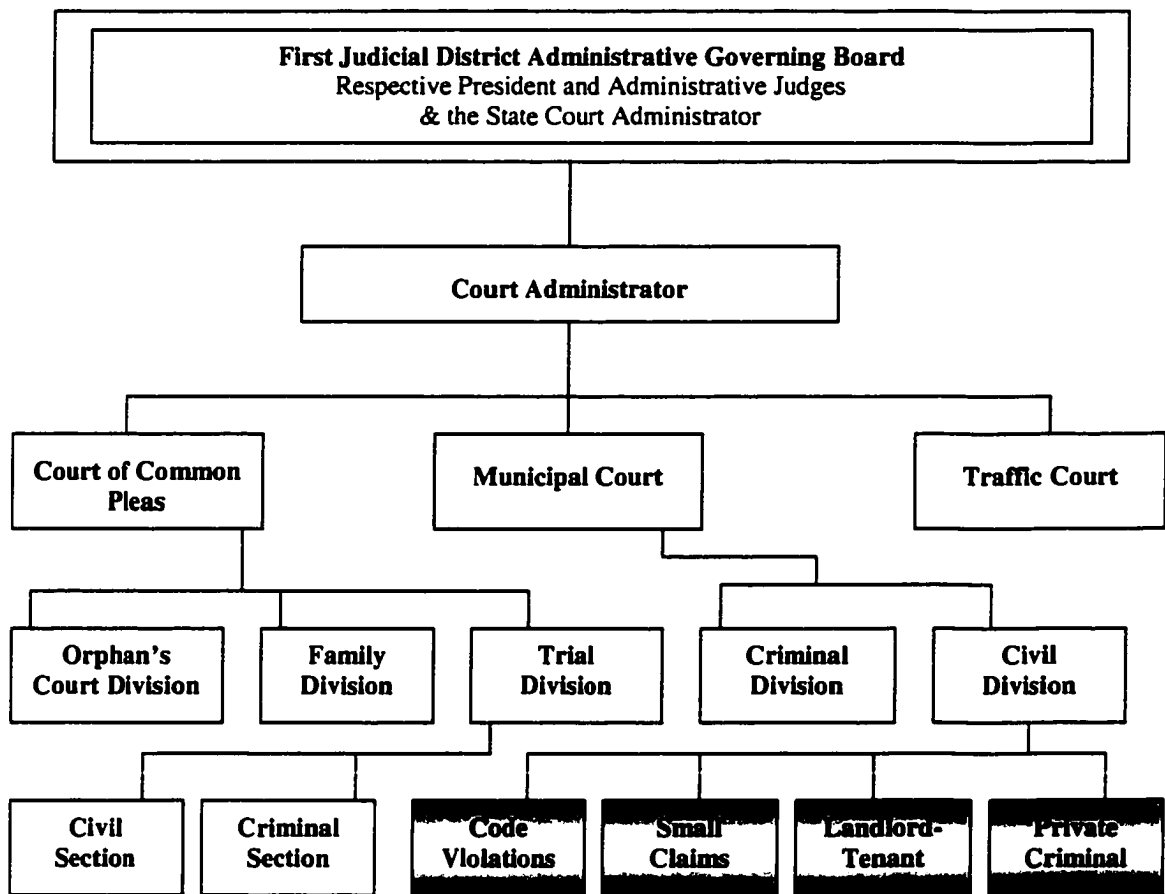


Figure 1. Administrative Structure: The First Judicial District. Adapted from First Judicial District of Pennsylvania, 1998, p. 6.

cases. They are ordered by percentage of the Municipal Court docket: in 1999, code violations comprised 53% of the disposed cases, small claims 29%, landlord-tenant 15%, and private criminal 3%. I have shaded these boxes to differentiate them from the organizational components all other boxes represent. Of these four types of cases, only the first two are provided their own courtrooms. Though a formal organizational chart such as this provides a useful framework, it has little apparent relationship with the daily

operations of L-T Court and Municipal Court.

Landlord-Tenant Case Life Cycle

The life cycles of the landlord-tenant cases included in this study are typically lengthy and complex. They begin with conflicts between landlords and tenants, transform into full-blown disputes, become legal matters, and wend their way through pre-trial procedures. Even after a judge finally hears them, they are still subject to various post-trial motions and can also be appealed for a *de novo* appeal in Philadelphia's Court of Common Pleas. A *de novo* appeal means that the case is subject to a brand new trial, the result of which replaces the first trial in Municipal Court. Either landlord or tenant could appeal the result of this new trial to the state Superior Court, then to the state Supreme Court. As cases continue along their cycle, they represent a smaller and smaller proportion of original conflicts that underlie all trials heard in L-T Court. Though there are no current data on the proportion of landlord-tenant cases at each developmental stage, research by Galanter (1994) argues convincingly that the vast majority of troubles and injuries between landlords and tenants do not even become disputes. A small number of these become lawsuits, a small number of these are settled or resolved without a full hearing, and a small number of these are appealed. Felstiner (1974) similarly argues that most conflicts are met with avoidance rather than with legal action. Trials in L-T Court, it would appear, have long lives relative to most conflicts between landlords and tenants, though certainly not the longest lives possible.

The first formal act between a landlord and tenant is an agreement to rent property. This agreement may or may not include the signing of a written lease, which is

not required to form a landlord-tenant relationship. Landlord-tenant relationships formed via oral agreements alone are subject to the same laws as month-to-month agreements as specified in Pennsylvania's Landlord and Tenant Act. Such an agreement may also follow a series of exploratory discussions and negotiations over the terms of the lease that may not be considered a part of the formal lease but have significant impacts on the development of the landlord-tenant relationship. Finally, the landlord and tenant may know each other as acquaintance, friend, or even family, adding complex dimensionality to the landlord-tenant relationship before landlord and tenant join in a formal, contractual arrangement.

Though many conflicts may arise between landlord and tenant, most are no doubt resolved in some fashion before escalating into a legal dispute. Galanter (1983) points out that "disputes are drawn from a vast sea of events, encounters, collisions, rivalries, disappointments, discomforts, and injuries" (p. 12). Such "proto-disputes" between landlords and tenants might include a landlord sending a tenant an overdue security deposit after the tenant asks him or her for it or a tenant who pays a landlord back rent after the landlord asks him or her for it. These are examples of grievances that were expressed and met with compliance by the grieving party. Felstiner et al. (1980-1981) define a dispute as a contested grievance raised by one party and dismissed wholly or in part by the other party. The above examples would become disputes if the landlord in the first instance and the tenant in the second did not comply with the request that was issued to them. Even disputes are settled at high rates before they become lawsuits either through mutual agreement or from being dropped by the aggrieved party. Finally, the

vast majority of lawsuits are settled before they come to trial (Galanter, 1983). Though these observations were based on studies of small claims or general litigation, there is no reason to believe that they do not also apply specifically to landlord-tenant disputes and lawsuits. In fact, the low trial to case ratio described earlier confirms the last stage of the winnowing process from conflict to trial.

If either landlord or tenant does transform a dispute into a lawsuit in Philadelphia, he or she uses Municipal Court to do so. Taking the first example presented above, if a tenant wishes to sue his or her landlord for not returning a security deposit, he or she (or his or her attorney) must first go to the First Filing Office on the fifth floor of the Municipal Court building. The case will be a small claims case because the tenant has already given up possession of the property. If the tenant is *pro se* (not being represented by an attorney) and requests help filing their complaint, he or she will sit with a clerk who interviews them and helps compose the language on the complaint. A landlord or landlord's attorney would proceed in the same way, unless he or she is filing multiple cases (called bulk filing), which would be filed at a different office down the hall. This case would most likely be a landlord-tenant case, though the landlord technically has the option to sue only for damages rather than damages and possession. The clerks are instructed to give only procedural advice rather than legal advice, though this is a difficult distinction at times (this will be addressed later). Municipal Court policy requires that clerks do not accept complaints without a current rental license or without a copy of notice to the defendant written a prescribed amount of time in advance of filing the complaint. Clerks have some discretion, and can accept a complaint with an

indication by the plaintiff that they will bring in the required document for the trial.

Complainants pay filing fees to the cashier who authorizes the service of their complaint. The fees range between \$13.50 and \$60.50 depending on how many defendants are being sued for each complaint, whether the complainant lives in Philadelphia County, and other factors. Qualifying low-income plaintiffs can file *in forma pauperis* and have the fee waived. Complainants can then use the official court servers or private servers to personally serve their complaints, which they can post at the defendants' address if they are unable to personally deliver the complaint at two different times.

Defendants who receive the complaints receive basic information about their pending trial and the consequences of not appearing in court at the time specified on the complaint. Court sessions typically begin at or near these times (9:00AM and 1:00PM), and the courtroom will often be filled with as many as one hundred people. These include litigants and their friends and family, attorneys, and court staff. A trial commissioner takes his or her place at the bench where the judge sits during the trial, the tipstaff (the courtroom clerk, the equivalent of a bailiff in criminal court) begins calling the names of the litigants listed on the session docket, and the trial commissioner records any pre-trial dispositions (including defaults by defendants, non-prosecutions by plaintiffs, or withdrawals). Litigants are instructed to answer when they hear their names, but wait until called up to the bench. Tenants of landlords represented by bulk filing attorneys are called first, and any tenants present for those cases are asked to go with the landlord and attempt to settle their cases in a small room next to the courtroom. Cases in which either landlord or tenant are represented by an attorney are generally called next

and are also asked to settle the case next door. *Pro se* litigants are also asked to try and settle their cases, but they are offered a mediator to assist them in this process.

Litigants who refuse settlement negotiations or fail to settle bring their case to trial. The judge enters the courtroom; the tipstaff asks all to rise and introduces the judge. The cases are heard in succession, and the judge typically renders decisions from the bench, though the judge may take the case under advisement and notify the litigants of his or her decision by mail. After a decision is reached, the litigants may appeal their case within a specified period to the Court of Common Pleas where they would receive a new trial (known as a *de novo* appeal). This trial is conducted, in theory, independent of the Municipal Court verdict. There are a new set of procedural rules to follow (including discovery and various pre-trial motions), new fees (including *in forma pauperis* options), and choices between a jury and a bench (judge only) trial. Court of Common Pleas trials are sometimes followed with post-trial motions; appeals from this court go to the Superior Court and then to the Supreme Court if appealed again. Whatever court provides the final disposition, there are post-trial procedures designed to enforce the court's verdict. At the Municipal Court level, these consist of property garnishment to collect on monetary verdicts and eviction services to collect on real property verdicts. Final evictions must take place after two different writs are issued, and tenants may voluntarily leave before the final eviction takes place by either the Sheriff's department or by a private eviction officer.

The life cycle presented here necessarily leaves out many details that can add complex wrinkles to a case's history. For example, the judge may continue cases, adding

time and additional hearings to the case, or the judge may grant a petition to open a case brought by a litigant who defaulted on the initial hearing. Furthermore, Galanter's sea of proto-disputes is distinctly non-linear in nature. Landlords and tenants may end up returning to the state of equilibrium that they were in before either made a grievance even after months of disputation and litigation. Like any relationship involving a mutually held interest considered important to both (in this case property and home), the relationships landlords and tenants bring to L-T Court can be complex and richly textured.

Literature Review

This study of Philadelphia's Housing Court is the first to employ a rigorous research design that uses mixed methodology and multiple data sources to derive a broad and in-depth understanding of the Landlord-Tenant Court, the experiences of the people who come into contact with it, and its organizational context. I have endeavored to cultivate the points of view of plaintiffs and defendants, landlords and tenants, judges and attorneys, and court staff members. Rather than seeking freedom from bias I have sought multiple perspectives of all actors, folding into my analysis the multiplicity of their biases. This multiple perspectives orientation is unusual in the study of housing and small claims courts, which appear to inspire strong passions in researchers who find their sensibilities aligned with one set of disputants over another, or with the court organization over those who use it. The design also incorporates multiple units of analysis, from that of individual experience to the organizational and interorganizational dynamics that establish the context for that individual experience. The multiplicity of methods, data sources, perspectives and units of analysis set in a systematic research framework has much to offer the study of other housing courts, small claims courts, and trial courts in general.

Previous Studies

The two previous studies of Philadelphia's Housing Court are written from the singularly tenant-oriented perspective of the tenant advocates who researched and wrote the studies. Both are useful as explorations of the dynamics of Housing Court as a

specialized decision-making forum and of Municipal Court as a unique judicial organization, and both use solid basic methodologies. The first study, HADV's *The Philadelphia Housing Court, 1988, Efficiency Over Equity: Justice Denied*, utilized random selection to create samples of code enforcement, landlord-tenant, and public housing cases. The study's authors compared the samples with court statistics from a two-year period to assess the study's internal validity and found their sample to be highly representative. The resulting descriptive statistics were supplemented with qualitative interviews with judges, court personnel, lawyers, tenant advocates, and public officials. The authors do not report how many of each group was interviewed, or what interview method was used.

A measure of the study's rigor is the differential between the thinness of its data and the unequivocal conclusions drawn from it. For example, though only 14 trials were observed, the report concludes that "often the judges are not objective and inadequately apply housing law; they do not request code violation information or address relevant facts" (p. 21). There is no operationalization of the conditions under which judges could be expected to request code violation information, nor is there any definition of the relevant facts that went unaddressed. The study's overall conclusion must be placed in the context of the study's primary advocacy function: "The processes and behavior in the courtroom are highly subjective and justice is often denied to many people, some of whom can least afford but are forced unnecessarily to look for a new home or tolerate substandard living conditions" (p. i). The report's findings, like those of any exploratory study, are best seen as suggestive rather than conclusive.

The same holds true for assessing the findings of the second Housing Court study, *Court Watch: A Pilot Study of Tenants' Experience in Philadelphia's Landlord/Tenant Court* (Eldridge, 1996). This study was conducted by the Tenant Action Group (TAG), a tenant advocacy organization, and I will sometimes refer to it as the "TAG study." This report depends on the comparison of landlord and tenant win rates, but does not operationalize this dependent variable. I had first-hand experience, as the project coordinator and author, with how this unclear definition made the coding of whether landlord or tenant won the hearing susceptible to the strong tenant biases of the people doing the coding. Still, the study was done with enough basic methodological rigor to preserve the suggestive validity of its findings. The study relied on carefully constructed observational survey forms and inter-rater reliability for most of the observations to maintain a basic level of consistency across observations. The findings of this and the previous study will be included in the literature review below in the context of their methodological strengths and weaknesses, as will other literature germane to this study's design.

The TAG study's exclusion of a careful definition of which party wins a trial is actually representative of literature on trial courts in general. Contrary to the common assumption that trial results are simple binary outcomes, I found that the creation of a single outcome out of the numerous matters typically addressed during a trial to be an enormously complex undertaking. Trial outcomes have an extensive legal context that includes, for example, such concepts as admitted liability (the portion of the plaintiff's suit that the defendant admits owing). Furthermore, litigants have their own

interpretations of whether they won or lost the trial, and these may completely contradict any possible quantitative formulation of trial outcome. Like any complex sociological phenomenon, trials are richly textured and bring together various threads of meaning and experience that defy simple reductions or rhetorical intent. Mixed into landlord-tenant trials are the passions of people fighting for their possessions, their homes, and their sources of income. This volatile mix is contained within a judicial organization that is part of a wider public and private interorganizational network. All these levels and dynamics must be addressed to approach a full understanding of Philadelphia's L-T Court.

Main Concerns

The innovative dimensions of this study will be highlighted throughout the following literature review. The literature review is organized around the three methodologies used by this study: quantitative, case study, and ethnographic. Although it represents one of the most useful contributions to sociolegal literature, the calculation of landlord-tenant trial outcomes comes at the end of the quantitative section because it relies so heavily on a broader understanding of what constitutes a hearing in L-T Court. The literature germane to this study focuses on three central concerns: (1) what affects trial outcomes; (2) how do people experience disputes, trials, and courts; and (3) what is the organizational context for trials? Philadelphia's L-T Court is a housing court that is nested in small claims, state, and federal court systems. There is literature relevant to this particular court that analyzes trials, trial participants, and courts on levels ranging from this court at the bottom of the nation's trial system, to the highest court in the nation. I

start with literature that focus on Landlord-Tenant Court and other housing courts, and when necessary present studies that focus on higher trial courts to demonstrate the current understanding about trial courts in general.

These studies of courts and courtrooms range in methodological sophistication and function as well as in the strength of their association with this study. Most studies of housing courts, for example, have used advocacy-oriented designs that have limited scientific validity given their tendency to argue foregone conclusions. Many of the findings of these studies, however, are congruent with social science literature that use conventionally derived methods to arrive at their conclusions. Within the realm of social science literature there is a great deal of variation as well: from the use of basic descriptive statistics or weakly supported qualitative description through to sophisticated multivariate models and thematically robust analyses. The generalities abstracted from any of these studies must be tempered by the understanding that they are largely context-specific and provide important but limited insight into the subject of this inquiry. Ultimately, L-T Court, like any organization, is a singular entity and its behavior can only be predicted to a limited degree by comparison to other court systems.

Explanations of Trial Outcomes

Overall, there is substantial support for strong associations between judicial assignment, legal representation and trial outcome in both housing and other trial courts. Studies of housing courts demonstrate a strong impact on trial outcomes by tenant attorneys in particular. However, studies also suggest that landlord attorneys more familiar with the court win more verdicts for their clients. Some studies find associations

between the race and gender of trial participants (litigants, attorneys, and judges), but others do not find such an association. In housing court trials, the status differences between landlords and tenants appear to overshadow all other status differentiation, including that of race and gender. Finally, trials in housing court, like in many courts, consist of many different matters that constitute significantly different types of hearings. Any statistical model, then, should include both demographics and hearing type as control variables. Other control variables measure the theoretical heart of the trial: the facts and law that apply to those facts. Studies of housing courts invariably demonstrate a weak effect of testimony, evidence, and legal argument, particularly in the context of warranty of habitability defenses.

Philadelphia Housing Court Studies

As indicated above, the HADV study on Landlord-Tenant Court explored only this last association between tenant defenses to eviction and trial outcome. There was no apparent association between housing code violations and successful eviction defenses: L & I violation data presented to the court did not affect the outcome of any observed cases (1988). The TAG study (1996) also found no apparent association between tenant defense and hearing outcome, but also found variation in hearing outcomes according to what judge was assigned to the courtroom. The study found that although all judges found in favor of landlords for most cases (92%) and for contested evictions (95%), the judge who heard the most cases and who was formally assigned to the courtroom decided in favor of landlords at even higher rates (95% for all cases and 98% for contested evictions). This finding is best considered suggestive given the study's small sample

size, reliance on descriptive statistics, and the small differences between judicial outcome rates.

Judicial Assignment

Studies of other housing courts strongly link judicial assignments with trial outcome, though few use statistical modeling to do so. An early study by Detroit's Housing Court (Mosier & Soble, 1973) two years after a municipal ordinance established warranty defenses for tenants, demonstrated some variation in trial outcome according to the judge assigned to the case. More recently, a study of pre-trial procedures in New York City's Manhattan Housing Court (Reide, 1991) used univariate analysis (a series of models relating only one variable to one dependent variable) to show a relationship between judicial characteristics and decisions that prevented due process for tenants. The study used primarily secondary data supplemented with case file analysis, and its operationalization of the due process dependent variables was ambitious at best. However, the association it developed between certain judicial characteristics and whether the judge initiated a hearing on default judgments appears robust. The hearings were conducted to verify whether service of process was adequate. Specifically, the study found positive associations between high levels of campaign contribution while the judge was being elected, national ranking of judge's law school, past public interest law practice, female gender and White race and whether the judge initiated an inquest into tenant defaults.⁹ A journalist's investigation into the same New York Housing Court

⁹ The fact that there was enough variance in this dependent variable to derive significant findings demonstrates the uniqueness of housing courts. I observed no inquests taking place, even when a litigant reported lack of service.

(Kirschenbaum, 1994) related a lawsuit brought by landlords who believed the Housing Court's judges were too biased in tenants' favor. Landlords, tenants, and their advocates appear to agree with social scientists that judicial assignment has a definite impact on the hearing of their disputes.

Another study analyzed the relationship between judicial characteristics in a code violation housing court. Weiksnar's (1988) mixed method design combined qualitative interviews with statistical modeling. He first interviewed the housing court judges who heard the cases included in the sample, and differentiated them according to their opinion about whether they felt it was necessary to have a specialized housing court and to whether they fit one of two judicial styles. These two styles, *activist* – playing a mediator's role, or *classical* – playing an impartial, traditional role, are similar to other qualitative typologies created from studies of small claims judges (see Conley & O'Barr, 1990). When entering these variables into subsequent statistical models, Weiksnar found that the judge's opinion about the need for the specialized court, experience, and length of term had a strong effect on whether the judge's decisions increased compliance with housing codes. The judge's ownership of the specialized procedures required by the housing court appeared to affect the degree to which that judge enforced its legal mandate. Along similar lines, Engler (1999) found qualitatively significant differences in the treatment of *pro se* litigants as compared to represented litigants by judges in New York City's and Boston's housing courts. The adaptation of courtroom procedure to *pro se* litigation is an explicit mandate of these housing courts, as it is for housing and small claims courts in general.

Literature outside the realm of housing and small claims courts also supports the variance of judicial decision-making. Saks (1988) reports on experiments that test inter-judge reliability when deciding on hypothetical complex litigation. The experiments yielded high agreement (80% for 12 federal judges making 460 pre-sentence decisions and 78% for 8 federal judges making 439 pre-sentence decisions) but still a significant degree of variation. Saks points out that judicial reliability has been studied to a much greater degree in criminal settings and appellate civil settings, and calls for further study in civil trial courts. An example of one such civil appeals study is Tate's study (1981) associating the personal attributes of Supreme Court justices on the decision-making differences between the justices. Much of the literature relating to federal judicial review is predicated on the existence of significant differences in judicial verdicts (Burbank, 1993; Burbank, 1996). The impact of judicial behavior on settlement has also been established, as in Galanter's study (1994) of small claims court litigation and Lederman's study (1999) of tax court litigation. Finally, from a practicing attorney's perspective, the relationship between judicial assignment and case outcome could not be more obvious. The association, in fact, is institutionalized through court efforts to prevent judge shopping by attorneys seeking to try their cases in front of jurists who may be more favorable to their clients' cases.

Legal Representation

While there is no evidence in the literature that lawyers use judge shopping in the hopes of affecting housing court trial outcomes, there is wide agreement that attorney representation has a very strong effect on whether the landlord or tenant wins the trial.

This finding is congruent with studies of small claims courts, which are designed to provide access to *pro se* litigants who cannot afford attorneys or for whom attorney fees exceed the value of the complaint. The most dramatic example of the impact attorneys can have on landlord-tenant trials was demonstrated by an eviction prevention program initiated by the New York City Human Resources Administration (HRA) (Galowitz, 1999; Shinn & Gillespie, 1994). One recipient of HRA eviction prevention funds, the Legal Aid Society's Homelessness Prevention Legal Services Program for Families with Children, reported a success rate exceeding 90% in preventing evictions (Galowitz, 1999).

Other housing court studies also find that tenant attorneys have a significant impact on trials and other courtroom proceedings. The HADV and TAG studies observed that few tenants were represented during pre-trial proceedings, and associated this lack of representation with the high rate of pro-landlord verdicts. Bezdek (1992) observed the same phenomenon in her study of Baltimore's Housing Court, and Reide (1991) used univariate analysis to show that tenants with attorneys fared better during pre-trial proceedings in Manhattan's Housing Court. The vulnerability of tenants during pre-trial settlements is convincingly portrayed by Engler (1997), who analyzed the common negotiations between *pro se* litigants and landlord attorneys in New York's Housing Court and other trial courts. During these negotiations, "lawyers frequently violate existing rules against giving advice to unrepresented parties" in their negotiations with *pro se* tenants (p. 79). A later study by Engler (1999) of New York's and Boston's Housing Courts found that tenants also fared better during trials when they were

represented by an attorney. Both Mosier and Soble's study (1973) of Detroit's Housing Court and Mansfield's study (1978) of Chicago's Housing Court used descriptive statistics, which did not control for any other variables, to show that tenants with attorneys were twice as successful as *pro se* tenants. A follow-up study to the Chicago study (Chadha, 1996) found the same pattern eight years after the initial study. Lempert (1988) found a modest effect on the decisions of a Hawaiian public housing eviction board when tenants were represented by an attorney. This result was confirmed in a later study on the same eviction board (1992) that used probit models to find similarly modest effects.

None of the studies on private trials between landlords and tenants analyzed the effect of landlord attorneys, but they suggest that landlords were more successful when using attorneys, particularly when those attorneys were repeat players. The concepts of "repeat players" and "one-shotters" was famously introduced by Galanter (1974) who presented a framework associating the relative success of litigants in trial courts with patterns of social inequality. His thesis was that litigants or their attorneys who tried cases repeatedly in a given court were at a distinct advantage over those who came into contact with the court only once. The thesis, based on Galanter's analysis of a small claims court, was an early example of empirical research into Small Claims cases that has since gained wide acceptance (Burbank, 1988).¹⁰ Housing court researchers as a whole

¹⁰ Burbank (1988) relates that the study has also inspired judicial response, in the form of a criticism by Chief Justice Burger during an conference address in 1986.

emphasize the preponderance of cases in which the landlord is represented by an attorney who specializes in landlord-tenant cases and usually tries his or her cases without the landlord client present (Bezdek, 1992; Eldridge, 1996; Engler, 1999; Housing Association of Delaware Valley, 1988; Mosier & Soble, 1973; Reide, 1987). One of Monsma and Lempert's (1992) findings in their Hawaiian public housing eviction board study is that attorneys who are more familiar with the particular nature of that decision-making forum do better than those with little experience there. It appears, then, that if landlord attorneys affect trial outcomes, they are more likely to do so if they are repeat players than if they are one-shotters.

Finally, Sarat (1976) used univariate analysis to explore the effect of different combinations of attorneys and litigants on the outcome of small claims cases in New York City. He compared the effect of four permutations of attorneys and litigants – two *pro se* litigants, unrepresented plaintiff and represented defendant, represented plaintiff and unrepresented defendant, and two represented litigants – on adjudicated and arbitrated cases and found significant differences between legal forums chosen by different combinations of attorneys and litigants. For example, when both litigants are *pro se*, plaintiffs do much better in trials than in arbitration, but the rates vary little when both parties are represented by attorneys. Sarat also found that represented litigants did better in a trial setting when suing *pro se* litigants. The study provides support for the possible effect of landlord attorneys particularly when the landlord is represented by an attorney and the tenant is not; and the need to study various combinations of attorneys and litigants, and the importance of controlling for whether landlord or tenant is the

plaintiff. Trials are intensely interactive by nature, and the behavior of each trial participant affects the behavior of all other participants in different ways and to different degrees.¹¹

Race and Gender

Other variables that may affect housing court trial outcomes include the gender and race of the litigants or their attorneys, the differences in hearing type, and trial participants' use of testimony, evidence, and legal argument. Bonner (1992) found tentative support for the effect of plaintiff's gender on small claims outcomes. LaFree and Rack (1996) found that the gender and race of the litigants and the mediators significantly affected monetary outcomes in mediated small claims cases (if one mediator was Anglo, Anglo claimants received better monetary outcomes; if both mediators were women, minority claimants received worse monetary outcomes). Bogoch (1999) found some significant differences in female attorneys' perceptions of how they, and their clients' cases, were treated during trials. Riger et al. (1995), by contrast, found that the gender of attorneys, litigants, or judges had no effect on trial court outcomes, and Morril et al. (1998) found that gender did not affect simulations of informal legal discourse. Mosier and Soble (1973) found that neither race nor gender affected the outcome of housing court trials. Lafree and Rack (1996) found no effect of gender on small claims trial outcomes, but they did find that race had a strong effect. This effect, however, was

¹¹ An exception to the generally held finding that legal representation affects small claims and landlord-tenant hearings is Bonner's study (1992) of small claims trials. Her finding that legal representation did not affect small claims trial outcomes indicates that generalities from each study must be counterbalanced with the unique nature of the particular courts being studied.

highly correlated with the type of case being heard, a finding congruent with Lind, Huo and Tyler's study (1994) on dispute resolution preferences. It appears that the main effect of race is linked to the ways in which members of different racial/ethnic groups choose to use the courts to resolve their disputes. The complexity of the interaction between the cultural disputing styles is also emphasized by Lempert and Monsma (1994) in their study of a Hawaiian public housing eviction board. Lempert and Monsma used regression analysis to conclude that Samoans fared significantly worse in eviction proceedings. However, further investigation revealed that this was not a result of racial prejudice but of a pattern of culturally bounded eviction defenses to which the eviction board assigned little value. The combination of in-depth interviews with statistical analysis in this study was able to identify a pattern of cultural discrimination notable both for its subtlety and for its complexity. Other authors emphasize the complex nature of race and gender in sociolegal studies in general (Hans & Martinez, 1994; Menkel-Meadow & Diamond, 1991).

Hearing Type

The finding that case type sometimes explains the effect of race and gender on trial outcomes indicates that this is also a potentially important variable in any model of trial outcomes. Eldridge's study (1996) of Landlord-Tenant Court showed that litigants contested continuances, landlord affidavits to enforce agreements, tenant affidavits to enforce judgment satisfaction, and other matters. The study also showed different tenant win rates between eviction and non-eviction cases. Rack (1997) found that the type of

case being disputed significantly impacted the case's outcome, both in terms of comparing case outcomes between adjudication and mediation and comparing different types of cases being adjudicated. Again, a practicing attorney would see an obvious difference between their prospects of winning different types of pre-trial motions as compared to winning the final trial verdict.

Hearing type differences have an additional significance in housing courts given the unique nature of dispute over the possession of property and the observed weak relationship between modern landlord and tenant law and trial outcomes. Lempert and Monsma (1988), for example, found that while attorneys have a small effect on preventing eventual eviction of their clients, they are successful in winning continuances that give their clients an opportunity to cure the condition of the threatened eviction. They find, ultimately, that the adjudicator's policy on eviction had a greater effect on trial outcomes than attorneys were able to have: "What is far more important to a tenant's fate than the presence of an attorney are the policies that the Authority and its eviction board follow" (p. 179). The ACLU report on New York's Housing Court (Reide, 1987) found that tenants were as likely to be evicted whether or not they appeared in court. In general, housing court studies show higher rates of pro-landlord verdicts for eviction cases. Eldridge (1996) found higher eviction rates than over-all landlord win rates for other hearing types; Bezdeck (1992) and Mosier and Soble (1973) found similarly high eviction rates in Baltimore's and Detroit's Housing Courts, respectively. Chadha (1996) found that tenants were almost as likely to be evicted whether or not they appeared in Chicago's Housing Court (95% of tenants were evicted after a hearing; 98% of tenants

who defaulted in their cases were evicted). Most recently, Engler (1999) found similar rates in New York's and Boston's Housing Courts. In a housing court, eviction is the driving concern. Philadelphia's Landlord-Tenant Court hears both non-eviction and eviction cases, but the eviction cases are governed by entirely different rules and procedures than the small claims cases, which could technically be heard in any other small claims courtroom.

Legal Strategy

Theoretically, outcomes of housing court trials should be affected by tenant defenses and prosecutions based on warranty of habitability law, which is what housing courts were generally designed to help enforce. Based on the literature, this linkage was never established in any housing court so far formed. The HADV study's exploratory finding that L-T Court judges were summarily dismissing L & I data gained additional support from the TAG study. It found that the tenant was evicted in eight of the nine cases where the tenant presented documentation of code violations, and 95% of the cases in which the tenant used these reports or any other evidence to allege code violations resulted in eviction (Eldridge, 1996). In Bezdek's (1992) Baltimore study, 21% of *pro se* tenant defendants offered some kind of defense, and 60% of these defenses (totaling 13% of all contested cases studied) were based on the conditions of the rental property. Though not tested statistically, Bezdek found that the use of these defenses by a tenant had no apparent affect on the outcome of the case, a finding corroborated in other studies (Engler, 1999; Mosier & Soble, 1973; Reide, 1991). Furthermore, housing courts are seldom used for affirmative tenant claims to motivate landlords to repair their properties.

Reide (1991) reports that tenants' lawsuits for this purpose constitute only 3% of New York City Housing Court cases even though such cases were one of the court's main purposes statutorily. It would appear that no strategy used by a tenant, particularly when defending against eviction, affects the outcome of their hearings.

Trial Outcomes

This study is the first to apply admitted liability conceptualization to cases involving possession. Vidmar (1984) cogently introduced the concept of admitted liability when he pointed out that the final verdict is in and of itself meaningless without an understanding of how much the defendant admitted owing. For example, if a landlord files a non-eviction claim for \$1,500 in back rent and the tenant admits owing \$1,000, the disputed amount is only \$500. While a verdict awarding \$1,200 to the landlord gives the landlord 80% of the complaint amount, it only gives the landlord 40% of the disputed amount. Without accounting for admitted liability, the landlord would be seen as winning the case because she left the courtroom with well more than half of the money she claimed. However, a more meaningful interpretation of the trial outcome is that the landlord lost because she left the courtroom with less than half of the actual contested amount.

To arrive at this conceptualization, Vidmar conducted a different oversight that this study aims to correct: some of the trials included in his analysis concerned both money damages and possession but he did not include the latter in his calculation of trial

outcomes.¹² Vidmar refers obliquely to phenomena relating to dispute over possession of a rental property, such as the consumer practice of withholding payment to assert their rights, and refers to a specific case in which a tenant admitted owing only one of the two months' rent for which the landlord was suing. However, although his analysis of this case concerned his categorization of different types of admitted liability, it did not account for the eviction dimension implied by this case. Vidmar states unequivocally, "Tenants suing landlords do as well as landlords suing tenants," even though landlords can be suing for eviction as well as back rent or damages (p. 535). This practice has been common in studies of small claims cases (Borrelli, 1989; Ruhnka, Weller, & Martin, 1978). Other small claims court researchers explicitly justify their exclusion of eviction cases because of the unique nature of eviction (LaFree & Rack, 1996). On the other hand, no studies of housing court have applied admitted liability to the multiple dimensions of landlord-tenant trials.

Ruhnka, for example, excludes eviction both in a small claims trials study (1978) and an analysis of the landlord-tenant trials included in the small claims study's sample (1979). In his brief operationalization of case outcomes, he does not mention eviction and uses the award to complaint ratio that Vidmar (1984) criticizes. He states, "victory rates are simply a measure of who wins and who loses" (p. 46). The reality is, however, that tenants can admit liability for the possession of the property just as they can admit

¹² Vidmar acknowledges that other factors may create contradictions between his quantitative determination of trial victory and how litigants view their case and their trial. These include plaintiff overclaiming, "hidden agendas, spite, and other ancillary causes of dispute" (521). Litigants may, for example, "lose" the case by any quantitative measure but feel that they "won" the case because their trial achieved some other kind of personal success.

liability for the amount of money they owe. On the one hand, tenants could contest the eviction, indicating that they are not admitting liability for possession of the property. On the other hand, tenants could leave the property pre-trial or indicate their intention to move soon after the trial, thus admitting full liability for possession. Finally, tenants could admit partial liability by stating their intention to move after a period of time. The complexity of landlord-tenant trial outcomes is compounded by the fact that many contests are over procedural matters, which carry their own versions of admitted liability according to the kinds of decisions judges may make about them.

The oversimplified operationalization of the dependent variable in statistical analyses of landlord-tenant trials perhaps results from the methodological complications of calculating binary outcomes as well as collapsing multiple outcomes into a single dependent variable. Given that other kinds of trials will often include contests over other matters besides money (including injunctive orders and other kinds of equitable relief¹³), the expansion of admitted liability conceptualization to other matters besides monetary damages has potential far beyond the study of housing courts. Furthermore, utilizing a ranking procedure to create a single dependent variable that accounts for all possible outcomes within a single hearing is also valid in the study of trials that incorporate multiple matters.

The establishment of a single dependent variable allows the use of multivariate models that control for the effect of numerous variables. This will, for example, allow for determination of whether judges' decisions vary to the same degree according to

¹³ "Equitable" in this context is a legal term that refers to non-monetary matters adjudicated by courts.

hearing type, or whether they tend to arrive at uniform decisions for one type of case and variable decision over other types. Multivariate modeling can also differentiate between the effects of legal representation *per se* and the legal strategies they bring to bear for their clients' cases. It is possible, for example, that certain legal arguments or pieces of evidence are more or less effective independent of whether they are made by an attorney or by a *pro se* litigant. This study is the first to subject Philadelphia's Landlord-Tenant Court trials to regression analysis, and the first to do so for a Housing Court that adjudicates disputes between private landlords and tenants.

Another contribution of the study is the inclusion of landlord and tenant points of view in the conceptualization of the statistical model. Studies of housing courts tend to focus on tenant concerns and exclude those of landlords. Using admitted liability is one method used by this study to adopt a more multi-faceted stance with regard to landlord and tenant points of view. Vidmar (1984) points out that studies not accounting for admitted liability skew their calculation of trial outcomes to defendants, which are mostly tenants in housing courts. The inclusion of case type is also important in terms of landlord concerns, as there are other matters involving time of possession besides eviction that affect a landlord's rental income. Finally, this study also includes an analysis of judgment satisfaction. Van Koppen and Malsch (1991) point out that while plaintiffs appear to have advantages in both pre-trial proceedings and trials, they are at a distinct disadvantage at the post-trial collections phase of the case. His study of Dutch trial courts found that three years after the trial only 50% of the plaintiffs had collected their judgments. Bonner (1993) found the same rate for small claims judgment in a

Missouri small claims court as did Borelli (1989) in her study of three Massachusetts small claims courts. Analysis skewed in the direction of landlords, tenants, plaintiffs, or defendants cannot effectively portray the great complexity of landlord-tenant trials, and the relational and institutional networks of which they are a part.

Trial Participants' Experience of Disputes, Trials, and Courts

As Conley and O'Barr (1988b) found, outcomes of small claims cases are sometimes less important than other dimensions of the trial experience from the perspective of small claims litigants. Their use of an "ethnography of legal discourse" demonstrates that even a clear victory from the outcome-based perspective that drives statistical analysis of trials can produce great litigant dissatisfaction. Conley and O'Barr have also used ethnographic methods to reveal the complexity behind judicial decision-making (1988a) and the decision-making and behavior of attorneys (1990). Conley and O'Barr's development of multiple perspectives based on interviews with different trial perspectives is unusual in small claims court literature and even more unusual in housing court literature. Only one analysis of which I am aware used interviews of all trial participants involved in housing court trials: Lempert and Monsma's study (1994) of a public housing eviction board. However, these hearings were not presided over by judges nor did they include landlords. Still, this study and those of small claims courts provide some foundational insights into the experiences of people who participate in L-T Court trials.

A common theme of those ethnographies that presented the perspective of more than one trial participant group is the contrasting assumptions and expectations brought to

court by members of different groups. Conley and O'Barr in their research on lay expectations of the law in small claims courts refer to these expectations as "hidden agendas." An interest in simply being heard is often very important to litigants, and this extra-legal desire can only be discerned by talking to litigants (Borrelli, 1989; Conley & O'Barr, 1988b). Lempert and Monsma's (1994) aforementioned research demonstrated that what may appear to be simple racial discrimination based on statistical analysis was better understood as a complex form of cultural discrimination. Such a conclusion could only be derived using extensive interviews with tenants and members of the eviction board that revealed contrasting assumptions and expectations.

Studies assign different significance to these perceptual gaps between different trial participants. Conley and O'Barr (1990) find that although litigants express dissatisfaction with their local experience in a small claims court, this dissatisfaction does not produce a radical critique of the law; litigants retain a basic faith in the legal system. Yngvesson (1990) emphasizes the community aspects of these gaps in her ethnography of criminal "show cause" hearings in which complaints were either dismissed or turned into formal criminal charges. "Local understandings interpenetrate with official ones, affecting the ways that social events are understood and legal cases defined, the roles that courts come to play in everyday life, and the different ways that state power is legitimated and maintained in local settings" (p. 468). Yngvesson's emphasis on the power of citizens using courts stands in contrast to Conklin (1998). His legal critique raises the possibility that even for litigants represented by attorneys, the gap between everyday discourse and legal discourse is so great that alienation and suffering are

inevitable whether or not litigants receive a just verdict. There is agreement among these authors, however, that the differences between how trial participants experience the courts is an important dimension to sociolegal studies.

A theme specific to the housing court literature is the differential treatment of tenants and landlords by the court system. For example, Eldridge (1996) emphasized the dominance of the landlord attorneys who filed multiple cases on behalf of multiple clients. These attorneys were afforded significant procedural privileges: the ability to be late for court and not have their case dismissed (*pro se* litigants who were late automatically lost their cases), and the ability to interrupt the roll call to enter in their agreements to the trial commissioner (*pro se* litigants had to wait until the end of the roll call before taking any action on their case). Tenants were not clearly described their rights of appeal and many settled cases with no legal representation or assistance from a mediator. The report describes one observed case in which “neither the plaintiff landlord nor the landlord’s attorney were present for a hearing and the Court spent over 20 minutes out of chambers determining how to dispose of the case rather than throwing the case out due to lack of prosecution” (p. 12). Bezdek (1992) similarly emphasizes these privileges, as indicated by her observation about the landlord attorney using the witness dais to corral tenants for settlement negotiations. Chadha (1996) found that housing court judges “routinely assisted the landlord to prove certain elements of his case, while rarely, if ever, assisting the tenant in a similar fashion” (p. 15). These findings comport with housing court and small claims research which consistently finds that landlords and plaintiffs win their cases at much higher rates than tenants and defendants.

An overemphasis on differential treatment, which derives naturally from studying adversarial forums and organizations, can lead to the adoption of one or the other perspective of landlords or tenants. This tendency has made the adoption of multiple perspectives rare in studies of housing and small claims courts that employ case study and ethnographic methods as well as those that use quantitative methods (for exceptions, see Conley & O'Barr, 1990; Ruhnka, 1979; Scott, 1981).

Organizational Dynamics of Courts

Yngvesson and Hennessey (1975) assert that the favoritism afforded plaintiffs in small claims courts is related to two fundamental assumptions behind the establishment of these judicial organizations at the beginning of the twentieth century. The first assumption was that small claims were by nature simple and therefore amenable to simplified and quick adjudication. This belief was closely associated with perceptions of poor people, whose lack of financial resources was equated with an inability to engage in complex litigation. The second assumption follows this first: plaintiff's complaints were considered to be inherently valid.

It was assumed that these were straightforward cases of non-payment of a legitimate debt, and little or no allowance was made for the possibility that the economic relationship might involve deceptive sales practices or systematic exploitation of consumer by merchant. Thus the court was conceived and structured as a 'plaintiff's court...' (p. 226).

The combination of these assumptions led to the perverse transformation of small claims courts from courts designed to provide poor people increased access to justice into courts in which poor people were mostly consumer defendants and seldom brought affirmative actions against businesses. In short, "from the point of view of the average citizen, and

particularly one who is poor, they are much more likely to be used against him than by him; they are not easily accessible; the atmosphere is alien and confusing; and the range of procedures is limited and is geared more to efficiency for those administering justice than to effectiveness for the individual with a grievance” (p. 268). The organizational behavior of small claims courts, of which housing courts are a sub-set, can be explained in part by the basic assumptions that guided their development.

Kirshenbaum (1994) observes this same relationship between the organizational origin and current behavior of New York City’s Housing Court. The court was created in 1972 by state statute to reduce the prevalence of housing code violations by establishing a forum for aggrieved tenants to sue their landlords and enforce their code compliance. However, it was designed in such a way that the organization as a whole and the judges in particular had very little accountability to any supervisory body.

But the court is not so much the culprit in this story as it is one of the victims, orphaned by its creators and left to mutate in its own quirky, incorrigible way. It is its flawed infrastructure – including a contradictory administrative system undermined by turf wars and a vague disciplinary procedure that leaves judges virtually unaccountable for their actions – that has made this mutation possible, obscuring the court’s original mission and undermining realistic hopes for reform (p. 17).

Twenty years after its founding, only 3% of the court’s docket consisted of the complaints brought by tenants against landlords for which the court was designed. The court’s organizational ties to the rest of the city’s court system are weak by design, so much so that the state Commission on Judicial Conduct considers Housing Court Judges outside of their jurisdiction. The Advisory Council charged with appointing and evaluating judges frustrates both landlords and tenants with its lack of public disclosure

and has been undermined by other judicial administrators. Kirschenbaum directly associates the Housing Court's organizational structure and relationship with other judicial and municipal organizations with the court's inability to fulfill its mandate.

Though studies of individual small claims or housing courts typically take for granted this association between court organization, case processing, and litigation, the emphasis on local judicial behavior is a fairly recent development in sociolegal studies (Mohr, 1976; Seron, 1990). Sociolegal studies have more often adopted the legal convention of collapsing court and judge into "one, ahistorical and unchanging actor" (Seron, 1990 p. 451). As Seron points out, this vestige of formalism is related to the tendency of scholars to adopt the organizational framework of the courts they are studying. People who staff courts conflate judge and court as a matter of course, typically doing so with little critical reflection, as the scholars Seron and others (see especially Abel, 1980) have criticized. Others have called for the importance of contextualizing judicial analysis. Lempert (1990), for example, found that the ambiguities of longitudinal court docket data had to be contextualized with qualitative data in order to make sense of the specific nature of the public housing eviction board he was studying. Mohr (1976) found that organizational theory should not be applied in a blanket fashion to any court because courts changed their organizational behavior based on the type of case they were adjudicating. Their organizational styles could change between any of the four organizational sub-models he identified: the firm (satisficing¹⁴ behavior that seeks decisions acceptable to all), the rational (maximization behavior that

¹⁴ This term describes behavior oriented at creating maximum satisfaction among groups and organizations.

seeks discrete goals), the garbage can (anarchic behavior that narrows choice via happenstance), and the political (dominating behavior that depends on unbounded adversarial decision-making). Courts are organizationally complex and defy categorization without careful accounting for their particular nature.

One area of organizational theory that Mohr (1976) found particularly promising to the study of courts was that of interorganizational analysis. Though he recognized the significance of having judge, prosecutor, and defense attorney representing different organizations while participating in the same trial, he did not feel that interorganizational analysis was developed enough at the time of his writing to be of much use to the study of courts. A later report by the National Institute of Justice (Henderson et al., 1984) more confidently brings together empirical research with organizational theory in a study of the unification movement in state court systems. The unification movement was designed to arrange often overlapping trial courts into a coherent administrative and appellate system by formally linking lower courts with the highest court in the state. This process required practical consideration of the administration of justice within each court and how to best organize the courts in relation to each other. The authors found wide variance in the interorganizational structures used by different state systems, in part due to the wide variety of legal forums used often within the same jurisdiction. Henderson et al. (1984) associate “people’s courts” with decisional adjudication, and make an important point about the potential organizational effect of operating without attorney buffers between the judge and the *pro se* litigants. “Courts dominated by decisional adjudication are more susceptible to capture by agencies who are outside the boundaries of the court and do not

share judicial norms” (60-61). Judicial organizations that lack attorneys lack an important mechanism to ensure the continuity of legal norms, a void that can be filled with interests of non-legal organizations with their own, possibly conflicting, norms.

Black's (1989) review of housing court success in addressing housing code violations found that the key to their success was the formulation of an integrated interagency network that is both active and balanced. If either the court or the code agency dominated the relationship or if they had a balanced but inactive relationship, both agencies were ineffective. The court Black found to best exemplify a successful interagency system was in Boston where the code enforcement agency refers many cases to the housing court, which utilizes a staff of housing specialists who work with the court, owners, and tenants. The specialists arrange for repairs, investigate eviction cases, and serve as probation officers by setting the penalty for non-compliance at the amount necessary to make the required repairs. This court staff serves as a buffer between the court's adjudicatory activities, the code enforcement agency, and the litigants. What is happening within any housing court courtrooms is directly related to the courts' intra- and interorganizational structure.

Studies that develop both intra- and interorganizational perspectives on any court are relatively unusual. Howe's (1983) use of an interorganizational model to explain the differential effectiveness of code enforcement in eleven cities stands as a rare example that seeks information about a court and municipal agency in the relationships within the “organizational network” they share. Combining this kind of organizational perspective with statistical modeling and qualitative analysis to develop an understanding of all

private landlord-tenant trial participants' experiences, including that of the litigants, their attorneys, judges, and court staff, creates a powerful tool for understanding Philadelphia's Housing Court. Combined triangulation of trial participant points of view with triangulation between quantitative and two qualitative methods contributes significantly to housing court, small claims court, and trial court literature.

Methods

This study employs multi-method design involving quantitative, ethnographic, and case study methods. The combined use of these three methods allows for a complementary, holistic approach that triangulates methods to arrive at convergent findings. As Miles and Huberman (1994) state, “the careful measurement, generalizable samples, experimental control, and statistical tools of good quantitative studies are precious assets. When they are combined with the up-close, deep, credible understanding of complex real-world contexts that characterize good qualitative studies, we have a very powerful mix” (p. 42).

Using Yin's (1994) rubric, this is an embedded single-case study of housing court that employs multiple units of analysis. These units are as follows, from most individual to most systemic: litigant, trial, case, courtroom, court, legal system, and interorganizational regulatory network. Effective case study analysis requires the utilization of a variety of data sources and a variety of methods in order to achieve thorough triangulation in both substantive content and analytic form. The data sources are: official court transcripts, direct observation, participant observation, court administrative data, case files (the court's record of the documents from any case brought before Landlord-Tenant Court), formal interviews, and informal interviews. The methods are statistical modeling, ethnographic analysis, and case analysis (I call the case studies of landlord-tenant cases “case analyses” rather than “case studies” to differentiate them from the study as a whole, which is itself a single-case study of a housing court).

Though each methodology generates conclusions about multiple units of analysis, each emphasizes only one or two units. The quantitative methodology focuses on the litigant and trial units of analysis using transcripts, observational field notes, administrative data, and case files. The ethnography focuses on the courtroom, court, and legal system units of analysis using the same sources as the quantitative analysis in addition to participant observation, and unstructured and semi-structured interviews. The case analysis is a nested multiple-case study of a small number of trials that focuses on the litigant, trial, and case units of analysis using all of the above data sources. In sum, the study utilizes three distinct but interlocking methods and seven different data sources.

From one perspective, even though the three methodologies are linked in overarching design and conducted concurrently, there are important differences between them. This is particularly true of the differences between the quantitative component and the two qualitative components given their contrasting epistemological frameworks (Creswell, 1994). Quantitative analysis tests predictions to establish causal meaning while qualitative analysis documents researcher and participant observations to derive contextual meaning (Creswell, 1994; Smith, 1988). Furthermore, there are important differences between building knowledge based on the structured interviews central to this study's case analysis compared to the unstructured interactions central to this study's ethnography.

However, from another perspective, too much can be made of the differences between any given methodology, particularly between quantitative and qualitative methods. Kritzer (1996) cogently points out that both quantitative and qualitative

methodologies depend on the interpretation of the analyst, and both are much more similar than often acknowledged. Kritzer draws associations between the obvious interpretative nature of fieldnotes that constitute ethnographic data and data used for statistical analysis:

Similarly, some process of interpretation constructs most quantitative social science data. The provider of the data may make the interpretation, such as when someone interprets or responds to a question posed by an interviewer. Alternatively, the researcher who collects the data engages in interpretation through the process of writing survey questions, constructing and applying a set of codes, or establishing rules for what is and is not included when something is counted or measured. Furthermore, with quantitative data, the selection and application of statistical procedures represents another element of the interpretive process (p. 2).

Quantitative analysis would not be possible without interpretation, which establishes the basic justification of any study's design as well as the practical and conceptual considerations of variable operationalization. More fundamentally, any meaningful analysis requires interpretation that is bound to the instrumentality of the analyst. As Sarat (1990) states, "the meaning of what I study is a constructed rather than a discovered meaning; it is constructed through an interaction between observer and subject in which the subject is, in part, constituted by the observation just as the observer is transformed by interaction with the subject" (p. 164). All analysis, quantitative or qualitative, ultimately depends on the researcher's relationship to his or her data, independent of what method is used to collect and analyze it (Kritzer, 1996).

This conclusion is not to suggest that the differences between any given methodology are unimportant. The value of research is assessed by the scientific communities that produce and evaluate it, as well as by the public and decision-making

bodies that consume it. These audiences value different scientific procedures to different degrees. The conclusion does, however, allow for a more fluid relationship among the kinds of data I have collected and the methodologies I have used to interpret them.

Kritzer (1996) likens a quantitative analyst's use of statistical procedures to musical or dramatic creativity: "one is trying to read something into the notes, or the lines, or the numbers in order to grasp the 'sub-text'" (p. 22). Statistical numbers by themselves are meaningless, and their utility is determined by the analyst's ability to make sense of them using their technical and interpretive skills. "Performing the data" in this manner is common scientific procedure, though it defies the image of quantitative analysis as objective and neutral. Data performance is not anarchical – it has rules that must be followed in order to retain the researcher's ability to maintain scientific integrity.

Establishing statistical relationships or selecting ethnographic data to prove a foregone conclusion, for example, is strictly unscientific. My attempt has been to allow interplay among data, method, and theory and to construct a thorough and coherent presentation of a housing court.

Practically speaking, I will present the quantitative and two qualitative methods (ethnography and case analysis) I have used as distinct methodologies. However, I urge the reader to keep in mind that a case study methodology unifies the three methods under a comprehensive framework. The ethnographic data are particularly useful in providing ongoing contextualization and themes that help bind each data source, method, and theoretical construct into a unified whole.

Quantitative Methodology

The purpose of the statistical methodology is to generate findings on the litigant and trial units of analysis that are generalizable to all trials heard in L-T Court.

Observational data of 153 hearings, administrative data, and transcripts and case file data were coded into independent, control and dependent variables. The trial transcripts were particularly valuable given the very fast pace of many of the hearings as well as their inherent complexity. Using the transcripts allowed me to measure many variables with a high degree of validity and reliability relative to using only observational note-taking. Courtroom observation was still invaluable, though, given that this was that only way I could record demographic data about the hearing participants and the only way I could identify the wide range of phenomena not captured by the official court transcript. Data gathered while ordering the transcripts and data on the transcripts themselves helped me find an administrative record and case file for each trial included in the sample.

Research Question and Hypothesis

The research question guiding the quantitative design is: what factors affect the outcome of contests between tenants and landlords in Philadelphia's L-T Court? Based on preliminary observations and available literature, I developed the following hypothesis: judicial assignment and legal representation, when controlling for hearing type, legal strategy, and litigant and judge characteristics, have significant effects on whether judges render favorable verdicts to landlords or to tenants. Three independent variables are hypothesized to affect whether tenant or landlords win their cases: 1) whether the landlord has a repeat player attorney; 2) whether the tenant has any attorney

(repeat player or not); and 3) which of the judges, who rotate through the courtroom on a semi-weekly basis, hears the case. The distinction of a landlord's attorney being a repeat player is based on preliminary observations of the courtroom dynamics, which include a clear differentiation between landlord attorneys familiar with the court and those that are not. The control variables include the matter the trial revolves around (money damages, eviction, continuance, or other procedural actions); the testimony, evidence, and arguments that landlords, tenants, and their attorneys use during the trial; and the racial, gender, and nation identity of the trial participants.

Research Design

The quantitative component of this study utilizes a quasi-experimental design common to most regression analyses. The number of variables that could theoretically affect the outcome of landlord-tenant cases is substantial and it would be impossible to use an experimental design that assigned litigants to different trial conditions.

Multivariate models that test the effect of independent variables when controlling for the effect of numerous other variables is the most desirable design for this investigation (Kazdin, 1992). Hearing characteristics, trial participant characteristics, and litigant's legal strategy all influence different judges to different degrees and in different ways, thus influencing whether they render a verdict in favor of a landlord or a tenant.

Normatively, hearing characteristics and legal strategy should affect judicial decision-making, but litigant and judicial characteristics should not. In fact, even differences between judges should not affect trial outcomes based on some formalist points of view. Courts are expected to render even-handed decisions based on fact-

finding and application of law rather than decisions based on personal beliefs or prejudices. Furthermore, L-T Court as a Small Claims Court has the institutional mandate to provide equal access to justice for unrepresented (*pro se*) litigants, so normatively whether or not litigants are represented should not affect judicial decision-making. However, it is hypothesized that litigants who are represented by attorneys are able to bridge the divide between their personal narratives and courtroom procedures, thus improving the quality of their legal argument. A contingent relationship between tenant and landlord strategy exists due to the adversarial trial process. In fact, contingent relationships exist throughout the models, between judicial argument and litigant legal strategy, for example. The complex interpenetration of the variables that are necessarily organized in a linear fashion will be explored using qualitative methodology.

Sample

The sample frame is all landlord-tenant cases that were listed on the court docket during an eleven-month period in 1999 and 2000 and heard as a contested case by a Municipal Court Judge in Landlord-Tenant Court. The inclusion criterion is that either the tenant or tenant's attorney and either the landlord or landlord's attorney must be present for the contest; the exclusion criterion is commercial cases and small claims cases not between landlords and tenants. Another exclusion is less clearly defined: cases that the judge moves towards settlement without expressing his or her point of view about the merits of either litigant's case. The processes of settlement and trial are fluid – litigants and attorneys often resolve lawsuits through a combination of out-of-court settlement negotiations and in-court adjudication. Some of these cases start as hearings and end as

settlements (or agreements), and a fewer number are adjudicated agreements in which the judge presides over the entirety of the final agreement. For these cases, the terms of the agreement are as evident as other hearings and may be virtually indistinguishable from straightforward trials. Only those cases in which the terms of the settlement were reached in front of the bench and on the public record were included in the sample.

A prospective convenience sample was taken from the sample frame of all landlord-tenant hearings listed during the study period. I observed all contested hearings during five sets of the nine private landlord-tenant sessions that take place each week. This totaled forty-five observed sessions, or the equivalent of five weeks of L-T Court hearings. This sampling procedure controlled for the possible effect of hearing time on the outcome of the trials as well as the trial per session ratio. The sessions were chosen on the basis of convenience, and were not evenly distributed across the eleven-month study period. The assignment of cases by the court is done randomly with one notable exception: bulk filing attorneys sometimes seek to get their cases heard during particular sessions, a request that is often granted by the court. Since this variable is being measured (see Appendix A), it can serve as a control for possible selection bias.

Data Sources and Data Collection

Besides the data compiled via the above measurement instruments, data were also collected from the court's administrative database, the official court transcripts of the hearings, and the court's case files. The data base was accessed via a terminal located in the Court Administration offices which was available for one-hour increments on any given day, and data were entered directly into a computer file of all observed hearings.

The data encompass all courtroom activity associated with a given case, including address, attorney names, date that the case was listed for hearing, and any continuances, petitions, motions, or verdicts for that particular case. These data are used as the official Municipal Court docket for cases and appear to be highly reliable. The official court transcripts are written by stenographers who listen to the tapes of the cases taken by Court Recorders. They are somewhat less reliable than the administrative data, but capture a far greater amount of information about the hearings. The court recorder must determine when a case begins and ends, something that is not always clear. Furthermore, interpretation of tape recordings varies between transcribers to some extent. Comparison of transcripts made by two different stenographers of the same trial indicates that this variation is slight and most likely insignificant. Finally, the court's case files contain all pleadings and documents filed with the court, including the original complaint and the judge's disposition. These documents are particularly important given that they are the only reliable source of information about the complainant's possession count (back rent, termination of term, or breach) as well as the judge's verdict on those counts. These data are also highly reliable, and are easily triangulated with the data from the notes, administrative data, and transcripts.

The hearing transcripts total over 2,000 pages, and while they do not depict all of what takes place in the courtroom, they do accurately depict what was officially said on the record. A number of transcripts were double-ordered for the same hearings and were transcribed by different stenographers; their nearly identical rendering of the taped hearing demonstrates the high reliability of the transcripts. The docket number of the

case was recorded by the tape recorders who made the tapes, which allowed a complete match between the hearing transcripts and the docket information recorded on the court's administrative database. The docket record is comprised of a complete case history, from the date the case was filed to its final disposition at the Municipal Court level and the Common Pleas case identification number if the case was appealed. Also, a complete match was made between the transcripts and the case files. The files were particularly important because they contained a copy of the complaint, which specifies the components of the suit and a copy of the disposition, which specifies the components of the judge's ruling. The files also contained a copy of any agreements that were made as well as other aspects of the case that provide insight to the hearing's outcome as well as the variables that may affect its outcome. Finally, the demographic data were collected via direct observations of the trials. The observations created a small amount of missing data, which constituted the only missing data in the sample. Taken together, the transcripts, administrative data, case files, and observational data provide both confirmatory and complementary data about trials in L-T Court.

Dependent Variable

Landlord Wins Hearing

The dependent variable measures whether the landlord wins the hearing: if a landlord wins, the dependent variable is coded "1"; if a tenant wins, the dependent variable is coded "0." The values are arbitrary, as each landlord win is the equivalent of a tenant loss and visa versa. Though the idea of clear judicial victories readily attributed to one side or the other has been assumed by many researchers, the determination of who

wins a landlord-tenant hearing is quite complex. Any monetary outcomes must be placed in the context of admitted liability, eviction, and procedural matters in order for them to be meaningful approximations of “win” and “loss.” Such contextualization may reduce the strength of the statistical models by introducing variance into the dependent variable. However, excluding any of these three dimensions reduces the conceptual validity of the hearing outcome measure and may give the impression of a major finding that actually has a weak relationship with reality. Adding other dimensions introduces even more noise into the dependent variable, such as individual trial participants’ own assessment of victory. In a single trial, the judge, litigants, and attorneys may each determine who has won the trial using independent criteria that may bear little resemblance to any generalized criteria I could use to operationalize “landlord win.” In spite of these limitations, there is value in creating statistical models of these and other trial outcomes due to their generalizability – individual assessment of victory is patterned, and statistical analysis can shed light on conceptual patterns generally shared by trial participants. The methodological limitations simply highlight the need for methodological triangulation and the use of methods that describe the complexity of an individual’s own measurement of who won the hearing.

Case Type

The complexity in hearing types relates directly to the complexity of the dependent variable, which measures a straightforward win/loss determination even though each hearing may be over multiple matters. A judge, for example, may grant a tenant a petition to open a case following a default judgment, hear the case, and award all

the disputed damages to the tenant and possession to the landlord. As indicated in the previous chapter, the tenant can admit liability for both the monetary and possession dimensions of the case. Obviously, if the tenant wins a contested possession and contested full damages, the tenant has clearly won the hearing. If the above tenant loses an uncontested possession, the award for full damages is tantamount to winning the trial because the monetary damages become the only substantive matter being contested. Furthermore, the tenant's initial procedural victory in getting the case heard is made irrelevant by the final trial verdict. Using a ranking system in conjunction with admitted liability conceptualization of monetary and possession outcomes, this study transforms any multiple set of outcomes within the same hearing to derive a single, orthogonal outcome.

Another outcome permutation of the above example deserves particular attention. If the tenant loses a contested possession but wins the contested damages, the verdict is essentially split. If the values of possession and damages are equivalent, neither landlord nor tenant would win the case – it would be a tie and could not be included in the statistical analysis. However, as indicated in the previous chapter, existing literature of housing trials has suggested that eviction is generally the most important dimension to trials over contested possession of property. This study found considerable support for this thesis both within transcript and interview data, and nothing to refute it.¹⁵ Landlords

¹⁵ More research into this pattern is needed to confirm whether it generally holds true from the perspective of landlords and tenants. The ideal determination of differential value between money damages and possession would be made based on direct interviews with landlords and tenants, as is true for the determination of any type of admitted liability.

often have difficulty collecting money judgments, and tenants incur significant moving costs. Possession verdicts determine whether a tenant can continue living in his or her home and whether a landlord can retain control over his or her property.

In fact, Landlord-Tenant Court is technically organized around cases over possession, which are assigned “L-T” (landlord-tenant) rather than “S-C” (small claims) case numbers. Landlord-tenant cases are subject to different sets of procedural and substantive law than all other small claims cases because they concern real property rather than other types of issues. Though small claims cases between landlords and tenants may involve similar issues and legal arguments, they could technically be heard in any other courtroom within Municipal Court. By contrast, landlord-tenant cases are not limited in damages jurisdiction, the major distinguishing feature of small claims cases (which are limited to \$10,000). We return, then, to the final permutation of our hypothetical case where the tenant won contested damages but lost contested possession. Because the relationship between damages and possession is ordinal, such an outcome is tantamount to a tenant loss.

These are the protocols used to rank which outcome was the most important and therefore chosen as the determining outcome of the trial:

1. The final case type addressed in the hearing is the most important. Litigants can achieve a variety of procedural victories to reach a verdict, but those may be moot if the end result of the case goes against them.
2. Possession is more important than money damages. Along similar lines, possession based on non-payment of rent is less important than possession based on termination or breach. Eviction based on non-payment of rent is a curable breach of the lease, and the tenant can simply pay the judgment and continue the lease (known as “pay and stay”).

3. If a tenant waives the right to possession and to money damages, another hearing type may be the determining matter. Some litigants are seeking some other kind of relief. For example, if a tenant asks for and receives extra time before being evicted and the landlord contests the request, this is coded as a tenant win.

These three protocols establish clear ranking for all cases that have multiple outcomes.

Admitted Liability

The calculation of damages using Vidmar's (1984) admitted liability theory deserves more detailed attention. The formula he uses to determine the percentage of disputed amount awarded to plaintiff is as follows:

$$\text{Outcome} = \frac{(\text{Award} - \text{Admitted Liability})}{(\text{Claim} - \text{Admitted Liability})}$$

The percentage figure that results can then be collapsed into a dummy variable which is coded as "1" if the landlord wins 50% or over of the disputed amount and a "0" if the landlord wins under 50% of the disputed amount. It should be noted that the raw percentage outcome could have a negative figure or be well above 100% because it is possible that a complainant could lose less than 0% or win more than 100% of the disputed amount. For example, a tenant could sue his or her landlord for the security deposit and the landlord could counter-sue for the amount of the security deposit plus additional money. It is then possible for the judge to award the counter-suit damages, thus giving the tenant plaintiff a minus percentage of the claim.

Two factors add complications to the dependent variable calculations. First, Vidmar (1984) determined the defendant's admitted liability through direct interviews that were prohibitively time-consuming with a great likelihood of a low response rate. Therefore, the admitted liability is derived from the exchanges between litigants and the

judge in the court transcripts. Fortunately, landlord-tenant trials often address what the defendant admits to, so the admitted liability of tenant or landlord was often readily apparent. For those trials in which defendants indicated only that they owed less but did not offer a specific figure as to what they owed, their admitted liability was coded "\$0," indicating that the tenants contested the full claim. This resulted in some bias against the tenant who, in these circumstances, might have won more of the disputed amount than the calculation would indicate. On the other hand, if tenants did not clearly indicate that they were contesting possession, their admitted liability for possession was coded "1," indicating that they admitted owing the property to the landlord. This potentially resulted in some bias against the landlord who, if the tenant was in fact contesting possession, would not win the possession portion of the claim because it appeared uncontested. The number of cases that fell into both categories was small, and since the biases are counterbalanced, I do not think they impacted significantly on the analysis.

The second factor complicating the calculation is that the complaint figure typically changes between filing and hearing. On the complaint, possession based on rent owed includes a field that specifies on-going rent and this is typically checked off. Even if this is not checked off, a plaintiff for any type of case may ask to amend the complaint at the hearing, to increase or decrease the amount for which she or he is suing. Furthermore, the complainant can change this amount over the course of the trial. A defendant can also change the amount she or he admitted to owing during the trial; however, this was not observed. Defendants can also file a counter-suit, which is recorded as a negative figure in the admitted liability field. The changes in the money

damages complained for and admitted were recorded up to the third time a change was made by either complainant or defendant. Finally, court costs ranging from \$13.50 to \$60.50 were added to the complaint and verdict amounts for the purposes of calculating a comprehensive and accurate dependent variable for those cases involving monetary damages.

In theory, it is possible to model the variables that affect each of the different types of outcomes associated with each of the three sets of case types (damages, possessions, and procedures). However, all outcomes but money damages are binary in nature and suffer from low statistical power given the low number of cases in which a landlord loses. Some exploratory conclusions based on frequencies and logistic regression can be made about the independent effects of variables on each of the possession and procedures outcomes. I did compare the final model with linear regression models of variables on the damages portion of the claim only.

Independent Variables

Judicial Assignment

The first independent variable is judicial assignment, or which judge hears a landlord-tenant case in the sample. The identity of the judge is easily determined through courtroom observation and can be verified using administrative data, transcripts, and case files. The Municipal Court Civil Administrative Judge assigns judges to hear L-T cases for a period of one week in morning and afternoon sessions from Monday through Friday. Each of the twenty-nine Municipal Court judges, four of whom are permanently appointed Senior Judges, are eligible for assignment to L-T Court. There is, however,

considerable variation to the assignments; some judges are assigned often in L-T Court while some are never assigned there. Similar to my measurement of attorney behavior, I also measured judicial behavior such as the length of a judge's hearings, number of questions a judge asks each trial participant, whether the judge specifically elicits any testimony or evidence, and whether the judge reviews the evidence presented to him or her. Finally, I also tabulated the number and type of legal arguments a judge makes from the bench. These variables provide a more fine-grained analysis of judicial behavior than simply determining the effect that different judges have on hearing outcome.

Legal Representation

The last two independent variables are whether an attorney represents landlord or tenant. When a hearing takes place, any attorney involved in the case enters his or her appearance before the bench and the litigants as well as any witnesses are sworn in. Plaintiffs (the vast majority of which are landlords) present their cases toward the right of the bench (from the perspective of the back of the courtroom) and defendants present their cases toward the left of the bench. These conventions facilitate reliable identification of the various parties to the cases observationally, and these observations were triangulated with data from the transcripts, administrative data, and case files. I operationalized the repeat player landlord variable by comparing ethnographic observations and interviews of and with landlord attorneys with the number of times an attorney tried a case in the sample. They were remarkably congruent, such that the group of landlord attorneys who tried two or more cases was identical to the group I identified qualitatively. Finally, I also measured the actions of the attorneys to determine if their

impact on trials was subtler than simply whether or not they were present at trial.

Control Variables

Legal Strategy

Based on legal norms, variables measuring the legal strategies used by litigants and their attorneys should have the greatest effect on the outcome of landlord-tenant, or any, trial. The legal system is based on the application of law to particular cases, such that exclusion or inclusion of substantive evidence or testimony used to support an argument based on statutory and/or case law should have a substantial impact on trial outcomes. They are control variables, however, because previous research suggests that the quality of legal argument does not significantly affect the outcome of L-T Court hearings or other similar housing court hearings whether the arguments are forwarded by *pro se* litigants or attorneys. The hypothesis that legal representation affects trial outcome does not depend on the strategies that attorneys take, but on the mere presence of attorneys. Still, variables measuring legal strategy theoretically have an effect and need to be rigorously measured.

There are three areas of legal strategy control variables: testimony, evidence, and legal argument (see Appendix A). Each of the five participants in any given trial (landlord, tenant, judge, and landlord's attorney and tenant's attorney if present) can engage in each of these types of legal strategy. Normally, attorneys cannot offer testimony or enter evidence without the direct testimony of a witness, but this procedural limitation is relaxed during Small Claims hearings. Four sets of variables were therefore created for each participant for both testimony and evidence. There are no such strictures

on attorneys for legal arguments, and since judges also can offer legal arguments, five sets were created for this area of legal strategy. Furthermore, testimony and evidence can be elicited from any of the participants and were measured with a single set of variables. These measured whether at any time during the trial a trial participant elicited either testimony or evidence from any of the attorneys or litigants who were a part of the hearing. (A strictly parallel set of variables measuring elicitation by participant by testimony and evidence type would have created nearly 400 additional variables). Finally, it should be noted that any given statement made in court might cover more than one area of legal strategy. For example, a statement made by a tenant that damages to the property were in violation of the housing code is both a piece of testimony to the fact of the damages and a legal defense to the rent they are being sued for. Furthermore, if this tenant also offers photographs of the damage during this statement, the tenant would also be presenting evidence.

All 13 sets of variables differ somewhat based on the participant but basically reflect central issues as observed previously in L-T Court combined with those that should, normatively, constitute the substance of landlord-tenant trials. Legal norms as determined by procedural rules and conventions as well as by statutes and common law that apply to this L-T Court were used to determine what variables should be measured. These variables were coded using the court transcripts and court case files, which provide some confirmation of these measurements, particularly in the area of evidence. However, because L-T cases are *de novo* (the initial case cannot be used as the basis for subsequent appeals), no evidence is formally entered into the court record. This makes verification

of these variables using case files unreliable, though documents presented as evidence before and during the trial are sometimes attached to the docket.

Demographic Characteristics

Another set of control variables is the basic demographic characteristics of all trial participants: race, gender, and whether English was used as a second language. There are validity and reliability problems when participants do not self-report such characteristics as their race; such data are only available after interviewing all trial participants (Hernandez, 1995; Kahn & Denmon, 1997; Mittleburg & Waters, 1992). Therefore, the accuracy of these measurements was verified using formal interviews of the case analyses. For these interviews, sixteen respondents were asked to identify their race, gender, and ESL status after I had coded them myself. I correctly identified 100% of these respondents, and can reasonably conclude that my measurements of these demographic variables were adequately valid and reliable.

Case and Hearing Types

The most complex set of control variables measure the various hearing types of the observed trials. The complexity derives from the fact that any one case may qualify for multiple types. These include money damages, which can take place both alone with small claims or combined with possession in landlord-tenant cases. Suits for possession of the property are further broken down according to three distinct counts. Count "A" is based on back rent, count "B" is based on termination of the lease term, and count "C" is based on breach of the lease. Of these, only the first is curable, so that if a tenant receives a judgment for non-payment of rent only and pays the money owed, he or she can remain

in possession of the property until any future action that the landlord may bring against him or her.

Besides these basic case types, hearings can also concern a variety of procedural matters. The most common procedural decision is a request for a continuance in which either litigant asks the judge to reschedule the hearing for a future date. Also common are petitions to open, in which a litigant is asking the court to hear a case that was already decided because he or she was not present during the previous hearing and a default judgment was rendered against him or her. Other procedural motions include: petitions to satisfy, in which litigants are asking the court to remove a judgment from their records because they have paid the amount specified by the verdict, and motions to strike, in which either side asks that the original trial verdict be reversed and taken off the court record. A procedural decision that is not standard in the sense that there are no rules associated with it is a request by the tenant for more time before eviction than is prescribed by statute. Still, this is an important sub-category of procedural type cases because any extra time that is allotted tenants allows them to retain possession, thus depriving landlords of filling that unit with a new rent-paying tenant. Data about each of these types are available through combining the transcript, administrative data, and case file information.

It is apparent that a single case could be categorized as a number of different types. For example, landlords could file a petition to open a case that previously ended in a default judgment against them because they were not present at trial. If this petition is not granted, the case type is strictly procedural. However, if the petition were granted,

the hearing would also qualify for other categories. If the tenant asked for a continuance and the continuance was granted, the case would qualify for another procedural type. Alternatively, if the continuance was denied and the landlord won a money and possession judgment, the case would qualify as two different procedural categories as well as the damages and possession types. Finally, if the tenant asked for additional time than typically allotted and that request was denied, the case would qualify for three different kinds of procedures, damages, and possession for a total of five trial types. Finally, cases differed according to whether the landlord or tenant was plaintiff or defendant, whether either party made a counterclaim, and how many times the case had been continued before the hearing.

Statistical Analysis

Because the main outcome is a dichotomous win/lose determination, I used logistic regression to model the relationships between independent and control variables on the dependent variable. The number of variables included in the final and preliminary models is limited by the extent of the variance in the dependent variable. In this sample, tenants won their case 46 of the 153 sampled trials. An acceptable power limitation for logistic regression is a variable-to-outcome ratio of one variable for every five outcomes in the smallest cell. This allowed nine variables in the final model. This criterion could be relaxed for the preliminary models given their exploratory nature, and the limit of 18 variables was used for these models (P. D. Allison, personal communication, January 15, 2001).

I organized the preliminary models around related domains and used a tiered

approach to determine what variables should be included in the final models. First, frequency analysis was employed to find out which control variables were likely to have statistically significant effects on the dependent variables. Second, conceptually related variables that were likely to affect trial outcome were included in models to determine the significance of their effects. Finally, statistically significant control variables were combined in final models that included the hypothesized independent variables. I entered variables simultaneously for the preliminary variables, but used a combined enter and forward stepwise procedure to distinguish between the effect of the control variables from that of the independent variables.

One set of control variables was crucial throughout the analysis: whether a given trial participant was present at a trial. Because attorneys can represent their clients without their clients' presence at trial and because not every litigant has an attorney, for any given trial either the landlord or her/his attorney on the one side or the tenant and her/his attorney on the other may not be present at the trial. Without controlling for their presence, variables measuring the behavior of each of these trial participants could be confounded by their presence or absence.

Validity and Reliability

Threats to Internal Validity

Selection Bias

One threat to internal validity is selection bias due to the non-random sampling procedure. The sample's inclusion of an even number of sessions across an equivalent of

Table 2: Trial Session Docket List

	Mon. AM	Mon. PM	Tues. AM	Tues. PM	Wed. AM	Thurs. AM	Thurs. PM	Fri. AM	Fri. PM	
Study Sample	43.2	36.2	52.2	40.6	62	60.6	78	52.6	25	
Test Sample	58.8	38.2	61.8	44.6	56	71.8	35	52	21.8	
% Difference:	36%	6%	18%	10%	11%	18%	122%	1%	15%	
Study Sample Average:	48.6									
Test Sample Average:	48.9									

five weeks of hearings serves as a control for the uneven assignment of cases to each session (consistently fewer cases are assigned to Friday afternoons, for example). It also controls for the uneven assignment of cases to bulk filing attorneys whose familiarity with L-T Court procedures and personnel may explain the hypothesized relationship between landlord attorneys and hearing outcome. A comparison between the cases listed for the study sample's 45 sessions and a test sample of cases listed for another 45 sessions during the study period measures the sample's internal validity in terms of the cases listed on each session's docket. I drew the test sample from the same sample frame as the study sample using the same consecutive sampling procedure. A comparison between the docket list averages indicate some variation between the samples, though only one pair of session averages differs more than 100% from the lowest docket list average. The total averages are nearly identical, indicating that the study sample is reasonably generalizable to the sample frame in terms of the cases included in the statistical analysis.

Seasonality

Seasonality also threatens the sample's internal validity. Cases were selected disproportionately in the summer when there are no issues relating to heating services, which could also have a significant effect on the outcome of landlord-tenant hearings. However, at least some cases were heard during all four seasons:

Table 3: Seasons of Year

	Fall	Winter	Spring	Summer
Hearings Percentage	12%	10%	22%	56%

History

Another threat to internal validity is history due to the change in judgeships mid-way through the study period due to the start of a new judicial term. The sample includes some of the last L-T Court hearings of two judges and the first Landlord-Tenant Court session presided over by a new Municipal Court judge. There is substantial overlap between the judges who presided over all sessions during the study period and those who presided over the sample sessions. Ten of the 14 judges assigned to L-T Court within these eleven months are included in the study sample. One of the non-represented judges only sat in L-T Court for two days, and two other non-represented judges only had one weeklong assignment each. However, the fourth non-represented judge was assigned to L-T Court for a high number of weeks (6, or 13% of the total study period weeks), so this judge's exclusion could have a significant effect on case outcomes across the study period. A session of this judge was observed for the sample, but no cases met the study's selection criteria. Furthermore, the proportion of sample judges to study period judges is not precise, which also limits the generalizability of the sample to the sample frame. The sample appears to be moderately representative of the study period in terms of judicial assignment.¹⁶

¹⁶ Based on a transcript of one of the excluded judge's trials I obtained for one of the case analyses, the judge appears to be relatively pro-landlord, raising the possibility that her exclusion from the study did not result in an overestimate of the high landlord win rate. In any case, the relationship between the sample frame and any other sample frame is not precise. Because judicial assignments are not available in advance, are unevenly distributed, and are subject to daily changes, any random sample of sessions would yield an uneven distribution of judges. Even if the sample was more closely representative of the sample frame (which could be achieved by randomly selecting sessions on a weekly or daily basis), this sample frame would not be representative of any other future set of trials because the judicial assignments are so fluid.

Threat to External Validity

Reactivity

A threat to the study's external validity is reactivity. My presence in the courtroom was highly visible given that there was rarely anyone else there who was not a party to a case, let alone conducting research. Furthermore, some of the judges knew me from my previous research, and other judges discussed this research with judges who had not been a part of the TAG study (Eldridge, 1996). There was some indication that at least one judge adjusted his or her statements from the bench because I was observing trials. However, this is based on an unverified, tentative observation accompanied by the sense that if my presence changed the judge's statements it did not seem to affect the content of judicial decisions. I attempted to reduce this threat by maintaining as unobtrusive demeanor as possible during court sessions, but its impact on the statistical analysis is impossible to determine. With regard to the study's external validity in general, statistical findings, like all of the study's findings, are generalizable to other courts to the extent that other court's procedures, organizational structure, and history differ from Philadelphia's housing court.

Reliability

The greatest threat to reliability is the limited inter-rater reliability I measured, which established high reliability only for most variables using a small number of hearings. I made every effort, however, to maintain consistent coding across the transcripts. Another threat to reliability emerged after a tipstaff, towards the beginning of my data collection, instructed me to not take notes. This presented difficulties because I

was relying on observational notes to record data that was unavailable elsewhere. I relied for a time on memory and recorded race, gender, and nationality of trial participants (including witnesses) immediately after leaving the courtroom. This proved less reliable than I had anticipated, and resulted in some missing data. I therefore developed a set of hieroglyphics that I scratched into a printed copy of the session’s docket with my thumbnail:

Table 4: Data Collection Hieroglyphics

Race:	Gender:	Other:	Examples:
\ = White	\ = Woman	E = ESL	“/ \” = Black Woman
/ = Black	l = Man		“E \ l” = White Man, ESL
A = Asian			
H = Hispanic			

This threat to internal validity is an excellent example of the inter-relatedness between quantitative and qualitative methodology. While the note-taking policy created obvious difficulties in collecting valuable data, the nature of policy provided rich grist for my ethnographic mill (see Weis & Fine, 2000 for related uses of research obstacles).

Furthermore, the conflict over my right to take notes evolved into a legal case, complete with an attorney, written legal arguments, and a legal strategy. My interactions with the court, in fact, are the basis of a fifth case analysis, presented in Chapter 10.

Taken as a reasonably representative, valid, and reliable sample of cases heard in L-T Court, the sample’s 153 hearings represent approximately one tenth of the approximately 1,600 Landlord-Tenant cases heard over the course of a year.

Case Analyses

I selected the first four case analyses in a more conventional manner. The purpose of the case analyses was the application of study methodology at the level of the litigant, trial and case in order to understand how different participants experience and perceive the same trials. The case studies answered the question, “What happens in L-T Court?” Courtrooms are adversarial in nature and the polarities and tensions between landlord, tenant, attorney, and judge call for careful scrutiny using multiple perspectives of the same experience. Studying each perception of the trial from different participation groups and the dispute that led up to it shed light on some of the aspects of court experiences that are difficult to discern using observation and transcript analysis alone. My objective was to interview between four and six sets of landlords and tenants and/or their attorneys, a strategy that is congruent with case study conventions (Yin, 1994). This number allowed a basic degree of variation between the cases, and the small size also allowed in-depth study of the cases. This included detailed analysis of the trial transcripts, court files, and any additional hearings or appeals that surrounded the hearing I observed and from which I recruited participants. I created five sets of interview protocols tailored to each trial participant and covering the same ground in the area of personal characteristics and background, normative expectations, and trial experience (see Appendix B for protocols and consent form). The interviews were loosely structured and I added probes and diverged the questions in order to follow participant-directed lines of inquiry.

The primary selection criterion for the cases was that at least one perspective from the tenant and landlord sides be included in the study, although I attempted to interview as many trial participants for a given case as possible, including the judge. I initially conceived the cases to be a sub-sample of the statistical sample, but operational difficulties of recruiting trial participants while also observing all trials in a given session proved too difficult to sustain. Furthermore, without more specific sampling criteria the inclusion of cases was more likely to be influenced by my bias rather than a systematic procedure. I addressed this potential selection bias by alternating between approaching the landlord or tenant whom participated in the trial and using a standard protocol while recruiting participants. Out of approximately twenty-five attempts to obtain at least one landlord and one tenant perspective, this initial procedure yielded one case: Sexton v. McGinnis.¹⁷ This case was the only one in which I also obtained an interview from the judge who presided over the hearing.

Sampling Matrix

The most interesting dimension of this case was the interplay between the tenant, landlord, and the judge with the tenant's attorney during the trial. In addition, preliminary statistical and ethnographic analysis suggested that attorneys play a significant role in trials and the organizational structure of the court. I then added legal representation as the second central case selection criterion. I used Yin's (1994) matrix

¹⁷ The names of the cases have been fabricated to protect the confidentiality of the trial participants. For purposes of clarity, the cases will be referred to by their given names throughout the study, and no other cases will be named to avoid possible confusion between the case analyses and the many other legal cases included in the study.

procedure to create a sampling framework guided by legal representation as the central variable. This yielded the following sixteen permutations of legal representation:

Table 5: Legal Representation Permutations

	<i>LL Pro se</i>	<i>LL w/Att</i>	<i>LL Att only</i>	<i>LL is Att</i>
Ten <i>Pro se</i>	Yes	Yes	Yes	No
Ten w/Att	Yes ^a	Yes	Yes	No
Ten Att Only	No	No	No	No
Ten is Att	No	No	No	No

^a Already obtained.

The “yes” and “no” determinations indicate which configuration I chose to pursue to create a unique sample, except for the one case that was a part of the statistical sample. Since tenants are rarely absent when their attorneys represent them and landlords and tenants seldom represent themselves as attorneys, I did not pursue cases matching the final two rows and final column. Operationally, I started this new case analysis sampling procedure after completing the quantitative sampling by bringing this above matrix to court and recruiting participants based on their match with uncompleted cells. I used the same procedures of alternating contacts between landlords and tenants and used a standard recruitment protocol to keep the selection process as balanced as possible. Out of approximately 15 recruitment attempts, two more cases were obtained using this procedure (as well as three formal and two informal interviews for incomplete cases): Singleton v. Zephyr Properties and Pendleton v. Fortune.

Though the revised sampling procedure yielded a greater number of recruitment contacts, it remained difficult to obtain interviews from everyone who had agreed to

them. I found it particularly difficult to obtain interviews from landlords, one of whom expressed an interest in being interviewed but seemed to avoid the actual interview for a period of four months. In the meantime, I had been following a case that started with an ethnographic contact in the Municipal Court Administration office. I had observed a White man, probably in his early 40's, dressed in jeans and a flannel shirt, holding what appeared to be legal papers and asking legally sophisticated questions to the office's secretary. In short, he looked like a *pro se* litigant but he talked like a lawyer. He was in fact both: a tenant who was representing himself and three other tenants in his building. I attended one of the three Municipal Court hearings of his case, and kept in contact with him as he and the other tenants appealed to the Court of Common Pleas. During this new trial, I was able to recruit the tenants, the attorney who was now representing all of them, one of the landlords, and the landlords' three attorneys into the study. This became the fourth case: Dennis v. Yes Housing, Inc.

Case Descriptions

A summary of the cases and their legal representation categories included in the case analyses is as follows. The table distinguishes between the legal representation categories that were purposively sampled and those that were not, and includes the percentage of the quantitative sample the category represents.

The case analysis sample includes those that represent the two most significant configurations, and the four cases together represent over two thirds of the configurations observed in the statistical sample. I should emphasize that the intent of the case analyses is not to be representative in a statistical sense, but it is important that the cases reflect a

Table 6: Cases Analyses Description

N = 153

	<u>Singleton v. Zephyr Properties.</u>	<u>Pendleton v. Fortune</u>	<u>Sexton v. McGinnis</u>	<u>Dennis v. Yes Housing, Inc.</u>
Sampled Configurations				
1. Both Pro se (50%)		X		
2. LL Att only, Ten. Pro se (18%)	X			
3. LL w/Att, Ten. Pro se (15%)				
4. Both w/Att and Present (5%)				X (On Appeal)
5. LL Pro se, Ten w/Att (4%)			X	
6. LL Att only, Ten w/Att (1%)				
Non-Sampled Configurations In Case Study				
7. Ten is Att, LL w/Att (1%)				X
Total Configuration Types Represented: 5 Total Percentage of Cases that Fit These Types: 78%				
Other Non-Sampled Configurations				
8. Ten is Att, LL Pro se (3%)	13. LL is Att, Ten Attorney Only (0%)			
9. LL w/Att, Ten Att Only (1%)	14. LL Pro se, Ten Att Only (0%)			
10. LL Att Only, Ten Att Only (1%)	15. Ten is Att, LL Attorney Only (0%)			
11. LL is Att, Ten Pro se (1%)	16. Both are Attorneys (0%)			
12. LL is Att, Ten with Att (0%)				

diversity of common and unusual configurations of litigants and attorneys. The cases also include a variety of case characteristics – small-claims, landlord-tenant, procedural, counterclaims, and appeals – and trial participant characteristics – different judges, and different races and genders of landlords. Most of the data were collected via sit-down face-to-face interviews using the protocols, but one attorney filled out the interview protocol as a questionnaire and answered some follow-up questions later. These data were supplemented by informal discussions with some of the respondents, which took place before and after the interviews.

I used the case analyses to provide in-depth insight into how trial participants experience Landlord-Tenant and Municipal Court. Chapters 5 through 8 are each

centered in a case analysis, which is contextualized using ethnographic data and linked to the statistical findings presented in Chapter 4. Chapter 9 combines case analysis data from all four cases with ethnographic data to explore a central theme throughout the analysis: the interorganizational relationships between the courts and other organizations.

Ethnography

The purpose of the ethnographic component of this study is to analyze L-T Court at the organizational level. For the purposes of this analysis the courtroom will be viewed as a decision-making forum, the court will be viewed as the organization, and the legal system will be treated as the context within which both the decision-making forum and organization function. The ethnographic methodology answers the question, “What is the meaning of what happens in L-T Court?” This analysis provides not just context for the statistical interpretations and case analyses, but a comprehensive framework for the systemic forces that influence the behavior of the trial participants as well as the individuals and groups that perpetuate the L-T Court institution. The ethnography provides the widest level of analysis in the nested case study – it establishes, in short, the biggest nest that contains all other levels of analysis.

The organizational analysis is based on the principles of multiple points of entry and multiple perspectives. An institution is a complex organization comprised of numerous individuals and groups. Researchers who rely on a single source of information or point of entry into an institution will not be able to develop a full understanding of the organization's behavior. For institutions resistant to observation, such as Philadelphia's Municipal Court proved to be, persistent pursuit of multiple

sources of data about the organization and different ways to interact with the organization becomes crucial. Sources must not only be multiple, but they also must represent multiple perspectives if a complete picture of the institution is to be developed. As Smith (1988) points out, the more multiple perspectives that are developed about the same phenomenon, the more valid and less biased conclusions can be drawn about that phenomenon. Every effort was made to obtain a balanced number of perspectives from members of each participant group: landlords, tenants, attorneys on both sides, judges, and court staff.

Data Sources

The data used for the ethnographic analysis consist of trial field notes, pre- and post-trial field notes, unstructured and semi-structured interviews with various individuals who have experienced some aspect of L-T Court, and transcripts. This field note procedure follows that of Miles and Huberman (1994) and Glaser and Strauss (1967). Pre-trial data provide information about the universe of cases from which the trials emerge. Semi-structured interviews with litigants who chose out-of-court settlement and who default on their cases provide data about the experience of litigants who do not participate in a trial but who interact with the court. Trial field notes and transcripts provide rich detail about the trials themselves, and interviews with trial participants provide data about how people experience the trials. Other sets of field notes were based on interactions with people in various locations within and near the court, including the mediation area next to the court, the First Filing and Judgments and Petitions windows, the hallway outside of L-T Court, and other courtrooms within

Municipal Court and Common Pleas Court. Other areas had less direct bearing on L-T Court, including a restaurant near the Court where court staff, attorneys, and tenant advocates sometimes ate and the offices of tenant advocacy organizations. Still other field notes were taken even farther afield of L-T Court, such as those that recorded a conversation with an assistant district attorney who tried cases in front of Municipal Court judges.

Field notes taken in and about two areas of court, the Court Administration Office and the Court Recorders Office, are unique because my experience in these two areas developed into participant observation. In both areas I was observing while obtaining data: administrative data from a computer terminal in the Administration Office and ordering transcripts with court recorders in the Court Recorders office. I spent enough time doing these activities, which were a substantial part of the staff's work, that I became increasingly more of an insider within these work areas. These points of access, then, led to in-depth data about the work of Municipal Court front-line staff who had a great deal to say about the workings of the court and about their views on landlord-tenant disputes.

The insider experience I developed with these two offices contrasted sharply with the outsider experience I developed in L-T Court. I began this research as an outsider due to a previous study I had conducted for a tenant advocacy organization that was highly critical of the Landlord-Tenant Court's treatment of tenants. Over the course of data collection for this current study, my outsider status within the courtroom intensified in spite of efforts to present myself as a researcher interested in the perspectives of all trial participants, including landlords and judges. My difficulties obtaining access to

court data that was theoretically public, such as notes of courtroom proceedings and case files, increased to the point that I sought the help of an attorney to protect my right to continue the research. As mentioned above, the data generated by these access problems generated enough valuable information about the organizational structure of L-T Court that it constituted a case analysis in its own right. Furthermore, by becoming an attorney's client I learned about legal decision-making from a perspective that resonated with landlords and tenants who either had attorneys or did not have the benefit of legal counsel to aid their case. I also benefited via this process from superb legal research of case law pertaining to the public right to courtroom data that helped place the organizational and legal dynamics of L-T Court into a broader organization and theoretical context. Ironically, my outsider status led to access to experiences that provided an insider experience of legal disputes and the operations of Municipal Court.

The relationship between my constricted access in some areas and the expanded access it led to in other areas confirms Lofland and Lofland's (1995) view that limited access in one area may increase access in another. This idea is also congruent with Weis and Fine's (2000) exploration of data derived from the margins between what is planned and what occurs in qualitative research. Data collection is an activity, so experiencing the inability to collect data constitutes another kind of data. These new data are subject to ethnographic interpretation just as the data that have become unavailable. Data are paradoxically paired with a lack of data, and the lack of data may produce new data that are more revealing of fundamental social and organizational structure than the data that were originally sought. Ethnographic data are "interpretations of other interpretations"

whereby data collection is itself a process of interpretation (Van Maanen, quoted in Kritzer, 1996). Kritzer's description of all analysis also emphasizes the relationship between raw text or numbers and their sub-text. Similarly, Smith (1988) urges analysts to "look, as it were, to an invisible text latent within what is seen and derive the unwritten text that ties the surface behavior into a coherent whole" (p. 130). The obstacles I faced accessing data provided crucial insights into the organizational behavior that was preventing that access. I recorded my research experience of the organizational dynamics of Municipal Court as a distinct set of field notes, which gained prominence as the inter-relationship between myself and the Court gained complexity.

Analysis

Field note data were entered into computer files that served as a basic thematic structure at the beginning stages of analysis. The first files were organized according to location of observation (courtroom, court administration, etc.). I first used an initial set of themes that may have applied to any organization to start coding as I recorded the data:

1. *Formal v. Informal Exchanges*: informal interactions between research participants often provide insight into the organization's deep structure.
2. *Multiple Representativeness*: the different roles and personae that people adopt or project provide insight into the organizational structure that assigns these roles in the first place.
3. *Personalological (at the individual level), Intragroup, and Intergroup Dynamics*: different levels of individual and collective behavior provide insight into the complex dynamics of an organization.

These original themes, as did all themes, became more or less robust as the research progressed. For example, only the third original theme continued to build in importance throughout data collection and analysis. I developed four other sets of themes, which are

listed in Appendix C. I added the working themes soon after the beginning of data collection, and these represent the first level of fieldwork analysis. As my understanding of the court's behavior increased, I added new or refined themes to the evolving theme list. I separated those variables relating specifically to trial participants to create a third list. As themes took shape, I wrote memos to collect thoughts about the themes and other analytical aspects of the data. This list of 41 themes was then applied to the trial transcripts, interviews, and other data in the course of the final write-up of the study. These 12 write-up themes reduce or combine the data collection themes, and are presented in Chapters 5-9. In general, the extent to which a piece of data was triangulated with other data was identified throughout the qualitative analysis.

As in all qualitative research, the nature of the data are to a significant extent shaped by the identity of the researcher. There are two dimensions to my identity that had direct bearing on my effort to "get in," in Lofland and Lofland's (1995) words, to the research setting. The first issue relates to my previous research in L-T Court that established a greater affinity with the tenant's perspective than with the landlord's or court staff's perspectives. In order to reduce tenant bias in my current research and cultivate multiple perspectives, I used a set of field protocols to guide my initial contacts with research participants (see Appendix D). I endeavored to create a balanced analysis of the various perspectives of the trial participant groups by collecting ample data from different groups and drawing thematic conclusions based on these multitudinous data.

The second access issue relates to my identity as a White male. Both race and gender have been widely documented as having an effect on the researcher-subject

relationship (Armstead, 1995; Bola, 1995; Monette, Sullivan, & DeJong, 1994; Reinhartz, 1988; Rhodes, 1994). Given the substantial percentage of non-White female landlords (23%), tenants (56%), and judges (26%) that participated in the statistical sample of trials, race and gender are significant factors in Courtroom 4-B. Furthermore, the racial and gender composition of L-T Court has changed considerably since the 1996 study was conducted. At that time, 90% of the observed judges were White men as compared to the 35% of the White male judges observed for this study. My race and gender will have an effect on how courtroom participants perceive and respond to me and on how I perceive and respond to others during the course of my research. Like any common identity, my demographic association with other White men may be an advantage or a disadvantage in forming connections with participants given how similar, and therefore either highly resonant or dissonant, our identities are.¹⁸ While race and gender are among my most obvious distinguishing features, there are numerous other aspects of my identity that will also play a role in my research. I therefore maintained a high level of introspection in order to identify and challenge my own biases and assess the effect I was having on my research subjects (Alderfer, 1988; Smith, 1988).

¹⁸ In fact, the three judges who consented to interview were White, and two were men.

4

Quantitative Analysis

Analysis of the 153 trials included in the statistical sample confirms two of the three hypothesized relationships: judicial assignment and the presence of a tenant attorney significantly affect the outcome of landlord-tenant hearings. Although the presence of a landlord attorney (whether a repeat player or not) did not affect whether the landlord or tenant won the case, there is some indication that landlord attorneys use tenant testimony to aid their case. This suggestive finding is bolstered by the marginal significance of weak tenant testimony. As expected, no significant relationship was found among any dimension of either party's legal strategy besides retaining an attorney for the tenant. Racial, gender, and language characteristics of the trial participants also had no effect. However, hearing type had one of the strongest associations with landlord wins: cases concerning contested possession of the rental property are almost always awarded to the landlord. Also, tenants requesting continuances or presenting affidavits win the hearing at a significantly high rate. Finally, the analysis demonstrates that judges' decision-making is guided more by reasoning that focuses on the tenant's obligations rather than reasoning that focuses on the landlord's obligations. The picture that emerges from the statistical analysis is of a courtroom in which the application of central tenets of landlord and tenant law is secondary to the influence of attorneys and the presiding judge's orientation to landlord-tenant conflicts.

Before presenting these findings in detail, this chapter presents some data about the pre-trial roll call that takes place before each trial session. Descriptive statistics

provide a foundation for the preliminary and final statistical models. As with the previous chapter, the formulation of the dependent variable is so closely dependent on the formulation of the hearing type control variable that presenting the dependent variable first is less comprehensive than presenting it after the hearing type formulation. The independent variables and finally the remaining control variables will follow the dependent variable description. Preliminary models test large numbers of variables unified by conceptual domain (as independent or control variables). The final model incorporates the most robust variables into the concluding statistical analysis of the quantitative data. The chapter concludes with an analysis of the final dispositions of all cases in the sample and an analysis of those cases that were appealed to higher courts.

Pre-trial Sample

The trials represent only a fraction of the cases listed for any given session and must be seen in the context of these other cases. Non-random, comprehensive data about two of the study's sessions, totaling 103 listed cases, along with qualitative observations provide some insight into the broader universe of landlord-tenant hearings. These data were collected using an observational survey method, and suffer somewhat from missing data due to the extremely fast pace at which cases are processed during the roll call hearing (it was particularly difficult to reliably measure racial and gender identity of the litigants).

Table 7: Trial Participant Identity

N = 100^a

	Non-White Women	Non-White Men	White Men	White Women	Number & Percentage ^b
Landlords	6%	37%	56%	0%	21
Tenants	70%	13%	9%	9%	23
LL Attorneys	0%	1%	80%	19%	68
Ten Attorneys	0%	0%	100%	0%	2

^a Three of the cases had missing data on litigant identity.

^b Because there are exactly 100 cases in this chart, the total number for each category is equivalent to the total percentage for each category.

Even with these limitations, the demographic make-up of the trial participants represented by the pre-trial sample matches the general impression one gets from sitting in court during roll call. When the above figures are disaggregated by race and gender, they show that most people in court at the beginning of the roll calls are Black (64%) and female (61%), while all but one of the attorneys is White and most are male (80%). Particularly striking is the high proportion of landlords (68%) who are not present and are represented by an attorney, and the low proportion of tenants (2%) who are represented by an attorney (all represented tenants were present).

This difference points to the central focus of the roll call: efficient processing of cases in order to reduce the number of hearings as much as possible. Four of the landlord attorneys bulk filed cases and processed a range of two through nineteen cases back-to-back. Together, they accounted for 70% of the cases in which an attorney represented a landlord. The dispositions of the cases in the pre-trial sample are as follows:

Table 8: Hearing Type

N = 101

Ten. Default	Withdrawal	Landlord Continuance	Settlement w/Attorney	Settlement w/ Mediator
33%	19%	3%	16%	4%
Non-Prosecution	No Service	Trial	Not Called	Missing
6%	5%	13%	3%	2 ^a

^a This is the total number of cases in which data about the case hearing type was missing.

Bulk filing case processing is speeded by the high number of tenants who defaulted on their hearings, the number of cases the attorneys withdraw presumably because they were resolved pre-trial and the number of continuances the attorneys ask for, presumably to provide additional time to settle a case pre-trial. These quickly resolved cases total 55% of the hearings. After the bulk-filing attorneys finish their lists, they exit the courtroom and attempt to negotiate an agreement with the tenants, the vast majority of whom are neither represented by attorneys nor are provided a mediator. These negotiations yield the third highest disposition rate in the pre-trial sample: 16% of the cases were resolved in this manner. Small numbers of the cases were resolved with the assistance of a mediator, were dismissed because the landlord failed to appear in court (non-prosecution), or were dismissed because the tenant was not properly notified of the hearing according to rules of serving complaints. The remaining 13% were cases that went to trial as contested hearings, thus becoming a part of this study's statistical sample.

Trial Sample

Dependent Variable & Case and Hearing Type

Of the 153 cases included in the sample, landlords won 107 (70%) of them. Landlords therefore win two and a half times more often than tenants, a considerable difference but much less than the previous calculation that landlords won their cases nine

times more often than tenants (Eldridge, 1996). The difference between the two studies' landlord win rates is due in part to the inclusion of admitted liability and procedural matters in the operationalization of the dependent variable. Because the calculation of the dependent variable is so reliant upon these dimensions of the cases, I will present the formulation of the dependent variable in the context of first formulating the case type and hearing type variables and then collapsing them into a single orthogonal variable where "1" is assigned to a landlord win and "0" is assigned to a tenant win.

Case and Hearing Type

The hearing sample represents a complex array of case and hearing types. It should be emphasized from the outset that the sample is one of hearings rather than cases, and that because of continuances a single case may have multiple hearings. This sample includes multiple hearings of three cases, two of which were continued once then tried, and one of which was continued twice then tried. Continuance requests are often contested and have unique significance because time of possession is a critical issue; therefore, these cases were included in the analysis. An additional analysis of the final verdicts of continued cases is included below along with an analysis of appeals, both of which affect a case's final outcome. For the most part, however, the statistical analysis will be of the sample's hearings.

While each case can have multiple hearings, each hearing can have multiple types based on a variety of issues litigants put before the judge.

Table 9: Hearings Percentages

N = 153

Continuance Request, LL	Continuance Request, Ten	Small Claims, LL File	Small Claims, Ten File	L-T/Possession
4%	6%	3%	14%	70%
Petition to Open, LL Side	Petition to Open, Ten Side	Tenant Affidavit	Tenant Requests Time	Counterclaim, Landlord
3%	9%	1%	15%	2%
Counterclaim, Tenant	Petition to Strike, LL	Petition to Strike, Tenant	Final Action by LL Side	Multiple Hearing Types
6%	1%	1%	81%	84%

As indicated previously, the most basic distinction in case type is between Landlord-Tenant cases and Small Claims cases between landlords and tenants, the latter of which do not involve possession of the property and constitute 17% of the observed hearings. The majority of these are brought by tenants suing for the return of security deposits or for damages to their possessions, but 18% of all S-C cases are brought by landlords for unpaid rent and damages. All cases heard in L-T Court are either L-T or S-C cases, but some L-T hearings involve procedural rather than possessory matters. For example, two (1%) of the L-T case hearings were over affidavits brought by tenants to enforce satisfaction of a previous judgment entered against their landlords and a third L-T case concerned a motion to strike a previous judgment.

Each of the remaining hearing types involves procedures, like continuances, that could be applied to any case type. Both landlords and tenants or their attorneys, for example, can file a petition to open a case that they had defaulted on by missing a previous hearing. The petition is reviewed twice, first by the Municipal Court Administrative Judge who provides initial acceptance or rejection and then by a trial judge in a hearing where both parties must be present or the non-defaulted party might

face her or his own default judgment. A total of 3% and 9% of the observed hearings included petitions to open by the landlord and tenant, respectively, or their attorneys. If a petition to open was granted, the case proceeded to other matters; if it is not, the default judgment for the entire amount sued for and any accepted amendments stands. Both landlords and tenants can also submit a counterclaim, either prior to the hearing or at the bar of the court during the hearing, and 8% of all hearings included deliberation over a counterclaim.

A final hearing type does not fit into any of the court's own categories but is worth individual attention for the same reason that continuances are significant: tenants often ask the judge to give them more time before they have to move or pay back rent. Again, because time is literally money for landlords, the granting of these requests can have a significant effect on landlords' ability to secure rental income. Fifteen percent of all observed hearings included such a request. In all, 83% of all observed hearings met the criteria of at least two hearing categories, and some of the hearings were made up of four different hearing types.

Dependent Variable

The outcome of each case and hearing type can be compared with the final verdict to illustrate the winnowing process necessary to create a single, over-all dependent variable that measures who won each contest.

Table 10: Hearing Type and Outcome

N = 153

	Continuance Request, LL	Continuance Request, Ten	Continuance, Judicial	Small Claims, LL	Small Claims, Ten
Hearings	6 (4%) ^a	9 (6%)	2 (1%)	4 (3%)	20 (14%)
<i>LL Wins</i>	5 (83%) ^b	1 (11%)	0 (0%)	1 (25%)	6 (30%)
	L-T, Possession	L-T, Damages	Petition to Open, LL	Petition to Open, Ten	Tenant Affidavit
Hearings	127 (83%)	130 (81%)	5 (3%)	13 (9%)	2 (1%)
<i>LL Wins</i>	100 (93%)	62 (54%)	5 (100%)	4 (31%)	0 (0%)
	Ten Requests Time	Counterclaim, LL	Counterclaim, Ten	Petition to Strike, LL	Petition to Strike, Ten
Hearings	23 (15%)	3 (2%)	9 (6%)	1	2
<i>LL Wins</i>	11 (48%)	2 (100%)	3 (50%)	0 (0%)	2 (69%)
	All Outcomes	Contested Possession	Contested Damages	Contested Outcomes	Ranked Outcomes
Hearings	356	82 (54%)	102 (67%)	283	153
<i>LL Wins</i>	202 (57%)	78 (95%)	61 (60%)	179 (63%)	107 (70%)

^a The number is the total number of this type found in the sample, and the percentage is of the total number of cases in the study sample.

^b The number here is the total number of cases of this type won by the landlord and the percentage is of the total number of cases per hearing type.

In all, the 153 hearings constituted 356 hearing types. Landlords and tenants clearly win at different rates according to hearing type, and the landlord win rate for all hearing types suggests that, in sum, the outcomes of the hearings are fairly equitably distributed.

However, the “All Outcomes” hearing rate of 57% landlord wins accounts neither for admitted liability nor the ordinal relationship between hearing types according to their eviction and procedural characteristics. The “Contested Outcomes” rate excludes those cases in which the possession claim was uncontested or the entire damages claim was uncontested, yielding the higher rate of 63% landlord wins. Uncontested landlord wins are meaningless due to the principle of admitted liability. Finally, the “Ranked Outcomes” rate ranks the multiple case types within each hearing to derive a single win determination for each observed hearing. As indicated in the methods section, the cases

are ranked according to whether they are over a contested eviction, whether the damages are contested, and whether the cases concern contested procedural matters. When each case is subjected to this within-case ranking procedure, the total landlord win rate increases to 70%.

Independent Variables

Judicial Assignment

The effect of the judge on case outcome can also be measured in terms of legal strategy and judicial behavior as well as simply measuring which judge hears the case. The extent to which judges elicited testimony from, requested documents from, and reviewed documents of all four potential trial participants (landlords, tenants, and their attorneys) was measured. Also measured were the number of questions the judge asked the trial participants as well as the number of times a judge interrupted trial participants in the midst of their speaking at the bar of the court.

Table 11: Judges' Interactions with Litigants and Attorneys

N = 153

	Landlord	Tenant	Landlord Attorney	Tenant Attorney
Eliciting Testimony	104 (84%)	138 (92%)	49 (78%)	14 (82%)
Questions Asked				
Total:	733	1128	212	111
Average:	5	8	1	1
Range:	0-31	0-38	0-27	0-19
Interruptions				
Total:	178	395	122	44
Average:	1	3	1	.5
Range:	0-8	0-14	0-11	0-11
Document Requested	33 (27%)	53 (35%)	21 (33%)	5 (29%)
Document Reviewed	38 (75%) ^a	45 (58%)	26 (78%)	5 (45%)

^a Percentage is of documents presented at court.

There is little variation in the number of times a judge elicits testimony from each trial participant. Judges ask landlords and tenants more questions than their attorneys, ask tenants the most number of questions (eight on average), and interrupt tenants more than anyone else (three times on average). The hearing length was also measured to determine whether the time judges allowed for presentation of evidence, legal argument, and deliberation affected whether tenants or landlords won more cases. Hearings ranged in length from one minute to over two hours, but their distribution is unevenly distributed toward the shorter end of the range. The median hearing length is nine minutes, the two modal values were 5 and 8 minutes (comprising 17% of the hearing lengths), and the average hearing length was 14 minutes.

A judge allows little time for legal deliberation in the shorter trials, and 35% of the time the judge gives no indication of his or her legal reasoning behind the verdict. However, a significant number of the judges present their reasoning about their verdicts from the bench, and average one legal argument over the entire trial sample. These arguments can also be broken down into pro-tenant arguments and pro-landlord arguments.

Table 12: Judicial Legal Arguments

N = 153

Argument	Frequency	Argument	Frequency
Rebate due to conditions	22 (14%) ^a	Notice Adequate, Landlord	3 (2%)
Inadequate evidence, Tenant	17 (11%)	No Illegal Entry or Lockout	2 (1%)
No Escrow Account	12 (8%)	Must Pay Rent	2
Security Deposit Deduction OK	7 (5%)	Tenant Must Prove Rent Paid	2
Term Expired	7	No Landlord-Tenant relationship	2
Landlord Must Repair	6 (4%)	Tenant has no defense	2
Lease Binding to Tenant	6	Landlord needs witness	2
No Notice, Tenant	5 (3%)	Other Arguments	30 (21%)
No Notice, Landlord	4	No Arguments	53 (35%) ^b
Inadequate evidence, Landlord	3 (2%)		
Agreement Binding to Tenant	3	Total Pro-Landlord Arguments	95 (62%)
Late Charges Excessive	3	Total Pro-Tenant Arguments	48 (31%)
Habitability Required	3	TOTAL & AVERAGE	146 (1.0)^c

^a The number represents the total number of times the argument was made and the percentage is the proportion of that number with the total number of all arguments made. Arguments made only once were not included in the chart. I use this system for all the legal strategy charts.

^b This number represents the number of times a judge made no legal argument, and the percentage is the proportion of that number with the total number of the times a judge could have made a legal argument.

^c This figure is the rate of argument per judge.

The most common argument is that the tenant is due a rental abatement due to poor housing conditions, a statement apparently strictly in favor of the tenant. However, the issuance of a rebate never accompanies a stay on eviction: though tenants won half of the contested damages claims when the judge made this argument, they lost all of the contested possession claims. It appears that when the warranty of habitability is taken into account, it is done so only in the context of money damages rather than eviction. The rest of the rebate argument, then, is that the tenant is owed a rebate but the landlord is owed possession. This works to the tenants' advantage when they are not contesting possession (making the case equivalent to a damages-only small claims case) but it obviously works against the tenants' primary interest in preventing their eviction when they are contesting possession.

Legal Representation

The effect of attorneys on case outcome is measured in two ways. The first way is simply to measure whether or not an attorney represents either side; an attorney represented a landlord sixty-three times (41%) and a tenant seventeen times (11%) in the sample. Another variable further differentiated the landlords between one-shotters and repeat-players to test Galanter's theory. Only twenty-eight different attorneys represented landlords, and nine of these represented more than one landlord. These nine attorneys tried 70% of the hearings that included a landlord attorney, and all of them were readily identifiable as bulk filing attorneys via qualitative observation. Interestingly, only one of the tenant attorneys tried more than one case for the tenants, and this attorney tried multiple cases as a landlord attorney. There was only one other tenant attorney repeat player, so this variable did not have enough variance to include in the models.

The second way to measure the effect of attorneys on case outcome is to study the legal strategies attorneys use to obtain the best result possible for their clients. The strategies run parallel to those used by *pro se* landlords and tenants, and include testimony, evidence, and legal argument. Technically speaking, an attorney cannot give direct testimony, but when the attorney has no witnesses this becomes very difficult to avoid. Attorneys are afforded considerable latitude in the informal context of Landlord-Tenant Court in order to present their case without witness testimony, and all attorneys in the sample provided at least one piece of testimony:

Table 13: Tenant Attorney Testimony

N= 17

Testimony	Frequency	Testimony	Frequency
"No Rent Owed"	5 (17%)	Other Testimony	14 (48%)
"No Repairs"	4 (14%)	No Testimony	0 (0%)
"Didn't Damage"	3 (10%)		
"Less Utilities Owed"	3 (2%)	TOTAL & AVERAGE	29 (1.7)

Table 14: Landlord Attorney Testimony

N = 63

Testimony	Frequency	Testimony	Frequency
"Rent Owed"	41 (66%)	"No Access for Repairs"	4 (6%)
"Lease Expired"	19 (31%)	"Have License"	2 (3%)
"Breached Lease"	19	"No Payment on Check"	2
"Tenant Damage"	11 (18%)	Other Testimony	27 (18%)
"Apartment Repaired"	11	No Testimony	0 (0%)
"No Notice Given"	7 (11%)		
"Utilities Owed"	6 (10%)	TOTAL & AVERAGE	149 (2.4)

Tenant attorneys provide almost two thirds less testimony on average than landlord attorneys. This may result from the need of landlord attorneys to testify on behalf of their absent clients, which occurred in half of the cases that involved a landlord attorney and only occurred in one tenth of the cases that involved a tenant attorney.

Both tenant and landlord attorneys use substantially less documentary evidence while representing their clients than they use testimony or legal arguments.

Table 15: Tenant Attorney Evidence

N = 17

Document	Frequency	Document	Frequency
Photographs	4 (24%)	Breach Notice	2
Lease	3 (18%)	Letter	2 (12%)
Rent Receipts	3	Other Documents	10 (40%)
Escrow	2 (12%)	No Documents	7 (41%)
Utility Bills	2	TOTAL & AVERAGE	25 (1.5)

Table 16: Landlord Attorney Evidence

N = 63

Document	Frequency	Document	Frequency
Lease	18 (29%)	Breach Notice	2
Termination Notice	5 (8%)	Photographs	2
Receipts for repairs	4 (6%)	Utility Bill	2
Rent Receipts	3 (5%)	Other Documents	8 (15%)
Letter	3	No documents	32 (51%)
L & I Abatement	2 (3%)		
Non-payment Notice	2	TOTAL & AVERAGE	54 (.9)

Half of the landlord attorneys and almost half of the tenant attorneys' testimony offer no evidence at all to the court. This suggests that attorneys rely more upon the strength of their oral presentation and legal argument to sway the judge towards their side of the dispute.

Attorney arguments are significantly more varied, their rates higher, and the frequency that attorneys make no argument at all lower.

Table 17: Tenant Attorney Arguments

N = 17

Argument	Frequency	Argument	Frequency
Landlord Make Repairs	6 (35%)	Need Landlord as witness	2 (12%)
Retaliatory Eviction	3 (18%)	Other Argument	14 (44%)
No Notice Given	3 (18%)	No Argument	3 (18%)
No Rent Owed	2 (12%)		
Upheld Agreement	2 (12%)	TOTAL & AVERAGE	32 (1.9)

Table 18: Landlord Attorney Argument

N = 63

Argument	Frequency	Argument	Frequency
Ten Pay Rent	41 (65%)	No Vacancy	2 (3%)
Termination	22 (35%)	Lease Binding	2
Breach	21 (33%)	Need Evidence Notice	2
Ten Pay Repairs	12 (19%)	Notice Adequate	2
No Agreement	5 (8%)	Other Argument	24 (17%)
Objection to Hearsay	4 (6%)	No Argument	5 (8%)
No Breach Notice	3 (5%)	TOTAL & AVERAGE	140 (2.2)

The high number of tenant attorney arguments in the “other” might indicate their lack of experience relative to landlord attorneys, many of who hear numerous cases and present them with practiced, almost rote, language. It also might reflect the relatively current formulation of tenant rights that have only recently begun competing with long-established landlord rights.

Control Variables

Legal Strategy

The third control variable domain measures the legal strategies used by trial participants. If either side mounts a weak defense or if one side mounts a strong defense, this could explain the differential rates by hearing type identified above. As indicated previously, four distinct types of legal strategy were measured: witnesses, testimony, documents, and legal arguments. Witness variables were measured via direct observation, whereas the final three types were coded using pre-determined variables that were supplemented and refined using emergent variables based on the transcription of each hearing. Like the demographic and case characteristics control variables, the legal strategies of litigants proved to be enormously complex. Though represented landlords and tenants offer testimony, they do so under the guidance of their attorneys. I have therefore disaggregated the legal strategy variables to distinguish *pro se* landlords and tenants who represent themselves.

Testimony of trial participants and documents presented to the court all establish the facts of a case. Witnesses are used relatively infrequently: 4% of *pro se* landlords had real estate agents as witnesses and only one provided testimony while 6% of *pro se*

tenants brought other tenants to court as witnesses and only four provided testimony. The impact of witnesses was measured only in terms of whether they were present at the hearing and if they provided testimony. By contrast, all litigants or their attorneys provide at least a minimal amount of testimony about their case, and many provided extensive testimony. Parsing testimony from legal argument is difficult, particularly when the litigants have no training in law or little experience in L-T Court. Some testimony is actually equivalent to legal argument, such as a landlord stating that their tenant broke an oral agreement. This is both a statement of fact – describing a tenant action – and a statement of law – arguing that breach has occurred in a finding agreement.

Perhaps because *pro se* tenants as a group have the least experience in L-T Court

Table 19: Pro se Tenant Testimony

N = 135

Testimony	Frequency	Testimony	Frequency
"Needs Repairs"	63 (47%)	"Police gave advice"	3 (2%)
"LL Has Done No Repairs"	56 (41%)	"Buying House"	3
"Didn't Damage Property"	37 (27%)	"Escrowed Rent"	3
"Owe No Rent"	36	"Lead Paint Present"	3
"Less Rent Owed"	24 (18%)	"Need More Time"	3
"L & I Violations"	22 (16%)	"Husband Sick"	2 (1%)
"Called L & I"	20 (15%)	"Need Money to Move"	2
"Paid for Repairs"	12 (9%)	"Provided Access to Landlord"	2
"No Heat"	10 (7%)	"Defaulted due to medical"	2
"Broke agreement"	9	"No Response"	2
"Can't Pay Rent"	9	"Less Utilities Owed"	2
"Locked Out or Illegal Entry"	7 (5%)	"Heat caused sickness"	2
"No work"	6 (4%)	"Landlord Breached Lease"	2
"No Notice"	6	"LL Falsified Information"	2
Tenant: "Have Family"	5	"No Breach"	2
Tenant: "No Ut. Owed."	4 (3%)	"Gave Notice"	2
"Water shut-off"	4	"No Drugs"	2
"Homelessness Prevention Aid"	4	Other Testimony	65 (15%)
"Have Section 8 Certificate"	4	TOTAL & AVERAGE	445 (3.3)

and yet they participate in trials more than any other group, their testimony is particularly complex. All tenants provided at least one piece of testimony. Tenants provided over a hundred distinct pieces of testimony ranging in frequency for each piece of testimony from 1 to 63 (“the apartment needs repairs,” presented in 47% of the hearings).

Landlords, by contrast, provided fewer distinct pieces of testimony and there was much less variation in landlords’ testimony than in the testimony of tenants.

Table 20: *Pro se* Landlord Testimony

N= 90

Testimony	Frequency	Testimony	Frequency
"Rent Owed"	79 (88%)	"No Response"	2
"Ten Damage"	29 (32%)	"Rent Always Late"	2
"Breach Lease"	26 (29%)	"Bothering other tenant"	2
"Apt. Repaired"	26	"Damages Minor"	2
"Lease Expired"	21 (23%)	"Checks bounced"	2
"No notice"	13 (14%)	"Tenant Threatened"	5
"No repairs, no access"	12 (13%)	"New Landlord"	2
"Utilities Owed"	10 (11%)	"Need Documents"	2
"Broke Agreement"	3 (3%)	"No money for repairs"	2
"Section 8 Policy"	3	Other Testimony	27 (11%)
"Drugs on premises"	2 (2%)	No Testimony	0 (0%)
"Thought tenant moved"	2	TOTAL & AVERAGE	247 (2.7)

The most frequent piece of testimony (“the tenant owes rent”) was presented 79 times in 88% of the hearings. These two modal pieces of testimony – needs repairs for tenants and owes rent for landlords – exactly match tenants’ and landlords’ opposing orientations to the rental property. Tenants are predominantly interested in housing conditions and landlords in rental income.

Landlords and tenants present far less documentary evidence than testimonial evidence.

Table 21: *Pro se* Tenant Evidence

N = 135

Document	Frequency	Document	Frequency
Photographs	28 (21%)	Escrow Proof	4 (3%)
Rent Receipts	27 (20%)	Other Receipts	4 (3%)
L & I Violations	19 (14%)	Court Papers	3 (3%)
Letter	17 (13%)	Journal/Diary	3
Lease	16 (12%) ^a	Physical Object	2 (1%)
Breach Notice	8 (6%)	Statutory or Common Law	2
Affidavit	6 (4%)	Lead Contamination Notice	2
Paid for repairs	6	Other	12 (7%)
Utility Bill	5	None	64 (47%)
Police Report	5	TOTAL & AVERAGE	169 (1.3)

^a Technically, complainants are required to attach the lease to the complaint, but this does not always take place. Leases were coded as trial evidence when they were specifically alluded to as an attachment to the complaint or presented to the court during trial (a definition which holds for all times leases are counted as evidence).

Table 22: *Pro se* Landlord Evidence

N = 90

Document	Frequency	Document	Frequency
Lease	12 (13%)	Breach Notice	2 (2%)
Letter	11 (12%)	Utility Bill	2
Photographs	7 (8%)	Rental License	2
Receipts for repairs	6 (7%)	Tax Bill	2
Rent Receipts	3 (3%)	Other	7 (11%)
Non-payment Notice	3	None	53 (59%)
Termination notice	2 (2%)	TOTAL & AVERAGE	63 (.7)

While only one *pro se* litigant presented no testimony, half of both *pro se* landlords and tenants presented no documents at their hearings. However, tenants again present a disproportionately greater amount of documentary evidence as well as more types of evidence than landlords do. The modal value for each litigant's documentary evidence (photographs for tenants and lease for landlords) matches the same pattern as testimonial evidence. Tenants present photographs to prove the existence of poor housing

conditions, while landlords present leases (for the most part) to prove the existence of a contractual obligation to pay rent. Landlords' use of the lease for this purpose is somewhat subtle given that tenants cannot use the lease to prove the landlord's obligation to provide adequate housing conditions. The warranty of habitability is implied rather than express and is therefore not in a lease unless specifically added to it by the tenant. In fact, the purely legal nature of this side of the contractual obligation may establish a differential treatment of landlords' and tenants' obligations by judges. The modal legal arguments also fit the pattern of landlord and tenant interests.

Table 23: *Pro se* Landlord Legal Arguments

N = 90

Argument	Frequency	Argument	Frequency
Tenant Must Pay Rent	74 (82%)	LL Gave Adequate Notice	2 (2%)
Term Has Expired	22 (24%)	Tenant Provides No Access	2
Tenant Breached Lease	21 (23%)	Made repairs	2
Tenant Must Pay Repairs	21	Other Argument	7 (4%)
Had No Agreement	14 (16%)	No Argument	5 (6%)
Tenant Gave No Notice	12 (13%)		
Apartment is Habitable	2 (2%)	TOTAL ARGUMENT	180 (2)

Table 24: *Pro se* Tenant Legal Arguments

N=135

Argument	Frequency	Argument	Frequency
Landlord Must Make Repairs	57 (42%)	Notice Adequate	3
No Rent Owed, Conditions Poor	27 (20%)	Property Unfit	2
Landlord Breached Agreement	23 (17%)	Money for Services	2
Outstanding L & I Violations	20 (15%)	Want Rebate	2
No Notice	13 (10%)	Double Security Deposit Due	2
Upheld Agreement	12 (9%)	Notice Adequate	2
Less rent due, poor conditions	10 (7%)	Complaint False	2
No Breach	7 (5%)	Owe from Deposit	2
Retaliatory Eviction	4 (3%)	No lease, no rent	2
Warranty of Habitability	4	Landlord Breached	2
Complaint Binding	4	Other Argument	16 (7%)
Notice Adequate	3 (2%)	No Argument	36 (27%)
Illegal Lock-out or Entry	3	TOTAL & AVERAGE	225 (1.7)

The overwhelming landlord argument is that tenants must pay their rent, while the most common tenant argument is that landlords must make repairs to the property. However, unlike the evidence patterns, landlords make disproportionately more arguments than tenants do. Tenants' arguments are also more diverse, and a much higher percentage of tenants (36%) make no legal argument as compared to landlords (6%). These differences may again be an indication of tenants' relative inexperience in L-T Court, which makes it difficult to know how to make a legal argument at all and also to know what arguments carry weight with judges and what arguments may actually decrease chances of winning the case. *Pro se* tenants elicit testimony from landlords 4% of the time, request documents from landlords 2% of the time, and elicit testimony and request documents from a landlord's attorney only once each. Both *pro se* landlords and tenants rely on the strength of their own testimony, documents and legal argument rather than using examination and cross-examination. These procedures are important but are also technically sophisticated and require extensive legal training, and not a little talent, to utilize effectively. It is no surprise that *pro se* litigants use them rarely. *Pro se* litigation combines the legal function of the attorney with the factual function of the witness in a way that limits the impact of both sides of a *pro se* litigant's case.

One group of *pro se* litigants reflects this complexity to a high degree: *pro se* landlord and tenant attorneys. Five tenant attorneys, one tenant paralegal, and one landlord appearing twice represented themselves in the hearings. The *pro se* landlord attorney represented himself as a property manager rather than as a landlord and had his landlord clients present at one of his hearings; the fact that he was both a landlord

(property managers share standing and liability with their clients) and an attorney was not particularly evident. It was, however, quite clear when *pro se* tenant attorneys or paralegals were representing themselves. Technically, *pro se* attorneys are required to examine themselves, but this contorted procedure is not required in informal small claims settings. Still, the conflation of attorney and client remains awkward and could either weaken litigants' case due to the generally low opinion of *pro se* attorneys or strengthen their case due to their legal knowledge. *Pro se* attorneys were analyzed both as separate groups and as aggregated with the other two attorney groups.

Trial Participant Characteristics

It can be inferred that if the trial sample is reasonably representative in terms of judicial assignments and listed cases, it will be reasonably representative in terms of the trial participants. A review of the trial sample's demographic data (also measured observationally) reveals some important differences between the trials and listed cases:

Table 25: Trial Participant Characteristics

Pre-Trial N = 100

Trial N = 153

	Non-White Women	Non-White Men	White Men	White Women	Total # & %
<i>Landlords, Pre-trial</i>	6%	37%	56%	0%	21 ^a
Landlords, Trial	23%	26%	31%	7%	119 (78%)
<i>Tenants, Pre-trial</i>	70%	13%	9%	9%	23
Tenants, Trial	56%	26%	8%	10%	144 (94%)
<i>LL Attorneys, Pre-trial</i>	0%	1%	80%	19%	68
LL Attorneys, Trial	0%	3%	64%	34%	70 (45%)
<i>Ten Attorneys, Pre-trial</i>	0%	0%	100%	0%	2
Ten Attorneys, Trial	0%	0%	88%	12%	17 (9%)
Judges	26%	33%	35%	5%	100%

^a This figure represents both total number and percentage of pre-trial cases.

First, many more landlords are present during trials than during the roll call (over three quarters), and many of these are *pro se* litigants. Not coincidentally, fewer attorneys

represent landlords and more represent tenants. This comparison suggests that *pro se* landlords are less successful settling their cases than are landlord attorneys, and also suggests that when tenants are represented by attorneys they are more likely to bring their case in front of a judge. In fact, no cases tried by a landlord attorney came to trial in the pre-trial sample, whereas both the cases in the pre-trial sample in which tenant attorneys tried were involved to trial.

The racial and gender make-up of the attorneys remains relatively constant from pre-trial to trial, which is not the case for the identity of tenants and landlords who are more evenly distributed across all four groups during the hearings. Still, though many more landlords are Black women in the trial sample, the greatest number is still White men, and though many more tenants are Black men, the total number of Black tenants is still over three quarters of all the hearings. The complex racial dynamics of Landlord-Tenant Court are made increasingly so by the diversity of the judges who preside over the hearings. Judges are evenly divided between White men, Black women and Black men, but White women are in a small minority (this category would have changed if the previously mentioned often-assigned judge were represented more by the sample because she is a White woman). In short, the diversity of racial and gender identities establish numerous permutations of inter- and intra-racial and gender combinations within each trial participant group.

Preliminary Models

Judicial Assignment and Behavior

The variance in judicial behavior across the judges points to statistically significant differences in judges' tendency to favor either the landlord or the tenant side to a greater degree. The verdict rates for each judge is compared to a regression analysis of the identity of the judge on hearing outcome. Judge "A" was left out of the regression analysis because he only heard one case in the sample, and Judge "J" was excluded as the reference category. This reference judge heard a substantial portion of cases and also had the highest landlord-favored rate, making him a statistically viable and conceptually meaningful candidate for the judge against which the other judges are compared. All variables were entered simultaneously to compare their effect as different categories of the same nominal variable.

The rate of landlord favorable verdicts is aligned with the odds ratios for all of the judges, and three of these odds ratios are statistically significant at the .05 level, one at the .10 level, and one at the .11 level. Without controlling for any other factors, the difference is dramatic for litigants facing Judge "B": tenants are 15½ times more likely to win a contest in front of Judge "B" than in front of Judge "J." Similarly, tenants are 11 and 11½ times more likely to win their hearing when in front of Judges C and D than the reference judge, and 4½ times more likely to win their cases when in front of Judge G. The odds ratio for Judge "E" is trending towards significance (at .110) and even Judge "H" (at .131), with the third highest landlord-favored rate, is approaching statistically significant differences compared to the judge with the highest landlord-favored rate. The

Table 26: Regressing Judicial Assignment on Landlord Wins Case

N = 153

	Judges									
	A	B	C	D	E	F	G	H	I	J
Hearings	1 (1%)	9 (6%)	5 (3%)	12 (8%)	8 (5%)	16 (10%)	3 (2%)	24 (16%)	50 (33%)	25 (16%)
Landlord Win Total	0	3	2	5	5	10	2	17	40	23
Landlord Win Rate	(0%)	(33%)	40%	42%	62%	63%	66%	71%	80%	92%
Comparative Significance	NA	.004***	.027***	.005***	.110*	.057**	.327	.131	.360	NA
Comparative Effect Size	NA	.065	.087	.093	.218	.218	.267	.317	.532	NA
Likelihood to Favor Tenant	NA	15.5x	11.5x	11x	4.5x	4.5x	3.5x	3x	2x	NA
Total Variance Explained	.12									
Predictability of Model	74%									

*p < .15.

**p < .10.

***p < .05.

judge with the second highest landlord-favored rate, Judge “I,” is not significantly different because this judge also favors landlords to a high degree. When Judges “I” and “J” are regressed on landlord wins, thus using the remaining judges as a reference category, the effect of judicial assignment remains robust. Landlords are three times more likely to win their cases in front of Judge “I” and nine times more likely to win their cases in front of Judge “J” than all other judges combined.

Regression of the various measurements of judicial behavior may help explain the variation in judges’ verdicts. Elicitation of testimony, questions asked, interruptions made, requests for documents, reviews of documents, and hearing length were all regressed on hearing outcome to determine if any of these variables were statistically significant. Three variables were significant in this forward conditional model: whether a judge elicited testimony from a tenant attorney, whether a judge reviewed a document presented by a landlord attorney, and whether a judge made a pro-landlord argument.

Table 27: Regressing Judicial Behavior on Landlord Wins Case

N = 153

Variable	Significance	Odds Ratio	Likelihood Interpretation
<i>Judicial Behavior</i>			
Judge Elicits Testimony From Tenant’s Attorney	.005*	.043	23x Favoring Tenant
Judge Reviews Landlord’s Attorney’s Document	.020*	13.22	13x Favoring Landlord
Judge Makes a Pro-landlord Argument	.005*	2.595	2.5x Favoring Landlord

*p < .05.

With regard to the first variable, judicial elicitation of testimony from tenant’s attorney appears to be an intervening variable between hearing outcome and whether an attorney represents the tenant; these variables are highly correlated at .90. The other two variables

appear more substantial. Overall, landlord attorneys win at the same rate relative to *pro se* landlords, so that the variance in landlord attorney rates may be explained by the judge's response to their presentation of documentary evidence during the trial.

Legal Representation and Attorney Behavior

The fact that two of the three significant judicial behavior variables are directly related to both landlord and tenant attorney behavior suggests that legal representation plays a significant role in L-T Court proceedings. This relationship is strongly confirmed by preliminary models measuring the effect of attorney presence and attorney legal strategy on case outcome.

Table 28: Regressing Legal Representation and Attorney Behavior on Landlord Wins

N = 153

Variable	Significance	Odds Ratio	Likelihood Interpretation
<i>Legal Representation</i>			
Tenant Attorney Is Present	.001*	.139	7x Favoring Tenant
<i>Tenant Attorney Behavior</i>			
Total Amount of Tenant Attorney Testimony	.006*	.256	4x Favoring Tenant
<i>Landlord Attorney Behavior</i>			
Landlord Attorney Elicits Testimony from Tenant ^a	.045*	10.045	10x Favoring Landlord

^aThis result was obtained while controlling for case type and tenant attorney.

*p < .05

Simply the presence of a tenant attorney increases the likelihood that a tenant wins her or his case by a factor of seven. When the tenant attorney behavioral variables are modeled, the variable measuring the amount of testimony tenant attorneys provide is significant but is highly correlated with the presence of tenant attorneys. The presence of landlord attorneys does not have a significant effect on trial outcome. This remains the case even when controlling for whether landlord attorneys are repeat players: no variable based on the presence or identity of a landlord attorney is statistically significant. However, the

one variable from landlord attorney strategy that increased the likelihood that the landlord would win the case was whether an attorney elicits testimony from a tenant. When a landlord attorney elicits testimony from a tenant, that attorney is ten times more likely to win his or her case than when he or she does not elicit testimony from the tenant. This may be related to the ability of the landlord's attorney to frame the tenant's testimony in a manner that weakens the tenant's case, which is relatively easy to do when the tenant is not represented by an attorney. Furthermore, often the tenant is the only witness available to the landlord attorney, making their examination particularly important.

Hearing Type

The use of hearing type as a control in the above instance indicates that case type has a statistically significant effect on hearing outcome, which is indeed the case. When each hearing type and an additional variable measuring number of previous continuances is regressed on hearing outcome using the forward conditional procedure, three variables are significantly related to the dependent variable.

Table 29: Regressing Hearing Type on Landlord Wins Case

N = 153

Variable	Significance	Odds Ratio	Likelihood Interpretation
<i>Hearing Type</i>			
Continuances Requested by Tenant	.007**	.052	19x Favoring Tenant
Small Claims Cases Brought by Landlord	.054*	.105	10x Favoring Tenant
Contested Possession Hearings Only	.000**	6.832	7x Favoring Landlord

*p < .10. **p < .05.

Continuance requests by tenants are highly significant, and tenants are 19 times more likely to win their cases when they are requesting a continuance when compared to other

hearing types. Ironically, small claims cases brought by landlords are also significant – tenants are 10 times more likely to win their case when they are defending themselves against a small claims case. Providing continuances is an interim method of providing some extra time to resolve the lawsuit, and are provided by some judges much more often than others provide. Judges' decisions against landlords suing tenants for money may reflect a related set of beliefs that landlords are not likely to collect on any awarded damages. This view is the corollary to a generally held view that possession is the more important dimension to cases heard in L-T Court: tenants deserve the benefit of the doubt when they are no longer in possession of the landlord's property.

Landlord Legal Strategy, Tenant Legal Strategy, and Demographics

Three domains remain to be tested for their effect on hearing outcome: landlord, and tenant legal strategy (including use of witnesses), and demographic relationships between all trial participants. When the landlord behavioral variables are modeled, controlling for landlord representation in order to isolate the effect of landlord behavior from that of their attorneys, no variables are significant. However, landlord elicitation of tenant testimony is approaching significance, adding some weight to the previous finding that landlord attorney elicitation of tenant testimony is significant. No tenant behavioral or witness variables are significant when controlling for presence of an attorney, and the one significant demographic variable (tenant attorney is a White man) is highly correlated, like other variables analyzed above, with all tenant attorneys. In fact, four variables from three different domains that are highly correlated with the presence of tenant attorneys had statistically significant relationships with hearing outcomes.

A final control variable must be introduced to be sure that legal strategy has little effect on the outcome of trials in Landlord-Tenant Court: the quality of landlord and tenant testimony, documents, and arguments. The quality of attorney legal strategy is relatively consistent and any attempts to distinguish *a priori* the theoretical impact of each variable in these domains would be too difficult to make with much validity. However, the quality of tenant and landlord legal strategies is clearly variable and a basic distinction can be made in all three strategy areas between presentations to the court which could have a neutral or negative effect on the success of either party of a hearing. For example, one landlord suing her tenant for eviction and back rent testified that she locked out her tenant before the end of the term, which is called a self-help eviction and is prohibited in Pennsylvania. Such testimony should, theoretically, do damage to the landlord's case. In another example, a tenant suing his landlord for stealing the tenant's property presented a document to the court listing the property, and the last item was "a jug of water" (Transcript). Such a piece of evidence should also, theoretically, do damage to the tenant's case. All four sets of variables (tenant action favorable to tenant, tenant action favorable to landlord, landlord action favorable to landlord, and landlord action favorable to tenant) for the three legal strategies (testimony, documents, and arguments) were regressed on hearing outcome. Finally, each individual evidence and argument variable was regressed on hearing outcome, once again using a forward conditional model.

Only one of these variables was significantly related to hearing outcome: the number of pieces of testimony a tenant gave that were favorable to the landlord. For each

piece of testimony tenants provide that is damaging to their own case, the landlord is two times more likely to win the hearing. Because some tenants provide more than one piece of testimony damaging to their cases, landlords may be as much as 6 times more likely to win their case simply based on the testimony that their tenants provide the court. A total of 49 tenants gave damaging testimony, 10 gave two pieces of damaging testimony, and 1 gave three pieces of damaging testimony. This finding fits together with the previous finding that landlord attorneys who elicit testimony from tenants are more successful – tenants, most of whom have little legal training or experience, do not know what to say that will put their side of the case in the best light. Only two tenants (13%) provided unfavorable testimony while they had an attorney present and only did so one time each; *pro se* tenants provided unfavorable testimony 35% of the time and one quarter of the tenants who did so provided more than one piece of testimony that favored the landlord. A substantial proportion of tenants represented by attorneys (40%) gave no testimony at all, which would seem to be an effective strategy on the part of tenant's attorneys. When this strategy is turned into a variable and regressed on hearing outcome while controlling for tenant presence to the three times tenants are not present at all, it has a significant effect on hearing outcome such that tenants are five times more likely to win the hearing if he or she does not testify. Interestingly, landlords represented by attorneys provided no testimony at an even higher rate (60%), but this has nothing approaching a significant affect on the dependent variable.

Final Model

A final, comprehensive model of the eight variables found to be significant in preliminary models and not highly correlated with each other offers support to the hypothesized relationship between judicial assignment, legal representation, and hearing outcome. A correlation matrix was created to determine which variables were highly correlated, and models run to explore the strength of the relationship between independent variables and the dependent variable. Four independent variables remained significant: 1) case is heard by Judge "J," 2) judge makes a pro-landlord argument, 3) an attorney represents a tenant, and 4) landlord attorney elicits testimony from tenant. For the final model, I used the enter procedure for the three case control variables and two participant control variables (presence of tenant and presence of a landlord attorney) as a block that remained stable throughout the modeling procedure. I then used the forward conditional procedure to introduce the four independent variables in a stepwise fashion, starting with the variable shown to have the strongest effect on case outcome in previous models. The first final model indicated that one variable was excluded because it fell just short of the conventional .05 significance test, so I ran the next model with a significance level of .06 to include the variance explained by this marginally significant independent variable. The results clearly support the judicial assignment component of the hypothesis. Landlords are 7 times more likely to win their hearings when in front of Judge "J" than in front of all other judges combined. Also significant is whether judges express pro-landlord arguments from the bench, which helps explain the propensity of judges to issue verdicts in favor of landlords. The strongest association in the model is

Table 30: Final Model

N = 153

Variable	Entry Sig.	Final Sig.	Odds Ratio	Likelihood Interpretation ^a	R2 Change Cox Nagel		R2 Total Cox Nagel	
Control Variable Block								
1. Contested Possession Cases Only	.000	.000***	7.581	7.5x Favoring Landlord				
2. Tenant Continuance or Affidavit	.029	.067*	.088	11.5x Favoring Tenant				
3. Landlord Small Claims	.261	.429	.379	--				
4. Tenant is Present at Trial	.815	--	--	--				
5. Landlord Attorney is Present at Trial	.129	.670	--	--	--	--	.28	.35
Independent Variable Entries								
6. Tenant Represented by an Attorney	.000	.001***	.053	19x Favoring Tenant	.04	.10	.32	.45
7. Judge Makes Pro-landlord Argument	.019	.032**	2.297	2.5x Favoring Landlord	.03	.04	.35	.49
8. Judge "J" (highest landlord win rate)	.016	.059*	6.812	7x Favoring Landlord	.02	.03	.37	.52
9. LL Attorney Elicits From Tenant	.057	.078*	12.542	12.5x Favoring Landlord	.01	.02	.38	.54
Predictability of Model								
	<i>Predicted Outcomes</i>							
<i>Observed Outcome</i>	Tenant Wins	Landlord Wins	<i>Correctly Predicted</i>					
Tenant Wins	13	33	Tenant Wins: 28.3%					
Landlord Wins	2	105	Landlord Wins: 98.1%		Overall Percentage Correctly Predicted: 77.1%			

^a Likelihood interpretations are only given for variables significant at $p < .05$ or $p < .10$.

* $p < .10$. ** $p < .05$. *** $p < .01$.

between tenant representation and hearing outcome: tenants are 19 times more likely to win their cases when an attorney represents them. Landlord elicitation of tenant testimony was significant at the .10 level, suggesting that while simply having an attorney may not help a landlord's case, having an attorney who uses tenant testimony does. Finally, two hearing types are significant: contested possession cases and tenant continuances and affidavits. Whether the hearing is over a contested possession has a very strong relationship with the dependent variable: if landlords are pursuing eviction that their tenant contests, they are 7½ times more likely to win the hearing. On the other hand, if landlords are contesting a tenant continuance or affidavit, they are 11½ times more likely to lose the hearing. The model is strong, explaining 38% of the variance in hearing outcome according to the more conservative Cox and Snell R-Square calculation and 54% of the variance according the Negalkerke R-Square calculation, which adjusts the R-square to conform more closely to OLS R-Square calculations (Allison, 1999). This means that the model identifies about half of the variables that affect whether the landlord or tenant wins their case.

The constellation of judicial assignment, pro-landlord judicial argument, and contested possession variables points to a key dynamic of L-T trials: judges favor landlords when deciding on possession because they appear to be enforcing the monetary side of the landlord-tenant contract more than the habitability side. Of all of the judicial arguments made from the bench, 61% of them relate to paying rent, while only 12% relate to habitability. Judges may clearly express pro-landlord legal arguments because they are more focused or attuned to the landlord side of the contract than the tenant's

side. Another possible explanation is that judges may feel compelled to publicly justify the high rate with which they decide cases in favor of landlords, thus giving their actions greater weight and authority. This dynamic may have been particularly active when observers such as myself were observing trials. Whatever the reason behind judges' actions and pronouncements, the model indicates that the proceedings within L-T Court are more problematic when it comes to possession cases.

A second constellation of modeled variables points to another important dynamic of landlord-tenant hearings: *pro se* tenants are vulnerable because they do not give testimony that consistently favors their case. Tenants are dramatically more successful when they are represented by an attorney whose job it is to help shape tenants' testimony to show their case in the best light, in the same way a landlord attorney works for his or her client. Landlord attorneys take advantage of tenant inexperience and are more successful when they elicit and shape tenants' testimony to the benefit of their landlords' case. Although neither tenants' giving landlord-favorable testimony nor tenants' not giving testimony at all was significant enough to include in the final model, their marginal significance adds weight to the problematic role that tenant testimony plays in the hearings. Without an attorney to help them, tenants struggle to make their case effectively in a legal forum that focuses less on the critical tenant interest (habitability) than on the critical tenant obligation (paying rent).

The model also points to an important area in which landlords experience L-T Court as problematic: time of possession and collection of judgments. Landlords contest continuances because they extend the tenants' time of possession and prevent them from

repossessing their property so they can rent it to another tenant who may pay rent more consistently. In spite of sometimes-strenuous objections, tenants are granted the vast majority of their continuance requests (all but one in the sample). Case histories show that 18% of the cases represented by the hearing sample included at least one continuance, and a total of 38 continuances were issued for the cases in the sample. The continuances averaged approximately three weeks, so the total amount of time of possession provided tenants via continuances was approximately 800 days. In addition, judges routinely award more time of possession to tenants who ask for delays of their evictions; half of these tenants' requests were granted, thus adding 457 additional days of possession awarded to the tenant. Between continuance requests and requests to postpone eviction, tenants in the sample were granted approximately three and a half years additional time of possession.

Post-Hearing Data

Final Verdicts

The tenant affidavits included with tenant continuances in the case control variable points to another area where landlords face difficulties with L-T Court proceedings: collecting on judgments after trials take place. In one of these affidavit cases, the tenant won a petition to satisfy hearing testifying that she had paid \$2,800 of a \$3,278.50 judgment by agreement and the judge accepted the affidavit as proof of satisfaction in spite of the nearly \$500 short-fall that the landlord pointed out. That this landlord received any money at all made him comparatively fortunate – based on administrative records, only 10% of all landlord judgments are satisfied (as compared to

20% for tenant judgments). If landlords weren't winning possession, they would be in the same position as many small claim plaintiffs who may win their judgments but seldom collect on them (Borrelli, 1989; Van Koppen & Malsch, 1991). Although landlords can use court procedures to garnish tenant assets, this is time-consuming and difficult to do considering many tenants have few assets and these are difficult to discover. Enforcing the judgment portion of landlord-tenant judgments is less problematic for landlords, though obtaining the necessary writs and activating eviction services takes time and money. Most landlords (57%) awarded possession obtain a writ of possession, and a smaller percentage (36%) obtain the final alias writ the sheriff or landlord-tenant officer is required to have before forcibly evicting a tenant. Presumably most tenants moved out before such a forcible eviction occurs, though it is impossible to know from available data how many tenants moved before they were physically forced to.

Landlord-Tenant Court awards more landlords possession of their properties than indicated in the sample because a proportion of the sample cases (10%) is continued. Of these continuances, the final verdict was observed in four of the initially continued cases, four others settled before going to trial, and seven ended in possession and damages judgments in favor of the landlord. Based on the testimony in the observed continuance hearings, all of these cases were over contested possession and money damages (though it is possible that the tenant's admitted liability changed during the final trial). When considering case outcomes at the Municipal Court level, then, these seven landlord-favorable verdicts replace the sample's continuance outcomes, six of which were tenant-

favorable outcomes based on the contested continuance. The final Municipal Court case outcomes are, minus the four settlements, 34 (23%) tenant-favorable verdicts and 111 (77%) landlord-favorable verdicts. This verdict rate constitutes a 7% increase in Landlord-Tenant Court landlord win rate from the hearing win rate calculated earlier in the chapter. This final verdict rate is less than the over-all landlord win rate (90%) observed in the previous study of L-T Court (Eldridge, 1996), but still represents an over three to one ratio of landlord to tenant trial wins.

In Municipal Court, having an attorney is far and away the most important legal strategy tenants can use to bolster their case, particularly when it comes to framing their testimony in the best possible light. For landlords, no legal strategy seems to increase their success, which appears to derive predominantly from the fact that they are landlords. While judges sporadically hold landlords accountable to some aspects of their leases (such as giving proper notice or charging reasonable late fees), they do not hold them accountable to the implied warranty of habitability and evict tenants at very high rates. Only one of the three cases in which a tenant successfully contested his eviction concerned housing conditions. In this one case, the judge was about to grant the landlord possession, but appeared to reverse himself after the landlord's attorney continued to aggressively pursue the damages portion of the claim. On the other hand, judges also give a substantial number of continuances and additional time of possession to tenants, which make it difficult for landlords to secure their rental income. While this creates some hardship for landlords, they usually win possession eventually whether or not tenants attempt to hold them accountable for poor housing conditions. The variation in

judicial verdicts occurs at the margins of eviction, which is virtually inevitable at the Municipal Court level. Some judges give a high number of continuances, while others give a high number of rebates due to housing conditions; but when issuing final decisions on eviction all judges almost always side with the landlord.

This dominant orientation to awarding possession to landlords seems to interfere with the apparent effect of repeat player attorneys and landlords on hearing outcome. There appears to be little that landlords can do to undermine their position within the courtroom, and they appear to win independently of their legal representation or level of experience in the courtroom. In a way, all landlords and their attorneys act as repeat players, reinforcing judges' orientation to eviction by virtue of their complaint. However, there also appears little for landlords to do when contesting a continuance or additional time request. Landlords may achieve repossession of their property, but it can take months based on the number of continuances the court grants. Landlords appear to be best served by attorneys who endeavor to settle cases before a trial even takes place, thus avoiding a tenant appeal as well as the occasional tenant-friendly verdict.

Appeals

L-T Court, like any trial court, is not necessarily the final stopping point for a landlord-tenant case: 21 sample cases were appealed to Common Pleas Court (17 by tenants, 3 by landlords, and 1 by both). Of these cases, 4 came to trial, 6 were settled, 9 were dismissed due to appellant inaction or withdrawal, and 2 are listed as active. Two of the trials were further appealed to the Superior Court, one of which settled before trial and the other which remains active and is waiting for trial. The clearest outcomes of

these cases are the trial outcomes, 2 of which reversed the Municipal Court's verdict from a landlord win to a tenant win and the other 2 replicating the lower court's landlord-favorable verdict. Furthermore, three case outcomes reversed the Municipal Court decisions because the landlord failed to file a required filing or make an appearance at the new trial (one tenant recovered \$400 from his court escrow account as a result).

Accounting for these reversals and settlements substantially alters the final verdict rate to 73% landlord wins from the 87% Municipal Court final verdict rate. This difference suggests that tenants appear to fare better at the Court of Common Pleas than at the Municipal Court level.

While it is not possible to definitively determine whether landlord or tenant "won" the settlement at the Common Pleas level relative to the verdict each received at the Municipal level, it is notable that six of the settled cases included sizable reversals in money damages. It is feasible that in such settlements tenants are waiving their interest in possession in exchange for a rental rebate. In one of the two cases that reversed the Municipal Court verdict, the tenant attorney essentially did not contest eviction because he or she had little legal defense to it, and in the other case the tenants offered a settlement that exchanged a rental rebate for possession of the property. This settlement offer was not accepted, and while the landlord won possession in Common Pleas Court, the tenants appealed the possession decision to the Superior Court and won a stay on eviction. As of this writing, the tenants had extended their time of possession 14 months by appealing their case. All told, tenants in the sample added approximately 7 years to their time of possession by appealing their cases (in addition to the time until the

appealed case is resolved). Thus, tenants added over 10 years of time to their possession of the rental property through legal proceedings, which is equivalent to about 3 weeks per tenant included in the sample.

If the relative success of tenants who have attorneys at the Municipal Court level is any indication, the success of tenants in reversing the Municipal Court decisions and arriving at satisfactory settlements is also related to their use of attorneys. Unlike in Municipal Court, the number of landlord and tenant attorneys is equivalent – 12 landlord attorneys and 11 tenant attorneys tried the Municipal Court Appeals, and attorneys represented both sides in three of the four cases that went to trial. Interestingly, the repeat player phenomenon appears to apply to both landlord and tenant attorneys in the (admittedly small) appeals sample. Two of the tenant attorneys heard more than one case and worked for the same legal aid agency, and three of the landlord attorneys were from the same law firm and were observed trying other cases not included in the sample. The Common Pleas *de novo* trials appear more like full-fledged hearings that include a greater balance in legal representation. If tenants are able to pursue their case to the Common Pleas Court level, they appear to benefit from a more even playing field and the greater number of tenant attorneys who practice at that level.

The second active appeals case reinforces the need for legal representation at the Common Pleas Court level. This appeal was brought by a tenant who had lost a petition to open hearing in Municipal Court for a case in which he was suing his landlord for withheld security deposit funds. Based on the tenant's court file, he had effectively appealed the case by filing out the necessary forms. However, it appears that he did not

know that in order to effectuate an appeal of a petition, he had to file a motion in the Common Pleas Motion Court. This court is similar to Landlord-Tenant Court in that it is a segregation of all motions that come before Common Pleas judges and has its own procedural requirements. According to a Common Pleas law clerk, this case will remain active in spite of its lack of activity because the court does not actively throw cases out for non-prosecution. This tenant clearly would have benefited from legal counsel and faced a major impediment to *pro se* litigation at the Common Pleas level.

The following four chapters place the quantitative findings into context using the first four case analyses and associated ethnographic data. These layers of interpretation will add flesh to the statistical relationships while the quantitative findings help place individual and collective experiences into a broad, representative framework.

Section II

Introduction

Each of the next four chapters serves three distinct but related purposes. First, each chapter begins with a case analysis that I present and analyze in the context of two themes that frame all four case analyses: 1) legal representation, and 2) the extent to which they are embroiled with interorganizational dynamics. The cases were initially selected on the basis of their configuration of legal and *pro se* representation, thus making that theme integral to all of the case analyses. The cases also happen to fall along a clear interorganizational continuum from Chapter 5's case that has almost no interorganizational dynamics to Chapter 8's case that has the most interorganizational dynamics of any case I encountered in my research. The second function of the case analyses is to illustrate ethnographic themes that frame the entirety of the data I have analyzed. These themes serve to place each case analysis into the context of the study as a whole, and also provide the context for the statistical results. Finally, the third function of the case analyses is to provide an interpretive framework for the statistical findings.

In sum, each case analysis is structurally linked to *Legal Representation* and contextually linked to *Interorganizational Dynamics*. The case analyses also illustrate a variety of additional ethnographic themes, which are expanded upon using data about other legal cases. As previously indicated, I have assigned names only to the four case analyses and the trial participants whom I interviewed. Because some trial participants did not participate in the study, I did not assign names to every person involved in the case being presented (see Appendix E for a glossary of case and trial participant names). Any other reference to a "case" refers to some other of the hundreds of legal cases I

observed or encountered throughout the course of the study. I will attempt to maintain this important distinction throughout the remainder of the dissertation.¹⁹

Interorganizational dynamics provides an over-arching framework for the case analyses, legal representation provides a common thread through the case analyses, and the ethnographic themes provide linkages between the case analyses, other legal cases, and the statistical findings.

My thematic selections throughout the study have been guided by the study's four theses: 1) gaps between judicial expectations and behavior, 2) law's interorganizational structure, 3) legal institution's dynamism, and 4) the common interests of landlords and tenants. At the end of Chapter 8 I describe the interorganizational framework that links all four case analyses.

In Chapter 9, I apply this interorganizational framework to three different organizational relationships that the case analyses do not illustrate but nonetheless provide crucial insight into the behavior of Municipal Court and Landlord-Tenant Court. Taken as a whole, Chapters 5 through 9 sweep across the experience of Landlord-Tenant Court from pre-trial through appeals, from individuals to organizations, and from the perspectives of each trial participant group.

The relationships between landlords and tenants included in this study span a period of months to decades and are characterized by a breakdown that has led to a trial in Landlord-Tenant Court. When a landlord-tenant dispute becomes a legal case, both

¹⁹ Of course, each case analysis is a study of a legal case. Unlike other cases, the four case analyses were subject to comprehensive data collection that included all available longitudinal data, from pre-trial through appeal.

parties may choose to use an attorney to try their cases for them or to try their own case as *pro se* litigants. *Pro se* litigation, as we have seen, is particularly problematic to tenants who typically enter the complex dynamics of Landlord-Tenant Court, unfamiliar with normative legal procedures and the unique rules and behavior of this particular courtroom.

Case Analysis #1: Singleton v. Zephyr Properties

The first case, Singleton v. Zephyr Properties, demonstrates the experience of one *pro se* tenant's experience as a plaintiff in a small claims case against a real estate corporation represented by an attorney with extensive experience in Landlord-Tenant Court. The case also represents the most limited landlord-tenant relationship possible because the suit involved a deposit on an apartment into which the tenant had never moved. The brevity of the relationship resulted in the development of very few interorganizational dynamics. However, while lacking in interorganizational dynamics, this first chapter provides rich data on the intraorganizational dynamics, which provide the platform for interorganizational themes. The themes I identify mid-case and expand on at the end of the chapter are: *Low-income Landlords/High-income Tenants*, *Judicial Decision-making*, and *Trial Participant Satisfaction*. After presenting these themes, I describe the exploratory data about cases disposed of during pre-trial procedures gathered via three sets of interviews about litigants who settle, mediate, or default on their cases.

The limited landlord-tenant relationship represented by this case also provided the opportunity to delve into the reasons behind the tenant's abortive effort to leave his current rental property. Tenants find themselves in a chain of relationships with landlords while they move from property to property, while landlords use a variety of mechanisms to manage the dynamic flow of their tenant clientele. Both the tenant's relationship with his or her landlord and the landlord's management of their rental business bring tenants and landlords and/or their attorneys into L-T Court.

The Tenant: Albert Singleton

Albert Singleton was determined to force Zephyr Properties to return his rental deposit. Zephyr Properties rented new apartments, which he knew would be in better repair than his current apartment. His current landlord made no repairs to the property, and he was tired of making them himself. A recent divorce had forced Mr. Singleton to become a tenant again after owning a home with his wife for twenty years. He had been a friend with his landlord, and while he still considered him a friend, he ranked him as the worst landlord possible. When I asked him why, he said,

Because he does nothing. The roof needs to be done. It was nice inside, but he doesn't put any money in it. It's a single house, and I rent it with my daughter. When owners think of property as a place they'd live in, then they'll be good landlords. I know that he wouldn't live there, so all it's about is strictly collecting rent. This situation hasn't affected our friendship, because I presented solutions. If I wanted the apartment painted, I bought the paint, did it, and took it out of the rent. I was in this situation, and I thought it might be a good time to move. (Interview Notes).²⁰

This succinctly describes some of the fundamental dimensions of landlord-tenant conflicts. In the first place, for Mr. Singleton the house is a home for him and his daughter, but for his current landlord it is a source of income. According to Mr. Singleton, it is an important source of income for his landlord who is "living on the edge" (Interview Notes). Secondly, the landlord-tenant relationship is characterized by intimacy and adaptation, whereby a relationship that is both personal and business in nature is negotiated via a set of interdependent interests.

²⁰ I identify sources of direct quotes throughout the document as "Interview Notes" for data collected during interviews, "Field Notes" for data written up after observation, and "Transcript" for data quoted directed from trial transcripts.

Unlike the large corporation that owns the property he took to court, it was clear to him that his current landlord could not afford even basic repair services: “He doesn’t have a local person to call in an emergency. I had no electricity for a couple of days, and he didn’t have anyone who could take care of that” (Interview Notes). Though they had negotiated a series of agreements that Mr. Singleton make repairs and deduct them from his rent, the situation was still precarious: “He’s just making it more expensive for himself. I have yet to sit down and talk – I get too angry, and I need the place. I can’t just say what I want. If I want to keep the place, I have to walk on egg-shells” (Interview Notes). Maintaining the balance of money for home is difficult when the landlord has so little to invest back into the property or the landlord disinvests in order to increase profits before selling or abandoning the property. The existence of low-income landlords runs counter to general assumptions about the wealth of landlords and emphasizes the need to provide public assistance to landlords as well as to tenants. I will return to this theme at the end of the case analysis.

Mr. Singleton was hopeful about his \$799 lawsuit against Zephyr Properties for the one-month rent he had placed to hold an apartment, which he later decided he no longer wanted. He did not even think anyone from Zephyr Properties would appear in court to defend against such a small claim, based on the interview I had with him after the trial. He had not even seen the apartment he had reserved with a one-month deposit and he knew the landlord he was suing was a large corporation that might have to spend more on an attorney than it would recoup by winning the lawsuit. After all, he had decided not to hire an attorney because he would lose money even if he won all of his deposit back.

He had first called Community Legal Services (CLS) when the real estate company did not return his deposit. This non-profit agency, often referred to as Legal Aid, is Philadelphia's primary source of legal representation for low-income litigants. Attorneys and paralegals provide some advice over the phone, but mainly provide services through a walk-in system at their downtown office. All cases are screened for income qualifications and legal merit before a CLS attorney will accept a client, a critical procedure for a perpetually under-funded institution.

The CLS staff member who spoke with Mr. Singleton advised him to go to "Small Claims Court" to file a claim asking for the money back plus interest. In fact, the support provided to plaintiffs in Municipal Court was motivated in large part by cases exactly like Mr. Singleton's, brought by aggrieved consumers against organizations with far more resources than they had to pursue their grievance (Ruhnka, 1979). Still, Mr. Singleton immediately felt the impact of not having an attorney when he sat down with a filing clerk for help in writing his complaint. Though he found the clerks helpful while they assisted his filing, he was frustrated that he could not get help calculating the interest on his deposit because he did not know when to start the interest amount nor did he know how much interest to charge. Rather than guessing, Mr. Singleton decided to drop this aspect of his claim.

In spite of this difficulty, Mr. Singleton remained highly motivated to see his lawsuit through to trial. His motivation had two levels, one personal and one political. From a personal standpoint, Mr. Singleton stated, "I just wanted to get the money – I felt entitled to it. They [CLS] gave me basic advice to get started." (Interview Notes).

From a policy standpoint, he hoped his suit could dissuade Zephyr Properties from treating tenants like him unfairly: “I wanted to have a positive impact. Most tenants are small and don’t have the resources of a large corporation” (Interview notes). Mr. Singleton was hopeful that by suing he had helped dissuade Zephyr Properties from keeping rental deposits in the future.

The Landlord Attorney: Barbara Doubleday

Based on the data Barbara Doubleday provided to me and my observations of her active practice in Landlord-Tenant Court, Mr. Singleton’s hopes at having an impact on Zephyr Properties would not be realized no matter the case’s outcome.²¹ Her client was one of the largest landlords in Philadelphia, managed thousands of rental units, and had assets that rendered Mr. Singleton’s \$799 claim (and the money they paid her to try the case) virtually inconsequential. Ms. Doubleday described her relationship with Landlord-Tenant Court as “very involved” for 10 years. In those years she had seen many landlord-tenant cases, most, no doubt more complex than the one brought by Mr. Singleton.

To Ms. Doubleday, the case was a simple matter of a broken oral lease, but she was not hopeful that the judge would uphold the law. She wrote that the Court’s responsibility was “to follow the law and be respectful” (Interview notes), but later said, “judges don’t follow the law” (Field Notes). When I asked her in what ways they did not follow the law, she hesitated before answering. She then stated that while the relaxation

²¹ Ms. Doubleday opted to respond to the interview questions in writing, which she did on a copy of the interview protocol. I had a follow-up interview with her, and also observed her numerous times in Landlord-Tenant Court.

of the formal trial requirements in L-T Court could explain some of the ways that judges do not follow the law, many other dismissals of legal procedure and substantive law was simply a part of the court's customs (Field Notes). As Abel (1982) points out, the purpose of small claims judicial informalities are to reduce technical impediments to *pro se* litigation, not the application of substantive law.

Not surprisingly, then, her expectations the day she came to the court were “very low [based on] the judge’s past decisions.” At the beginning of the hearing, she presented her simple legal argument about Mr. Singleton’s breach of his oral lease with Zephyr Properties: “There was an oral lease, my client [Zephyr Properties] relied on his [Singleton’s] representations that he wanted the apartment and on the security deposit to hold it. It wasn’t rented until July because they couldn’t take it off the market, Judge. He had, they [Zephyr Properties] had an oral obligation to provide it to him....” (Transcript). According to Pennsylvania contract law, oral agreements are binding and enforceable in court, and according to the Landlord and Tenant Act oral leases are the equivalent of month-to-month written leases (Kupersmith, 2000). In Ms. Doubleday’s view, the case should have been open and shut in her client’s favor. She fully expected to lose it outright.

The Verdict

To Ms. Doubleday’ surprise, the judge awarded Mr. Singleton only 48% of his claim. Although the court record reflects that Mr. Singleton won the case because the judge found for the plaintiff, the case was a narrow landlord victory according to the definition of win/loss used in this study. Ms. Doubleday conceded nothing during the

trial, whether as admitted liability or a settlement strategy, so the verdict’s percentage of the claim equaled percentage of the disputed amount awarded to Mr. Singleton. Though Ms. Doubleday was glad that her client would not have to pay the full amount for which Mr. Singleton sued them, she felt that the court should have “found against the tenant,” thereby dismissing the complaint in its entirety.

Though I did not obtain an interview with this judge for this case analysis, his inclusion in the statistical analysis provides some information about him in the context of his verdict rate relative to other judges. Based on the judicial assignment chart on page 116, the judge who heard Singleton v. Zephyr Properties is Judge “I.” I will refer to him as Judge “I” throughout this chapter and elsewhere where such a reference does not jeopardize revealing this judge’s identity. I will do the same for the other judges I refer to throughout the study (with the exception of the one judge who I interviewed for Case Analysis #3, whom I have given a name in Chapter 7). This chart summarized the data from the previous chart for the purposes of the case analysis and ethnographic chapters:

Table 31: Judge Descriptions

Judge	Landlord Win Rate	Percentage of Cases Heard	Judge	Landlord Win Rate	Percentage of Cases Heard
Judge “A” ^a	0%	1%	Judge F””	63%	10%
Judge “B”	33%	6%	Judge “G”	66%	2%
Judge “C”	40%	3%	Judge “H”	71%	16%
Judge “D”	42%	8%	Judge “I”	80%	33%
Judge “E”	62%	5%	Judge “J”	92%	16%

^aThis judge was excluded from the statistical analysis because he heard only one case in the sample, and this judge and observations of cases he presided over are also not referred to in the qualitative sections of the study.

Judge “T” provided no description of his legal decision-making in this case, but a reasonable inference can be made from the trial transcript. The judge appeared unmoved by the oral lease breach argument, but he was interested in her assertion that Mr. Singleton had provided a false statement to her client in an effort to get out of the lease. Mr. Singleton, in fact, admitted to the judge that he had fabricated a letter from his boss stating that he was being transferred after talking with someone at Zephyr Properties who indicated that he might be able to get his deposit back if he was relocating due to employment. Ms. Doubleday put Mr. Singleton “on the stand” concerning this issue.²²

Ms. Doubleday: So the person who wrote it didn’t write it, you did, and you wrote it for the purpose of trying to get out of the lease.

Mr. Singleton: No, I wasn’t trying to get out, I never had a lease.

Judge: Well, let me, let me ask something. In order for him to, to, to have cause him to have consummated and moved into a place, how much money would he have needed?

Ms. Doubleday: To hold the apartment, Judge –

Judge: No, no, that wasn’t the question.

Ms. Doubleday: Consummated, I don’t know what consummation means, Judge, in –

Judge: Well no, no –

Ms. Doubleday: – the context of this (Transcript).

Based on the attorney’s legal reasoning, the agreement was binding at the point of the tenant’s oral statement that he would rent the apartment, so the judge’s concern about how much money the tenant needed to rent the apartment was immaterial. The tenant’s use of fabricated evidence eroded his credibility and contradicted his complaint, which indicated that Mr. Singleton had “changed his mind” about renting the apartment.

²² The attorney’s examination is informal. There is no separate area for the tenant to “stand” as a witness, and there are little recognizable patterns in terms of putting on witness testimony, except in a small number of the trials in which both landlord and tenant were present and represented by an attorney.

Finally, Ms. Doubleday's amusement with the judge's use of the term "consummate" illustrates the gap between attorneys' and judges' adherence to legal principles and use of legal terminology.

Judge "I's" decision to virtually split the damages claim, then, appears to be based less on an application of law than a sense of fairness: the landlord would have needed more money from the tenant before allowing the tenant to move in, so the agreement wasn't fully binding. The tenant therefore deserved the return of the money, except for the fact that the tenant lied in order to get it back. Therefore, the tenant only deserves somewhat less than half of the money he is suing for. That this kind of judicial decision-making process is common in L-T Court proceedings is amply supported by lack of statistical relationship between law and verdict. I explore it further as an important theme in the next section of this chapter.

Legal Strategies, Housing Strategies

One strategy that may have helped Ms. Doubleday is a common one used by attorneys who try their cases against *pro se* tenants and without their own witnesses: using information gleaned from the tenant before the hearing as evidence against the tenant. Legally, attorneys with no witnesses are in a somewhat precarious position in that they are supposed to introduce all evidence, both documents and testimony, by examining or cross-examining witnesses. While some provision is given to attorneys to represent their clients without adhering strictly to this basic procedural requirement, this rule is dramatically relaxed in typical small claims proceedings. This is done in part to avoid the requirement that *pro se* litigants examine themselves, but it helps make *pro se* tenants

particularly vulnerable to experienced litigators.

In this case, Mr. Singleton refused to meet with Ms. Doubleday in the settlement room next to the courtroom, but she was still able to use an apparently brief conversation before the hearing to her advantage. When testifying about the falsified letter, Ms. Doubleday stated, “Mr. Singleton still lives in Philadelphia and still works in Philadelphia, and I confirmed that with him before Court” (Transcript). Ms. Doubleday used her pre-trial discussion with Mr. Singleton like an informal deposition, which allowed her to forward her argument without having to rely on potentially differing testimony during the trial itself. The attorney doesn’t even need the tenant to say anything to use this strategy; at the beginning of the trial, Ms. Doubleday stated, “I talked to Mr. Singleton just before Court and advised him that the sworn allegations in his complaint were not exactly accurate” (Transcript). When stated with the authority of an attorney familiar to the court, such a statement appears to carry significant weight. Engler (1997) points to the use of similar tactics by attorneys who take advantage of *pro se* litigants’ lack of representation.

The false statements made by Mr. Singleton, which Ms. Doubleday sought to highlight with other statements made before the trial, were made as a part of his own housing strategy. The reasons Mr. Singleton gave for deciding not to rent from Zephyr Properties were many, and included changing his mind, job relocation, insufficient funds, and a desire to stay in the suburbs. A final reason he gave to me in our interview, and it seemed the most compelling of his stated reasons, was the prospect of buying his landlord’s property. This was the only reason that Mr. Singleton did not give to the

court, perhaps hoping that he could curry favor with the judge by presenting himself as a struggling tenant rather than someone with enough resources to buy his current landlord's property (as opposed to the Zephyr Properties apartment). Such an acquisition would enable him to exchange his rental payments for equity payments towards a home that he could renovate without concern for altering someone else's property. He told me that his annual income was \$80,000, which, even accounting for his post-divorce financial struggles, would provide him ample resources to buy a moderately priced house such as the one owned by his landlord. The existence of tenants wealthy enough to consider buying their landlord's house defies general assumptions about tenant poverty. The assumptions about wealthy landlords and poor tenants, in fact, are dyadic in nature and will be addressed as a single theme below.

Both Mr. Singleton and Ms. Doubleday left the hearing with about half of the disputed amount, and each with a sense of dissatisfaction with Municipal Court proceedings. I have already related Ms. Doubleday's low opinion of Landlord-Tenant Court's enforcement of the law, which her experience of this case reinforced. Mr. Singleton's frustration, on the other hand, was not about the lack of legal application but was about courtroom rules: "'Stand up, be quiet, don't smoke....' It was intimidating. It's not user-friendly. The law isn't user friendly – everyone should be a lawyer" (Interview Notes). This tenant experienced his introduction to Landlord-Tenant Court as a rude awakening to procedures that did not account for his lack of knowledge and experience in courts. The experience of Housing Court as a hostile environment by *pro se* litigants with little experience in the courtroom's dynamics (classically matching

Galanter's profile of one-shotters) represents the final theme this chapter addresses.

Themes

Low-income Landlords/High-income Tenants

Mr. Singleton and his landlord represent a phenomenon that receives little attention in the study of landlords and tenants: the wealth of both groups varies greatly and defies the simple associations of landlords with wealth and tenants with poverty. A number of landlords testified in hearings that they did not have enough money to make repairs to the property. In one case, a landlord testified that he could not afford to make repairs after his tenant stopped paying rent due to her lack of employment: "I didn't have no funds to replace the stove or do anything else in the apartment. I have a mortgage on the building close to \$400. And I didn't have no funds to keep up with any violations I wanted to take care of" (Transcript). The situation becomes perverse when the landlord does not have enough funds to repair a property because the tenant is withholding her or his rent in order to force the landlord to make repairs. In another case, the tenant testified that he withheld his rent in part because the electric company shut off services due to lack of payment. The landlord then testified that his rental income shortage prevented him from paying the electric bill, a lower priority than the mortgage payment that was three quarters of the rent he usually received. Both tenants and landlords often need financial assistance to effectuate the availability of affordable housing.

Mr. Singleton's efforts to buy his landlord's property and return to home-ownership demonstrates that while some landlords struggle with making ends meet, some tenants do not struggle with financial deprivation. Three other tenants included in the

statistical sample testified that they had spoken with their landlords about buying the rental property, and two others testified that they were buying a house. One of these brought an affidavit to the court because her mortgage company required a four-year-old landlord-tenant judgment satisfied before they would give her a loan. Just as people transition between tenant and homeless populations (Culhane, 1992; Culhane, Lee, & Wachter, 1997), people also transition between the tenant and homeowner populations. Similarly, the landlord business is a fluid one and landlords enter and exit the business just like any other business.

A nationally representative analysis of tenants highlights the complex inter-relationship between class and the landlord-tenant relationship. Varady and Lipman (1994) clustered the data obtained via questionnaires and census data around common characteristics. Six clusters emerged from the analysis in order of highest percentage: (1) college graduates starting out (26%), (2) lifestyle renters (21%), (3) families moving up the housing ladder (17%), (4) black renters (15%), (5) struggling blue-collar workers (11%), and elderly life cycle renters (10%). The authors suggest that the government homeownership targeted to groups three, four and five, which constitute 43% of all tenants. The clustering of all but a small percentage of the Black tenants was surprising to the authors, and suggested to them the continuance of housing discrimination. The struggling blue-collar workers faced the worst housing conditions and had the greatest housing mobility. On the other hand, the largest cluster, college graduates, had by far the highest incomes and prospects for ownership. Overall, fully 63% of the tenants planned

to buy a home sometime in the future.²³

The prevalence of high-income tenants in no way diminishes the difficulties faced by low-income tenants. The following exchange between a judge and a tenant who declared her intention to countersue after being evicted illustrates these difficulties succinctly:

Judge: Ms. _____, all you've done is complicated life for yourself.

Tenant: Complicated life?

Judge: All right. Judgment for –

Tenant: I'm out on the street as of October 30th.

Judge: Judgment for –

Tenant: What could be more complicated than that?

Tipstaff: Quiet please.

Judge: Judgment for plaintiff, \$450, plus possession from today

(Transcript).

Maintaining a tenancy meets such a basic need that tenants choose to put up with a great deal of discomfort, and even possible danger, to avoid eviction. Homelessness is sometimes one short step away from eviction.

Judicial Decision-Making

The judge's verdict in Singleton v. Zephyr Properties reflects a pattern of judicial decision-making used by this and other L-T Court judges. This pattern includes verdicts that are split in some fashion and that are detached from legal considerations, even when specific legal arguments are made. I observed the same judge who heard Singleton v. Zephyr Properties render another split verdict in a hearing for another complaint also brought by an attorney representing himself who used the same oral lease breach

²³ I was unable to find any comparable studies of the demographic characteristics of landlords.

argument Ms. Doubleday used. According to the trial transcript, the tenant had arranged with a landlord to rent his property and had given the landlord \$25 to run a credit check. However, the landlord discovered that his property management company had already rented out the room, so he called the tenant to tell him that he was sorry but the room had already been rented out. Clearly not satisfied with an apology, the tenant sued the landlord for the difference between their agreed upon rent and the higher rent of the apartment he eventually found and increased moving expenses, which totaled \$3,000.

At the end of the proceedings, this exchange took place between the litigants and the judge:

Landlord: I, generally, in my mind, whether – and I’m not a lawyer, I don’t know the law – in my mind, don’t feel that I have an agreement with someone until we have a lease signed, until I get a security deposit and a check....

Tenant: Your Honor, I – I am an attorney and I looked up the law and the law in Pennsylvania is, a lease, I think, three years or less, is an oral agreement – is valid... We had a deal....

Landlord: And, again, I’m not an attorney, but I did consult legal counsel and they’ve explained to me, the statute of frauds in Pennsylvania, that –

Judge: Wait a minute. Well, as a practical matter, he [the landlord] had given notice –

Tenant: I have the statute here, Your Honor.

Judge: Yeah. But I’m not – I’m not aware of the law in terms of that. I am – I am going to find in favor of the plaintiff for \$1,000.

The judge’s split was skewed to the defendant, who won 66% of the claim. It illustrated, however, the same lack of association between legal issue and verdict found in *Singleton*. This time, the judge not only did not reveal his legal reasoning, but also declared his utter lack of it.

The weak linkage between verdict amount and legal reasoning is evident in other judges’ decision-making. In one session, a different judge awarded \$1,000 and

possession to landlords in four of five landlord-tenant complaints he heard, despite the fact that the complainants were asking for damages ranging between a thousand to nearly three thousand dollars. This form of rough justice is similar to the kind that is now familiar to any who watch the proliferating number of television shows in which litigants contract to have their cases decided by a television court rather than a real court. In fact, the only other people conducting research in Municipal Court besides collection specialists that I was aware of were identifying litigants for recruitment onto these shows.

These shows are all based on a form of Solomonic justice in which litigants bring claims in front of a single judicial arbiter for quick results. In fact, one attorney characterized Municipal Court judges' verdicts as follows: "the judge splits the baby and always gives something back, though it's not enough for both sides" (Interview Notes). Small claims cases such as this one are amenable to such a strategy given that they are over money alone. Eviction cases, however, pose the same problem King Solomon faced when confronted with a child custody dispute: the rental property/home cannot be split. In the past, in most cases possession was often summarily granted to the landlord, but today the tenant has rights to retain possession against the landlord's wishes. There is no longer any simple resolution to such cases from a legal standpoint.

The interviews I conducted with three judges demonstrated that the motivations behind landlord-tenant verdicts are often sentimental rather than legal (one interview lasted a half-hour, one two hours, and one three hours). Using the chart presented earlier, the judges are (in order of introduction below): Judge "C," Judge "J" and Judge "D." The three judges connected personal experiences with their decision-making and expressed an

over-arching landlord orientation to the hearings they presided over. Based on these interviews, when judges favor landlords they do so out of a *caveat emptor* sentiment. When judges favor tenants, they do so out of a sympathy for the plights tenants sometimes find themselves in. The favoritism to tenants takes place at the margins of eviction: if a tenant has not paid rent for any reason, judges see little reason preventing a decision granting possession to the landlord. The interviews bolster the statistical findings that though judicial verdicts vary between landlord and tenants wins for the cases as a whole, they vary little when the cases are over contested possessions.

Based on the statistical analysis, Judge “C” was the second most tenant-friendly judge and was eleven and a half more times likely to decide against the landlord than Judge “J,” the most landlord-friendly judge. Still, Judge “C” expressed a landlord rather than tenant sensibility in our open-ended interview, in which I asked only general questions about the judge’s experience. The judge related an experience from the beginning of the judge’s career that sounded formative in establishing a basic orientation to landlord-tenant disputes. The judge was giving me advice about my research and said,

Just remember that people may not be telling the truth. Some people have a lot of attitude about not paying the rent. When I first started I got a case in which a tenant lived near me and didn’t pay rent for two years. Six months would have been plenty to bring her to court, but even after two years, she was indignant! I don’t understand that – it’s not their property (Field Notes).

This early experience with a recalcitrant tenant who lived near Judge “C” and yet had such a different approach to tenancy than Judge “C” had seemed to affect the way the judge approached landlord-tenant cases in general. The judge seemed to use this experience as a guide in giving the landlord the benefit of the doubt when it came to

cases in which there was no evidence about paid or unpaid rent. When this decision-making process is applied to numerous cases, it becomes a policy that has more to do with the idiosyncratic experience of a particular judge than it does an application of existing legislative and judicial law. When all judges apply the same decision-making process, individual policymaking forms a collective expression of a court-wide policy.

Judge “C” also raised a question that relates directly to the prevailing Housing Court policy on landlord-tenant disputes: the proper remedy for tenants facing poor housing conditions is to move into a better apartment rather than leveraging their rent to force the landlord to make repairs to the property. The judge asked, “You have to wonder why people want to stay in some of these places – why would you want to live in those conditions or have a terrible landlord?” (Field Notes). This question would only make sense if low-income tenants had the economic freedom to choose adequate, affordable housing. The lack of such freedom has been exhaustively documented (Burt, Aron, Lee, & Valente, 2001; Culhane et al., 1997; Dolbeare, 1988), and numerous tenants have provided insights, in front of this and other judges, about the vicious cycle of financial deprivation and deteriorating rental housing.

Still, this blind spot about the reasons for tolerating poor housing conditions appears to be collectively held within the Municipal Court Organization. The view was dramatically articulated by Judge “J” in a trial I observed and for which I obtained a transcript. Judge “J” had the highest pro-landlord rate, and was included in the final statistical model that showed him as being seven times more likely to decide in favor of landlords than all other judges combined. Judge “J” was evicting a tenant who had

clearly expressed an interest in staying in her apartment and having her landlord make repairs. At the end of a very short trial he said, "Let me say, really, you're going to get everything you want here. It's not a place you want to stay in, right?" The Orwellian implication was that by evicting tenants from housing that needs repairs he is doing them a favor.

Judge "J" connected a pro-landlord sentiment with personal experience in the same way as Judge "C":

It's very difficult to rent properties in Philadelphia because it's the most tenant friendly place in the area. It's more difficult to evict tenants here than in the surrounding counties. I know, because I'm a landlord and went through a lot with my properties and tenants here. I have a complete perspective because I've been on both sides of it: I manipulated my landlord when I was a tenant, and now I'm a landlord and tenants do it to me (Field Notes).

Given the documented ease with which tenants have been evicted in Landlord-Tenant Court (Eldridge, 1996; Housing Association of Delaware Valley, 1988), it is likely that Judge "J" is referring to the various pre-trial and post-trial procedures landlords must go through to actually regain possession of their property from a tenant. These procedures provide at a minimum two months between complaint and actual eviction, representing a possible loss of two month's income. Judge "J" appears to believe that any tenant who does not pay rent is manipulating their landlord to dodge their obligation to pay rent.

Judge "J" emphasized the non-legal nature of his decision-making:

Some might say I'm prejudiced, but I don't think so. I think I bring some common sense to the process. A lot of judges refuse to evict – that's why they like me in here because I bring some common sense here. Judges seem to find tenants' stories compelling, and they lose sight of the big picture (Field Notes).

Judge “J” was using his own experiences, sense of fairness, and a policymaker orientation in the course of his decision-making.

Judge “J” presented a thoroughly thought-out rationale for his judicial decision-making that centered on the role of Philadelphia’s Department of Licenses and Inspections (L & I):

The problem with L & I is that it’s a tool for poor tenants to not pay their rent. So many tenants withhold all of their rent, which is not necessary. When I was a tenant, I only withheld two hundred dollars, called up the landlord, and said that if you don’t make the repairs I wanted, then I wouldn’t pay him and he’d have to take me to court. There’s no need to go to an agency like L & I (Field Notes).

This judge’s own manipulation of his landlord involved an inside understanding of the law – at the time he withheld his rent, he was a lawyer. Though he characterized his strategy as a lawyerly ruse, the use of rent as leverage is a critical piece to the warranty of habitability. When he was a tenant he used a legally protected tenant remedy to leverage a landlord to make repairs to his apartment. As a judge, however, any tenant using such a strategy was immediately suspect for unfairly manipulating their landlord and the city to gain free rent by filing complaints with L & I:

The problem I had with the system over there [L & I] is that it’s entirely complaint based. What they need is comprehensive auditing rather than complaint-based processing, which is a form of selective enforcement that is unconstitutional. Saying it’s unconstitutional is just a fancy way of saying that it’s unfair, and it’s the kind of situation we’d never accept in the criminal justice system. [L & I] would [say] that they are understaffed and can’t do audits. I see their point, but they really could use some other kind of system because this one is just not working (Field Notes).

Complaint-based processing makes the department vulnerable to tenants who use housing conditions complaints as a strategy to avoid the consequences of simply not having

enough money to pay rent. The strategy is not only ineffective because it directs attention to undeserving tenants, but, according to the judge, may be an illegal violation of due process under the U.S. constitution.

To say that judges use sentiment more than law to guide their decision-making is not to say that judges don't think about the verdicts they are making. Judge "J" characterized himself as "ideological:" "You see, I'm a reformer, I want to improve things. Other judges will come in here and just do what they have to do, but I want to make things better" (Field Notes). Judge "J's" policy was to summarily evict tenants who he felt were unjustly manipulating their landlords and the government in order to secure a rent-free existence, at least for a short period of time. The basis for this policy was drawn from his own experiences as a tenant and a landlord rather than drawn from governing statutory and common law.

Judge "D" shared the same basic pro-landlord orientation to the law as Judge "J," but added a pro-tenant sentiment that motivated him to avoid the law so as to bring tenants some relief. Judge "D" was only slightly less likely to decide in favor of tenants as compared to Judge "C," both of whom diverged dramatically from Judge "J" in their verdicts. However, Judge "D" referred to himself as "practical" both from the bench and during our interview in a very similar way that Judge "J" had described his use of "common sense." Also, Judge "D" stated to me that he represented landlords in his former practice as an attorney. Though they applied their sensibilities in different ways, it was still their sensibilities that guided their decision-making from the bench.

The pro-tenant judge's emphasis on practicality appeared to derive from an

appreciation for the inherent difficulties of maintaining impartiality in an emotionally-laden forum. Once again, the judge associated this conflict with his own experiences and those of his judicial colleagues:

Judges have to be very careful. We're not always very careful, but we should be. You can't totally eliminate emotions from judicial responsibilities, but you can't allow emotions to dictate your judgment. What dictates your judgment is the law. There may be opportunities to bend here or there, but the underlying context is the law. Judges do let their emotions interfere with the law. True in any judicial situation. Hearing cases in Landlord-Tenant court is a highly emotionalized experience, more so than sitting in front of [other kinds of cases]. We all have experiences that dictate thought processes.... I was fully aware where prejudices and emotional feelings [lay]; I also knew what the law was. The best way to go was to try to settle. Then I didn't have to have one interplay with another. Settlement took it out of law vs. emotions (Interview Notes).

Avoiding ruling on cases by encouraging the litigants to settle, a relatively consensual process, was to this judge a practical way of dealing with the complex interaction of his sympathies and legal understanding. This judge expressed a balanced empathy for both the landlord and tenant perspectives:

For instance, if you were born very wealthy and had property and tenants, you will form an opinion: if they don't pay, they go. If you are from a tenant household and your family can't pay because your father wasn't well, you'll say that we just couldn't pay, and you become very pro-tenant. You might say, 'What's the difference if I'm late or miss a payment? The landlord has plenty of money' (Interview Notes).

Sidestepping "the law" was the most viable policy for a judge who professed an appreciation for both the landlord and tenant side of the dispute.

Another way to avoid applying law is to issue a continuance, a pattern that was exemplified by the most tenant-friendly judge in the sample, Judge "B." This judge routinely issued continuances, sometimes over the strenuous objections of landlord

attorneys and often with no apparent procedural or legal reasoning. Of Judge “B’s” pro-tenant verdicts, two thirds were continuances granted in response to a request from a tenant or initiated by the judge. In a case continued previously by Judge “B” and heard by another judge, the landlord attorney explained to the presiding judge that the case was continued by Judge “B” “over her strenuous objection” and “only when [the tenant] begged him to continue this” (Transcript). When I asked Judge “B” for an interview, he declined and stated that “he was too kind-hearted to make decisions” about eviction (Field Notes). The near inevitability of eviction in L-T Court creates a kind of melancholia that surrounds the courtroom in contrast to other small claims courtrooms. Two judges and a court staff member commented that assignment to Landlord-Tenant Court was the least desirable assignment. This no doubt explains why such a high number of the Municipal Court judges (16) are either not given any assignment to courtroom 4-B or are given only one week or less assignments (3), so that only one third of the total number of Municipal Court judges hear L-T Court cases. With Judge “J” being a notable exception, removing tenants from their home was not a welcome task for judges.

It appears that the law that judges sometimes attempted to avoid was not statutory and common law but the law as practiced by the court. This law constitutes a court-wide policy that is aligned more with outmoded *caveat emptor* principles than with warranty of habitability principles that couple a landlord’s covenant to maintain their property with a tenant’s covenant to pay rent. The pro-tenant judge described both his alignment with this policy and the ways that he diverged from it:

The general psychology of the judges is that a tenant who doesn't pay rent should be asked to vacate; I'm not even sure if that's not my psychology. The only differences I had with the other judges were where there were instances of legitimacy, in which case I could work out a settlement.... If I felt like I was being conned by the tenant, they wouldn't get any sympathy from me. A judge's sympathy can't operate if it's against the law. There are people who can't afford to pay rent, but how can the landlord pay the mortgage, make repairs, or make a profit...? If tenants took advantage of me, I didn't have full knowledge of it. I presume there are times I was being conned and didn't know it, but after a while you can pick it up real quick. It's a balancing act that doesn't work (Interview Notes).

The balancing act the judge refers to here is the two contradictory arguments a tenant must make as a part of a warranty of habitability argument: 1) "The housing conditions are unsatisfactory," and 2) "I want to keep living in the apartment." According to *caveat emptor*, if you are unsatisfied with the property, your sole recourse is to leave so it doesn't make sense to express both dissatisfaction and a desire for continued tenancy. The warranty of habitability's remedy is to allow tenants to use their rent as a means to force the landlord to repair the property, thus reducing the tenant's dissatisfaction.

When the pro-tenant judge specifically addressed these principles in the context of Pugh v. Holmes (1979) in our interview, it was the only time I observed a Landlord-Tenant Court judge specifically address this landlord and tenant law. The judge's interpretation indicates that while the warranty of habitability may have adjusted the law as practiced in Landlord-Tenant Court, it did not affect the core principles of *caveat emptor*.

Pugh doesn't protect tenants – it just gives a rebate. I don't know what to do if a tenant isn't paying rent.... It may not be fair to tenants, and I don't know what CLS [Community Legal Services] will say about having other reasons for not paying rent. Nobody expressed these to me; I don't know what is going through their heads. Not paying rent, there's no real reason.

I don't have any suggestion to keep a tenant who is not paying rent. I'll give a rebate if the place is not up to standards, they can pay and stay, but if the place is uninhabitable, I get them out of there. If they're not paying rent, I must toss them. It's one-sided, and I don't know how you would create a happy medium, to swing the pendulum. I have a gut feeling based on personal prejudice, empathy, and feeling that it's a shame for these people.... A lot of tenants thought that if they had a problem, they didn't have to pay rent. Their apartment wasn't uninhabitable; if the ceiling was leaking, they are entitled for a rebate, not to not pay rent. It's not up to L & I regulations. It's a big misconception. Big and small landlords also don't know the law, and tenants don't either (Interview Notes).

The landlord's breach of not maintaining the property supersedes the tenant's breach of not paying rent, except to the extent that a rental rebate can be offered to the tenant. This rebate, however, has no effect on eviction; awarding possession to the tenant by disallowing eviction by a landlord whose property is substandard is out of the question in L-T Court.

In fact, in an echo of Judge "J's" statement, if the apartment is in such bad shape as to be completely unlivable, the tenant should be evicted for the sake of his or her own welfare. In the words of Judge "D," "if you were dumb enough to not know what was in your best interest, it was incumbent on me to make the decision for them. Health has to be the major concern, not avoiding paying rent" (Interview Notes). Withholding rent, in this view, is synonymous with irresponsible avoidance and is fundamentally decoupled from the landlord's responsibility for maintaining the condition of the rental property. The law Judge "D" refers to is not written law, but the law as practiced in Landlord-Tenant Court.

A final legal case heard in front of Judge "I," the judge with the second highest pro-landlord verdict rate who heard Singleton v. Zephyr Properties, illustrates the L-T

Court policy on the warranty of habitability and eviction. In this case the tenant testified that the reason she had not paid her rent was that her landlord had failed to repair a roof that leaked into her bedroom and she was withholding the rent until he did so. She had to throw out her mattress set and had been sleeping on her living room couch for months. The judge took off \$1,300 from the complaint and gave possession of the property back to the landlord:

Judge "I": So, that's a substantial reduction in terms of the two rooms that you, essentially, was put on – he's requesting \$1,648.00.

Tenant: Can I say something, Your Honor?

Judge "I": No, you cannot. Well, you – do you expect to not pay anything, ma'am?

Tenant: No. I wasn't saying that. I was holding my rent – I told him before, I had no problem with staying there. I just wanted my stuff to get fixed.... I go to work every day, I'm a single parent. And I paid him up until I was supposed to and I have gotten no satisfaction from this roof, yet (Transcript).

Judge "T" almost did not let the tenant articulate her warranty of habitability defense, and once he did it had no apparent effect on his verdict. Though the tenant made no specific reference to case or statutory law, she clearly aligned her argument with the framework established by Pugh v. Holmes (1979).

Trial Participant Satisfaction

The two different sources of Mr. Singleton and Ms. Doubleday's dissatisfaction were L-T Court's procedures and lack of substantive law, respectively. With some exceptions, litigants generally expressed dissatisfaction at the various rules of the court and attorneys generally expressed dissatisfaction with the lack of substantive law application. Another attorney who represented tenants echoed Ms. Doubleday's sentiment while describing a case in which a tenant was evicted before being given a

trial:

It's not like it's about the law, applying specific legal principles. The fact that the Municipal Court didn't give the tenant a hearing until four days after she was evicted didn't matter at all... One judge said from the bench, 'It's my philosophy that if a tenant and landlord can't get along, then they should be separated.' It's as if he thinks he's doing them a favor (Field Notes).

Judge "C's" statements above indicate that at least one judge does in fact think that evicting tenants from sub-standard housing is promoting their well being. Even though tenant attorneys dramatically improve their clients' chances in Landlord-Tenant Court, they still face considerable institutional obstacles forwarding their clients' interest.

While the legal obstacles may be relatively subtle from a litigant's perspective, litigants experience procedural obstacles in all too obvious ways. Mr. Singleton expressed his frustration with the authoritarian climate established by courtroom tipstaves. The zeal with which some court staff members apply the somewhat anachronistic court rules is impressive. In one instance, a tipstaff spoke loudly to a litigant who had entered the courtroom after the roll call began and who appeared not to know that he was entering a court that was in session. This is not unusual given that the courtroom has few obvious courtroom symbols that might cue nervous litigants that they are entering a formal proceeding.

Tipstaff: Sir, court has begun – take a seat until your name is called.

Litigant: But I was told to come...

Tipstaff: Take a seat and be quiet. And take off your hat – this is a courtroom (Field Notes).

By the time this litigant (who appeared to be a tenant based on the tenant's copy of a landlord-tenant complaint that he held) sat down, he appeared thoroughly cowed by the

tipstaff's harsh expression of authority.

Other litigants are less intimidated, and I observed many who swore at the tipstaff or trial commissioner after being told how to behave in the courtroom. Another observer who sat in on another roll call presided over by this tipstaff looked at me in amazement and said, "She's a Nazi!" This same tipstaff once threatened a tenant with being thrown in a jail cell if she did not cease interrupting the judge and landlord in the course of a trial. Other tipstaves are less authoritarian, and I observed some who informed litigants of the courtroom's expectations of their behavior more respectfully and gently. Still, even a gently stated request could carry hostile implications. One of the most commonly enforced court rules was to tell litigants to take their hands out of their pockets. Although no explanation is given for this directive, it appears to be closely related to the tipstaves' focus on preventing weapons from entering the courtroom. Being told by a court officer to keep one's hands in view must evoke the feeling that one is in a criminal proceeding rather than a participant in a civil trial and is being treated as potentially violent.

In fact, Municipal Court judges and some of the tipstaves also serve in criminal Municipal Court hearings, which are held in the Criminal Justice Center where the threat of violence is more apparent. Landlord-tenant appeals are heard in the Criminal Justice Center, and the day before I observed one of the appeals a criminal defendant stabbed a police officer multiple times with a sharp object. The threat of violence is real in L-T Court as well: I observed one tenant nearly coming to blows with his landlord, and the tipstaves and sheriff had to separate them and escort the tenant out of the building. Until part-way through the study, a picture of the former President Judge standing over a table

overflowing with confiscated weapons hung next to the metal detector as a constant reminder of this threat as well as court surveillance.

Not all of the court staff's actions that produce dissatisfaction among trial participants are as explicit as those described above. Like any modern apartment, Landlord-Tenant Court has a thermostat that regulates the temperature for that courtroom only. When I was observing trials in the summer, I began to wear warm clothes in spite of the high temperatures outside of the Municipal Court building because the courtroom temperature was so cool. I commented to a staff member about this, who explained that another staff member liked to lower the temperature in L-T Court. When I asked this second staff member if she kept it cold, she replied, "Yeah, I like it cold because it moves things along. They wear these skimpy little outfits and don't want to stay in the courtroom, so they'll leave. They should wear more clothes" (Field Notes). Though this staff member did not specify whom she was referring to, my observations indicated that those who wore cooler clothes tended to be tenants while landlords tended to wear long pants and shirts and attorneys always wore suits. Since litigants have to wait in the courtroom through the roll call, a period between roll call and hearings, and other hearings before getting their own case heard, leaving the courtroom is synonymous with settling the case. The strategy effectively met the court's goal of efficient processing of landlord-tenant cases but generated ample dissatisfaction for everyone not formally dressed (which excluded attorneys, judges, and court staff).

Pre-Trial Dispositions

Defaulting Litigants

The procedure by which litigants default on their cases is unique to L-T Court, and also creates a significant amount of trial participant dissatisfaction. In every other Municipal Court courtroom (observations were made of each of the other five courtrooms and L & I Court), litigants are given a grace period of anywhere between fifteen and thirty minutes to check in with the tipstaff or trial commissioner before the judge starts trying cases. Even if a litigant enters the courtroom after hearings have begun and the litigant's case has not been called, he or she might avoid a default judgment. In Landlord-Tenant Court, by contrast, there is no margin of error and the price for lateness even by a minute can be drastic. At the end of the list the tipstaff asks those who did not hear their name to queue up, and they are each told the amount of their default judgment or that their case was dismissed, and given information about filing a petition to open their case. One observed case began with a petition to open brought by an attorney who explained that he and his landlord clients missed their hearing because they were caught in traffic. According to the docket, the landlord's name was called at 9:07AM.

The reasons tenants gave me for being late to court varied greatly, ranging from calendar mix-ups to parking problems. None of the litigants reported receiving information that they would default on the case if they were late. This means that they had not read or understood the complaint, which states, "IMPORTANT NOTICE TO THE DEFENDANT. You have been sued in court. If you wish to defend against the claims set forth, you must appear at the date, time and place as shown. You are warned

Table 32: Post-Default Interviews

Questions:

- | | |
|------------------------------------------------------------------------|----------------------------------------------------------------------------|
| 1. Did you know you would default if you did not arrive at 9AM or 1PM? | 4. Why did you arrive at that time? |
| 2. Did you get any information about that before the trial? | 5. Have you had experience in other courts in which there were roll calls? |
| 3. What time did you arrive? | 6. What will you do next? |

Interview Method	Race and Gender	#1	#2	#3	#4	#5	#6
A. Informal	Tenant	--	--	--	I got my days mixed up.	--	--
B. Informal	Tenant	No	--	--	Called court to say I was late, told to come and see if the landlord came. He did, and I lost the case.	--	--
C. Protocol	Black Male and Black Female Tenants	No	No	9:30	Missing	First trial experience.	Missing.
D. Protocol	Black Male Tenant	No	No	10:00	Transportation problems, thought trial at 9:30.	Missing	Missing.
E. Protocol	Black Male Tenant	No	No	10:15	Came from NJ and couldn't find parking	Criminal Court, if late for roll call, announce and they'll find a slot for you. Expected the same.	Move in 21 days, didn't know about Petition to Open, thought would cost money (went through papers, only \$10), thanks for enlightening.
F. Protocol	Black Female and Black Male Tenants	No	No	10:05	Didn't have paper work, had to rely on landlord for time, already 8:30AM when left.	First experience.	Look for another place
G. Protocol	Black Male Landlord	Yes	No	9:02	For this situation, I would be there for an hour anyway.	No. Only deal with this court primarily.	Drop the case. I won't get the money anyway.

that if you fail to appear, the case may proceed without you and a judgment may be entered against you by the Court....” At the least, litigants did not understand that the “Notice to Defend” meant that L-T Court tolerates no excuses for lateness – even minutes. It may also mean that litigants did not receive an explanatory brochure that is sometimes sent out with the complaints (only some of the court’s case files I reviewed had a brochure in them). The tenant who had parking difficulties (Litigant “E”) expected the Court to accommodate him as he had previously experienced in Criminal Court, though he was over an hour late to the hearing. I would hypothesize that expectations about accommodating lateness based on experiences in other courtrooms explain a substantial portion of default behavior.

Finally, additional comments by the one landlord I interviewed (litigant “G”) are worth highlighting. He knew about the lateness policy because he had represented himself previously in L-T Court. He arrived two minutes after the session started.

The defendant had a lawyer, and lawyers go first so they called my name right away. Known attorneys will be late – if I was a lawyer they probably would have let me proceed. Lawyers get all the privileges, and everyone else has to wait. It’s ridiculous, they should wait too because we’re penalized because we’re not lawyers. The courts are run by lawyers, who are in cahoots with other lawyers. They say to hell with citizens (Interview Notes).

This landlord’s comments touched on the themes of favoritism towards attorneys, particularly those that are repeat players or “known” in the courtroom. The status of an attorney has advantages during pre-trial as well as trial procedures.

Table 33: Post-Settlement Interviews

Questions:

- | | |
|-------------------------------------------------------------------|-------------------------------------------------------|
| 1. Why did you decide to settle the case rather than go to trial? | 4. Did you consider hiring an attorney for this case? |
| 2. Is this your first experience in landlord-tenant court? | 5. What was your experience in the negotiations? |
| 3. Have you had experience in other courts? | 6. What will you do next? |

Race, Gender	#1	#2	#3	#4	#5	#6
A. Black Woman	Judge was going to agree with landlord.	Yes	Yes ^a	Yes. Didn't have enough for attorney, did not qualify for legal aid.	Not happy. A Section 8 tenant, no help from HUD to prove rent.	Have to find another place. Will pay amount right away.
B. HispanicMan, Portuguese Woman (ESL)	We weren't told we could go in front of a judge.	Yes	No	No. That wouldn't have helped.	We showed our rent receipts. We paid the rent, but one check was canceled.	We'll stay after paying the rent. We were surprised to get the court date.
C. Black Man, Black Woman	We needed time – we're looking at another place.	Yes	Yes ^b	No. Tried to get in touch with Terants' Rights [sic].	Attorney was reasonable, doing landlord's dirty work.	We owe the money, and we'll be able to work it out for the next apartment.
D. Hispanic Woman (ESL)	Lonely for me to go to trial. Was without a job and unable to pay rent.	Yes	No	No. No need for an attorney.	Fine. Gave 21 days to settle with landlord. I was expecting less, like a week.	After pay off debt, will look for a house to buy for same amount as rent.
E. Black Woman	Computer glitch delayed disability payments. No sense to go to trial to get extended time.	No ^c	No	No. It's nothing serious, not like they will throw me out. I'm there for medical reasons.	OK. Went before a judge before. He told the landlord's attorney to be lenient and decided in my favor.	I plan to stay. This doesn't have any effect on the landlord tenant relationship.

^a "I went to court for child support. About the same, talked before trial to work it out."

^b "Custody Court. It's entirely different."

^c "Third time negotiating to extend lease."

Settling Litigants

Physically, the settlement “Booth Area” is kind of an institutionalized hallway. It is constructed as if the hallway deals that used to take place in City Hall have been enclosed and brought at least partially into the fold of the court. Trial Commissioners do not offer a mediator to tenants when the landlord is represented by an attorney, even when tenants specifically request a mediator. Litigants “B” both spoke English with an accent, which may have been a factor in their ignorance about being able to go in front of a judge. Whatever the reason, the existence of litigants who do not understand such a basic right is problematic for any court system. Litigant “E’s” experience demonstrates that at least some settlements have become routine for tenants and landlords or their attorneys. She and her landlord appear to have adapted their relationship to the cycles of health and illness that affect her ability to pay rent. That this equilibrium lies so close to eviction seemed to be of little concern to her. Finally, litigant “D’s” avoidance of the feelings of loneliness she felt in front of a judge poignantly express the vulnerability of *pro se* tenants, many of whom are struggling with job loss and other financial distress. Her happiness with the time she was allowed to take to move is also poignant, because it is the minimum time allowed.

Mediating Litigants

Those cases that are not disposed of by default or lack of prosecution, settled with an attorney, or come to trial are resolved via settlement with a mediator. A court staff member pointed towards the potential advantages of mediation for all litigants:

Table 34: Post-Mediation Interviews

Questions:

1. Why did you decide to settle the case in mediation?
2. Is this your first experience in landlord-tenant court?
3. Have you had experience in other courts?
4. Did you consider hiring an attorney for this case?
5. What was your experience in the mediation?
6. What will you do next?

Race, Gender	#1	#2	#3	#4	#5	#6
A. Black Male Tenant	Wasn't ready to move right away and I had nothing to lose. The judge told us to go into mediation.	No	No (Jury Duty)	Have an attorney who tells me what to do in court. He could come to court if it was important.	Mediators were good, though they tended to lean towards the landlord. My pictures helped my case.	Judge forced landlord to give me back \$1,500. I'll stay in the apartment.
B. White Woman Tenant Sub-letting Apartment	Trial was a back up to mediation, and decision is more binding than in court.	Yes	No (Jury Duty)	No. Sub-lessee only owes \$900. Legal aid would not take case.	Mediators were calm and reassuring even though sub-lessee was whining.	Will sign an agreement if I sub-let in the future.
C. Landlord	Mediation was binding – it had to have the same legal effect for me to use it.	Yes	No ^a	No. Not necessary. Mediator was a lawyer.	Mediator was professional and balanced.	Wait for date tenant has to vacate, and hopefully they won't be there. Can come back to court if they are still there.
E. Black Female and Black Male Tenants	Sometimes can solve it before going to court. They kept our security deposit and we won most back through mediation.	Yes	No	No. We knew we had enough evidence. We hired a private contractor and called the city.	We had a good experience. After we explained the situation, they agreed to pay what they owed.	We're no longer in the property.

^a"I had a case in Family Court. I found the judge's power to be upsetting, and I got very emotional."

If you just watch cases in the courtroom, you won't understand the whole case. For instance, this one tenant who was very professionally dressed and seemed to know her case well made some good arguments in mediation. Both parties made their arguments, but she and her landlord didn't arrive at an agreement, and had their case heard in front of the judge. She didn't make any of the arguments she made in mediation and lost her case. I was there, and later told the judge what the fact pattern was in mediation. He said, 'I didn't hear that case,' and said that if she had made the same arguments it would have been a slam-dunk in her favor. The judge can't be expected to make her argument for her, so she would have done better in mediation (Field Notes).

Mediation has its disadvantages, however, primarily based on the fact that the settlement process is irrevocably linked to the trial process. If the trials favor one side, then the mediation process will also be skewed because *pro se* landlords may know that they are more likely to win and *pro se* tenants may know that they are more likely to lose if their case goes before a judge. This linkage was evident in the settlement data, in which litigant A, a tenant, stated that she chose settlement because the judge was pre-disposed to deciding against her.

Despite this potential, the litigants I interviewed who had arrived at mediated settlements were uniformly satisfied with their experience in mediation. Litigant "A" described the collaboration between the judge and mediation unit that resulted in the return of \$1,500 to him. The mediators were "good," "calm and reassuring," and "professional and balanced." One particularly interesting experience was related by litigant B, a tenant who sub-let her apartment for two months and was suing the sub-tenant for unpaid rent and bills. She found herself in the peculiar position of being both landlord and tenant of the same property. One consequence of this was that CLS would not take her case because it represented a conflict of interest due to her position as a landlord in the case that she was pursuing. Though she had difficulty obtaining legal

counsel, she found mediation to be satisfying and was impressed with the way the mediator handled the “whining” of her sub-tenant.

A final observation of all three sets of data on litigants who defaulted, settled, or mediated their cases is worth noting: of the seventeen people I spoke with and recorded their race, only one was White. The high number of Black *pro se* litigants that settle their cases with landlord attorneys has already been mentioned in the pre-trial discussion in Chapter 4. This may be related to an association between race, lower income, and reliance on large apartment complexes that charge small rents for housing. These large developments often use bulk filing landlord attorneys to try their landlord-tenant cases. Although further research would be needed, the pattern may also relate to an association between race and ethnicity and litigant choice between adjudication options (Rack, 1997).

Singleton v. Zephyr Properties was as simple a trial as possible. It involved no actual tenancy, no pre-trial negotiations, and no ongoing relationship. In spite of that, the tenant plaintiff consulted with Community Legal Services before filing his case, revealing an organizational relationship between Municipal Court and this legal aid organization. Also, underlying Ms. Doubleday’s frustration with the judge’s lack of adherence to law is a large set of relationships connecting Landlord-Tenant Court with the organizations that create the law the court is supposed to apply. The state legislature and the courts have established a legal framework that, in the view of this landlord attorney, the judiciary is not heeding. The nature of this relationship between L-T Court and legal and political government organizations will become clearer as the next cases increasingly illustrate interorganizational dynamics.

6

Case Analysis #2: Pendleton v. Fortune

This next case brings into view two organizations that have a close statutory relationship with Landlord-Tenant Court but a distant actual relationship: the Philadelphia Department of Licenses and Inspections and the Philadelphia Department of Health. Because Case Analysis #3 more extensively involves L & I, that relationship will be analyzed extensively in the next chapter (Chapter 7). Chapter 6 will highlight L-T Court's relationship with the Department of Health and the local and federal governmental actions designed to reduce the threat of lead paint contamination to residents of old buildings. As mentioned in the previous chapter, all law is produced and carried out by legislative, judicial, and administrative decision-making forums and organizations so that any law Landlord-Tenant Court is mandated to enforce creates a relationship between the court and these other entities.

Unlike Singleton v. Zephyr Properties, this second case involves a landlord-tenant relationship with a history that includes a previous lawsuit and mediated settlement. In that previous case, the tenant sued the landlord for failure to return his security deposit; in this case, the landlord sued for eviction on the basis of breach. This case analysis focuses on the following themes: *Court Staff*, *Landlord Decision-making*, and *Lead Contamination*.

The Landlord: Charles Fortune

Charles Fortune once hired an attorney who accompanied him in mediation with a "tenant from hell," and did not think that he got much out of the \$300 it took to hire the

eviction specialist. He didn't want to be "used and abused" by an attorney again and it "wasn't too difficult" to use what knowledge he had picked up about the legal system to his advantage (Interview Notes). Besides, his previous tenant did all of the work for him in mediation, "cussing and hollering" so much that the mediation staff was laughing about it. He signed an agreement with her stipulating that she would leave the apartment and pay an additional two months rent, neither of which he ever saw.

By the time he sued Darcy Pendleton for eviction, he was confident about representing himself in mediation. He got the result he wanted: she also agreed to leave, and to use \$200 of her security deposit to cover the remaining half month of the agreed upon term. When she left, he estimated that she caused nearly \$900 in damages and excess water charges and so he could easily have kept all the deposit. Technically, he even could have sued her for balance of the damages. However he "wanted to be fair" (Transcript) and sent her a check for \$137. Now here was Ms. Pendleton suing him for the portion of the security he retained to cover the damages and excess water charges. "Tenants," Mr. Fortune said, "want all of the privileges and none of the responsibilities" (Interview Notes).

The Tenant: Darcy Pendleton

It seemed to Darcy Pendleton that Mr. Fortune was the one who was not acting responsibly. When she started renting from him, the apartment was "filthy, a mess" but he said that he would take only one month's rent as deposit. He further agreed to the apartment "exactly the way she wanted it" before collecting the other two months security (Interview Notes). Two months later, he still hadn't fixed it up and the Department of Licenses and Inspections came out to inspect the building.

The whole building was run down. [The inspector said] to me that [my landlord] was looking for better tenants and that the fire was arson. The apartment was in a complex of buildings, and the building on one side was burnt. They said that he did it for insurance money, and that he was being investigated for it – two hours after the fire, L & I was there investigating (Interview Notes).

One of the violations L & I had cited him for was a bathroom window that he said he would fix, but here he was refusing to return part of her security deposit so he could make window repairs. It was, she thought, a clear instance of a landlord stealing a tenant's money to make repairs he should have made when she was still living there.

When Ms. Pendleton presented a copy of the L & I violations to the court, they did not seem to help her case at all. Instead, Mr. Fortune blamed her for creating the damages, saying that he had used her security deposit to add bars to the windows after seeing her break into the building through a window when she had lost her keys. She wished he had added bars before she left, because one of her windows led right onto the roof and anyone could have easily gotten from the roof into her apartment. Furthermore, as she explained to the judge, the new lock she installed and Mr. Fortune was charging her to replace was to prevent him from coming into her apartment without her knowledge during the day. The excess water charges also were not her responsibility, in her view. Mr. Fortune did not require her neighbor, "a big guy," to pay for them even though he told her he thought her neighbor was also responsible for them. Mr. Fortune threatened her with eviction if she did not pay all of the water charges in a letter he slipped under her door. She was scared, and stated to me that if she became a landlord, her experience as a tenant would "help me understand their feelings without putting them out there and making them scared" (Interview Notes).

Ms. Pendleton had felt vulnerable during the mediation they used to resolve the first lawsuit. In fact, she felt similarly as she did when she was around Mr. Fortune. She directly associated this vulnerability with her lack of litigation experience: “I was so stupid, I didn’t have any pictures – I should have been like a lawyer. But there’s no reason to hire a lawyer, who’d try and bamboozle you out of more money.” Interestingly, though both *pro se* landlords and tenants saw themselves as at a disadvantage due to their lack of legal knowledge, they agreed that spending money on attorneys was not worth what they would get from an attorney’s services. In fact, the small amount of disputed money made the hiring of private attorneys completely unjustified to them. The existence of legal disputes over such small sums of money is one of the central reasons small claims courts were initiated in the first place so that litigants whose dispute was smaller than attorney’s fees could still have their dispute heard. In this respect, the case and its disposition demonstrates the court functioning at its peak.

The Verdict and Experiences of the Courtroom

The trial was very short (between five and ten minutes), and resulted in a finding for the plaintiff of \$134.50. Because the verdict was for just over half of the complaint, Ms. Pendleton won the case based on this study’s statistical definition of “win.” However, the money was less important to both Ms. Pendleton and Mr. Fortune than the principle of standing up for themselves. Based on that measure, they both felt they had won the case. Ms. Pendleton was satisfied with her verdict because she had become able “to speak up for myself. Now he ain’t nobody, just another person who owes me money” (Interview Notes). For Mr. Fortune’s part, he was satisfied with the verdict because he admitted to owing the \$100 judgment because he charged for water even though this was

not a specified expense in the lease. However, the rest was owed to him and the verdict proved to him that the tenant “just can’t run over me” (Interview Notes). In short, Ms. Pendleton won the case because she forced her landlord to pay money to her, but Mr. Fortune also won the case because he won everything but the portion of the claim he admitted to owing.²⁴ For these litigants the symbolic currency of preventing the other side from getting everything they wanted overshadowed the monetary currency being disputed.

Although landlord and tenant both left the courtroom with a basic sense of satisfaction with the verdict, their experiences of the hearing itself were divergent. Mr. Fortune felt that the judge accurately identified what was illegal vs. legal about his security deposit withholding and was a “reasonable guy.” Ms. Pendleton, on the other hand, felt like the judge

should have given me more time to talk. It was my case and I should have been able to explain everything that was going on rather than have him explain everything. He had chosen to settle with me before, and now it was my turn. A lawyer would have been able to advocate better – I was nervous and stressed. A lawyer could have handled that for me (Interview Notes).

The tendency for judges to treat the complaint as a *prima facie* case in which the plaintiff’s burden of proof is lowered to what the complaint alleges and the burden of proof shifts to the defendant is a disadvantage to *pro se* tenants both when they are

²⁴ This qualitative perspective on whether landlord or tenant provides insight into the complexities of people’s perception of victory, which Vidmar (1984) addressed and Conley and O’Barr (1990) studied extensively. While this perspective does not invalidate statistical findings that require a win/loss formulation for analysis, it does call for their cautionary assessment and their triangulation with other data and methods.

defendants and when they are plaintiffs. When they are defendants, they have difficulty presenting their case in the most effective light for themselves. When they are plaintiffs, they do not get the feeling that their case has been adequately heard. An attorney could have buffered Ms. Pendleton's emotions and translated her experience into a legally viable presentation of the facts and associated legal arguments. Interestingly, Mr. Fortune also discussed the importance of controlling his emotions during court proceedings: "Be cool, and don't react" (Interview Notes). Though this case was Mr. Fortune's first trial, he had taken tenants to court 15 times previously, which no doubt assisted his ability to maintain his composure during sometimes intense negotiations with his tenants. Attorneys repeatedly described their work in terms of being emotional buffers between their clients and the court.

Though Ms. Pendleton did not find herself being questioned by a landlord attorney aggressively prosecuting their case, she did find herself questioned by the tipstaff who appeared less than favorable to her side of the dispute. The phenomenon of court staff involvement in the trials themselves (in addition to the pre-trial procedures already described) appears to be a byproduct of the relaxed rules of small claims proceedings. It may also relate to the peculiarities of L-T Court's and landlord and tenant law's rules and procedures which motivates judges to rely on tipstaves as sources of information about how trials are run and decisions made.

The first interaction of the tipstaff in the proceedings was soon after the hearing began when Mr. Fortune was presenting a list of the deductions he made from her security deposit:

Tipstaff (to Ms. Pendleton): Keep you hands out of your pockets, please.

You want to look at that? Did you get that?

Ms. Pendleton: Yes, ma'am.

Tipstaff: OK (Transcript).

The instruction that litigants keep their hands out of their pockets is stated in a sharp, authoritarian manner, which implies that litigants were breaking a rule that they knew about to begin with. Such an interjection into the court proceedings must make it all that much more difficult for inexperienced litigants to make their case.

The other questions about whether the tenant had seen the landlord's evidence is closely aligned with the tipstaff's function of managing the transfer of evidence from the bar where the litigants stand to the bench where the judge sits. However, the tipstaff's next interjection occurred well outside of her functional role while the judge was reviewing pictures brought by Mr. Fortune to support testimony that the window repairs he made resulted from Ms. Pendleton's use of them:

Mr. Fortune: She went through the windows in the alley to get into her apartment because she didn't have any keys.

Judge: Do you recall doing that, ma'am?

Ms. Pendleton: Yes, I do recall doing that, but –

Tipstaff: Is that the window you went through?

Ms. Pendleton: No, it is not. That is, there were no, there were no bars on the window to my apartment so there were no bars for me to have to get through to get to the apartment. There were no bars on the window (Transcript).

The tipstaff's question interrupted Ms. Pendleton's testimony, which had been appropriately elicited by the judge, about the context surrounding her use of the window and its relation to the window repair deduction she was disputing. Furthermore, the judge asked his question in a relatively neutral tone, whereas the tipstaff asked her question in a relatively accusatory tone such as that sometimes taken by opposing counsel involved in

a cross-examination of a tenant witness. That the question was asked by a clerk at all, and that the judge allowed the clerk to examine the tenant, indicates a significant erosion of legal boundaries that does little to assist litigants in presenting their case.

From Mr. Fortune's point of view, he found little impediments in a court organization that greatly benefited his business. If he could not evict tenants, there was no way he could continue a line of work that had turned out to be less lucrative than he had initially believed. He used the legal knowledge he developed in L-T Court and by studying real estate to extend his ability to evict tenants beyond the limits of the law:

I'll bluff people, I will put them out illegally if I have to. If they know the law, then I might not.... [This] older guy respects law and order, so I didn't put him out. The younger guy I put his stuff out on the 28th during a leap year, and I forgot it was a leap year. He said he was ready to move the next day on the 29th, and he called the police. I was on the street and wondering if I should stay or leave. The tenant said he didn't have any other place to go. The policeman came up to us and said, 'That's an illegal lockout.' I decided to play dumb, 'I didn't know you couldn't evict someone this way.' The policeman said, 'I can take you to jail. Can you work this out?' I said to the tenant, 'Can you go to a hotel?' I gave him \$50 and he left (Interview Notes).

The laws protecting tenants from self-help evictions are meant to eliminate just this situation: a person going to a hotel with enough money for only one night's stay is as close to being homeless as it gets. Judges in Landlord-Tenant Court assertively uphold this tenant protection: one judge said to a landlord who testified that the police advised her to lock the tenant out, "We don't do self-help here" (Transcript). From Mr. Fortune's standpoint, though, self-help eviction strategies are necessary due to the prohibitive lengths of time it takes to evict someone: "Leases are stacked in favor of the tenants. If it takes 2-3 months to evict someone [trails off]... Where in the world can you take something off the shelf and then not pay them for it?" (Interview Notes). Many of the

eviction notices included in the court files are threatening. Combine this with tenants' ignorance of their right to contest the eviction in court (one tenant testified that she left because of the eviction notice), and it is likely that many of the disputes resolved through tenant compliance with threatening or illegal activity on behalf of landlords. On the other hand, many other landlord-tenant disputes are no doubt resolved in a relatively peaceful manner brought about by compassionate landlords. The decisions landlords face in their relationships with tenants is another theme.

One impediment to his business that Mr. Fortune did encounter was law related to lead paint contamination.

I know a lot of guys who buy houses, milk them, abandon them. The laws promote that kind of behavior. People are trying to make all that money. Take lead-based paint laws – it's the landlords who pay for it. Who gets stuck with it? The paint companies don't have to pay. If an apartment of mine is suspicious, I don't rent to families with kids under six. Why take a chance? If kids get lead poisoning, they'll look it over, and it can take \$5,000 to do the house all over again. There are those lawyers on TV asking people who have lead poisoning to call them. All you need is one case like that.... It's like dodging bullets, but sometimes you don't and you get caught.... All houses have lead, so landlords can't be the only ones responsible for renovating it. I rented this one place to a woman and her child, who got lead poisoning, and the health department inspected the apartment. It had been vacant for a year and I didn't want to rent to a little kid. It's now been vacant because I don't have the money to fix the lead problem (Interview Notes).

Currently, lead contamination is a public health hazard but there is not a public investment in solutions commensurate with the concern. In fact, the punitive nature of the related law with regard to the landlord makes for no guarantee that the lead paint will be abated and the building returned to the low-income housing market. The organizational dynamics relating to lead contamination law is another theme explored further below.

The Relationship

Ms. Pendleton was afraid that Mr. Fortune was pressuring her for more than simply money, given how often he made remarks about her clothes and when she entered and departed her apartment. After their court agreement,

he was too nice, telling me that I could have that key. I thought he wanted something more than money, like he was going to be nice not money hungry. Oh, you know, I led him on because I didn't want to get evicted.... I'm sure that if I had gotten romantically involved with him, he would have stopped asking me for more money for the water. He was married but didn't wear his ring, and his intuition was telling him that he found a good target (Interview Notes).

This was Ms. Pendleton's first time renting an apartment on her own, but she felt like she was "living at home – with him it was, he was always around. He was just like your parents: 'I know what time you came in.' I was scared to ask him to leave me alone. I didn't want to get kicked out" (Interview Notes). At one point he boasted to someone about knowing her, as if she were his possession.

Based on his statements to me in our interview, Mr. Fortune was indeed sexually interested in Ms. Pendleton and viewed her as someone he could readily control.

My thing is if a tenant scares me, I won't rent to them. If I feel intimidated, how will I collect rent? I only rent to people I can intimidate, or at least those with whom I have a mutual understanding. I've never had women who have physically intimidated me, but with women it's a different thing. Tight clothes, sexual type stuff, I sometimes get sidetracked.... The little lady in court, I rented to her and I didn't care what kind of [credit] report I got. And I did get a credit report. But if they don't pay rent, overnight they turn into witches (Interview Notes).

The gender dynamics of landlord-tenant relationships between male landlords and female tenants are muted in court where landlord-tenant dynamics predominate and where there is a strong presence of female attorneys, judges, and court staff. However, nearly a third

of landlord-tenant pairings between non-corporate landlords and their tenants fit the pattern of male landlord/female tenant. The power dynamics of landlord-tenant relationships combined with the power dynamics of male-female relationships make fertile ground for the kind of situation that developed between Mr. Fortune and Ms. Pendleton. The vulnerability of women tenants is compounded when their landlords are men.

Mr. Fortune and Ms. Pendleton found themselves in a relationship far more complicated than they probably realized, and they brought their dispute into a far more complicated legal forum than they probably realized (and did so twice, no less). Remarkably, though, they spoke of parallel experiences in their upbringing and their interest in the landlord business. Mr. Fortune's parents had tried landlording, but gave it up because they found it impossible to cope with non-paying tenants; Ms. Pendleton's parents had to leave the apartment she grew up in because of a dispute over unpaid water charges. Mr. Fortune became interested in the landlord business after listening to a television program about how to get rich by buying and renting out real estate; Ms. Pendleton was planning to be a landlord and was using videotapes about how to become a real estate investor. Mr. Fortune was very hopeful when he started the business, but faced long-term disappointment over the amount of work involved; Ms. Pendleton was looking forward to becoming a landlord so she could do a much better job than landlords like Mr. Fortune. Both treated their hearing as a learning experience: Mr. Fortune would adhere more closely to his motto, "The best way to evict a tenant is before renting to them" by selecting low risk tenants only; Ms. Pendleton planned to use a property manager after becoming a landlord and would "never pull rank" (Interview Notes).

Finally, both saw the result of the hearing as an important personal victory.

Themes

Court Staff

Trial Participation

The tipstaves' involvement in Pendleton v. Fortune was one of the strongest patterns that emerged over the course of the study. The degree and type of tipstaff involvement appeared related to the judge who was hearing the case. At only one time did a tipstaff's involvement earn a reprimand from the judge. During this case (the only one in the sample heard by this judge), the tipstaff interrupted the judge when he was in the process of stating an agreement figure for the landlord:

Judge: ...If I understand sir, you accept –

Tipstaff: Four thousand dollars.

Judge: Oh, no, no, no don't crier, don't do that.

Tipstaff: No?

Judge: No, don't do that, give me a second (Transcript).

In every other instance, the judge allows the tipstaff's interjection to stand without objection, and the tipstaff even provides testimony in some of the hearings. For example, during one hearing a tenant presented photographs of a damaged toilet to the judge. The judge gave the photos to the tipstaff to give to the plaintiff:

Judge: – you see the brown things around – you see the brown things around that?

Tipstaff: Rust...Around here [pointing to a photo]? It looks like rust – (Transcript)

In another case, the judge asks the tipstaff to interpret photographs. As a whole, this involvement appears routine and unremarkable to anyone involved in the proceedings. The practice was so routine that I was not fully aware of it until reading the trial

transcripts.

Unlike most instances, the tipstaff's involvement in this case as a kind of expert witness, able to give valid insight into photographic evidence, assisted the tenant's cause at a point where the judge was seeing an aspect of the tenant's case favorably. Tipstaves generally appear to follow the lead of the judges: since most of the time the judge is leaning towards the landlord's side of the case, the tipstaff typically assists the landlord's case. For example, during the next hearing, the tipstaff interrupted the landlord attorney's opening statement to admonish the tenant to listen to the attorney. The tipstaff then directed the tenant to remain still at the bar, which is actually a low bench and provides little clear physical guidance about how to situate oneself. The tipstaff also told the tenant not to speak to the landlord's attorney, which enforces the procedural requirement that litigants or attorneys examine the other side via questions but gives the impression to *pro se* litigants that they should not speak to their opponents at all. In another case the tipstaff asks the tenant if she escrowed the money, and when the tenant responded that she did not the tipstaff stated: "She don't have the money" (Transcript). Tipstaves appear quite comfortable in their role as judicial assistants, as indicated by this transcript record of the end of one hearing:

Tipstaff: You have possession as of today.

Landlord: As of today I'll get possession right? I can go in the apartment any time?

Tipstaff: No, you've got to read that paperwork and follow the law.

Landlord: Oh, okay.

Tipstaff: You can't go against the law (Transcript).

The impression tipstaves often give is that they are law enforcement officers rather than court clerks charged with a limited function to help keep order in the courtroom.

The greatest degree of tipstaff involvement I observed took place when a Senior Judge was substituting for the judge officially assigned to hear cases in Landlord-Tenant Court for that week (Senior Judges are typically used as substitutes). A landlord was suing a mother and a daughter for eviction and thousands of dollars of unpaid rent in back-to-back hearings. In the first hearing, the tenant defended herself against the eviction by offering evidence that she had paid all the rent, and the landlord waived the rent, saying, "I just want them out" (Transcript). The tipstaff repeated this statement to the judge, then interjected later, "He just wants possession," (Transcript). The tipstaff is responsible for recording the final disposition of each case, but seemed to be helping the judge who did not seem to be certain about how to dispose of the case. The judge ended the case with the statement to the tenant, "[Tenant's first name], there's been an agreement now and you're gonna leave. Possession, possession only." The tenant, in fact, never agreed to leave her apartment in exchange for the rent. The case ended with the tipstaff saying to the litigants, "You can leave." Typically, the tipstaff's efforts to end the case are stated with the same degree of authority that they use to enforce other court rules.

The second case between this landlord and the first tenant's daughter was the shortest one I observed, and took less than one minute to complete. The hearing actually began before the daughter reached the bar of the court as she walked up the aisle between the gallery benches, and proceeded with neither judge nor tipstaff pausing to swear her in. The judge asked the landlord what he wanted to do with this case, and the landlord stated that he did not want any money from this tenant either. Immediately following this statement, the tenant attempted to introduce evidence that the landlord had housing code

violations on the property. Though it is not clear to whom the tenant is referring when she says that “he told, they told me to give you this,” it would be reasonable to assume that the tenant got this advice either from a tenant advocate or from an L & I inspector. In either case, the tipstaff and judge apparently arrived at the same conclusion that her evidence was irrelevant because the landlord had waived the rent:

Tipstaff: Okay, he just wants possession. That has nothing to do with it.

Judge: He just wants possession.

Tenant: But they told me –

Judge: What did they tell you?

Tenant: To give this to you, the violations that he have there.

Landlord: I have –

Judge: Well, at any rate –

Tipstaff: Anyway, he just wants possession, he don't want no money from you so that's not necessary.

Tenant: Okay.

Judge: All right, you – all right, judgment for possession only...(Transcript).

The evidence of poor housing conditions was never reviewed, and neither the tenant nor the landlord was asked for testimony. Instead, the configuration of the *pro se* tenants, senior judge, aggressive tipstaff, and a landlord who waived his damages claim triggered the complete blurring between judge and tipstaff and set a central L-T Court policy in bold relief. The reason that contested possession cases explain so much about whether landlord or tenant wins the hearing is that the Court does not view poor housing conditions as a defense to eviction. The tipstaff, as an enforcer of court rules, was simply enforcing another L-T Court policy.

Statements About Landlords and Tenants

Just as judicial courtroom behavior follows from judges' stated views about landlords and tenants, court staff behavior also follows from court staff perceptions of

landlords and tenants. That the following tipstaff generalized from one “bad tenant” to all tenants is indicative of the pro-landlord sentiment among the court staff:

Tipstaff: I heard this one case in which a woman had ten children and she just hadn't paid her rent. First of all, no one has any business having ten children these days. Do you have children?

Researcher: Yes, I just had my second two weeks ago.

Tipstaff: They're expensive, aren't they?

Researcher: Yes, there are a lot of costs involved.

Tipstaff: Well, the judge told her that she had to leave, and she said, 'Where am I going to find another place that will take 10 kids?' She seemed completely unconcerned that she hadn't paid the rent. Why should tenants become dependents to landlords, who are private businessmen and who try to make a living? I maybe wouldn't feel so strongly about it if I hadn't had to work hard and pay for what I own. My family had three pretty successful businesses and they fell on hard times and it was hard – I had to work hard to get back to where I am (Field Notes).

The tipstaff's judgment about not paying rent is bundled with a judgment about having too many children, and his understanding of landlord-tenant disputes is framed in the context of his own experience. He had worked hard to maintain his own independence, so that non-paying tenants who are asking for an inappropriate dependency from their landlords are a personal affront to his own achievement.

I encountered this landlord orientation in various Municipal Court administrative offices. One staff member said after she hung up the phone after speaking with a tenant defendant,

Staff Member 1: I love it when people act for me on the phone. This one was coughing when she said that she had emphysema, and said that she had – 'cough, cough' – gotten three months behind in her rent. I thought, 'That's a lot of free rent, and that if I was her landlord I'd be trying to get her out, too.'

Staff Member 2: Yeah, I'd like to go three months without paying my mortgage.

Staff Member 1: It's amazing what they get away with.

Staff Member 2: If the shoe was on the other foot, I wonder what they would do (Field Notes).

Many tenants do not pay rent due to various life circumstances unprotected by their lease contract, and some of those that report these circumstances are no doubt lying about them in hope of gaining some mercy from the court. However, the value-laden stories about recalcitrant tenants were not balanced with stories about recalcitrant landlords. The two comments made to me about recalcitrant landlords by court staff were not generalized to all landlords: one court staff said that a landlord was crazy, and another implied that a landlord was exploiting his tenants.

Court staff seemed to be comprised largely of homeowners, all of whom faced paying a mortgage and some of whom were also landlords. For example, the above “Staff Member 1” told this story while continuing the above conversation:

Staff Member 1: My friend called, and she said you would not believe what those tenants did to the place. They ripped off cabinets, put things in the toilet. They owed three months rent, too. I told her at least she had gotten them out. Some get away without paying rent scot-free. It’s like that girl I had in that apartment. The only thing that saved us was the husband. She wouldn’t let us into the apartment – I don’t know what you are supposed to do if they don’t let in the landlord. When we went in, she was wearing what used to be white sweat pants, but they were so dirty that they were black. The children were living in there in terrible conditions, with infestations and all sorts of things. There was nothing we could do. We tried to get in there once, and she called the police on us, and they told us there was nothing they could do. The husband finally took away the kids, and they were such beautiful kids. The mother was using them as a tool (Field Notes).

It is understandable that if one of a staff member’s tenants is responsible for housing code violations and this experience is confirmed by other landlords, then the staff member would be prone to project this experience generally onto landlord-tenant disputes. I later spoke with this staff member about her experience, and she described her frustration at the amount of work she needed to do to remove the tenant for the sake of the children

living there as well as retaking possession of her property. She also discussed her own experience as a tenant in terms of how different her commitment to paying rent every month was from some of the tenants she encountered at court. Her pro-landlord sentiment was informed both by her experience as a landlord and as a tenant.

I observed a small group of staff comprised of a trial commissioner, a tipstaff, and an administrative assistant succinctly express the court staff's landlord orientation. The three staff members were discussing an item that someone left behind in a courtroom. They were joking about taking it home with them, and one said, "Possession is nine tenths of the law!" The comment was followed by hearty laughter as one of the staff members set the item aside in case someone claimed it. This spontaneous celebration of an aphorism that sums up the supremacy of ownership seemed to me to be a deep, cultural expression that reflected the organization's core norms concerning landlord and tenant issues.

Administrative Court Staff Assistance

In spite of the pro-landlord sentiment, the court staff's assistance to landlords and tenants appears to be relatively balanced. Though some tipstaves treat tenants harshly, other tipstaves treat tenants respectfully and provide useful advice about how to proceed after a hearing, as indicated in the previous chapter. I observed court staff members in the filing offices providing extensive assistance both to landlords and to tenants. In one instance a landlord returned to the Judgments and Petitions office numerous times due to confusion over how to file a landlord-tenant complaint. Though the clerks jockeyed to avoid repeating their advice to the landlord, the landlord was always addressed and appeared to finally leave with the understanding he needed. In another instance, a tenant

came to the office with a court order that contradicted what happened in her hearing. The supervisor of the office spent an hour assisting the tenant, speaking to the court recorders and judges in order to correct the information the tenant received.

The Court of Common Pleas' head clerk specifically prohibits court staff from giving legal advice. A sign posted between the First Filing and Judgments and Petitions Office reads: "BY ORDER OF THE PROTHONOTARY WE ARE PERMITTED TO GIVE PROCEDURAL ADVICE NOT LEGAL ADVICE." The distinction between procedural and legal advice is a slippery one, however, and court staff members in the various filing offices talked about sometimes providing legal assistance to both tenants and landlords:

We're not allowed to provide legal advice but could give advice about a procedure, filing, or required documentation. For instance, if they appeal, we can let them know that they need to go over to Common Pleas Court, but we can't tell them much more than that. For example, if the tenant is appealing a denial of a petition, they need to get an order from Common Pleas to stay the proceedings, but we're not allowed to say that. Sometimes we say you need a stay, but we're not supposed to say it. I used to tell people that all the time until I was advised by my boss that that was legal advice. You really need an attorney for appeals. We see some people all the time, but if I don't recognize someone, then I might tell them something in a round about way. For instance, both the Sheriff and Mr. ____ do execution [a judgment enforcement procedure], but since Mr. ____ does only landlord-tenant, he is a lot faster. I'm not allowed to say that, but I can emphasize that the Sheriff does everything and Mr. ____ only does landlord tenant. If someone asks me who is faster, I tell them that I don't know. You have to be careful because if I did suggest ____ and he wasn't faster, they could come back and bust you. The people who are the most on you are those who you've tried to go the extra mile for (Field Notes).

In the first instance, this court staff member was advising a tenant about a Court of Common Pleas procedure considered outside the realm of Municipal Court, even though the appeals procedure was directly related to the Municipal Court verdict. In the second

instance, the staff member was constrained to hinting at whether the public or private eviction services are faster because the landlord isn't required to use one or the other. The distinctions here between legal and procedural advice are difficult – both filing an appeal and processing an eviction are predominantly procedural in nature.

The discretion that court staff members in the filing offices use to make this distinction is significant, particularly given the expertise they develop in the course of providing their services. I spoke with another court staff member about making the legal/procedural distinction:

Researcher: Is it hard to distinguish between legal and procedural advice?

Court Staff: Very. The questions they [landlords] ask you, like “Can I cut off gas after 3 months?” It’s can I or should I? Legally they shouldn’t, but they’ve [tenants] left, really. It’s hard, because we have lawyers telling us things all the time and you get sucked in and find that you’re giving legal advice, and maybe bad advice.

Researcher: You must know a lot of law by now.

Court Staff: Yeah, you pick it up.

Researcher: Maybe the difference between you and lawyers is that they have the credentials to give out bad advice, and you don’t.

Court Staff: Yeah, I like that. We’re supposed to give advice just about what happens in this office.

Researcher: Keep it limited to what you do.

Court Staff: That’s right. The thing is, we have lawyers calling us all the time asking us if we’ll accept something. I think, ‘You tell me what we’ll accept, you’re the lawyer!’ That’s when it’s time to get a lawyer, when you’re paying someone to ask us questions. Give me a break. That happens a lot. Just the other day I had someone call up. They should be telling me what to accept, or make a legal argument about what we should accept. If they go higher than us, we’ll have to accept it (Field Notes).

When lawyers are seeking legal advice from court staff members, the distinction between procedural and legal advice becomes even more difficult to manage. The procedures that the filing offices are in charge of are all determined by statute or court rules as promulgated by the state Supreme Court, all of which are publicly accessible. This court

staff member's frustration seemed to be driven by the tendency of lawyers to approach their work from a bureaucratic rather than legal standpoint.

The tendency for court staff to get "sucked in" to providing legal assistance results in landlords or their attorneys receiving more extensive assistance from court staff than tenants. In the majority of cases heard in Landlord-Tenant Court, tenants are defendants, and tenants are always defendants in cases specifically designated for Landlord-Tenant Court. Unlike proceedings in higher courts, defendants in Municipal Court are not required to answer a complaint in order to avoid defaulting on their case. Instead, tenants defending themselves from eviction answer the complaint by making an appearance in Landlord-Tenant Court. Because this "answer" is not a filing, tenants are not given any advice on how to defend themselves whereas landlords who file the complaint receive extensive advice.

The following observation of back-to-back litigants seeking advice from a First Filing clerk who provided advice to *pro se* litigants illustrates this imbalance:

Tenant: I received this in the mail [holding up her copy of the complaint].
What do I do?

Clerk: I can't give you legal advice, but you can speak to people at this organization, the Tenant Action Group. They'll be able to help you.

Landlord: I want to evict my tenant. I've had it.

Clerk: Have you given notice?

Landlord: I haven't done anything but come here.

Clerk: Well, the first thing you need to do is give notice. You can do that by mail. Just write out a letter saying that the tenant needs to leave your apartment in ten days.

Landlord: Can I do that today?

Clerk: Yes, you can walk out and send the letter to your tenant, and if you bring back the receipt you can file your complaint.

Landlord: Thank you, that's what I'm going to do (Field Notes).

The tenant was provided no advice about her defense, including information about Landlord-Tenant Court's strict default procedure. As indicated previously, Landlord-Tenant Court is the only courtroom that does not allow some latitude to litigants arriving after the stated time of the hearing. Though the face of the complaint emphasizes the prospect of default, it does not specify that the court is unusually strict about its roll call procedure; only one of the six defaulted litigants I spoke with knew that if they did not appear at the beginning of roll call they risked losing their case. Though the lack of a required filing in response to the complaint was instituted presumably to make it easier for defendants, unique Landlord-Tenant Court proceedings have the perverse effect of reducing the amount of advice a tenant can receive from the court staff. This effect is aligned with the court's general pro-landlord orientation and its emphasis on reducing landlord-tenant trials to make the processing of disputes between landlords and tenants more efficient.

Landlord Decision-Making

Even when landlords do have ample funds to keep their property in good repair they also must make difficult decisions about how to run their businesses. A conversation with a pair of landlords who had just reacquainted themselves while filing eviction complaints against two of their tenants demonstrates two distinct approaches to being landlords while also illustrating the inherent difficulties in being a landlord.

Landlord B: How long until you give a vacate notice?

Landlord A: Rent is due on the first, and I send out letters on the 15th.

Landlord B: See! At a minimum, at a minimum, I let 60 days go by.

Landlord A: Sixty days! But by that time you don't have any security left.

Landlord B: I know, but I can't just get rid of these people. I get involved – they become like family.

Landlord A: And they probably count on that. The way I think about it,

I'm doing them a favor by kicking them out because they don't get the feeling that the world works in a certain way and they can just get by.

Researcher: The tough love approach.

Landlord A: Yeah, tough love. I like that. I give them tough love by kicking them out (kicks air with foot).

Landlord B: Well, I'm not depending on my rent for income. My thing is that I feel it's a blessing to have these properties and when I can get a benefit out of them, great, but these people need help.

Landlord A: See, you're as much of a social worker as a landlord!

Landlord B: That's true. I sit down with them and try to give them some direction. It's important to me – I have tenants for up to seven years, and I can't just get rid of these relationships. This tenant I'm here for has cancer, had one breast removed. She's 62 and knows what life is already (Field Notes).

Both landlords saw themselves as serving important social welfare needs, one by evicting people quickly to teach them lessons about life and the other by evicting people slowly in the hopes that he can help them figure out a way to stay in the property. Landlord A's hard-nosed business approach makes sense for a landlord who is depending on his tenant's rent to support himself, while Landlord B's social welfare approach makes sense for someone who is willing to take on rental losses to maintain long-term tenancies and build equity using the rental income he does collect. Though these landlords differed widely in their practical and ideological orientations to landlording, they both had their limits. Even Landlord B could not sustain a relationship with one of his tenants who was not paying enough rent and had just filed for her eviction even though he knew she had no place to go if he evicted her.

Lead Contamination

Mr. Fortune had found a tough opponent in Philadelphia's Department of Health. Lead contamination was raised only a handful of times in the cases I observed, but one of those cases represents a great deal about the experience of people in L-T Court and the

court's organizational context. The Residential Lead-based Paint Hazard Reduction Act was passed by Congress in 1992 and is administered by the Environmental Protection Agency and the Department of Housing and Urban Development. The Act requires landlords leasing properties built before 1978 to provide a prospective tenant with a brochure about lead-based paint, to disclose any known contamination in the property, and to include a standard warning about possible lead-paint contamination in the lease. The Act further enables local governments to enact more stringent disclosure requirements, and Philadelphia City Council passed its Lead Disclosure Ordinance to follow suit. The ordinance begins with the statement,

Forty-five percent (45%) of the Philadelphia children who were screened for lead poisoning in 1993 had levels of concern as defined by the Centers for Disease Control. This amounts to 22,302 children.... Environmental exposure to even low levels of lead increases a child's risk of developing permanent learning disabilities, reduced concentration and attentiveness, and behavior problems which may persist and adversely affect the child's chances for success in school and life. Exposure to higher levels of lead can cause mental retardation, seizures and death (Philadelphia City Code and Home Rule Charter, 6-801 in Gould, 2000).

The city also amended its Health Code to include an "anti-retaliation" ordinance that extends tenant protection to include a prohibition on eviction or attempted eviction, coercion to leave the property, changing of lease terms, re-renting of the property, and collecting rent until the lead has been abated (Gould, 2000). Municipal Court has established a collaborative system with the Department of Public Health to identify those cases that involve certified lead paint contamination in order to prevent them from being heard in L-T Court, but the system does not catch all of them.

In the observed case that got through this system, the tenants were a *pro se* Black

family and came to the bar of the court with their young child. They had clear difficulties presenting their lead contamination certification and began their case talking over each other and the White male judge. They also faced a judge who used the court's escrow policy in the same manner that other judges did, as a method of invalidating all tenant testimony regarding a warranty defense.

Judge: All right, you owe back rent, is that correct?

Female Tenant: No.

Judge: No? Why not?

Female Tenant: That (indiscernible) one, we got a statement stating we were withholding her rent because –

Judge: I can't hear you.

Female Tenant: We have a statement –

Male Tenant: We have a statement from Licenses and Inspections saying to withhold the rent –

Female Tenant: And the department –

Male Tenant: – because –

Judge: And did you put it into escrow?

Female Tenant: Excuse me?

Judge: Did you put the rent –

Female Tenant: They told us that we could save it –

Judge: Ma'am.

Female Tenant: – to move. Uh-huh?

Judge: Did you put the money in escrow?

Female Tenant: No, we saved our money.

Judge: Well then, I don't want to see anything from Licenses and Inspections (Transcript).

Eventually the tenants were able to get to the heart of their defense against their landlord's eviction and back-rent claim:

Female Tenant: Our house has lead in it and it's right here on this statement from here saying that our house –

Judge: Well then –

Female Tenant: – has lead in it.

Judge: – you should move.

Female Tenant: ...My baby right there when we moved into her house, her lead level was seventeen and now its twenty-four. That's a big difference (Transcript).

Her child's new lead level was, in fact, two and a half times the federally established level of concern (Gould, 2000).

After receiving no response from the judge about their main defense against eviction, the tenants catalogued the other problems with the apartment. These included broken bathroom fixtures including a toilet that had hot water running in it, trash left from previous tenants, a cracked door and nailed shut windows with no screens, rodent and insect infestations through holes in the walls, and no heat. The landlord testified that they would not let her make repairs and that they sent away two different contractors: "I said, 'Well, the best thing you can do is, you know, to move.' Because from January to now [August], I got no rent, no nothing" (Transcript). The judge entered a verdict for possession only, not awarding the landlord any of the \$4,375 that she was suing for, and told the tenants that they had to move in 20 days unless they appealed.

Female Tenant: We got to move in 20 days? I don't think that's right.

Judge: Well –

Female Tenant: Because how you going to ask us to move –

Male Tenant: Your Honor –

Female Tenant: – and the house is –

Judge: Listen –

Male Tenant: Your Honor –

Judge: You have the right to appeal.

Female Tenant: – is contaminated with lead.

Judge: She's [the clerk] going to give you a document. She [the landlord] doesn't feel it's right because she's not getting a money judgment.

Female Tenant: ...If the house has lead in it, why are we here?

Judge: I'm not your legal advisor. My advice is to go to Community Legal Services.

Female Tenant: Well we have –

Judge: My – listen, I cannot –

Female Tenant: – we've been there.

Male Tenant: We have been.

Judge: I'm done. This case is over (Transcript).

The judge's decision to waive the landlord's rental claims appeared to be cold comfort to

the family. The hearing took approximately 20 minutes and was the last case the judge heard that day. The case was not appealed, nor did the landlord file for either eviction writs.

It is not known whether these tenants returned to Community Legal Services, but it is clear that they could have used an attorney to argue their case. Not only was their testimony very difficult to follow, even accounting for the judge's interruptions, but also they did not effectively describe their major piece of evidence. There was a letter instructing them to withhold their rent attached to their court file, but it was from the Department of Public Health not the Department of Licenses and Inspections. It appears doubtful that the judge would have responded any differently if the tenants had referred to the correct city agency, but they would at least have had a better chance if they had a lawyer to properly enter the letter into evidence. The Public Health Department letter begins with very strong language about how the landlord and tenant must comply with the Department of Health's lead paint abatement policy:

The Health Department inspected the above referenced property and found that lead-based paint is creating a health hazard to your child. Your landlord has been ordered to eliminate the lead hazard within thirty (30) days.... You must permit your landlord's workers into the property to do the work during regular business hours.... Failure to cooperate with the landlord will result in action against you (File Copy).

The letter then uses equally strong language to describe the most stringent anti-eviction tenant remedies legislated by any body with jurisdiction over Philadelphia:

If the required work has not been done after thirty (30) days, the owner/agent is prohibited from collecting rent. It is illegal for the landlord to retaliate against you because there is lead in the home. Section 6-403 (5) of the Health code says your landlord cannot evict you through court action... (File Copy).

The letter lists the other forms of prohibited retaliation, and ends with an invitation to call the Environmental Health Inspectors if the parent/guardian has any questions. The letter's statement that the tenant's landlord is "prohibited" from collecting rent and that their eviction is "illegal" stands in stark contrast to their treatment by the judge. In fact, the judge's eviction ran contrary to both the Health Code and the basic tenets of Pugh v. Holmes (1979). The judge's complete abatement of the rent constituted a finding of full breach of the warranty and should have been accompanied by a denial of the landlord's request for possession until the property was repaired.

This case illustrated a second set of themes, the experience of two *pro se* litigants pitted against each other, and two organizations that are closely related to Landlord-Tenant Court in all but their actual relationship. The interpersonal layers that overlay landlord-tenant relationships and the organizational layers that overlay the decision-making forum designed to resolve landlord-tenant conflicts add complexity to both the relationships and the court. In a number of areas, judges appear to reduce this complexity in order to arrive at speedy verdicts often substantially removed from legal precedent.

Case Analysis #3: Sexton v. McGinnis

This case illustrates the intractable nature of Landlord-Tenant Court's relationship with the Department of Licenses & Inspections and introduces the relationship between it, Municipal Court, and the Court of Common Pleas. Both this and the final cases were appealed to this next court, which has its own set of procedures, customs, and rules. Both cases also spent a considerable amount of time in Municipal Court before their appeals, proving a longitudinal perspective on the trial participants' experience of Landlord-Tenant Court. An unusual feature of this chapter's case analysis is the inclusion of the judge's perspective on the hearing that I observed, which was one of three continuance hearings. I obtained transcripts for all four of the case's L-T Court hearings, so I will be referring to the three hearings I did not observe as well as the one I did observe. The sole ethnographic theme this chapter expands upon is the *Department of Licenses and Inspections* theme introduced earlier.

The Landlord: Elaine Sexton

Elaine Sexton gladly accepted Francie McGinnis' invitation to the apartment Ms. McGinnis was then renting. It did not seem so bad to Ms. Sexton and she didn't know why Ms. McGinnis wanted to leave it. But she did, and they discussed her moving into one of Ms. Sexton's apartments. Ms. Sexton found her interesting and she enjoyed the conversations they had. Little did she know that eleven months, four hearings, two attorneys, and one appeal later she would have only \$200 to show for Ms. McGinnis' tenancy. Of all the landlord-tenant relationships she had had, Ms. McGinnis' had "been

the most excruciating. She thinks she's right no matter what... Just check out people's stories thoroughly, because you never know. She's a manipulator who plays mind games." (Interview Notes).

For example, as Ms. Sexton related to me, she tried to make repairs to the property, but every time she tried to schedule them the times she offered were unacceptable to Ms. McGinnis. Ms. Sexton, consequently, could never find enough time to make the biggest repairs. Also, it was only after she gave Ms. McGinnis an eviction notice that Ms. McGinnis called L & I: "She says she's not vindictive, but after I sent her the eviction notice, then she calls L & I. That's not vindictive?" (Interview Notes). As Ms. Sexton stated to one of the four judges who heard the case (the first three were continuances), "Well, there is nothing in that place that makes it uninhabitable. Or if it were so terrible, [Francie McGinnis] would have moved... She has some peyotic [sic] fantasy that she's going to stay and not pay rent" (Transcript). She wondered if Ms. McGinnis had done this before to other landlords.

The Verdicts

Ms. Sexton asked for the first continuance because she felt sick. The second continuance was initiated by the judge who said they both should have lawyers, and the third was granted at the request of the attorney Ms. McGinnis hired. Ms. Sexton did what she could to argue against awarding a third continuance, thus requiring a fourth hearing, but it was to no avail.

I was very disappointed – I don't think they should have granted another continuance. I have hired lawyers in the past and am talking about [this case with] one now, but as I told you before I have a good opinion of myself and think that I can represent myself just as well as a lawyer. The judges do like to see lawyers so they can keep them around. Judges are

lawyers, too, so they want to keep the lawyer business healthy. It's the brotherhood of lawyers.... I have talked to a lawyer, but they don't want to get involved if it has already started. I had already talked to another one who said, 'Don't pay me.' He [the lawyer she consulted] said that I seemed to have a grasp of the issues and that that I should just represent myself. I'm going to jump for joy when she's out of the apartment (Interview Notes).

Ms. Sexton's emphasis on the role of attorneys appears to reflect a pattern: this granting of the continuance contributed to the statistical relationship between tenant attorney and positive tenant outcome. In fact, I had observed Judge Nemon, the judge who heard the third continuance hearing, express the view from the bench that he generally awarded continuance requests to attorneys.

The Judge: William Nemon

Judge Nemon clearly shared the belief with Ms. Sexton that if tenants are dissatisfied with their apartment, then they should move to another one they like better. The judge agreed with her comment that Francie should have moved if she didn't like the place:

Well, obviously, that is not possible. Even if the property – even if the property, Ms. [Sexton], as you already know, is not up to par, the best that this Court can do is to give her some kind of a rebate. You can't stay without paying rent just because the property is not exactly up to par (Transcript).

In spite of their common views on non-paying tenants, when she didn't agree to the judge's offer to exchange the back rent for possession, the judge granted the continuance. None of her many objections to giving Francie another three weeks of unpaid time in her apartment deterred the judge from making his decision. The judge's offer represents another example of splitting the verdict by awarding possession to the landlord and money to the tenant. Just as researchers sometimes ignore the differential importance of

eviction and rent, split verdicts like this ignore the same phenomenon.

After reviewing the transcript of the third trial, Judge Nemon thought that he had handled the case well.

I tried to resolve the issue. I was concerned that this had been three times continued, and the tenant may have been trying to play games. I tried to resolve it, but I don't know the outcome. I don't know whether I was being used, whether this was merely a ploy to avoid the unavoidable. If it's uninhabitable, they should have been able to come in and prove it (Interview Notes).

That Judge Nemon was wary that he was being duped but still decided to issue another continuance could be explained by the presence of the tenant's attorney in this case. The judge's continued assessment of the issues this case raised indicates that this case may have ended differently if the tenant did not retain an attorney after her second hearing.

The judge went on to state:

Tenants did this many times, and it happened with some that didn't even have any L & I violations. It bothered me, though I understood that they didn't know the system. I also suggested that they get the hell out of there. If they pay rent, pay rent to someplace that is habitable; if they don't pay the rent, they'll go to someplace that is habitable and get thrown out of there.... Some are smart enough to know that if it remains uninhabitable, they don't have to pay rent. Even if L & I found the place was uninhabitable, I tried to coax them out, but if I couldn't get you to go out I would have thrown you out... (Interview Notes).

The existence of poor housing conditions, with or without proof from L & I, was cause to leave the apartment rather than using rent to leverage repairs. For Judge Nemon, habitability and rental obligations were not mutual and any *pro se* tenant arguing this point would have faced what amounts to a summary judgment in favor of eviction.

The Tenant Attorney: Gary Oxholm

Gary Oxholm, Francie McGinnis' attorney, clearly felt that Francie received a better result because he represented her:

You're asking the wrong person – of course I think she did better with me. There are two things in this case: Francie didn't know the law, and she had no idea about the procedures and the law. She told me that one of the previous judges who heard the case was rude to her and said to both her and Ms. Sexton, "Shut up and get lawyers" (Transcript).

According to the trial transcript of the second hearing, Ms. McGinnis could definitely have used Mr. Oxholm's services earlier. A different judge presided over the second hearing (four judges heard this case in total). After she presented her extensive evidence and summarized the testimony her witnesses would provide, the following exchange took place:

Judge: Do you work?

Ms. McGinnis: Yes, I work. And I also –

Judge: Besides working you do all this...? For one year almost you've just sat there and, and haven't paid anything at all.

Ms. McGinnis: Well, because it came down to almost a power play. Why don't these L and I violations that I'm under the impression that, that you're not even allowed to do this in Court unless your violations are complied with.

Judge: Do you have a lawyer? Why don't you both get lawyers, I mean you can't –

Ms. Sexton: Your Honor, the –

Judge: – all you do is talk, talk, talk, talk, talk, talk, talk (Transcript).

Though exchanges I observed between judges and attorneys sometimes grew heated, none approached the level of disregard for point of view, trial preparation, and right to be heard than this. Ms. McGinnis did take the judge's advice, which was why she had an attorney for the third hearing. The experience of judges as they preside over highly emotional eviction cases is another theme explored below.

In Mr. Oxholm's view, the legal system is largely driven by economic considerations – litigants have to decide the extent to which they would invest money in defense of their principles. If one does not have money to pay for representation and cannot secure subsidized counsel, one faces an uphill battle.

Lawyers provide procedural and substantive knowledge and provide facts and assistance. I called the witness down and I gave a clearer presentation to the judge that covered evidence and testimony. The judge gives some presumptive validity to litigants who are represented by attorneys because it shows that they are paying for their principles and feel strongly about it (Interview Notes).

In the third continuance hearing, the judge may have applied this presumptive validity to his request for a continuance, determining that because an attorney made the request there is probably a good reason for it rather than being a way to buy the tenant more time.

Judges also appreciate the attorney's ability to present a coherent case relative to tenants who, in the words of the Judge Nemon, are in a "better position to make a presentation.... Tenants ramble, tell about their problems, going back to their grandparents..." (Interview Notes). As indicated by the statistical analysis tenants are at a distinct advantage when represented by an attorney in part because their testimony often does as much harm to their case as good.

As Mr. Oxholm experienced in the fourth and final trial, this advantage can be relatively insignificant when the hearing involves a decision on a contested eviction. In the fourth hearing he was able to win a rebate on the back rent Ms. McGinnis had escrowed, but, in his view, it didn't appropriately reflect the evidence and testimony he presented about the seriously unsafe housing conditions faced by his client.

I think Judge _____ [the fourth judge] could have done better. The law says that a lease includes an implied warranty of habitability that protects

the health, safety, and welfare of the occupant. In my view, [Ms. McGinnis'] apartment had some seriously unsafe conditions. The doors had locks that needed a key to get out, so that if there was a fire you would have had to fumble around for a key in order to get out. Also, the windows didn't have locks, and there were no smoke detectors. The floors were torn up and filled with staples, so that if you had to crawl along the floor during a fire, you would have gotten hurt. These are basic items that go to the safety of the occupant (Interview Notes).

In his view, only a significant reduction in the rent, and certainly more than the 20% reduction the judge gave, would have compensated his client for these dangerous conditions. What made matters worse, from Mr. Oxholm's perspective, was that the judge did not appear to be interested in the case Mr. Oxholm had presented:

I thought the judgment was high. The judge seemed to have a negative perception of the facts, like she didn't want to be bothered with them. My theory is that judges will generally hear more outlandish stories from tenants about why they haven't paid their rent, and will hear more non-meritorious arguments. This gives judges a jaundiced eye. I realized that the judge wouldn't look favorably on the facts when I mentioned code violations, and she snapped, "What evidence do you have?" I put a witness on the stand to testify to the code violations and we also had photographs. These were serious violations. If someone were to die, the case would be worth millions of dollars. What it comes down to is what is the value of the danger of death? (Interview Notes).

In this view, judges become acclimated to sifting through disorganized and often irrelevant *pro se* tenant testimony and apply this same lens to cases that are well-organized and based on meritorious legal arguments. When this dynamic takes place concerning properties with potentially life-threatening code violations, the results could be disastrous.

Based on the transcript, Mr. Oxholm's impression was accurate: the fourth judge seemed to share Judge Nemon's suspicion of tenants who use warranty of habitability strategies like withholding their rent to enforce repairs:

Judge: Why hasn't your client moved?

Mr. Oxholm: She was afraid that she would be sued for the term of the lease, Your Honor. She wants to move, she –

Judge: She wants to move since February but she hasn't moved? I don't buy that (Transcript).

Though Mr. Oxholm did not specifically refer to case law, he did observe the congruence between his case and the common law case that, in theory, holds ultimate binding authority over all cases being heard in Landlord-Tenant Court:

If you compare the defects between this case and Pugh v. Holmes, the defects are very similar. If the defects are true, it's up to me to establish them in court. The witness was a record-keeper at L & I who testified to the validity of the code violations. The judge brushed off the L&I evidence (Interview Notes).

When attorneys build support for an argument using common law, they seek cases that most closely resemble theirs and which have verdicts most closely aligned with their desired outcome for the new case. Having a single, Supreme Court decision that affirmed a Superior Court decision and which has not been challenged at the Superior or Supreme Court levels is gold when it comes to case law argumentation. It would be hard to find a case with the same level of congruence with Pugh v. Holmes (1979).

Mr. Oxholm also presented a competent, credible presentation of L & I violations – this was the only case included in the study where an official from L & I testified to the existence of unsafe conditions. Mr. Oxholm examined the witness thoroughly, asking him to detail the violations, and had him read into the record their conclusions:

'The continued existence of violations listed on this notice creates a hazard to the health and safety of the occupants, building and/or the public. These conditions constitute an emergency and must be corrected immediately. Failure to comply may result in the initiation of prosecution against the owner' (Transcript).

He had Ms. McGinnis testify about the code violations as well, prevented her from

presenting too many extraneous pieces of testimony, and had her interpret photographs of the code violations that she had taken. Finally, he examined Ms. Sexton and got her to testify that she had signed the complaint after checking the box next to the statement, “THERE ARE NO OUTSTANDING NOTICES OF L & I VIOLATIONS.” Ms. Sexton responded with her interpretation that this sentence was a part of the previous sentence that stated whether the subject premises is unfit: “...I am saying that it is not unfit and L & I has never said it was unfit. It’s a building worth over \$110,00, it was in excellent condition” (Transcript). Mr. Oxholm was never able to complete the examination, as the judge suddenly ended the case.

When the judge interrupted Mr. Oxholm’s examination of Ms. Sexton during the fourth and final hearing, her first statement reads as someone impatient with the proceedings and impatient to move on to the next case (based on the transcript – I did not observe this hearing). The judge brought the final Municipal Court hearing of this case to an end by saying, “All right, I’ve heard enough. I’m reducing the rent from \$475 to \$375 a month, that means the plaintiff gets a judgment for \$4,125 plus \$28.50 costs, she gets possession as of today and this is based on (A) non-payment of rent on a residential lease” (Transcript). By this point the case had lasted approximately 45 minutes, over three times the average hearing length included in the statistical sample. To Mr. Oxholm, losing the case was not the most important factor in how he felt about the decision:

All I want is a fair trial. I don’t mind losing, well, not that much, if I feel like the case I’ve presented was taken seriously and weighed as a part of the verdict. It drives me crazy when that doesn’t happen, when there is no intellectual validity to the judgment. This happens all too many times (Interview Notes).

Mr. Oxholm knew that the assignment of damages was a highly subjective matter, and

that particular judges would likely arrive at different money verdicts given their assessment of the value of the property after accounting for its unsafe conditions.

However, this judge appeared uninterested in the evidence he had presented and the legal arguments he had made. The court's lack of interest in much of the law judges are supposed to enforce clearly trumps the presumptive validity invested in attorneys.

The Tenant: Francie McGinnis

Francie McGinnis was also frustrated by the Court's lack of adherence to law and procedures, particularly in the context of the housing code violations. I asked her about her expectations of court:

To be fair, though I haven't seen it.... The injustice is striking. I thought the judge would be a better judge of character. They don't go by the law. From what I understand, this case should never have been accepted. She perjured herself by saying that she had no L & I violations, and she shouldn't be able to execute on this writ. The complaint form specifically asks whether there are outstanding L & I violations.... Nobody cares about the L & I violations. I had them sent to Court to get attached to the file, and the judge didn't even know they were there in the file. He obviously hadn't familiarized himself with any of the cases. I had called L & I in February, and they sent out people. None of their reports were factors in the case so far. You weren't there during the first trial when the judge almost found me in contempt of court. The judge didn't see the L & I violations, and when I pointed them out, he dismissed them. He also wouldn't look at my pictures, and said, "Why should I look at them?" I said, "Pictures are worth a thousand words, aren't they?" but he didn't want to look at them (Interview Notes).

The dismissal of the perjured claim and of L & I evidence go hand in glove – the perjured statement on the face of the complaint is about the existence of L & I violations. Perjury, in fact, is addressed on the face of the complaint as required by the Landlord Tenant Act. When a landlord or agent signs the complaint, he or she is completing the following statement: "I, _____, depose and say that the facts set forth in this complaint are true and

correct and acknowledge that I am subject to the penalties of 18 P.S. 4904 relating to Unsworn Falsifications to Authorities.” Though the Municipal Court filings, like its procedures, are stripped down, they are not stripped of the basic requirement that the complaint be truthful.

Ms. McGinnis put quite a bit of work into her case to get it as far as she did. Gary Oxholm stated that by the time she came into his office, she had “ten times the usual amount of evidence” (Interview Notes). By this time she had also found people within both the Department of Licenses and Inspections and Municipal Court who helped her get some of this evidence to her hearing:

L & I was wonderful. They met with me and helped me figure out how to get the reports over to Municipal Court. My landlady is known, she’s seasoned and knows how to play the game. I found a [Municipal Court] clerk who knew about her and helped me get through the proceeding (Interview Notes).

On two occasions I mentioned Elaine Sexton to Municipal Court staff in two different offices, and they both knew her. Whether or not her repeat player status accrues any advantages relative to landlords in general, Ms. Sexton certainly knows her way around the courthouse. I actually began my interview with her in courtroom 4-D where she was entering a default judgment against someone to whom she lent money. I then paused the interview to accompany her into another courtroom in which she was observing a case involving someone she was prosecuting for assault in the criminal side of Municipal Court. Ms. Sexton told me that going to court was her “favorite thing to do” (Field Notes).

The Warranty of Habitability and Eviction

In the end, though, neither Ms. Sexton's extensive court experience nor Ms. McGinnis' assistance from L & I staff, Municipal Court staff, and her attorney had a major impact on the trial. Both landlord and tenant attorney seemed to provoke substantial annoyance, Ms. Sexton because she was not following Landlord-Tenant Court rules and Mr. Oxholm because he was taking Court time by presenting evidence and making legal arguments. Though there was some uncertainty about how much of abatement in rent Ms. McGinnis would receive, her eviction appeared to be a foregone conclusion.

According to Pugh (1979), a finding for rental abatement can only take place after the judge finds that the landlord materially breached the lease and must be accompanied by a finding for continued possession by the tenant. In other words, Ms. McGinnis should not have been evicted, having won abatement from the judge. Pugh is unequivocal on the point that poor housing conditions can be used against both the damages and eviction components of the complaint (Birenger, 1999; Johnson, 2000). The Superior Court opined that "a tenant may assert a breach of the implied warranty of habitability as defense against a landlord's action for possession or for unpaid rent" (Pugh v. Holmes, 1979). Pugh specifically states that pre-warranty remedies such as constructive eviction were no longer acceptable as they required the tenant to vacate the premises, "a difficult, if not impossible requirement in times of low cost housing shortage" (Pugh v. Holmes, 1979). Though slightly less direct because Pugh dealt only with non-payment of rent, cases in which tenants are sued for termination only or in addition to non-payment of rent should also not be evicted if they receive a rental

abatement for the same reason (Johnson, 2000). Of the 100 tenants who were evicted in the statistical sample, 22 received a rental abatement expressly because the judge found that poor housing conditions existed. When cases in which the tenants waived their contest of possession are subtracted from this number, 14 cases remain in which the judge awarded both abatements based on a warranty defense and possession to the landlord.²⁵ These Municipal Court verdicts directly contradict a central tenet of a state Supreme Court decision that is supposed to guide all lower court landlord-tenant decisions.

The central tenets of laws that preceded Pugh (1979) and which were ostensibly overruled by Pugh, are still being applied in Landlord-Tenant Court. Ms. Sexton, Judge Nemon, and the final trial judge each make arguments that are apparently based on the Rent Withholding Act. The Supreme Court expressly rejected an argument by Mr. Pugh's attorney that the Act "pre-empted judicial development of common law landlord and tenant rights and remedies" (Johnson, 2000). The Court found the Act to be a part of a body of statutory and common law that supported the development of a clearly established warranty of habitability. Though congruent with Pugh, the Act's tenant remedies require prohibitive procedures that limit their effective application (summarized in Chapter 1). The L & I designation "unfit for human habitation" carries with it the presumption that the apartment is 100% uninhabitable. This places the tenants using a

²⁵ This number is conservative given that judges often reduce damages claims against tenants with no explanation of their reasoning. Furthermore, tenants who waive their right to contest the possession may be doing so without the knowledge that a successful argument for abatement of rent is the equivalent to a successful argument against termination.

Rent Withholding Act defense in a classic catch-22: the tenants must argue that they want to remain in possession of a property that they cannot live in. Also, there is currently only one official escrow agency in Philadelphia, and its management of escrow funds has been a source of concern.²⁶ Landlord-Tenant Court judges required that withheld rents be kept by the official escrow agency as late as 1996 when the last study on the court was conducted, though there was no observed reference to the Rent Withholding Act in explanation of the requirement (Eldridge, 1996).

The “unfit” designation component of the Rent Withholding Act is what Ms. Sexton appeared to be arguing when she stated that there was “nothing in that place that makes it uninhabitable” (Transcript). The Act might also lend support for her argument that the sentences about unfitness and L & I violations on the complaint are linked, and therefore she did not perjure herself because she knew that her violations did not constitute an unfitness designation. Judges routinely argue that if tenants are still living in an apartment, it is not 100% uninhabitable and therefore they face eviction if they withhold more rent than the apartment was worth. This applies the catch-22 described earlier, and which Pugh avoids by establishing a less stringent standard for determining a warranty breach.²⁷ Judge Nemon’s statement about being limited to giving Ms. McGinnis a rebate on the rent and having to evict her if she is not paying rent is an example of a holdover application of a statute that has been superseded by Pugh. The

²⁶ A tenant attorney I interviewed stated that the agency was subject to litigation based on the embezzlement of escrowed funds by one of its employees.

²⁷ Pugh does not address this catch-22 directly, but warranty cases in other states do. “According to Lemle v. Breeden (1973) notes that the abandonment requirement was based on ‘the absurd proposition, contrary to modern urban realities, that a tenant cannot claim uninhabitability, and at the same time continue to inhabit’” (Johnson, 2000).

final trial judge argued the other component of the Act when she demanded evidence about Ms. McGinnis' escrow account from Mr. Oxholm. Judges routinely dismiss warranty defenses for lack of an escrow account, even when the tenant presents L & I violations. Pugh makes no requirement that any kind of escrow account be established.²⁸

Theme

The Department of Licenses and Inspections

Although the Department of Licenses and Inspections is mandated to have a significant role in landlord-tenant disputes, its code system has no apparent effect on evictions in Landlord-Tenant Court. Presenting documented code violations does not prevent eviction, nor does the direct testimony of an L & I administrator, even when the landlord does not contest their existence or argue that the tenant caused them or is preventing their repair. Twice, tenants testified that someone at L & I instructed them to withhold their rent and they were evicted for non-payment of rent. In one, the tenant and judge had the following exchange:

Tenant: ...I went to Licenses and Inspections, like I said, I've got kids up in there. We had –

Judge: How about February, did you pay him any rent in February?

Tenant: No, sir.

Judge: Okay.

Tenant: 'Cause they told me not to.

Judge: Who – who is they?

Tenant: Licenses and Inspections.

Judge: Okay.

Tenant: They told me to put my money in escrow.

Judge: Have you got a document that says that?

Tenant: No, I don't. But they told me to put my money in escrow and that's what I was gonna do, put my money in escrow.... And

²⁸ An escrow account is probably advisable, though, as it may help withholding tenants distinguish themselves from non-paying tenants.

[Licenses & Inspections] – and the man come around my house this morning, before I came to court to see if he came and fixed anything, which he didn't. So, they plan on taking him to court, anyway, which he knows about it, 'cause he's gotten letters.

Landlord: Your Honor, I –

Judge: But see, that's – that's something else... (Transcript).

L & I was extraordinarily involved in this case. Not only did they inspect the property in the first place, suggest that the tenant exercise his right to withhold rent, and send someone to re-inspect the property the day before the trial, but they brought a suit against the landlord for failure to repair the property. The judge found that the landlord had “a lot of violations” and that the tenant could not have caused all of them in spite of the landlord's claim to that effect. The judge then took \$420 (or 40%) off the damages portion of the claim and gave possession to the landlord based on non-payment of rent.

If the hearing between L & I and this landlord came to trial, it would be held next door to L-T Court in courtroom 4-G. It is Municipal Court's only other specialized civil court and the disputes between L & I and landlords were originally considered a part of “Housing Court” along with private and public housing landlord-tenant trials that are held currently in Landlord-Tenant Court. Even at that time, however, landlord tenant and L & I cases were unrelated even though they may have dealt with the same property. This is the situation that the above judge was referring to when he said that the L & I suit was “something else.” It may be difficult to find a more pronounced example of organizational disassociation between two intimately related public agencies: a tenant can be evicted in Landlord-Tenant Court after presenting evidence of code violations that the landlord is being sued for in the neighboring courtroom. Even though the existence of L & I violations is the crux for both legal cases, there is no coordination of them by L & I

and Municipal Court nor is there coordination of them between the two specialized courtrooms. The cases are treated as autonomous and mutually independent.

This lack of coordination can have a deleterious effect on landlords as well as on tenants. I interviewed a brother and sister who had just spent their morning clearing up code violations that were issued for their two rental properties from which they had recently evicted their five tenants. They had inherited the properties when their father died, and the tenants they also inherited had not paid rent for the two years since their father's death.

Brother LL: ...My father rented to people for only a couple of hundred dollars – where else can you get that? But now they have discovered code violations, and they'll use those for months.

Sister LL: Months!?! How about years?

Brother LL: That's right, years.

Sister LL: ...We own three houses, and these tenants all lived in one of the houses. Their excuse for not paying was that the person who collected the rent had died. When I said I was their new landlord, they said, 'There's some problems – could you come back next week?' We'd clear those up, and lo and behold there would be some other violations that would appear. We got them put out, but two of the tenants appealed, but they got thrown out for lack of a case.... We didn't have to evict them because the police did – they were using drugs....

Researcher: What damages did they cause?

Sister: Pulling off a railing, the front step, a piece of wood out front that needed to be fixed. They weren't there before. If you have a lot of people there on drugs, there's bound to be a lot of damages (Field Notes).

If these landlords had been able to prove that the damages were caused by the tenants in Landlord-Tenant Court, they should have had the opportunity to also prove the same in L & I Court and not had to pay penalties for the damages on top of their loss of rental income.

There is little opportunity to contest the code violations in courtroom 4-G in any fashion, let alone take advantage of a previous trial that bears directly on whether landlord or tenant was responsible for L & I violations. The sister landlord continued:

They told us what violations we needed to repair.... The city doesn't help you out at all. They just say what you need to do and you have to do it. There isn't even a judge in that courtroom, just someone who tells you the violations you need to repair. The only option is to show up and sign the order. My attorney was there for that as well. It's too much – how can anyone be a landlord in Philadelphia? No one cares, the city doesn't do anything to help landlords, and the laws are all in favor of the tenants. One fine we got was for a case that was served to my dead father's former house. Of course we didn't get notice – they served a dead person, and now we have to pay \$1,000... (Field Notes).

Of the five sessions I observed in L & I Court, none of the cases were heard in front of the judge, and only once did I observe the judge who is routinely assigned to this courtroom anywhere near it. The experience as a whole was very discouraging to these novice landlords:

Researcher: Are you planning to continue being a landlord?

Landlord: No, it's too hard. If you get bad tenants, you're sunk. My brother has some properties with good tenants, and it's no problem. If you have bad tenants, though, the losses pile up.

Researcher: You're planning to sell your properties?

Landlord: Yes, it's just not worth it (Field Notes).

A lack of coordination between courts and institutions charged with enforcing housing codes can seriously threaten the small landlord's willingness and ability to keep their low-income housing on the market. In fact, the loss of habitable, low-income housing is ultimately more of a problem for tenants than landlords, who may suffer losses on the property but will most likely not face homelessness if they sell or abandon the property.

The coordination of landlord-tenant and housing code hearings was central to the original intent of Housing Court, at least from the perspective of tenant advocates. Even

before Housing Court was formed, Howe (1983) characterized Philadelphia's housing code enforcement system as balanced but inactive given that Municipal Court collaborated with L & I in case processing and management. The bifurcation of Housing Court into Landlord-Tenant Court and Licenses and Inspections Court made it more difficult for the organizations and courtrooms to bring together housing cases into a single, comprehensive system.

Because both Pendleton v. Fortune and Singleton v. Zephyr Properties were small claims cases, each claim could be nearly evenly divided between the litigants. The glass remains either half full, as seen by Mr. Fortune and Ms. Pendleton, or half empty, as seen by Mr. Singleton and Ms. Doubleday. However, a judge cannot split possession and Landlord-Tenant judges appear to treat possession cases as virtual summary judgments in favor of the landlord. Essentially, since the baby can't be split it reverts to the property owner rather than the tenant consumer. The warranty of habitability only affects the part of the case that can be split, which is the less important dimension to landlord-tenant cases. If landlords are allowed to evict tenants living in substantially substandard apartments and re-rent the apartment to another tenant, a major regulatory mechanism of the low-income housing stock is rendered impotent.

Case Analysis #4: Dennis v. Yes Housing, Inc.

This case is unusual in its complexity, scope, and duration. It originated in Landlord-Tenant Court as four complaints brought by four tenants in a wealthy neighborhood who sued their landlord for breaching the warranty of habitability. One of the tenants was an attorney, and he represented himself and his neighbors in these suits. The landlord then sued each of the tenants for possession and back rent, which the tenants were withholding. The final Municipal Court verdict found against the tenants on the original claim and for the landlords on the eviction claims. The tenants appealed both sets of verdicts, countersued on the eviction complaints at the Court of Common Pleas level, and sought arbitration, which is provided to qualifying cases under Common Pleas jurisdiction. The landlords sued the tenant attorney for interfering with their business, bringing the total number of lawsuits (including the counterclaim) to seventeen.

All the cases were consolidated and tried in a Common Pleas jury trial, for which both tenants and landlords retained new attorneys. The case then involved four tenants, one tenant attorney and a *pro se* tenant attorney, four landlords and property managers, and three landlord attorneys. The judge found for the landlords on eviction before the trial began, and the jury found for the tenants on the damages claims. Both parties appealed the portion of the verdict they lost to the Superior Court. As of this writing, this is where the case stands, a year and a half after the first court action. Two of the tenants have removed themselves from the suit and moved to different apartments, but the tenant who is an attorney and one of his neighbors continue to pursue the case. I chose as the

name of the case the tenant who is an attorney (Henry Dennis), though the lead case could be any one of the tenants and has changed at different points of the litigation.

This case extends the analysis of L-T Court's relationship with the Department of Licenses and Inspections and, obviously, the higher state court system. It also introduces the theme of the Court's relationship with Philadelphia's *Fair Housing Commission*. The Commission is designed to prevent retaliatory eviction whereby the landlord evicts a tenant in response to tenant complaints about housing conditions or involvement in a tenant organization. Finally, this chapter will end with a conclusion that places each of the four case analyses on an interorganizational continuum.

The Tenant/Tenant Attorney: Henry Dennis

Mr. Dennis was sure he would win his suits against his landlord, Yes Housing, Inc., which was owned by Nathan Twiname II, his wife, and their son, Nathan Twiname, III. "The law," Mr. Dennis said to me two days before his second hearing, "is on our side" (Field Notes). He was using Pugh v. Holmes (1979) to prove that he didn't have to escrow his rent while withholding it to enforce repairs to his apartment building. Mr. Dennis was also using retaliatory eviction both as a defense against his landlord's eviction claim and as an affirmative action to sue his landlord in Common Pleas Court. He considered himself to be a good litigator, and had successfully prosecuted and defended numerous clients in legal areas more complicated than landlord and tenant law. In fact, he had litigated some landlord-tenant cases and thought that he would do fine representing himself *pro se*.

He also thought he would do fine representing his three fellow tenants, all of whom had decided to sue their landlord for breaching the warranty of habitability and to

use him as their attorney. His first hearing, however, made him wonder if his legal arguments would prevail in Municipal Court and he was hopeful that the four new Common Pleas lawsuits he had filed could “knock the case out of Municipal Court and into Common Pleas Court” (Field Notes). The attorney who represented his landlord, Mr. Severeide, seemed to be getting “special treatment,” and he wanted the Municipal Court administrator to give him a change of venue.

The four new cases would bring the total number of cases between Mr. Dennis, the three other tenants he represented, and their landlords filed against each other to twelve – there would be four counterclaims, another new lawsuit, and an appeal of all the Municipal Court claims to come. Mr. Dennis had fired the first salvo, applying to Common Pleas for a Temporary Restraining Order (TRO) to force his landlord to cease their renovation of two vacant apartments in the building. There was nothing wrong with the renovations *per se*, but the construction crew created all sorts of filth and noise, they entered into the apartments without giving notice, and no one at Yes Housing coordinated the construction with them. He lost the TRO, and the landlord continued to do little about the effects of the construction or to repair the rest of the building. He had begun withholding his rent, putting it in a separate checking account, and calls to Licenses and Inspections revealed that there were two-year-old code violations on the property. A new L & I inspection revealed additional violations, and by the time four more months went by the other three tenants were ready to join him in filing suits in the Municipal Court against their landlord for damages resulting from his breach of the implied warranty of habitability. Thirty days later their landlord sued them for possession of their properties on the basis of the non-paid rent they were withholding.

Mr. Dennis was excited when I spoke with him on the day of their second hearing. One of the tenants was not there, but the eviction claims, he thought, contained false information and would not stand in court with or without all of his witnesses:

The complaints should be chucked. First, they lied on the complaint that they didn't have L & I violations. Second, since they do have L & I violations they shouldn't be able to evict us.... I expect to get their case thrown out. We'll get ours heard, and hopefully the judge will be fair.
(Interview Notes).

The violations went back to one about a wall that was in danger of collapsing, and the most recent ones concerned the lack of an adequate fire alarm system, a front door that would not shut properly, and problems with various windows and doors throughout the property. When the wall was recently re-inspected, its continued disrepair earned a letter (most violations are simply listed) that stated:

You are hereby notified that the DEPARTMENT OF LICENSES AND INSPECTIONS has considered the situation at the subject premises IMMINENTLY DANGEROUS within the meaning of the Philadelphia Property Maintenance Code PM-308.0 ID structures. You are hereby ordered to demolish or repair the premises.... THIS NOTICE IS FINAL
(File Copy).

Their landlords had also not provided heat numerous times in the two years that they had owned the property. What was unusual about their case, Mr. Dennis said, was that the property was located in a high rent area (the four tenants' rents ranged from \$1,110 to \$1,250) and was an eyesore that stuck out dramatically from the double-wide mansions that populated their block. They were unusually wealthy tenants using laws designed to protect low-income tenants.

Before Mr. Severeide, Yes Housing's attorney, began his rote recitation of the first of the four eviction complaints, Mr. Dennis began his defense. It was a bad start.

Mr. Dennis: Your Honor, may I interject? I move to strike the landlord's complaints. They – it included false information that there are not outstanding L & I reports. The landlord knows there's outstanding L & I reports.

Judge: Wait, whoa, whoa, you can't stand here and say what the landlord knows. You know that.

Mr. Dennis: I've notified him of it so –

Judge: You're a lawyer, right...? Okay, so you can't say that.... Now you have –

Mr. Dennis: I wrote him a letter to that effect, too, Your Honor, after I got the complaint.

Judge: It doesn't make it a fact.

Mr. Dennis: I have the reports.

Mr. Severeide: Even if it is a fact, it doesn't strike the complaint.

Judge: It just makes it, it makes it something you said.

Mr. Dennis: Well I have, I have a report I can show you.

Mr. Severeide: Well, I'm going to object to a report. We have counsel here, counsel knows how to introduce testimony, Your Honor, and introduce exhibits. And put evidence into the, into the record.

Judge: That is true... (Transcript).

Mr. Dennis appeared to be suffering from a phenomenon familiar to practicing attorneys: attorneys who represent themselves can face great difficulties due to their dual functions. Testimony, documentary evidence, his clients' interests and his own interests were commingled in such a way that made following basic trial procedures more difficult than usual. In spite of this rocky start, Mr. Dennis was eventually able to present the L & I reports and make his retaliatory eviction and Pugh v. Holmes (1979) arguments. This was the only mention of the Supreme Court decision in any of the approximately 200 cases that I observed over the course of the study.

Much to the dismay of the judge, Mr. Dennis then requested a continuance to the small claims cases and a trial of the landlord-tenant cases. The judge continued all eight cases over Mr. Severeide's objections, sparking this comment from Mr. Severeide: "We're here on these eviction actions which should take no more than five minutes as

Your Honor well knows” (Transcript). It appeared that Mr. Dennis’ legally substantive arguments, however awkwardly presented, succeeded in buying him and his clients/tenants/neighbors more time to prepare the prosecution and defense of the cases.

The Landlord Attorney: Larry Severeide

Based on an interview with Mr. Severeide concerning another case for which I was recruiting case study participants, he held a dim view of any argument involving retaliatory eviction when the term of the lease had ended. While he understood a prohibition on raising the rent after a tenant reported her or his landlord to L & I, Mr. Severeide didn’t understand how a city ordinance could prevent a landlord from repossessing his or her property once the term had expired: “What does that have to do with the price of eggs?” (Interview Notes):

If a lease ends May 31, the tenant doesn’t have a right to demand to stay. This view is appropriate, and it is practical. The *Fair Housing Ordinance* says that you can’t terminate the lease with outstanding L & I violations. This is contrary to state law and basic contract law – the City Council has no right to pass it. This is particularly true where the law contradicts other law. It’s not like they can say you can’t take certain homicide cases, like there are “fair homicide” cases. It’s a problem with the real estate industry – they sit back and don’t respond to problems. They’re notoriously cheap and won’t hire an attorney to challenge this law in court (Interview Notes).

In Mr. Severeide’s view, the lease term is inviolable and no law for any purpose should be passed to affect this basic fact. The only reason the *Fair Housing Ordinance* has remained on the books is that the real estate industry has been too negligent to remove it via legal action. Neither this nor other city ordinances should legally affect the end of the lease term:

There’s also the registration ordinance that requires a rental license. You can’t collect rent if you don’t have a license – where is that from? It’s taking of property without due process. The purpose is so the city has a

method to make service on owners – they want to be able to serve owners for any purpose. It says that if you have no license, you can't collect rent and bring an eviction action... [This is] City Council conferring a benefit upon a third party [the tenant]. The registration ordinance may come accompanied with a penalty, and judges can fine them or throw them in jail.... There are few judges who enforce it – it's improper. It shouldn't be there, and never should have been passed (Interview Notes).

Mr. Severeide was not sure about why the complaint contained a question about outstanding L & I violations, and he could understand an argument against retaliation for rental increases or for refusal to renew a lease under some circumstances. Ultimately, neither the existence of L & I violations, any related city code, nor does Pugh v. Holmes (1979) protect tenants from being evicted when the lease term is over.

Mr. Severeide, however, also said that he had no problem with a tenant bringing a complaint to the Fair Housing Commission, which was established by the *Fair Housing Ordinance* to preside over cases in which the tenants were current in their rent and were accusing their landlord of retaliatory eviction. Like the Department of Public Housing, the Fair Housing Commission can directly limit a judge's activities in Landlord-Tenant Court. If the Commission grants a hearing to a tenant before their landlord files an eviction, the Municipal Court is prohibited from hearing the case until the Commission has its hearing. Furthermore, if tenants prove they are current in their rent and claims retaliation, Municipal Court Rules expressly order a judge to issue a temporary stay on eviction and refer the case to the Fair Housing Commission. The relationship between L-T Court and the Fair Housing Commission will be explored further below.

The Tenant Attorney: Mack Nelson

Although he used Mr. Dennis' retaliatory argument, Mack Nelson did not think it particularly viable. He felt that when a relationship between a landlord and tenant

soured, it was only practical for the tenant to start the process of moving. The hardest thing he found about representing tenants was his “belief that the lease has got to end”:

They think that it's more of a home than a lease. They do have rights, but even if they win, they will have to get out. They feel their rights have been stomped upon, and feel there's an entitlement to keep the apartment. But I know how the law plays out. If you don't like it, you should get out, and landlord should not be entitled to all rent. It's more about how much you get back, not whether or not you leave.... When a tenant gets fed up with it, there are plenty of places where you don't have to put up with bad landlords – you shouldn't just not pay the landlord. Legally you can stay, but practically and from a personal standpoint, you should plan to move (Interview Notes).

Mr. Nelson had represented both landlords and tenants in L-T Court, and generally found it rare to come across a credible tenant. His first impression of Mr. Dennis' case was to think, “You've got to be kidding me” (Interview Notes). He knew the area and did not think there could be anything to his colleague's complaints, but he was impressed with Mr. Dennis' pictures of the poor housing conditions. Mr. Nelson still thought the tenants should have taken steps to leave; but they did not. Now the tenants faced an eviction that Mr. Nelson saw as inevitable, even though he also thought it was decided on improper grounds. Mr. Nelson was in the process of appealing the eviction to the Superior Court and was writing several post-trial motions – unlike in Municipal Court, the Common Pleas verdicts could be altered after the hearing was over.

Based on the final Municipal Court trial transcript, Mr. Nelson's experience with the final Municipal Court verdict was rather dramatic. Three weeks before the hearing, Mr. Dennis had a brain tumor removed in New York City and needed to recuperate for three weeks. The Court Administrator did not give him an administrative continuance when he called before the surgery, and the court staff member he spoke to said that

someone should be at the hearing to request a continuance directly from the judge. Mr. Dennis had not informed Mr. Severeide of his continuance request, an oversight Mr. Severeide considered “completely outrageous”:

Mr. Severeide: And, and if I may, Your Honor,... whenever we arranged the date...he knew that a week later he was having surgery. You don't have brain surgery, you don't wake up one morning and decide you're going to have brain surgery.

Mr. Nelson: Well, Your Honor, I would disagree with that, with that aspect there. My understanding from Mr. Dennis was the surgery was pending waiting the doctor –

Judge: Did he have the surgery? Do you know?

Mr. Nelson: Yes, he had the surgery.

Judge: Do you know that for a fact?

Mr. Nelson: Yes, Your Honor. And they were waiting for a doctor to become available and apparently he became available on that date. And due to the nature of the surgery he had to do it on that date. So it wasn't a situation where I believe he knew the date and intentionally scheduled on that date (Transcript).

Mr. Severeide then objected to the continuance on the basis that he and his client had been there three times and “were out \$30,000 in rentals” (Transcript). The judge stated that they should “make some movement on the file,” and asked Mr. Nelson if he was prepared to defend the tenants. He said that he would do what he had to do.

He attempted to build evidence that the landlord, Nathaniel Twiname, III, knew there were L & I violations when his attorney, Mr. Severeide, filed the complaint.

Mr. Nelson: Your Honor, I believe it goes to the mitigation of the damages. If there are some viola—my understanding is there were approximately seven or eight L & I violations when the complaint was filed. I believe the tenants have the right to withhold rent –

Judge: Well, do you have any proof of that?

Mr. Nelson: I'm hoping he would tell the truth and that's my proof, Your Honor.

Judge: I hope he's telling the truth. He is.

Mr. Nelson: ...How many outstanding L and I violations were there at the time?

Judge: If you know.

Mr. Twiname: I'm not sure I know the exact dates.... I would like to specifically say that they were, what's basically ridiculous things like there was a crack in the plaster and so on which had nothing to do with habitability.

Judge: I've heard enough of that whatsoever (Transcript).

Mr. Nelson faced a lack of preparation and witnesses as well as a judge who demanded evidence the judge knew he did not have, seemed prejudiced to the credibility of the landlord, and who appeared annoyed to hear an argument based on the warranty of habitability that involved L & I violations. The Judge found in favor of the landlords both as defendants in the small claims matter and the plaintiffs in the landlord-tenant matters. At the end of the hearing, the Judge stated to Mr. Nelson, "...please tell Mr. Dennis that I wish him a very speedy and healthy recovery" (Transcript).

Although Mr. Nelson, with Mr. Dennis doing all the brief writing and research, was able to secure a jury trial and avoid the prospect of a bench (non-jury) trial before another Municipal Court judge, the appeal did not start out much better for Mr. Nelson. Before the jury entered the courtroom, the Municipal Court judge who presided over the trial as a Common Pleas Court judge announced that he had decided to grant the landlord's request for summary judgment on possession. A summary judgment requires that there be no facts in dispute between the parties, a situation that enables the judge to decide on the matter entirely on the basis of law. The landlord's brief alleged, following Mr. Severeide's reasoning and citing the Landlord Tenant Act, that since the tenants' lease term was over they had no right to remain in their apartments. The tenants' response brief alleged that there were three distinct factual disputes that needed to be heard during trial: whether the eviction was retaliatory and whether the landlords could evict the tenants when there were outstanding L & I violations (citing the *Fair Housing*

Ordinance), and whether the termination notice was proper (citing the Landlord Tenant Act). Mr. Nelson would have also argued, if he had the chance, that Pugh v. Holmes (1979) clearly assigns the determination of whether the landlord breached the warranty of habitability to the fact-finder, which in this case was the jury. By granting summary judgment, Mr. Nelson believed, the judge improperly assumed the role of the fact-finder in an area of highly disputed facts: “the eviction, legally speaking, was wrong” (Interview Notes).

The jury, Mr. Nelson pointed out, did determine that the landlords had breached the warranty of habitability in their finding in favor of the tenants on all accounts for damages totaling \$35,000. This decision put the summary judgment and the jury verdict at odds with each other, and the question about whether Pugh protects tenants from eviction based on termination or only eviction based on non-payment of rent remained unaddressed. Mr. Nelson had ended his closing on the second day of the appeal by tearing up a copy of the lease in front of the jury after saying that the tenants “signed the lease in good faith, and this is what the other side did” (Field Notes). Juries, he had long-determined, were more predisposed to tenants than landlords and the landlords had helped his strategy by using three attorneys and by focusing their efforts more on the judge than on the jury.

Mr. Dennis’ appeal of the summary judgment brought them to a hearing with the landlord and landlord attorneys in front of a Superior Court justice, followed by a hearing

with the trial court judge who had just issued the summary judgment.²⁹ Remarkably, the trial judge issued a stay on his own eviction order. Said Mr. Nelson, “It’s extremely unusual. For him to grant a stay means that he feels that the party moving for the stay will win on the merits...on appeal” (Interview Notes). As of this writing, eighteen months after the first Municipal Court hearing of the Small Claims cases, Mr. Dennis and one of the tenants are still living in their Yes Housing apartments and are current in their escrow payments to the court.

The Landlord: Nathan Twiname, II

Nathan Twiname, II couldn’t get over the fact that the court system would perpetrate such an injustice and deprive him and his son’s company of rent that they needed to make repairs to this and other properties. He expressed his frustration as follows:

How something can go on so long in favor of tenants? It seemed like the relationship should have been terminated, and the dispute fought off ground. It’s delayed and delayed. I guess it’s your building, but how long can they control it? They don’t own it, but it’s as if they did. I don’t want to be a slum landlord, and am nothing close. The law favors the tenant without any reasonableness to it. I was very disappointed. At some point in time, way earlier, this could have been solved. They got the appeal put off to March – I don’t see how the courts would allow it to hang on for so long. If this property were my only investment, I would be bankrupt. We’ve got mortgage, taxes, utilities.... It doesn’t seem fair, all this time, got to live there for nothing as if it were really squalid (Interview Notes).

²⁹ The case actually spawned two other appeals, one each from the tenants and the landlords. The trial judge ordered \$10,000 less to the tenants than the jury had awarded them based, according to Mr. Dennis, on a post-trial motion made by the landlords concerning the time period in which the tenants were escrowing their rent independent of the court. Mr. Dennis appealed to the Superior Court on the basis that the jury actually meant to award all of the escrow to them in addition to the damages amount. The second appeal was brought by the landlords, who asked the Superior Court to overturn the trial judge’s stay on evicting the tenants pending the Superior Court trial.

Mr. Twiname was clearly upset about losing control of his property for an indefinite period of time – the loss of rental income was becoming an acute hardship. When I asked him what his responsibilities were as a landlord, he replied, “Keeping the peace, and keeping the company from going under from the money they’re putting into escrow” (Interview Notes). They had to cover their expenses, chiefly a mortgage, from other sources until the case had concluded. He never thought that they would go a year without rental income from those properties – they were already having difficulty making all the required repairs, and this just made it worse. The apartment building was not carrying itself as they had planned, and it was getting increasingly difficult to adjust to the situation.

Mr. Twiname had some hope based on his experience with the Superior Court judge, who he felt did a much better job “cutting to the quick.” They met in a nicely appointed room that may have been the judge’s chambers, and the judge sat with them at a table. According to Mr. Twiname, the judge asked several questions to Mr. Dennis and his attorney, Mr. Nelson:

‘You’re still appealing?’ the judge said. ‘That means there’s no rent paid, and you still want to live there until all cases are over? In all fairness, I’ll stay it and not enforce possession enforce, but I want paperwork today.’ The issue seemed like: ‘You [tenants] have a grievance, the conclusion of which was determined by the court. You have no contract, yet you haven’t paid through April and you want a stay until all appeals are exhausted. I think you either would have to leave the building or give money to finance the building.’ (Interview Notes).

The judge made sure that the lawyers stayed on point, and Mr. Twiname was impressed with the way he handled the people in the room. The Superior Court judge reprimanded Mr. Dennis twice during the hearing for interrupting. He was relieved to be in the plush

courthouse because it made him feel like they were there to do business.

His son had gone to the Municipal Court hearings for this case, but he had attended another hearing there and was not impressed with what he saw:

The court has to act as the judge and determine which side merits whatever decision. They should rule on the judgment that best fits the facts that were presented. I once attended a hearing [in Landlord-Tenant Court] – here's a low level of court. 'Did you pay, did you not pay. OK, next case. Did you, didn't you.' They were acting – I had difficulty with it (Interview Notes).

Mr. Twiname shared the tenant attorney Mr. Nelson's view on juries, seeing them as inherently pro-tenant. He also shared the view that his own attorneys did not do a good job taking this central dynamic into account, and he felt that the judge did not do a particularly good job either:

We made a very stupid judgment, and may not have been focused enough on the jury. It made no sense to get a penalty assessment and not a monetary assessment. I couldn't understand the judge [when he charged the jury]. Also, I thought he said that they could not show their pictures – my understanding is that they needed to produce those to us more than 24 hours before the trial. I had a hunch and got some pictures done, but all I had was a Polaroid. I didn't have time to do them well. I'm disappointed in our attorneys, and thought the other attorney did a better job.... [He] put on a better show (Interview Notes).

They had submitted a post-trial motion to challenge the judge's charging of the jury, a motion that resulted in at least netting them more of the money the tenants owed them.

Though he and his son were going to stick by their attorneys (the main attorney at the trial was actually an associate in the firm they used for real estate matters), Mr. Twiname felt that he may have done a better job without an attorney representing him.

The Relationship

Like Ms. Pendleton and Mr. Fortune (the two *pro se* litigants at the end of the previous chapter), Mr. Twiname and Mr. Dennis shared quite a bit of common ground. Both believed that their case should have settled long ago, but both were girding themselves for continued battle. Mr. Twiname told me, “We probably should have just dropped it. There’s nothing to be gained by it. But we’re not giving up...” (Interview Notes). Mr. Dennis said, “The judge [for the Common Pleas trial] should have tried to settle the case, taken us back into a room, one at a time, and told us that he was not going to let us go until both sides hammered out an agreement. It’s going to get worse – it can take years for an appeal” (Interview Notes). Both landlord and tenant had also collected an impressive amount of information about each other, which included newspaper clippings, discussions with neighbors, and information about each other’s families. They also characterized each other as possibly suffering from mental health problems, and spoke with great passion about possessing the rental property.

Finally, both also explained the success of the tenants in terms of their use of attorneys more sensitive to the dynamics of the law and courts that affected the case beyond Municipal Court. Mr. Dennis told me, “They saw themselves as high-end landlords that the jury was in awe of, and thought they were going to win everything. The jury didn’t believe anything they said” (Interview Notes). While Mr. Dennis’ status as a lawyer status did little to counterbalance his status as a tenant in Landlord-Tenant Court, his and his attorney’s legal abilities had a greater effect in the higher court realm. I had the following exchange with Mr. Twiname:

Mr. Twiname: Mr. Dennis won everything he said he would....

Researcher: Why do you think he has been able to be so successful?

Mr. Twiname: He's a lawyer (Interview Notes).

A more sensitive attorney with greater trial experience, such as Mr. Nelson, might have done a better job appealing to the jury's sense of justice on behalf of Mr. Twiname and his son. Mr. Dennis was not the typical tenant because he was also a member of the legal profession and therefore had much more say about his legal destiny than tenants without such membership.

Current Status

As of this writing (August, 2001) landlord and tenant are currently locked in combat, and their case proceeds through the state court system which is designed to ensure that both receive a full and complete hearing of the legal issues raised by their dispute. Because of the appeals, the trial judge was required to write an opinion for the Superior Court to either overturn or uphold for both the damages and the possession aspects of the case. While this does not have the binding authority of a Supreme Court decision, it does have persuasive authority for other state courts considering the same issue. If landlord and tenant remain steadfast to their positions and settlement negotiations fail, the case may result in a full Superior Court decision that has binding authority at the Common Pleas Court level.

This, of course, can be appealed once more to the Pennsylvania Supreme Court, which, if it takes it, could render a decision that either expands or limits Pugh v. Holmes (1979). Though a Superior Court verdict would directly hold the Common Pleas Court accountable for its verdict on this particular case, it would remain to be seen if the establishment of common law precedent would effectively hold courts below the

Superior Court level accountable for future decisions. Common Pleas landlord-tenant trials, after all, are heard by Municipal Court judges who have extensive experience in L-T Court where there is no direct judicial review of L-T Court's verdicts. This previous experience in a forum that rests outside the chain of judicial review may make it difficult to ensure that new precedent has more of an effect on Common Pleas landlord-tenant cases than the lack of adherence to current precedent.

Theme

Fair Housing Commission

One case observed for the statistical sample fit the profile of cases L-T judges are required to refer to the Fair Housing Commission, but this did not happen. In it, the tenant, who was also an attorney, had sued the landlord for damages to his personal property, and four days later the landlord sued the tenant for breaching the lease because he did not have renter's insurance. The hearing on the evictions were scheduled first, and the tenant attempted to defend himself based on retaliatory eviction. Because the tenant did not owe any money, which the landlord attorney stipulated to, his case should have been referred to the Fair Housing Commission according to the rules of Municipal Court. In spite of the tenant's efforts to knock out the eviction claims on the basis of retaliatory eviction, the judge consolidated the two complaints and heard them together several days later. Even though the tenant presented proof of insurance, the judge awarded possession to the landlord and did not award the landlord any damages, though he did allow the tenant until the end of the lease to move.

Even those cases that receive a Fair Housing Commission finding of retaliatory eviction are not secure when they subsequently go to trial in Landlord-Tenant Court. A

Fair Housing Commission staff member expressed concern of the Municipal Court's lack of adherence to the *Fair Housing Ordinance*:

I was surprised about how immune the judges feel – they pretty much do what they want to do. The situation is that poor people are on their own, and the only people with attorneys are landlords. There was one tenant who lived on Washington Square who wanted to stay. She hired an attorney, and went up against [a bulk filing attorney]. She was well to do, middle class, and there were all sorts of conditions in her apartment. The Commission ruled in her favor, and during the hearing the attorney raised the Commission's finding. Judge ____ was hearing the case, and he said, 'That isn't worth the paper it is written on. The Commission doesn't have the authority to control what happens in this courtroom.' This tenant didn't come back to us until several months later, so there was nothing we could do about it (Interview Notes).

Though I was not able to confirm the story with corroborating data, the court's response to another institution with the statutory authority to hold Landlord-Tenant Court judges accountable to city law certainly fits the same pattern. Even a strict reading of the *Fair Housing Ordinance* which eliminates all cases in which tenants are not current in their rent does not justify evicting tenants who have received eviction stays from the Commission or those whose cases qualify for referral to the Commission at a Landlord-Tenant hearing. L-T Court proceedings appear to be little affected by the Fair Housing Commission, Department of Public Health, and Department of Licenses and Inspections.

Conclusion

Like any institution, Landlord-Tenant Court exists within a complex network of institutions that vie to protect their own authority and forward their own mandates. As a legal institution, the court is expressly entrusted with the function of applying laws created by other organizations. Even cases that bring no organizational relationships of their own with them are influenced by the network of legal processes which form the law

that is supposed to be applied in L-T Court. All cases in Housing Court, then, can be placed along an interorganizational continuum, running from the strength and complexity of the organizations that impact on the case through their relationship with the court.

The first case analysis, Singleton v. Zephyr Properties, represented the shortest landlord-tenant relationship possible and the case with the weakest association with L-T Court's interorganizational network. Even though the case was only about a rental deposit, the tenant utilized legal aid services (CLS) in the filing of his complaint. The landlord attorney also relied on institutionalized assistance, in the form of Pennsylvania statutes produced by the legislature and case law produced by courts. The second case analysis, Pendleton v. Fortune, fell further along the continuum because of the tenant's use of L & I reports to prove her case that the landlord was responsible for the damages for which he was using her security deposit to pay. The case also had a tangential relationship with the Department of Public Health via the landlord's experience with lead contamination. The third case analysis, Sexton v. McGinnis, involved even stronger interorganizational dynamics because of the tenant attorney's introduction of witness testimony by an L & I administrator. This case introduced L-T Court's relationship with the Court of Common Pleas in the context of the tenant's appeal and settlement. Finally, the fourth case, Dennis v. Yes Housing, Inc., represented a very strong association with the L-T Court's interorganizational network (in fact, the strongest of any other observed case). The case also involved L & I, and introduced the Court's relationship with the Fair Housing Commission and the City Council that authorizes it. Its relationship with the legal organizations connected to L-T Court exemplifies the need to see a single court's behavior in the context of its organizational environment.

The organizations introduced by the case analyses can be categorized into four types: welfare, legal, political, and regulatory. Singleton v. Zephyr Properties, for example, involved the first three types: CLS is a welfare type of organization, the courts that produce legal precedent are legal organizations, and the state legislature that produces other landlord and tenant law is a political organization. The court's legal organizational network primarily includes the Court of Common Pleas and the state Supreme Court which promulgates all Municipal Court rules, but also includes the Superior Court and other courts that relate to Landlord-Tenant Court verdicts and Municipal Court operations. Regulatory organizations also have direct relationships with the court, and include Philadelphia's Department of Licenses and Inspections, Department of Public Health, and Fair Housing Commission. L & I holds the most prominent relationship with L-T Court: L & I is mentioned many more times than any other institution during hearings, and three of the four case studies directly involved L & I.

In spite of the extensive organizational relationships represented by the case analyses, there are three dimensions to L-T Court's interorganizational network that the case analyses do not illustrate fully. First, the main political organization that influenced the court is the Democratic Party, whose machinery dominates the selection of Municipal Court judges. Second, there are many social welfare organizations besides CLS that impact on L-T Court litigants and which are therefore a part of the court's organizational network. Third, the case analyses do not address organizational relationships designed to regulate Municipal Court itself. These three dimensions will be addressed in the next chapter.

Ethnographic Findings: Political Parties, Organizational Accountability, and Social Welfare Agencies

Whereas each of the preceding four chapters treated the case analyses as figural, this chapter reverses the figure and ground and places the ethnographic analysis in the foreground. It draws from the case analyses, statistical analysis, and secondary sources to expand on three interorganizational themes that emerged from the data I collected:

Political Parties, Organizational Accountability, and Social Welfare Agencies. Though by appearances absent from Landlord-Tenant Court proceedings, the court's relationship with the city Democratic Party is the most organizationally active of any studied. The Democratic Party's nominations for Municipal Court judgeships are virtual locks for election and retention, making judicial selection an entirely political rather than legal process. Organizations such as the Philadelphia Bar Association seek to regulate the court's behavior, but their impact appears to pale in comparison with the ongoing influence of Democratic Party politics. Finally, in the aggregate, the court's relationship with public welfare programs is also strong. Landlords and tenants are involved with many programs, including public housing, public assistance, homelessness prevention, and legal aid programs. The funds provided by these public and non-profit institutions interact with L-T Court in ways that shed critical light on the impact these expenditures are having on landlords and tenants, many of whom face serious resource deprivation.

Political Parties

While the Municipal Court maintains an organizationally autonomous relationship with the courts to which it is theoretically accountable, it maintains a highly dependent relationship with the political party machinery that controls the selection of Municipal Court judges. All judges in Pennsylvania are elected in primary and final elections, a policy that receives constant criticism from proponents of merit selection by the legislative or executive branches. Both alternatives, however, must face the paradox of attempting to select impartial judges within a political context charged with ideology, partiality, and raw power. For the selection of Philadelphia Municipal Court judges, the electoral system applies distinctly non-judicial criteria to those interested in serving as a judge in Municipal and Landlord-Tenant Court. Furthermore, the campaign process has the potential to seriously impede impartial application of the law.

A Municipal Court Judge's View

One Municipal Court judge expressed his frustration with the system in a lengthy three-hour interview. The picture the judge presented was of a system that promoted accountability to judge's contributors and the political party machinery they funded rather than to the laws they were mandated to enforce. Becoming a judge had to start with:

raising money. In order to run for judge just like any other office – you have to raise money. You can put up all your own money, but it's rarely done. Even if you do put up a lot of your own, you will go out to raise money. Judges raise money from lawyers. The basic source is the lawyers. The implication is that if you make a contribution, you will be appreciative and accommodating to [them]. It compromises the judicial process because you can't divorce yourself from them to make objective decisions (Interview Notes).

The economic association between attorneys and judges is highly threatening to the judicial process that depends on autonomy and independence between advocate and arbiter. One repeat player attorney I spoke with described one campaign fund-raising event, which he attended with another repeat player attorney against whom he had argued numerous cases. Judges are required by law not to accept campaign contributions directly, but the list of contributors is readily available as it is, ironically enough, made public to enable scrutiny of judicial corruption:

You are obligated to have a treasurer so candidates don't have to collect money. I never got the list from the treasurer who keeps a list of contributors. Period. I especially didn't want a list of lawyers. If they come up in front of me, I didn't want to know about their contribution. I didn't want to be influenced. I think we should use merit selection with the understanding that if both parties endorse the nominee, judges, like federal judges need not run. Then you need not raise any money, and you're not influenced.... I didn't ask if anyone else looked at their contribution lists, and am not aware of anyone else doing it (Interview Notes).

The judge emphasized that he was not aware of actual ties between lawyers who contribute to judicial campaigns and judges' decisions in Municipal Court, but he was dissatisfied with the potential for abuses.

The judge also specifically identified Landlord-Tenant Court as a forum in which such corruption had the potential for occurring. He also did not want to review his contribution lists:

If you're sitting in L-T court and some big landlord contributes, you're then not obligated to toss the tenant.... Landlords having money shouldn't be a factor. Some landlords contribute to a particular campaign, whereas very few tenants do. If judges know what landlords contribute then you could get a connection in their decision, but most don't. Most will follow the law. It's possible to remain uninfluenced. I tried to make sure that I wouldn't, even subconsciously. If you get rid of the whole process the potential is gone. You could then go strictly on the law and not worry

about subconscious favoritism (Interview Notes).

Contributions of both landlords and attorneys to judicial campaigns have the potential to influence judges to become more favorable to landlords as most attorneys who practice in Landlord-Tenant Court represent landlords. I should emphasize that this judge did not accuse other judges of being influenced by campaign contributions, nor did I find any evidence that this was occurring. There is a circumstantial association between the high landlord win rate, particularly when eviction was at issue, and the differential level of contributions made by landlords and tenants. The potential, however, very much exists and the judge pointed out that it could create a pattern of interference with the judicial application of landlord and tenant law.

The major destination for the contributions judges receive via their treasurers is to the Philadelphia Democratic Party, which far exceeds the influence of the Republican Party when it comes to determining the selection of Municipal and Landlord-Tenant Court judges. Many judges run on both the Republican and Democratic tickets, which makes ideological sense in that judges are specifically prohibited from prejudicing future decisions from the bench and therefore provide virtually no information about themselves to voters. According to this Judge, the Republican Party does not require any contribution whereas the Democratic Party requires between \$10,000-15,000 for their campaign system before considering an endorsement. Sitting Republican judges are invariably replacement judges, appointed by the Governor to fill out the remainder of a departing judge's term, because they almost always lose their election against their Democratic Party opponents:

It's strictly about machinery – there aren't any ideological alignments because it's about money on behalf of candidates. The Republican Party doesn't ask any money to endorse. The Democrats do ask for money, which is not illogical. They have to endorse the candidate, get the candidate elected, and get money on the street to committee people. It's not illogical. Sometimes, though, it weeds out the best candidates. Those nominated in the federal system don't have to deal with money, and they don't just pick them out of a hat at random. And once you get there you're no longer beholden to the people who selected you (Interview Notes).

This system is resonant of the old Magistrate system and its conflation of electoral politics, business ties, and adjudicators whose legal qualifications were unimportant.

The politics involved with getting elected as a Municipal Court judge appear to resemble classic municipal ward machinations in which judges are selected on the basis of party power rather than their merits as prospective jurists. The judge summarized the system as follows:

How the court is constituted and how the political process works, has a lot to do with what happens in landlord-tenant court. The system is bad – we should have the federal system. Judges are selected by confirmation of Senate, you don't have to run. You are appointed for life, provided you are qualified and don't do anything to get knocked off. You're not beholden to the party, lawyers, or anyone else. You have more freedom to apply the law and your conscience. Such a situation might make a not so excellent judge an even better judge (Interview Notes).

Landlord-Tenant Court's central organizational accountability should be to the institutions that create the laws judges are mandated to apply. These include judicial, legislative, and administrative bodies at various levels of government. A judge's main concern should be with his conscientious application of these laws to the facts presented by each individual case.

A Grand Jury Investigation

Judicial elections do receive periodic scrutiny from the state government, illustrated by a recently conducted Grand Jury investigation into allegations of illegal campaign finance practices at the Municipal and Common Pleas Court levels.³⁰ The grand jury's findings, presented in a 130-page report, confirm the observations of the Judge quoted above about the structure of the judicial election process. They also found that the city-wide Democratic Party Ward organization (called "City Committee") required a \$30,000 contribution in 1997, that the "street money" expenditures used to increase votes on election day were poorly documented, and abuse of these funds by ward personnel was criminal in some instances. The Grand Jury characterized the electoral process as one centrally concerned with raising and spending money:

The amount of money spent by candidates varied, but it was not uncommon for 1997 candidates to spend \$100,000. A consultant informed one unsuccessful candidate that in order to be "competitive," the candidate would need to spend \$75,000. According to that candidate, "[The consultant] thought that would do it. It didn't." The consensus opinion of unsuccessful candidates was that they should have spent more (Sixteenth Statewide Investigative Grand Jury, 2001).

The process began with the political parties, as described above, and the Democratic Party primary was "universally considered" tantamount to the final election. Consultants played prominent roles because their assistance was critical to manage the situation that many ward leaders diverged from the central ward committee and spent street money

³⁰ The Grand Jury was convened under the aegis of the Grand Jury Act, and was supervised by a Dauphin County Court of Common Pleas judge acting with the authority of the state Supreme Court. It was initiated via a complaint by a good government non-profit agency (the Committee of Seventy) which filed a complaint with the Office of the Attorney General. In this regard, the report is a multi-organizational effort to hold the Democratic Party members as well as the Municipal Court accountable for its election practices.

endorsing their own set of candidates.

Because voters know so little about the judicial candidates and because many voting are doing so at the behest of ward organizations, endorsed candidates invariably win the most votes in the election. Ultimately, the system isn't even electoral: ward leaders are the ones who select trial judges in Philadelphia, not the voters who adhere to the sample ballots that wards produce:

The criteria for endorsement [by the ward leaders], from the candidates' perspective, are varied. Among the factors which weigh heavily in the endorsement equation are service to the party, through the performance of uncompensated legal work, and the support of influential sponsors, among whose number can be found elected officials and certain Ward Leaders (who are sometimes one and the same). The singular common denominator of the endorsed candidates is the contribution to City Committee (Sixteenth Statewide Investigative Grand Jury, 2001).

The criteria used by the politicians to select judges refer back to the party that the politicians constitute – there was nothing judicial about it:

It is also worth noting that, during the process, qualifications was an issue that was rarely brought to the fore. According to one candidate, 'I don't think that qualifications ever entered too highly into anyone's consideration, party included.' Another candidate, putting it more bluntly, noted, 'I'm not so naive or stupid that I think that qualifications play any role in this process as it is now' (Sixteenth Statewide Investigative Grand Jury, 2001).

The power of the party over judicial selection in Philadelphia, based on the Grand Jury report, appears to be absolute – the wards have formed a market for judicial campaign expenditures. The demand for campaign funds is supplied in part with contributions from groups such as lawyers, landlords, and other parties who may form constituencies that compromise judicial impartiality in Landlord-Tenant Court. One Grand Jury witness who is both a ward leader and a member of City Council summed up the current system

as follows: “And I think in many instances [the candidates] just get completely ripped off and abused. It’s a horrible system” (Sixteenth Statewide Investigative Grand Jury, 2001).

One of the grand jury’s witnesses was a Municipal Court judge who was a Ward leader and had been a consultant for a successful Common Pleas Court candidacy two years before he was elected to the Municipal Court. His description to the grand jury of his work with another consultant illustrates just how injudicious the election process can be:

“If _____ gave a check to a Ward Leader, they did what they were supposed to do. He was like back-up security.... [He has a] reputation as somebody, I think somebody would, you know, I can’t think of anything bad _____ has done to anybody, but I know that he had the reputation that he could do it” (Sixteenth Statewide Investigative Grand Jury, 2001).

The judge further testified that he saw nothing wrong with street payments to ward leaders because they often spent money out of their own pocket too, as he himself had done in the past.

Perhaps the most sobering finding of the report was that Philadelphia’s District Attorney’s Office had conducted an investigation fifteen years previously that had strikingly similar findings about the city’s judicial election system. “A review of media reports of that investigation reveal that it was remarkably similar to the present investigation, even to the point of mentioning [a still active consultant] funneling money collected from candidates to Ward Leaders” (Sixteenth Statewide Investigative Grand Jury, 2001). The system remained intact after the report, and the flurry of ward leaders’ election code compliance faded until, it appeared, the initiation of the more recent investigation. While no arrests resulted from the first investigation, this most recent investigation resulted in the arrest of four people for criminal charges stemming from

street money expenditures.

There is a real possibility that the formative relationships between judicial candidate, party leadership, and campaign contributors have been retained and affect current judicial behavior in Municipal and Landlord-Tenant Court. There is also an equal possibility that these relationships served only to elect the judges and that the court acts independently of influence from attorneys, landlords, or party leaders. However, the process by which the court is formed reflects the quality of the jurisprudence found therein, and there have been ample illustrations of judges who are averse to approaching their judicial responsibilities with a demeanor that befits the office. The Pennsylvania Code of Judicial Conduct (2000) also requires that judges “be patient, dignified, and courteous to litigants...and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control” (Canon 3.A.3). Furthermore, judges “should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law” (Canon 3.A.4).

Organizational Accountability

One institution that has established a system to make the judicial elections system accountable to legal qualifications is the Philadelphia Bar Association, the city’s local branch of the national professional association for attorneys. In 1995 the Bar Association began surveying attorneys about their experiences with different judges and formed a Commission on Judicial Selection and Retention to make recommendations about the election of judicial candidates and retention of sitting judges. At every primary and final election, the committee issues lists of recommended and non-recommended candidates along with the findings of their survey. Though the recommendations receive routine

attention in the press, they appear to have little effect on the elections themselves. In the most recent election, which took place one month after I began data collection in November, 1999, all of the committee's recommended candidates were elected or retained, but so were the three candidates who were not recommended (Litchman, 1999). One of these was a Municipal Court judge who refused to participate in the Bar Association's review process, thus earning an automatic "not-recommended" rating. During the previous election in 1997, another Municipal Court judge was "not-recommended" due to concern about her fitness for the position. However, she still received the second highest number of votes (the top four candidates were elected) and avoided a loss by over 70,000 or over 10% of the electorate (Riccardi, 1997). The sample ballots distributed by ward leaders appear to garner many more votes than those paying attention to the Bar recommendations, which mostly consist of those in the legal community.

I should emphasize that although the judicial selection process is loosely associated with judicial qualifications, there are numerous instances of proper and efficacious judicial conduct. Judge "I," who heard Mr. Fortune and Ms. Pendleton's (the two *pro se* litigants) case, heard the most cases in the statistical sample and more often than not endeavored to give each litigant a full hearing. Another judge heard by far the longest hearings in the sample and has a reputation among the court staff for giving litigants more than enough room to present their testimony and make their legal arguments. In fact, during one hearing in which the tenant's attorney was arguing retaliatory eviction, the judge looked up the *Fair Housing Ordinance* in the city code, read it into the record, and used it to determine her verdict. This was the one time,

however, that I observed a judge reading law into the court record in spite of many other times that litigants, or more often their attorneys raised legal issues during the course of the trial.

Social Welfare Organizations

Even setting aside the complex relationship between law and any given case, Municipal Court judges often faced hearings made complex by litigant involvement in programs delivered by a wide range of social welfare organizations. Though Municipal Court had no direct relationship with these agencies, the Court does interface with them through their response to the testimony of hearing participants. Landlords and tenants participate in a wide array of social welfare programs administered by non-profit and public agencies at all levels of government. The programs that both participate in together are housing programs which are designed to provide rental assistance to the tenant but also simultaneously provide rental income to the landlord. Tenants furthermore utilize a variety of services independently of their landlords, but this public support also helps support the tenancy and therefore maintain landlords' rental income. The rental market depends on an adequate demand from people able to pay the rents just as much as it depends on an adequate supply of relatively low-income housing.

As we have seen from the previous chapter, people with low incomes do not occupy a substantial portion of rental housing. Ms. McGinnis reported an annual income of \$30,000, though she did pay a modest \$475 monthly rent. Mr. Dennis lived in one of the wealthiest areas of the city; he reported an annual income of \$75,000 and paid a \$1,250 monthly rent. However, the rents in the statistical sample range between \$9 and

\$1,700 and the median rent is \$450 per month.³¹ The lowest rent and many of the other rents on the low end of the scale represent the proportion of rent tenants who participate in the Department of Housing and Urban Development Section 8 housing assistance program are required to pay. The Section 8 program provides vouchers to low-income tenants who may use them to rent privately owned apartments as long as the landlord agrees to participate in the program. Seven percent of the tenants in the sample reported that they were currently receiving Section 8 funding; approximately twenty percent of tenants reported that they were currently receiving or had formerly received some form of means tested subsidy. These programs are as follows:

Table 35: Tenant Subsidy Programs

(N = 150)

Program	Tenants Involved
No Reported Subsidy	96 (75%)
Homelessness Prevention	9 (7%)
Section 8 Housing Program	9 (7%)
Former Section 8 Participant	2 (2%)
Non-housing Public Assistance	8 (6%)
Former Non-housing Public Assistance	1 (1%)

Some tenants reported their involvement in more than one program. Of these programs, over half are housing programs that involve the participation of the landlord.

³¹ Though many of these rents are modest, the aggregate amount of rental income is substantial. Based on the average back rent verdict, Landlord-Tenant Court adjudicates cases worth a total of \$16-32 million per year.

SSI and Homelessness Prevention

Ms. Pendleton, of Pendleton v. Fortune, was one of the tenants who reported multiple sources of public assistance. Her annual income was \$6,500 and was comprised entirely of monthly Supplemental Security Income (SSI) payments for a rare eye condition that had made her blind in one eye and require surgery in the other. Her fixed income and the manageable rent appeared to be one reason that she feared being evicted by Mr. Fortune. In fact, she had to use two homelessness assistance funds to pool enough money for her to move into the apartment to begin with. She received one grant from the Red Cross and another from the city's Office of Emergency Safety and Services (OESS) to pay for her security deposit and first month's rent. The city's homelessness prevention program is funded via funds from the state legislature, which are administered through OESS by two non-profit agencies using six different sites throughout the city. The program was begun in 1994 and was designed to assist currently homeless families with securing rental housing or assisting near-homeless families by keeping them housed (Wong et al., 1999).

Ms. Pendleton used her funds to secure an apartment that was not in very good shape, but Mr. Fortune charged little rent (\$345). He also agreed to take only one month's rent in advance, fix up the apartment, and then take the remaining two months of the security deposit. He never made the repairs he promised, and she never paid him the full amount of the security deposit. She agreed to leave the apartment after he sued her for termination and breach based on his assertion that she was responsible for water usage from a broken toilet, then later sued him for the return of her deposit. The funds she obtained helped her maintain a seven-month tenancy, and helped her landlord receive

some secure rental income, but they did not secure a stable and long-term housing arrangement. Ms. Pendleton also used anti-eviction counseling provided by the Tenant's Action Group (TAG), a tenant's advocacy agency. A staff member accompanied her in mediation, but her advice was also not able to secure a long-term tenancy. Ironically, TAG is also one of the non-profits that administers the city's homelessness prevention funds: the same agency that helped defend Ms. Pendleton against Mr. Fortune's eviction participated in the program that provided funding to Mr. Fortune via Ms. Pendleton's application for homeless prevention funds.

None of these institutional relationships was brought up in the hearing between Mr. Fortune and Ms. Pendleton, but the nine tenants who did refer to homelessness prevention programs and agencies during their hearings show that using homelessness prevention funds to secure tenancies is a complicated endeavor. In one case the tenant testified that her application to TAG for assistance after she became ill and could no longer pay the rent was "in the works" before the judge evicted her on the basis of non-payment of rent (Transcript). In two cases, the tenants defended themselves against eviction by testifying that the landlord had agreed to accept payments from social service agencies and their evictions were in violation of this agreement. Also, in both cases the landlords testified that they had yet to receive the money and could not wait for these funds any longer.

In one of these, the tenant testified that she had made arrangements with two different programs and that because the landlord filed for eviction on the basis of non-payment of rent, both programs would no longer fund her. The attorney who represented the landlord stated at one point during the hearing, "...I was upset that the matter had

been continued, that the woman said, she was working and yet, she was applying for homeless assistance. I didn't understand how she was eligible" (Transcript). The fact that she was working may have helped her application for housing assistance. Homeless prevention programs have been criticized for "creaming" (serving only the relatively better off rather than the neediest) because many, like Philadelphia's program, require that recipients demonstrate a reasonable ability to maintain their tenancy after the program's initial, one-time assistance (Wong et al., 1999).

The other case in which a tenant asserted that the landlord agreed to accept homeless prevention funds illustrates a particularly high level of involvement between the Court and the homeless prevention program. The landlord, a Middle Eastern man with a heavy accent, expressed both frustration with and appreciation for the program:

... [It's been] over a month now. I don't receive anything. Is over a month...and every time I sent over there, nobody want to meet me and nobody want to give me answer correctly where is a check.... I'm never [dealt with the homeless prevention program] before.... I appreciate the department help with the people, that's what I know from her so I'm so happy that this department in America help the people who can't pay the rent, but over a month now I don't receive any checks" (Transcript).

The existence of the public assistance, in the landlord's view, was a good thing, but it did not actually help him if the rental income it covered did not arrive in a timely fashion.

The landlord was now faced with both a poor tenant and a social service agency that were not paying rent. The tipstaff interjected that she knew about the "federally funded" program:

Judge (To Tipstaff): These agencies, do they send the check once they get their funding, do they send it right to the landlord?

Tipstaff: Right to the landlord. Yes, she fills out all the papers, they tell her what she's gonna get, it goes directly to the landlord and they told you everything was okay and they were gonna send the money. And it

takes sometimes they're waiting till the next year, whatever, to get all that funding. Yeah. And then they send it out. It takes a couple months. They just passed the budget on it so it may take another month before he receives it.... And that's a one-time thing, judge.... Now another organization would take up from there. (Transcript).

The tipstaff's program summary was generally accurate, though the program is actually funded entirely by city funds, the program's fiscal year actually begins in the summer, and there is no service coordination with any other organizations following the one-time grant. The judge expressly did not find the tenant liable for the months covered by the pending funds after conferring with the clerk about what is "usually done" (Transcript). There is clearly some willingness on the part of the judge and court staff to coordinate their judgments with the services provided by homeless prevention agencies.

This willingness was also demonstrated by an unsolicited referral made by a tipstaff to a tenant whose situation was heartbreaking. The tenant was a single father who testified that he received custody of his six-year-old girl and had been trying to pay the nearly \$2,000 in back rent he admitted owing. He stated that his landlord was "probably running out of patience, but right – I'm just a stress to him, I don't have nowhere else to go with her..." (Transcript). He continued:

Tenant: I mean, you know, child care is really – you know—that's almost a hundred bucks a week now and I'm not getting – you know – any – you know – assistance and, plus, the – the work I've been getting, has been, like, you know, allowed me to keep up with the monthly rent, which I have. You know, and I'll ask him for, like, you know, a couple of months additional to work with me, but – you know, I – you know – but right now, you know, I – I don't have anywhere else to go and – you know – and you know, my little girl, she's doing good in school and everything....

Judge: Well, what I've done is – I'll enter the judgment and I'll just encourage the parties, perhaps, you can talk with him. I'll enter the judgment in your [the landlord's] favor for that \$1,815.00 and court costs of \$40.50.

Tipstaff: Plus service foundations and groups that you could go talk to.

Judge: Right.

Tipstaff: There's something called TAG, Tenant Action Group, they're on 12th Street right in the building, where the parking lot is and maybe, you could talk to them and they could give you some help (Transcript).

Tipstaves often had the opportunity to give litigants advice and did not. This particular tenant appeared to evoke sympathy rather than disdain, perhaps in part because he did not trigger the welfare mother prejudice that occasionally surfaced, as it did with the landlord attorney who was upset at the working woman receiving homeless prevention funds. I do not know whether the tenant did go to TAG, but he did file an appeal that stayed his eviction well into the next school year. In fact, because his landlord did not respond to his appeal with a new complaint, the tenant received all \$400 he had escrowed with the court. This case illustrates why assistance to tenants and landlords is crucial: the landlord bore the brunt of the tenant's difficulty making ends meet. The more landlords that are assigned this responsibility the more likely it is that they will exit the landlord business and possibly take valuable rental units off the market.

A Judge's Referral Efforts

One judge I spoke with wished he and his fellow judges could do more to help tenants obtain the services they needed, though he did make some referrals to programs he knew about. In one case I observed the tenant was a single mother who had brought her children to the courtroom and testified to the court in a heavy accent that her husband had been incarcerated and she had no money and nowhere to go if she got evicted. The judge recollected the case in our interview:

She was a Russian lady, behind on her rent. I suggested that she go to the Russian community because maybe they have something and also go to the Federation of Jewish Agencies to see if they could help her out. She

was bewildered, only here for a short period of time, and her husband was arrested for whatever reason. I sent her to a Russian lady in the Northeast who sent her to the Jewish Federation. I don't know what came of it (Interview Notes).

Though the judge felt glad that he could sometimes provide a referral, he lamented the fact that he knew so little about the function of these different agencies or how to effectively refer tenants to them. The judge continued:

There's no social agency that solves problems for tenants. The closest is Community Legal Services, who attempts to solve tenants' problems in a courtroom. Poor tenants don't always use them and don't always have the wherewithal to seek out other alternatives. There's no over-all program for people who face these problems that I knew of. There was one program that would pay some rent, but I didn't get the message that there's an over-all organization that did this.... If such a program existed, I would have been interested in availing myself of it (Interview Notes).

The judge was aware of a rental assistance program "under city auspices," which appeared to be the city's homeless prevention program, but did not know enough about it to make referrals to tenants. He was concerned that there were not enough funds for an umbrella organization, and also that tenants might misappropriate any funds they received and fall behind on their rent again. Still, he felt strongly that, "we could use a program to help deserving families" (Interview Notes). This judge, at least, was motivated to take advantage of Landlord-Tenant Court's close association with social welfare agencies that served poor tenants and, by virtue of their financial obligation under their lease, their landlords.

Section 8

Whereas homelessness prevention funding represents a temporary relationship between the funding agency, the landlord, and the tenant, the Section 8 program often establishes a long-term relationship between agency, landlord and tenant. The Section 8

program was instituted by the Department of Housing and Urban Development as an effort to add flexibility to their public housing program which had previously depended almost exclusively on large housing complexes to provide publicly subsidized low-income housing.

The largest component of the program consists of rental vouchers that a participating tenant could take into the open private rental market and use to pay his or her rent. Landlords are free to reject an application for housing that uses a voucher, but the guaranteed federal income the voucher represents serves as an incentive for landlords in the low-income housing market. In order to participate in the program, landlords must accept an independent inspection program conducted by the Philadelphia Housing Authority, the local agency that administers the Section 8 program. Until recently, landlords also had to use leases provided by the Section 8 program. The program represents an amalgam of the public housing system and private housing market, but disputes between Section 8 landlords and tenants are heard with the private rather than the public hearings. In short, the program introduces a complex wrinkle in an already complex relationship.

I interviewed a Section 8 tenant and her attorney after they had appealed the case to the Court of Common Pleas while recruiting trial participants for the case studies (I was not able to obtain an interview with the landlord or his attorney). The tenant found the response of both the Section 8 program and L-T Court to her dispute with her landlord to be less than satisfactory. I observed the hearing of her Small Claims case in which she sued her landlord for charging additional rent and water expenses that were expressly prohibited by her Section 8 lease. The judge found for her landlord in that

case, and when the landlord sued her for money that she was withholding he was awarded possession and the full amount of his damages claim against her. In neither case, according to the tenant, did the judge address the specific provisions in her Section 8 lease. When I asked her what she thought the Court's responsibilities were in dealing with landlord-tenant conflicts, she had the following to say:

Each case is different. In this case, I don't know. I hate to use the word "fair," but I didn't think it was fair that he was able to get away with all of that. His use of the court system didn't shock me. [The Court] should have sent it back to Section 8. When you look at all the papers, they say, 'If this takes place, contact us immediately.' Then, when you do it, you don't get any response. If it's on paper, why don't you do what you say you'll do? That's life (Interview Notes).

Though the Philadelphia Housing Authority (PHA) made timely inspections, if they found violations they asked the tenant to contact the landlord rather than contacting the landlord directly. L & I also inspected the property, but she never heard from them after the inspection took place. She came to her small claims hearing armed with plenty of papers, which the judge never reviewed. Though the tenant was the plaintiff, her testimony takes up only 11 of the 90 lines of text on the court transcript. The case ended with her statement, "he's not going to be able to hear my other side of anything" (Transcript). She decided to get an attorney for her appeal.

Her attorney was a legal aid attorney who specialized in public housing, including Section 8, cases. His agency only accepted cases that were meritorious and for which a legal argument could potentially impact on the case's outcome, and still they sometimes found their resources stretched thin. He found that this tenant's case especially strong. She was

an ace of a client. She asked the right questions, got whatever I needed to

prepare for the case, and was a good witness on the stand. She was articulate, and very even-tempered. Judges disfavor people who can't keep temper under control.... At the trial she was well dressed and attractive, a good member of our society (Interview Notes).

The landlord, in his view, was also in clear violation of the lease in terms of the additional sums of money he collected. Unlike the Municipal Court judges, who seldom apply the law specific to Section 8 tenants, Common Pleas Court judges typically give full hearings about these cases. The judge presiding over this one decided to evict his client based on termination of the term, something that he felt they had little defense for, but decided to find in favor of their side on the damages portions of the claim.

In all, the attorney found that although the Section 8 housing benefit had advantages over both the public and private housing systems there were still problems:

The Section 8 program is not as good a benefit on paper as public housing, but in practice it probably is better, specifically in Philadelphia. The program does decentralize poverty, though on a limited basis. On the whole, Section 8 landlords are more responsible about making repairs. However, PHA, which runs Section 8, is doing a lot to alienate landlords. I hear lots of landlords who aren't that bad saying that Section 8 is not paying what they are supposed to be paying. Some are going months without money. I don't know if landlords are acting on that. PHA is such a horrible bureaucracy. On the other hand, the inspections are also better than for private landlords. Section 8 does get out there for inspections. At some levels, they (PHA) function very well. They get out there – the law does require inspections for the Section 8 program. They do that job very well, and landlords see a direct connection between making repairs and losing income. The landlords know where the money is coming from, and if the repairs aren't made, they stop making payments. Private tenants don't have anywhere near that clout. If they escrow their rent, it goes nowhere (Interview Notes).

Though sometimes inefficient and alienating both towards landlords and tenants, the program applied a more effective inspection system than L & I does for private housing and it suffers much less from the glacial pace that PHA takes to address disputes with its

public housing tenants. The program's success ultimately depended on the full participation of both tenant and landlord – the program is ultimately a benefit for both, not just for the tenant. The program also gave the tenant's attorney the distinct advantage of using the federal court system to apply the federal laws that also govern Section 8 tenancies. In fact, he successfully sued his client's landlord in federal court to obtain transitional funds for her move into another Section 8 property. When he brought suits against landlords, he always did so in federal court where he found a greater adherence to the standard legal practice of engaged arguments supported by evidence and testimony than he did in the state courts.

Legal Assistance

Poor tenants took advantage of legal expertise through other programs besides this legal organization, which represented four of the tenants who appealed to the Court of Common Pleas and provided advice to at least three others before their Municipal Court appeal. One tenant used an argument that she was encouraged to use by a law student in a clinic provided by Temple University Law School. Another tenant was represented by an attorney from the Volunteers for the Indigent Program (VIP), a program established by the Philadelphia Bar Association designed to help increase access to justice for poor people. Attorneys working for private firms throughout the city volunteer to participate, and are assigned to clients who have sought help from the service. In this case, the attorney was able to overturn an unfavorable Municipal Court verdict by appealing it to the Court of Common Pleas. The attorney was notable for his extensive legal preparation for the Municipal Court case, which stood in marked contrast to cases generally heard in L-T Court.

Such successes at the Common Pleas level, however, do not impact on the original L-T Court verdicts. In other words, the judicial feedback is one-way: cases originate in Landlord-Tenant Court and some wind their way up through the appellate system, but case law established in the appellate process does not iteratively impact on new L-T Court trials in the manner that common law dictates. The Court retains a high degree of institutional autonomy. Its accountability to City regulatory agencies and the City Council, which passes laws expressly directing judicial behavior in L-T Court, is weak. The cases judges hear involve a great deal of relationships with social service agencies, but there is no system of referral or coordination. The Philadelphia Bar Association provides some measure of accountability, but it appears to have little effect on the selection of Municipal Court judges. Instead, the institution that has the greatest impact on the Landlord-Tenant Court is non-legal: political party machinery operated by ward leaders interested in meeting party needs rather than in selecting judges qualified for office. Whether the Court remains accountable to judges' campaign funders and the politicians who received the campaign money remains an open question.

Section III

Introduction

A Common Law River

Imagine that the centuries of common law cases that established *caveat emptor* are a river meandering across a continent, flowing with a strong current through a constantly shifting channel. As urbanization changed the value of property from land to shelter, the current eroded the existing riverbank as courts throughout the legal system began to replace *caveat emptor* with the warranty of habitability. These decisions pressed against the river's bank and broke new channels that led the river in a new direction, leaving old sections of river abandoned as lakes. By the end of the 20th century, this river ran strongly in a new channel through most state legal systems, including that of Pennsylvania. The river's new channel cuts across the old riverbank such that the influence of *caveat emptor* is mixed in with the river's new currents. Also, the river is constantly fed by rains drawn from its channel and from the lakes that its changing path forms, creating a hydrologic cycle that represents the accrual of common law across the passage of time. Even decades after the legal transition the old riverbed remains etched in the landscape.

In the same year (1980) that Pennsylvania Supreme Court added this state's landlord and tenant common law to the new, evolving riverbed, all cases involving tenancy in Philadelphia's Municipal Court began to be heard in a specialized housing court. Landlord-Tenant Court brought an intense focus to these unique cases that deal with highly charged conflicts over territory, ownership and possession. This new court was also a part of an organizational system that lacked accountability to other legal and governing bodies and vigorously defended itself from outside influence. The

combination of these factors created an eddy in the Common Law River, a legal backwater that maintained adherence to the outmoded *caveat emptor* principle in spite of the shift towards a more mutual relationship between landlord and tenant. As a result, though the law practiced in Landlord-Tenant Court is surrounded by the Common Law River's new flow, it follows essentially the same current that gave the old river such enduring strength.

Chapters 10-12 Summary

A bundle of four theories provides a useful framework to understand this organizational development and behavior of Landlord-Tenant Court and Municipal Court: autopoiesis, territoriality, paradox theory, and street level bureaucracy.

Autopoiesis forms the over-arching theoretical perspective and serves to unify not just the theoretical implications of the courts' behavior but the methodologies I used to discover it. Autopoiesis is a theory that was initially developed by biologists to explain the origins of life and perception but has been applied to a wide range of social systems, including organizations and the law (Capra, 1996; Teubner, 1993). The theory characterizes social systems as inherently self-referential, a characteristic that matches the circular patterns of the Municipal Court's behavior that has resulted in the continued application of outdated legal principles within Landlord-Tenant Court. Autopoiesis also explains the circular, self-referential patterns of the above Common Law River that remakes itself out of rain drawn from its own waters: law is a self-referential social system.

The remaining three theories provide explanations about different dimensions of an organization's autopoietic behavior. First, territoriality focuses attention to the physical space in which autopoietic patterns emerge, in this case a courtroom within a

courthouse. Territoriality has been developed within a wide variety of fields (including biology, sociology, and geography) and associates territorial behavior with aggression, control, and power (Lyman & Scott, 1970; Malmberg, 1980; Sack, 1986). Second, paradox theory provides insight into the behavior of the trial participant groups who interact within a space (Landlord-Tenant Court) created by an organization (Municipal Court) to resolve conflicts over territory. This theory was proposed by Smith and Berg (1987) and presents a framework for understanding the paradoxical relationships that both sustain and paralyze group and intergroup activities. Finally, street level bureaucracy explains the policymaking processes that take place within a legal organization that has isolated itself from the written law that normatively guides its actions. Street level bureaucracy is a theory that was developed by Michael Lipsky (1980) to explain the tendency of individuals within public service organizations and the organizations themselves to create policy in the course of implementation. Court staff and judges undertake street level policymaking as they transform legal mandates into policy activities that may bear little resemblance to policymaker intentions.

I will emphasize the autopoietic nature of each of these theories over the next two chapters, but a brief summary is warranted here. Territoriality theory is primarily concerned with the same boundaries that autopoiesis posits as the key element that governs the relationship between individuals and organizations. Paradox theory emphasizes the same circular patterns that autopoiesis identifies, and characterizes group processes as fundamentally non-linear. Street level bureaucracy points to the inherent unpredictability of policy as it is created due to the realities of policy in action. This assertion dovetails with autopoietic non-linearity as well as the autopoietic emphasis on

complex relationships, in this case between policymaking bodies and policy implementing organizations. Chapter 10 presents autopoietic theory, illustrates its utility for this study with a re-analysis of the interorganizational data presented in the previous chapters, and presents a new case analysis of my research experience collecting data for this study. Chapter 11 will weave the remaining theories together, utilizing the fifth case analysis as well as previously presented data. This chapter will conclude with an analysis of the ontological, epistemological, and methodological dimensions of autopoietic theory.

Finally, Chapter 12 will present the policy significance of the study's findings and make specific policy recommendations. This concluding chapter will also identify a future research agenda to continue investigation in the area of housing courts.

An Evolving Organizational Case: Autopoiesis At Work

The fifth case analysis is the dispute between the Municipal Court and myself over access to public data that illustrates some of the organizational patterns that I was observing. Without intending to, my efforts to obtain data began to increasingly take the shape of a legal case with me in the role of plaintiff and the Municipal Court in the role of defendant. Though I did not pursue my rights to collect data via a court action, I did retain an attorney and used his advocacy to obtain the data I needed to complete the study. I initially proposed to utilize autopoietic theory before beginning my data collection, and increasingly found that it applied to my experience collecting data as well as to the data itself. A description of the theory will precede its application to previously presented data and to the fifth case study of my interaction with the Municipal Court and Landlord-Tenant Court.

Autopoiesis

Theory

The term “autopoiesis” was coined by the neuroscientist Humberto Maturana out of the prefix “auto” (self) and “poiesis” (making) to form a word that means “self-making” (Capra, 1996). In essence, the word identifies the single most important criterion distinguishing living from non-living systems. As Maturana explains, he had been struggling to articulate fundamental, circular patterns he and his collaborator, Francisco Varela, had been identifying in the relationships between living systems and the process of cognition (1980). From a cognitive standpoint, he identifies three central

dimensions to the theory of autopoiesis: unity, organization, and structure. Perceiving consists of distinguishing an entity from its background and assigning that entity with the properties of unity. This creates the perception of an organization. An observer then further distinguishes components of which the organization is comprised, which constitute the organization's structure. The leap Maturana and Varela make is to assign these same properties to living systems, equating them with the cognitive process. A nerve cell, for example, is a unified organization bounded by a cell membrane and made up of a set of components, including enzymes, peptides, DNA, etc. They interact with each other in a constant making and remaking of the cell's internal structure. This defines the living system's intra-systemic dynamics.

The contribution most important to social science and the study of the law derives from Maturana and Varela's formulation of the inter-systemic dimension to living systems. According to autopoietic theory, direct communication between living systems is impossible because the system uses its own components to remake itself rather than responding directly to external effects. When an electronic impulse stimulates a nerve cell, for example, the cell transforms itself in response to the change in its cellular membrane, not directly in response to the stimulus. The cell reconstitutes itself in a different form as it serves its function to send the impulse along to the next nerve cell, but it remains a cell. Furthermore, when it changes back into its non-stimulated state, it is once again responding to a change in the cellular boundaries within which it exists. The autopoietic process is ongoing, dynamic and, above all, self-referential. The process also has implications for the process of cognition itself by establishing an autopoietic relationship between the living systems of the observer and the observed.

Arguably the central, and certainly the most prolific, theorist to apply autopoiesis to various social phenomena is Niklas Luhmann, and one of the areas he has concentrated on is law (Bailey, 1997). Luhmann expanded Maturana and Varela's emphasis on the nature of autopoietic interaction and characterized living systems primarily as systems of communication. The interlocking feedback between the cells described above is analogous to the interlocking communications between two social sub-systems (such as law and the economy) or between one sub-system and society as a whole. The communication between law and society preserves law's fundamental independence and structural composition in the same way a cell preserves its own structure as it functions in its cellular environment. The simultaneous continuity and change of the boundary that distinguishes law from the rest of the society represents a key paradoxical formulation at the center of the Luhmann's theory of legal autopoiesis. Whereas cellular components consist of bio-chemical elements, legal components consist primarily of normative elements. Legal norms are what the law makes and remakes as law responds to the changes in its external environment (Bailey, 1997).³²

This brings us to Luhmann's (1988) key statement about legal autopoiesis: law is normatively closed but cognitively open. Its cognitive openness allows the law to learn from its environment, but it does so entirely in the context of its own normative system. External actions and other forms of communication do not change law directly, but instead change the legal system's environment. Law adapts to its changed environment

³² Luhmann's theory has faced significant criticism from a variety of perspectives (Bailey, 1997; Dunshire, 1996; Lempert, 1988). Luhmann has made a number of adaptations from biological sciences that seem to me to be reasonable given the differences between biological and social living systems. (Bailey, 1997).

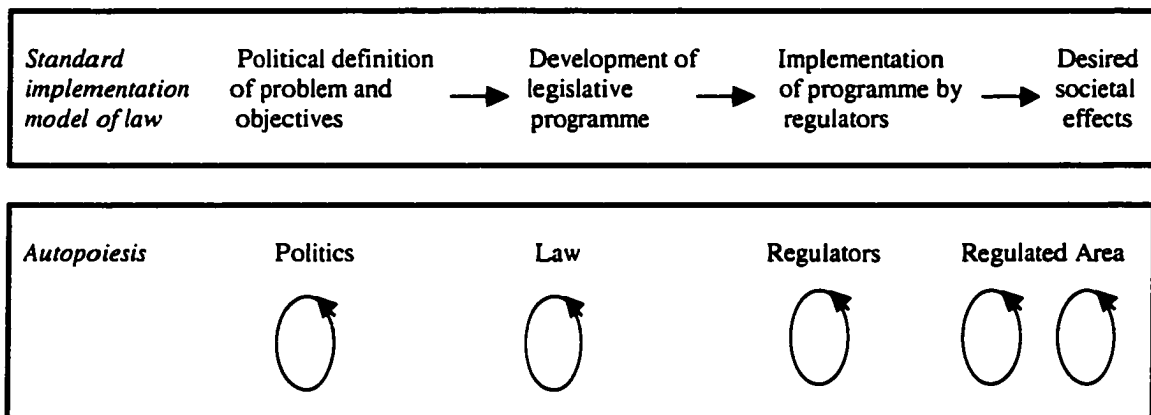
by utilizing its normative structure to assign meaning to the change in the environment, always in the context of its normative structure. This process is recursive and retains the unity of law as well as any other system it comes into contact with.

Every operation in law, every juristic processing of information therefore uses normative and cognitive orientations simultaneously – simultaneously and necessarily linked but not having the function. The norm quality serves the autopoiesis of the system, its self-continuation in difference to the environment. The cognitive quality serves the coordination of this process with the system's environment (Luhmann, 1988 p. 20).

The boundary is both what distinguishes law from society and what enables law to communicate with society without ever being directly influenced by it. This is the hydrologic cycle of the Common Law River: mixed in with the rain taken from itself is water provided by non-legal legislative and administrative bodies, which the river incorporates into its flow in an ongoing constitutive process.

In his emphasis on norms and communications, Luhmann gives little attention to two critical components of law: organizations and interactions. Others have expanded the theory's implications for organizational dynamics, taking an avowedly empirical approach that Luhmann seldom adopts. Paterson and Tuebner (1998), for example, present a framework that they apply to regulatory policymaking. They propose to replace the linear, causal framework typically used to link statutory policy and policy results with a model that emphasizes the interorganizational complexity and organizational autonomy inherent in policy formulation and implementation. They represent this shift graphically as follows:

Figure 2: Comparison Between Causal and Autopoietic Organizational Analysis



Note. From Paterson & Teubner, 1998 p. 458.

When policymaking is seen from an autopoietic standpoint, each policymaking system is autopoietic and operates in only tangential relationship with the other systems. Linking them in a causal chain therefore does not account for the way they actually relate with one another, and can lead to dramatic gaps between written and practiced policy. The authors instead propose that organizations be aligned as closely as possible so that their behavior corresponds to desired policy effects rather than operates at cross-purposes to it. One form of alignment is “binding” whereby the internal organizational processes are structurally coupled with law so that parallel organizational behavior corresponds to commonly held legal norms.

Paterson, Teubner, Luhmann, Maturana and Varela’s emphasis on the autopoietic cognition of an observer provides a key insight to the process of social science. Scientists enter into relationships with their research participants and these relationships consist of innumerable recursive perturbations of and adaptations to the boundaries that both separate and unify individuals. These adaptations take place in the context of an individual’s normative structure, either by reinforcing existing norms or laying down

fresh normative territory. Relationships between people, like those between organizations and social systems, consist primarily of meaning. Finally, many external events affect interpersonal boundaries, providing a context for macro social forces that either expand or constrict the field of choices from which each individual selects.

A multi-level perspective on the social, organizational, and individual dimensions of autopoiesis provides an important implication for the final case study I will present in this chapter: each of these social systems interacts with each other autopoietically. Though the implications of this exceed the scope of this theoretical presentation, its seeds are obvious in emphasis on the observer's integration with systemic autopoiesis. The equation of cognition with living processes means that an individual in the capacity of observer is engaging in a process of autopoietic relationship across the boundary shared by the observer and the social system being observed. Consequently, I have created the meaning of Landlord-Tenant Court and Municipal Court behavior by responding to the recursive boundary fluctuations between the courts and me in the context of my normative structure. Simultaneously, the court has created a meaning of myself in the context of its own normative structure. Guided by a research methodology that required introspection and pursuit of unwritten rules and organizational dynamics, I was able to mine both normative fields to develop a more complete understanding of the motivations behind court behavior I observed.

The broad, theoretical application of autopoiesis to all law lies outside the scope of this study, though it certainly provides insights along this line of inquiry. The data I have collected provide fertile ground for autopoietic analysis of legal organizations. I will first re-analyze the interorganizational data I have already presented using an

autopoietic framework, and then will analyze the intraorganizational data I developed over the course of data collection. The chapter will end with a summary of these two dimensions of autopoietic analysis.

Application

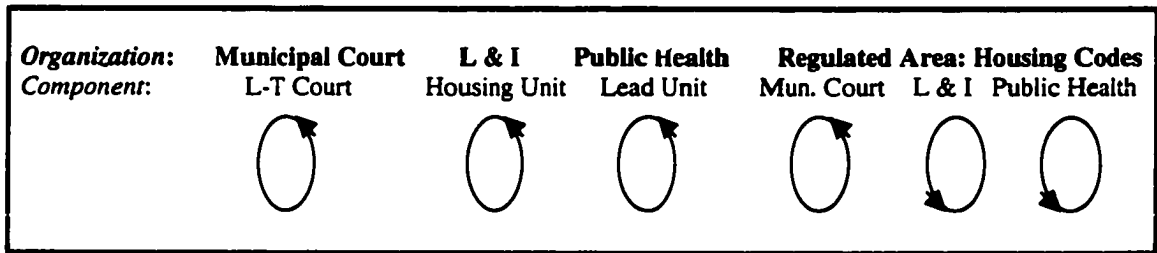
Interorganizational Dynamics

Autopoietic analysis allows a more precise formulation of the relationship between Landlord-Tenant Court, Municipal Court, and the legal system of which it is a part. Landlord-Tenant Court is a good example of a structural component which comprises, along with other components, the Municipal Court organization. Besides the other Municipal Court courtrooms, other components consist of the administrative and filing offices as well as the criminal side of the court and its parallel office located at the Criminal Justice Center. The Municipal Court is also a component of the Philadelphia County court system, which includes Common Pleas Court, and this court system is a component of the state court system, etc. The sum total of these various organization components, if added to the systems of other states and the federal government, constitute the legal system on which Luhmann focuses his attention. Each component operates autopoietically in relation to each other component, though the activity between the components will vary dramatically depending on their structural proximity. Autopoiesis provides a useful framework for making sense of our enormously complicated legal system.

The utility of autopoiesis is also evident when the theory is applied to the interorganizational data I presented in previous chapters. The gaps between current landlord-tenant policy and policy as practiced in Landlord-Tenant Court are obvious, and

might be actually discerned without a policy framework that accounted for the autopoietic relationships among the many organizations that interface with Municipal Court. Applying Paterson and Teubner's (1998) model, the court's interorganizational relationships could be graphed in a similar manner. I have also added the two levels of organization and organizational component to the framework. The existence of organizational components in other organizations is a reminder of the complexity of interorganizational analysis:

Figure 3: Interorganizational Analysis of Municipal Court and Landlord-Tenant Court



Ideally, the directionality of the three institutions would be aligned, as represented in the common placement of the first three loops. However, the Municipal Court's orientation to regulation of the private rental housing market is clearly not aligned with the mandates of both L & I and Public Health, as represented in the differently placed arrows in the final set of loops.

I intentionally paralleled the L & I and Public Health orientations to illustrate a point: as far as I know, these organizations share the same orientation only by mandate. A complete analysis would require studies of both organizations to determine their actual orientation to housing code enforcement, and what inter-relationships exist between the three organizations as a whole. Furthermore, this schema does not account for the two other types of organizations that are related to Municipal Courts in distinct ways: social

welfare organizations that are related via the agency of litigants who act as interorganizational bridges, and the democratic party which has the most complex interorganizational relationship. The autopoietic nature of these relationships will have to be taken up elsewhere.

Intraorganizational Dynamics

Pursuing "Public" Data

I was largely unaware that I was entering into an autopoietic relationship with Municipal Court when I began this research. My cognitive position as an observer of courtroom and courthouse operations was largely unconscious, though I endeavored to record my experiences of the court as information about the court. I had already engaged in a series of negotiations over access to court data, but these appeared to be largely resolved and the conflict I had previously had with the court (see Chapters 1 and 2) appeared latent. However, soon after beginning collecting data in earnest I discovered that my presence was causing a major perturbation in the boundary I shared with the court. While this created difficulties in completing my research design, it provided a window into the richly textured normative structure of Municipal Court. By the end of my data collection, I had engaged with the court to such an extent that I was replicating the same patterns of legal behavior that I had set out to study in the first place.

Three of the four sets of public data I used – notes of testimony, court files, and written notes of hearings – were subject to disputes with the Municipal Court administration and administrative judges. The fourth set, administrative computer data, was provided only after a request for the courtroom trial lists was denied (both data contain the same information, but the court list readily identified the cases that went to

trial, whereas the computer data were very difficult to use for this purpose). Two of the three disputes were resolved. First, an appeal to the Municipal Court Administrative Judge brought about access to the notes of testimony and the extra assistance of the court staff enabled me to circumvent the need for the courtroom trial list to order the transcripts. Second, a direct request to the clerks for files brought about access to these data. The third dispute was over writing notes in L-T Court and remains unresolved after numerous appeals to the Municipal Court judge. The resistance to my research was so intense during the course of data collection that I pursued legal assistance, and became the *pro bono* client of a First Amendment attorney. The disputes highlighted the extent of the court's adherence to the norms of autonomy, ownership, access, judicial power, and judicial restraint.

The first set of negotiations I engaged in to secure access to court data revealed the system's uncertainty about how they wanted to control my access to data. I was told by one Court Administrator that I could not buy the Notes of Testimony because I was not a party to the case, but I could use the courtroom docket list used by the clerks and lawyers because that was public data. I appealed the Administrator's decision on the Notes to the Administrative Judge, who reversed the decision and said that I should meet the Court Administrator to arrange how to buy them. The first Administrator I spoke with had left his position, and I met with the Deputy Administrator's Assistant who told me that I could not use the courtroom docket list (I had attempted to earlier and was told by a tipstaff that I could not do so) but I could use the administrative computer terminal. Initially I was allowed unrestricted access to this computer as long as no one else needed to use it, but was later told that I could use it only one hour at a time whether it was

available or not. Though the court's data access policies appeared ad hoc, they had the effect of exerting some control over my ability to gather information about the court's operations.

I also pursued permission to review another important set of public data: the official case files kept by the court, which contained all filing and evidence either submitted by litigants in advance of the trial or during the trial itself, as well as complete case disposition data. In the past, I had simply asked the clerks in Judgments and Petitions for case files, which they gave to me without asking me what my interest in them was. However, I knew that other public records were already being contested and wanted both to prevent further restrictions as well as to coordinate my large data request with the clerk staff. I decided to ask the then supervisor of this unit permission to review case files in November of 1999. She replied:

These records are all public records and public information, but I can't let just anybody look at them. I can't just let a reporter look at them without permission from my boss [the Deputy Court Administrator]. If you were involved in the case, [reviewing the file] would be no problem (Field Notes).

I was discovering that the public nature of Municipal Court's data was open to the court's own definition of "public." It appeared that the Municipal Court exerted ownership over the data, and released the data according to various idiosyncratic definitions of who had a right to view the data. This was the last conversation I had with an administrator about these data.

By the time I wrote a letter to the Administrative Judge requesting access to the case files, this data set had become of secondary importance because the court had blocked access to another data source that I had been using extensively for years: notes of

court proceedings. I had been taking notes in L-T Court since my first research project in L-T Court, (which began in the Fall of 1995), so I was not expecting to hear a judge's tipstaff³³ ask me to stop taking notes during the roll call in February 2000. I later spoke to the tipstaff:

Researcher: I'm not allowed to take notes?

Judge Tipstaff: No. See, what you need to do is order the transcript, which you can do through the Court Administration.

Researcher: Do you know how I'd be able to get the court number?

Judge Tipstaff: I'm not sure, you'd have to talk to Court Administration.

Researcher: I've taken notes here before.

Court Tipstaff: That's right, he has. Judge _____ let him, as did other judges.

Judge Tipstaff: Well, you can ask Judge _____ permission (Field Notes).

I had not been aware that judges had previously been giving permission to me to take notes in their courtroom – I had always thought this was allowable in any public courtroom. Without being able to take notes I would have increased difficulties identifying the cases I was studying, particularly because I was already not allowed to record the case number from the courtroom docket list. Furthermore, I would have difficulty reliably recording a variety of both quantitative and qualitative data about the trials and the court proceedings. After the session had ended, I asked the judge permission to take notes, which she granted. The judge's tipstaff encouraged me to get blanket permission to take notes in court from the Administrative Judge.

Two days after this first note-taking dispute, the same court tipstaff who told the

³³ Some Municipal Court judges have tipstaves assigned to them, who function similarly to law clerks at other levels of the court. Most tipstaves have general court assignments, which the judge's clerks also undertake at times. The Senior Municipal Court judges and those that have offices, such as the Administrative Judge, are assigned law clerks.

judge tipstaff about the permission I had previously been granted strode up to me where I was sitting at the back of the courtroom. She leaned closely to me and said in an intense voice:

Tipstaff: You are not to take notes while court is in session unless you have a letter from [the Administrative Judge].

Researcher: So, the conversation that I had with Judge Anderson does not apply.

Tipstaff: No (Field Notes).

Since there was still time before the court session opened with the roll call, I continued writing notes, earning a withering glare from the tipstaff. I stopped taking notes when the trial commissioner entered to preside over the roll call, and when roll call was over I attempted to clarify when I could take notes with the tipstaff:

Researcher: I wanted to ask you a question: can I take notes between the roll call and hearings?

Tipstaff: You cannot write while the court is in session. We're all aware of it, so if you try to take notes we'll ask you to leave the courtroom (Field Notes).

Taking this to mean that I could take notes between the roll call and hearing, I began recording observations from the roll call. The tipstaff looked up from her processing of defaulted litigants, and forcefully stated:

Tipstaff: Sir, stop taking notes.

Researcher: I'm sorry, I thought it was OK . . .

Tipstaff: No notes (Field Notes).

It appeared that the tipstaff's initial emphasis on not taking notes while the court was "in session" (which I understood to be when the trial commissioner or judge presided over the courtroom) was beginning to change into a prohibition on taking notes at any time within the courtroom.

Though not aware of it at the time, my previous efforts to gain access to the court had created various ripples in the boundary I shared with this social system. These alterations in the boundary state created a recursive motion that piled each smaller wave on top of each other until the Municipal Court organizational system experienced a major boundary change. My presence was threatening the system's normative structure by introducing the prospect of a changed interorganizational environment brought about by public scrutiny of its behavior. The scrutiny of other organizations could limit the system's normative adherence to autonomy and control over its own operation. The Municipal Court's response to the boundary changes I introduced was to introduce its own boundary change that blocked access to data central to my study and placed me in a responsive position to the new boundary state.

When I returned to Landlord-Tenant Court two weeks later, the court tipstaff told me that I could not take notes at any time in the courtroom. I then attempted to take notes outside of the courtroom in the hallway, and was told by a sheriff that I was not allowed to take notes there either. The only place I was able to take notes on the fourth floor without being told to stop was in the men's room, which was too far away from the courtroom to effectively record information without missing cases as they were heard. As I continued my observations in court, I saw many people taking notes, none of whom were prevented from doing so. As long as the people inside the court were behaving in conjunction with the court's purpose, their right to write was not challenged.

I later spoke with the judge's clerk who originally asked me to stop taking notes, and he told me how the Administrative Judge became involved with the emerging policy concerning my note-taking. Ironically, this clerk appeared to be glad on my behalf that

the Administrative Judge was involved because he appeared to believe that a meeting would clear up any confusion about my presence and pave the way to gain the permission to take notes that I wanted:

Judge's Tipstaff: Well, it looks like we worked it out.

Researcher: You mean by me not taking notes in court?

Judge's Tipstaff: Well that's just until you meet with [the Administrative Judge]. On the very same day we talked before we walked downstairs and ran into [the Administrative Judge]. We asked him about you, and he said, 'Sure, I know [him]. He writes papers and other things for the University of Pennsylvania.' It turns out you're well known around here.

Researcher: Apparently so.

Judge's Tipstaff: So, when you meet with him maybe he'll give you that piece of paper we were talking about.

Researcher: Hopefully.

Judge's Tipstaff: We'll see. Good luck.

Researcher: Thank you (Field Notes).

A note-taking policy first communicated by this tipstaff changed three times in two weeks and included at least two tipstaves and two judges in its development. First I needed individual judges' permission to take notes; then I needed the Administrative Judge's permission to take notes in front of any judge while the court is in session; finally, I needed the Administrative Judge's permission to take notes within the courtroom at any time. This is a classic example of recursive disturbances in an organizational boundary generated by a change in the organization's external environment. The Court was responding to my observation and the exposure it might bring as a threat to its internal structure and changed its boundary. I, of course, shared this boundary, so engaged in my own responsive behavior, and so on.

I find three dimensions of this experience particularly striking. First, the judge tipstaff who first informed me of the note-taking policy was consistently friendly to me

throughout this initial situation and the rest of my research. This tipstaff's demeanor was in marked contrast with the court tipstaff who treated me as a suspected criminal during the same time. Second, the policy developed through the agency of several, loosely connected judges and tipstaves such that it appeared to be an expression of the court's ethos rather than a consciously crafted policy. Third, at no time did I actually speak with a judge about my taking notes in Landlord-Tenant Court, having heard about it only through these two tipstaves. The lack of direct communication from the judges had the effect of isolating them from any liability for the actions of the tipstaves, even though by all appearances and their own statements the tipstaves were following instructions given to them by their organizational superiors. In fact, the only direct contact I was to ever have with the Administrative Judge was when another judge introduced me to him in the hallway behind L-T Court months before being asked to stop taking notes. When the other judge described my research, the Administrative Judge said, without any acknowledgment that he knew I was the same researcher he had written to months earlier, "well, welcome" (Field Notes). Within another short span of months, I had engaged with the Administrative Judge and the Municipal Court as a disputant in a legal case over my right to take notes in court. I was increasingly becoming a participant in the Municipal Court's autopoietic patterns.

Dissipative Structure

The particular structure of my interaction with the court closely resembles another systems theory congruent with autopoiesis: Prigogine's dissipative structure. Like Maturana and Varela, Prigogine sees living systems as simultaneously closed and open, but emphasizes the continuous flow of matter and energy through a self-organizing

system that retains its form (Capra, 1996). Capra applies the idea of dissipative structures to the fluid dynamics of a whirlpool in an illustration that elucidates the organizational eddy in the Common Law River that serves as an analogy to Municipal Court and L-T Court. Capra points out that as a whirlpool forms, water continuously flows through it without altering its basic shape. The water's increased radial inward velocity is counterbalanced with outward centrifugal forces and by the opposing forces of gravity and friction. In short, "the acting forces are now inter-linked in self-balancing feedback loops that give great stability to the vortex structure as a whole" (p. 170).

In my case, the forces creating the vortex were normative in nature and consisting of two competing pairs of norms: ownership/access and judicial power/restraint. On the one hand, the court asserted its ownership of the official court record by preventing me from freely taking notes, but on the other hand preserved my access to what was said on the record in court by allowing me to buy the official court transcripts. Similarly, while the Administrative Judge apparently used his organizational power to restrict my access to public data, he restrained his power by not ejecting me from the courtroom entirely. In spite of limited access, I still had enough access to data to complete my study. These dynamics reveal the fundamental normative structure of a court that is balancing competing norms as it responds to changes in its organizational environment. These same pairs of norms were evident in the court's variable treatment of litigants, which ranged from helpful assistance in accessing some court procedures to harsh reprimands about other court procedures "owned" by the court. Similarly, judicial treatment of litigants ranged from domineering dismissal to restrained patience. By interacting with the court's boundary, I was engendering systemic behavior that revealed organizational

structures that would have been more difficult to access otherwise. I had to become a part of the whirlpool swirling around Landlord-Tenant Court to understand how it operated.

From Conflict to Dispute

I began appealing the new note-taking policy to the Administrative Judge the day after the tipstaff initiated the no-note-taking ban by writing another letter to his office requesting permission to take notes and to review case files (see Appendix F). A series of phone calls, lost faxes, and additional letters yielded no direct response from the Administrative Judge, in spite of the efforts of his very kind secretary. The same day I spoke with this secretary for the last time, I spoke with a Tenant Action Group staff member who said that he and two other staff members were asked not to take notes in Landlord-Tenant Court by a tipstaff the previous week. The agency was doing preliminary observations for a follow-up study of the TAG report I had written four years previously. One staff member returned to court and secretly took notes behind a pillar without being asked to stop doing so. To this point the note-taking ban appeared to single me out; if it did originate at the time it was first applied to me, it was now being applied to other court observers. My own interaction with the court already had an organizational context given my previous attachment to TAG, and this organization's current efforts no doubt solidified that association further.

As I continued to collect data, I was subject to the surveillance of numerous tipstaves, three of whom asked me specifically not to take notes. One of these took a particularly acute interest in making sure I was not circumventing the note-taking ban. A week after finding out about the experience of Tenant Action Group staff in Landlord-

Tenant Court, this tipstaff approached me in the middle of a trial, leaned in closely, and said gruffly:

Tipstaff: You're not recording this, are you?

Researcher: No.

Tipstaff: You don't have a tape recorder?

Researcher: No, sir (Field Notes).

I was not planning to speak to the tipstaff as if he were a police officer, but his bearing and authoritarian tone invoked just this kind of response. Though the tipstaff left at that point, he appeared frustrated, and I wondered if he was considering a search of my possessions and me. This same tipstaff asked me if I was recording the hearings on two other occasions; on the second of these, the tipstaff noticed someone else besides me taking notes in court that was not connected to any case in front of court that day. Though this person had presumably been taking notes throughout the hearings while other litigants were able to write unrestrained, he was not distinguishable as someone not a party to a case until the last case was being heard. It was then that the tipstaff approached him and said loudly while waving his arms:

Tipstaff: You're not taking notes are you? You're not allowed to, and now I have two people to watch because he (gesturing to me) may be recording, and now you're taking notes.

Note-taker (smiling): I'll put away the notebook.

Tipstaff: It's not enough that I have one person to watch, is it? (Field Notes).

At no point did the tipstaff ask why this person was taking notes; he could conceivably have been a *pro se* litigant or an attorney preparing for a case.³⁴ The boundary separating L-T Court and Municipal Court was becoming more opaque to scrutiny for

³⁴ I was unable to speak to this person, so do not know in what capacity he was taking notes.

any purpose.

The court's hardening institutional membrane raised my fears that my access could be further constricted, and I made the transition from a non-legal to a legal disputant by seeking the representation of an attorney. This case study of L-T Court was becoming a legal case in its own right, and a researcher of landlord-tenant disputes was becoming a disputant with the Municipal Court. My own behavior was taking the shape of the court that I was studying – I had fully engaged with the court's autopoietic behavior.

I began speaking with lawyers about the dispute over access to court data. Two attorneys with very different practices characterized judges as running "fiefdoms." These attorneys shared experiences in which their ability to advocate for clients was compromised by unchecked judicial power. Their own ability to be a check on judicial behavior was limited because they had to preserve positive relationships with judges who might hear other cases they might try in the future. Attorneys also pointed out the potential conflict between engaging with a judge in a legal dispute while also representing clients who have significant real estate interests. These other clients could conceivably need representation in L-T Court, making the need to preserve a positive relationship with judges in that setting especially important. Two patterns emerged from these discussions with lawyers. First, because attorneys must try cases before judges, their ability to hold judges legally accountable is limited. Second, because Municipal Court judges preside over cases that involved property interests, challenging the Municipal Court's behavior about data access could harm an attorney's current or future landlord-tenant or other property oriented cases that Municipal Court judges hear. In this

way, the interests of property owners strengthen the court's autonomy norm and reduce the check on judicial power that attorneys represent.

Out of these conversations with attorneys came a referral to a private first amendment attorney who practiced law in a downtown firm. After hearing about my experience in our first phone conversation, the attorney's impressions of the case corroborated those of the other attorneys I had spoken with:

The court's actions are plainly unconstitutional. However, there's a question you need to answer: how confrontational do you want to be? My suggestion is that you send a letter to the Administrative Judge that clearly emphasizes your constitutional rights. It's a public right to attend hearings absent a finding that you are not allowed to be there (Interview Notes).

He, too, emphasized caution when taking up any case against a judge who may preside over another case tried by the attorney or another member of his firm. While the firm approved the attorney's acceptance of my case, it reiterated this caution. When lawyers sue a judge or a court, the arbiter of the dispute is organizationally intimate with the disputants because they all constitute the legal system.

When we met, the attorney also emphasized the importance of preserving attorney/client privilege by sharing information about my dispute with the court with only himself and his associates. The nature of attorney/client privilege itself is another example of law's autopoietic structure. This is readily apparent when the privilege offered to me by my attorney is compared to the confidentiality I offered to my research participants. If my communications with my attorney were subpoenaed for any reason, the subpoena would be quashed on the basis that attorney/client privilege is held sacrosanct by the court system in which attorneys practice. According to a number of attorneys with whom I spoke, those instances in which an attorney may be forced to

divulge privileged client information are extremely rare. By contrast, there is an important clause in my consent form that indicates the relative vulnerability of my communications with research participants: “I understand that all information collected in this study will be kept completely confidential, except as may be required by law” (see Appendix B). Though I would be able to mount a defense to a subpoena of my data on various professional bases, my defense would be inherently weaker than an attorney’s defense. After all, even in those rare instances where attorneys are compelled to divulge client information, they are forced to do so by their own professional standards and within the court system that constitutes their professional environment.

Becoming an Attorney’s Client

My experience having an attorney gave me insight into both the benefits and limitations of legal representation. By placing my dispute in the hands of an attorney, I had committed myself to following his direction and time frame. I could no longer speak in detail to anyone about my dispute with Municipal Court without clearing the communication first with my attorney. I also had to accept the fact that my attorney could not work on my case as quickly as I wanted him to. As long as I adhered to my attorney’s strategy and accepted his availability, I was accepting less direct decision-making power over my research. The benefits of having an officer of the court (which lawyers are called) representing me, however, far outweighed these limitations. I immediately felt more confident while collecting data at court and less fearful that I might be shut completely out of the system. I had an increasingly clear understanding of what my rights were and therefore how I could manage to find ways to achieve my research objectives. This confidence led to an increased level of creativity and initiative

in the field, and the strategies I developed began to erode the access limitations the court had initiated. In short, legal representation assisted my ability to successfully maneuver through the complex and highly bounded legal environment in which I was doing my research. My study had traveled full circle along the autopoietic patterns etched in law and in the behavior of Landlord-Tenant Court and Municipal Court. I began a study hypothesizing that legal representation significantly affected the outcome of trials and by the end of the study I had retained an attorney to secure the data necessary to confirm that hypothesis.

The first strategy I developed circumvented my need to use pen and paper notes in Landlord-Tenant Court. The aforementioned thumbnail hieroglyphics (see Chapter 4) I etched into trial list copies recorded the basic data I needed from courtroom observation. At one point the tipstaff who had asked me whether I was recording the hearings witnessed my thumbnail sketching during a trial. He glared at me, paused, then turned around, shaking his head and rolling his eyes, apparently in acknowledgment that I had found a technique to take notes that he could not, or would not, challenge. The second data collection strategy addressed the difficulty of speaking with litigants anywhere on the fourth floor of building where the trials are held. I began to interview litigants in the building's lobby where I was able to converse and take notes without interference from court staff. Finally, I asked a clerk if I could review case files for a research project, and the clerk said that I could. Seven months after first speaking with my attorney, I had gained access to the courtroom and file data without my attorney having to take any legal steps on my behalf beyond giving me knowledge of and confidence in my rights.

In the meantime, my attorney had drafted a letter to the Administrative Judge

presenting my right to access court data. Based on my attorney's research, the case law is clear on both taking notes in court and in reviewing case files. The federal constitutional and common law right to access to civil proceedings is established in Publicker Industries, Inc. v. Cohen (1984), which held that such access "enhances the quality and integrity of the factfinding process," "fosters an appearance of fairness," and heightens "public respect for the judicial process." Access to civil trials is also supported by state constitutional and common law; Article 1 of the Pennsylvania Constitution reads, "All Courts shall be open...." Commonwealth v. Hayes (1980) affirmed this constitutional right; R.W. v. Hampe (1993) cited Publicker and held that "the existence of a common law right of access to judicial proceedings is beyond dispute." Though many areas of common law are complicated by contradictory holdings by different courts, there is a noticeable absence of contradictory court decisions on both the federal and state levels.

Pennsylvania courts also specifically address the right to review court files. Commonwealth v. Fenstermaker (1987) and Hutchinson v. Luddy (1990) both grant the public a presumptive right of access to "public judicial documents." Furthermore, the public's right to inspect records can only be denied after the Court in question holds a hearing and finds that the denial is "necessary in order to prevent a clearly defined and serious injury" (R.W. v. Hampe, 1993). R.W. v. Hampe applies this same standard to exclusion orders from court proceedings, which are also addressed in Capital Cities Media v. Toole (1984) and Commonwealth v. Buehl (1983). Even if the court felt it had reason to exclude my note-taking and reviewing of court records, it would have had to give me notice and a reasonable opportunity for me to be heard in my defense.

Four other federal cases indicate how far afield of common law the behavior of

Municipal Court and Landlord-Tenant Court regarding data access lies. In one, a paralegal's right to take notes was affirmed when she was able to prove that her note-taking did not disrupt court proceedings (*United States v. Cabra*, 1980). In another, the court denied a reporter's request to tape record proceedings but noted that the reporter was still free to attend proceedings and "take notes freely and report on the proceedings to the public" (*United States v. Yonkers Bd. of Ed.*, 1984). The U.S. Supreme Court has addressed the insufficiency of exclusive reliance on court transcripts: "As any experienced appellate judge can attest, the 'cold' record is a very imperfect reproduction of events..." (*Richmond Newspapers*, 1980). *Publiker* (1984) later used this finding to hold that a trial court must not relax the standard for closing a proceeding because a transcript of the proceeding can be made available at a later date. Finally, *Blackston v. State of Alabama* (1994) found that a government entity violates the First Amendment if it places restrictions on a member of the public's recording of public proceedings merely for the purpose of controlling the content of the observer's report. Non-disruptive note-taking is the legal alternative to tape recording and cannot be prevented simply because a transcript is offered, nor can it be blocked for the purposes of controlling information disseminated about the court.

Organizational Norms

The extensive case law supporting my right to take notes in court and to review case files parallels a common question I received from virtually everyone to whom I related my experience with the note-taking ban: "How can they do that?" While lawyers appeared to be less shocked than non-lawyers about the court's restrictions, everyone I spoke with expressed some degree of surprise at the court's behavior. My attorney

provided the best answer to this important question: While the court does not have the legitimate authority to prevent me from taking notes, it does have the power to do so. Though judges are subject to various checks within the judicial system and by the legislative and executive branches of government, they have been given such extensive powers that they can readily exceed the normative boundaries that circumscribe their actions. The organizational detachment of Municipal Court inflates these powers considerably. The obvious gap between this authoritarian power and this society's democratic legal ideals perhaps helps motivate the judges' and court staff's protection of the court from scrutiny.

After completing most of my data collection, I talked to two staff members who asked me whether I had come back to court to visit the tipstaff who repeatedly asked me if I was tape-recording hearings:

Staff Member #1: Have you gone to court to see [the tipstaff]?

Researcher: No.

Staff Member #1: He was all over you, wasn't he?

Researcher: Well, I never had any recording equipment on me.

Staff Member #2: Someone did the other day.

Researcher: Oh? What happened to him?

Staff Member #1: He got thrown out. They noticed something suspicious about him, and found out that he was recording in the courtroom.

Staff Member #2: Yeah, you were lucky (Field Notes).

Though I had never been asked if I had recording equipment on my possession before being prevented from taking notes, afterwards I was routinely asked this question by security guards. The recording equipment seemed to garner as much attention as weapons – the security guards and tipstaves were protecting the institution from cognitive intrusion along with the physical intrusion of someone who brings a weapon to court.

Though I have no direct statement from the Administrative Judge about the

Municipal Court's motivation for blocking access to public data, another judge discussed the reasons he and his colleagues did not want me researching their court. It is an extremely clear enunciation of the court's autonomy norm:

Everybody is afraid of the social scientists who want to upset the social pattern, want to change history, change culture, change too much. Most of us who are invested are afraid of change; we don't want change.... You guys deal with ethereal theories and don't concern yourselves with how practical they may or may not be. You frighten off a lot of reasonable people; experience has taught so many to be afraid of you guys. Most professors are kooks, off-the-wall liberals, who want to turn the system upside down. There are too many people who have vested interests, which might be significant in their own little institution. Social science has a total lack of practicality. If you're talking about chemistry, you don't have that. You guys get so wild in what you'd like to see society become, you can forget it. For you, it's not just changing a particular law – you want to change the whole system. But you can always do better within the existing system. What's not considered is human nature, commitment, psychology, need for self-aggrandizement – all of these move the system (Interview Notes).

The judge expressed a strong association between social scientists, institutional change, and liberal ideology, all of which run contrary to the court's status quo orientation. The solution is not found in changing the system, but in changing the law that creates incremental change but does not affect the fundamental organizational structure. The human rather than theoretical elements of the system need to be accounted for in any change effort. Academic scrutiny is inherently external and therefore hardens institutions made up of people who are committed to the existing institution and the need to feel important and powerful. The movement this judge described is the circular movement of an institution which works hard to reduce unwelcome attention. Without such scrutiny, there is no accountability; without accountability, there is no reason to change due to external pressures; without change due to external pressures, the court can behave as it

wishes. Reducing scrutiny reduces the amount of external input the system must attempt to subsume into its self-referential internal structure that places high value on autonomy.

The attorneys speaking about the *de novo* nature of appeals in Chapter 8 were also discussing the court's adherence to autonomy. It is worth emphasizing that the court's autonomy should not be confused with its autopoiesis. The court's behavior would still be self-referential if the court valued the norm autonomy is paired with – interdependence. If, for example, an organization demonstrates a high degree of interdependence with other organizations, it is doing so in the context of its high value on this norm and low value on autonomy. Researching such an organization would be a vastly different experience, and I would expect the researcher to struggle more with the organization's effort to collaborate with and co-opt the research rather than exclude or dismiss it. Municipal Court and the people who comprise it (its structural components) expressed its high value on autonomy in multiple ways and from multiple perspectives.

Recent rules have significantly decreased the time allowed to file an appeal and increased the costs for bringing an appeal. While there is an exemption given to poor tenants that relieves them of the costs to appeal their cases, this exemption requires a legal petition that may be beyond the resources of a *pro se* litigant to discover and to properly file. Given that most tenants cannot afford legal representation and free or low-cost assistance is rationed due to inadequate resources, the prospects for getting a case to an appeal in Common Pleas Court is even more daunting than expressed by Mr. Dennis in Chapter 8. My own ability to transcend the public data access limitations enforced by the Municipal Court came at a significant price to the legal firm that provided me with thousands of dollars worth of their staff's hours that could have been charged to a paying

client. For most, it appears more desirable to remain caught in the Municipal Court's whirlpool than attempting to escape it.

A Theoretical Bundle: Autopoiesis, Territoriality, Paradox, and Street Level Bureaucracy

The following chapter adds three additional theoretical perspectives – territoriality, paradox theory, and street level bureaucracy – that build on the insights provided by autopoietic analysis of Landlord-Tenant Court and Municipal Court. Each theory provides a more finely grained explanation of one aspect of the courts' autopoietic behavior and structure. The last chapter's theoretical analysis started at the interorganizational level by explaining the bounded relationships between Municipal Court and other organizations. We then moved one step down to the organizational level by explaining the interrelationship of my research with the court's internal normative structure. This chapter moves us along this path in three more successive steps that pushes the analysis to the intraorganizational, group, and individual levels. Territoriality explains the intraorganizational relationship between courtroom and courthouse, paradox theory explains the dynamics of trial participant groups, and street level bureaucracy explains contributions of individual social actors to the organization's policymaking. Though each theory is not limited to the level I have assigned it, the arrangement provides an effective way to explore five distinct levels of organizational behavior. Finally, the chapter ends with conclusions about the theoretical bundle that I have created for this study and the possible use of multiple theories for analysis in general.

Territoriality

Theory

Territoriality helps explain the complex relationship between Landlord-Tenant Court and Municipal Court. As presented in the previous chapter, the Municipal Court organization is comprised of numerous structural components, of which Landlord-Tenant Court is one. The most prominent characteristic of these components is that they are all distinct places within the organizations, giving them a distinct geographical character. Additionally, the language we use to describe the court organization also provides domestic and architectural frames: Municipal Court is a courthouse containing courtrooms and filing offices. The dynamic inter-relationship between the court's components takes place within a clearly circumscribed physical space. In short, the Municipal Court has a territorial dimension and Landlord-Tenant Court is a distinct territory within that organization.

Of all the theories that comprise my theoretical bundle, territoriality is the least well developed. Writers have periodically decried this lack of systematic development: in 1975, Edney characterized human territoriality theory as "preparadigmatic" (p. 959); twenty-five years later, Bailey (2000) characterized the theory as "sorely neglected" (p. 1). Edney's specification of "human" territory points to the dilemma: the theory has been developed to a much greater degree in the biological sciences through the study of innumerable non-human species and their behavior. Like autopoiesis, its crossover into the social sciences has been contested. The theory's application to law has been limited, and its application to organizational dynamics absent, as far as I can tell. Still, work has been done on the theory in the fields of biology, anthropology, sociology, and geography.

According to the Oxford English Dictionary (2001), animal behavior was first characterized as “territorial” (a term that had long been used as a synonym for “landed”) in a zoological study of birds in 1920. In 1963 an anthropologist named E.T. Hall applied territoriality concepts to the use of space in human interaction. Hall called his theory “proxemics” and it has been widely influential in the area of non-verbal communication. Other theorists have maintained the biological emphasis on the competition, conflict, and aggression over land in their formulation of human territoriality. Malmberg (1980) defines territoriality in behavioral terms, emphasizing its ecological and instinctual characteristics, its individual and group level emotional attachment to exclusive spaces, and the presence of distinguishing features that may include aggressiveness. In a similar formulation, Taylor (1999) emphasizes “issues of personal and group identity, cohesiveness, control, access, and ecological management” (p. 1). The management of territorial boundaries is synonymous with the management of human relationships.

Other literature on the subject takes a sociological or geographical perspective rather than a biological one. Lyman and Scott’s (1970) sociological theory emphasizes attachment of boundaries to space in order to “command access to or exclusion from territories” (p. 90).³⁵ Lyman and Scott identify four territorial arenas: public (where citizenship confers access but not necessarily action), home (where regular participants control the territory), interactional (where any social gathering can take place), and body

³⁵ Though Lyman and Scott assert that biological territoriality provides some important grounding, they identify the roots of sociological territoriality in the ecological studies of such Chicago School sociologists as Park and Burgess.

(where the physical nature of an individual is the territory). From a geographical perspective, Smith (1990) emphasizes the paradoxical nature of territoriality in that geography must be simultaneously shared and divided. Sack's (1986) geographic formulation posits ten territorial tendencies, the first one of which also emphasizes this paradox in terms of classifying space in terms of "ours" or "not yours" (p. 32). Sack also frames territoriality as a form of communication through a marker or boundary that aids in the enforcement of control or the reification of power. Territoriality displaces attention from the social actors to the territory, creating impersonal relationships and the appearance of neutrality. Finally, territoriality is recursive in nature.

Lying underneath these sociological and geographical theories is an acknowledgment that territoriality has a great deal of significance in the context of legal studies. The citizenship that allows citizens access to public spaces in Lyman and Scott (1970) is fundamentally a legal construct and law pervades their emphasis on legal and illegal behavior. Sack (1986) states that "legal and conventional assignments of behavior to territories are so complex and yet so important and well-understood in the well-socialized individual that one often takes such assignments for granted and thus territory appears as the agent doing the controlling" (p. 33). Territory, like law, is socially constructed (Smith, 1990). Johnston (1990) explores the law-state-territory nexus in broad terms that apply most readily to large swathes of land, and Segrest (1994) uses territoriality to illustrate his theory that law's motivation is fundamentally unconscious. Both emphasize the relationship between territoriality and property rights, the passions and violence inspired by conflict over property, and the role of the state or courts to control those conflicts.

Application

The application of territoriality to Landlord-Tenant Court and Municipal Court demonstrates that both the biological and sociological/geographical variants of territoriality theory explain the courts' organizational behavior. The boundaries of Landlord-Tenant Court circumscribe highly particular behavior often characterized by aggressive behavior on the part of the court staff whose function it is to protect the court from external threats. All litigants are provided basic access to the public space, but access to the procedures that define expected behavior and influence case outcomes is provided differentially and sometimes not at all. The behavior of the judges and court staff frame their actions in terms of the territory, asserting an image of impersonal neutrality to people unfamiliar with or unfavored by the court. Though a public territory by law, Landlord-Tenant Court is also a home territory where regular litigants (the repeat players) are provided extensive access to court procedures and personnel. Finally, the recursiveness of the courtroom's territory links it to the behavior of the landlords and tenants who compete over a piece of territory and the Municipal Court which seeks to protect its organizational territory from external threats. In this way, the territoriality of Landlord-Tenant Court is a dimension of its autopoietic character.

The aggressive enforcement of sometimes mundane Landlord-Tenant Court rules described in Chapter 6 has to be seen in the context of the potentially violent disputes heard there. Conflicts between landlords and tenants raise intense passions and trigger basic instincts due to the critical nature of individual control over territory. Landlords are seeking to meet their first order human needs, using Maslow's (1954) classification, by securing their source of income, and tenants are seeking to meet their first order human

needs by securing their shelter. The control asserted by tipstaves, however, far exceeds their official function to protect the court from violent and inappropriate behavior and represents the extent of their own territoriality. The tipstaff's manipulation of the L-T Court's temperature is a classic example of territorial behavior: controlling the temperature is a way to control the litigants by dissuading them from bringing their case to trial, a goal supported by the courtroom's entire framework. Tipstaff involvement in trials can also be explained with territoriality: tipstaves are charged with protecting the court's procedural territory as well as its physical territory. The instructions given the litigants about how to behave are more admonishment than information because territorial issues of legal ownership and exclusion of non-legal inputs are at stake. Once the physical and legal territories are established, it becomes relatively easy to control those who enter them, particularly if they are unfamiliar with the lay of the land.

Just as the relationship between the landlord-tenant conflict and the courtroom's territoriality is recursive, the relationship between the courtroom and Municipal Court's territoriality is recursive. The dispute I had with the Administrative Judge was essentially a dispute over territory, which was a physical manifestation of the relational boundary that I shared with the organization. On the one hand, court staff and judges were seeking to secure their organizational control over a home territory; on the other, a social scientist was depending on the public nature of court territory to conduct research. I had to seek permission to buy notes of testimony, identify basic information about trials, review notes of testimony, and take notes. The only one that I was not able to gain access to – note-taking – was located at ground zero of the court's territoriality. Organizationally, the court's territoriality is aligned with landlord's territoriality in that the court owns the

territory and allows people to use it. Though my previous tenant research had already aligned me with the tenant perspective, my pursuit of public data did so in an even more profound manner. Tenants, the group least familiar to L-T Court, looked to the court as a public instrument of justice just as I looked to it as a source of public data. Furthermore, just as tenants do receive some measure of justice in L-T Court, I received a basic level of access to this courtroom. The tipstaves aggressively reminded me of the note-taking ban, but they did not invade my physical (Lyman and Scott's "body") territory. Though L-T Court and Municipal Court were not as public as I had assumed, their territoriality was limited by the legal norms that established normative expectations about the public nature of courts. In short, I was not evicted from the courtroom territory.

Territoriality and Autopoiesis

We have arrived back at the normative pair access/control identified in the previous chapter's autopoietic analysis. In fact, the territorial relationship between Landlord-Tenant Court and Municipal Court is autopoietic in nature because Municipal Court initiated the Housing Court system to centralize the processing of territorial disputes. This concentration of landlord-tenant conflicts had the organizational effect of catalyzing the Municipal Court's own territoriality. This internal dynamic makes Landlord-Tenant Court a central component within Municipal Court's organizational structure, and the interplay between courtroom and court is self-reinforcing. Using the Common Law River metaphor, the legal eddy created by Municipal Court's self-referential behavior rotates around the actions of this one courtroom. Here, the passions aroused by primal attachment to a piece of property possessed by either landlord or tenant merge with the passions inspired by a social system endeavoring to protect itself from

outside invasion. These normative forces act as gravity does on a whirlpool and propel the flow of the court's legal decision-making inward, while the normative forces of law itself counteract this flow enough to maintain the organization's basic position with the legal framework that defines its existence. Without enough association to its external legal environment, the court's organizational survival might become seriously threatened.

There is another way in which the court's territoriality is autopoietic in nature: people observing the court and people threatening the court physically are treated similarly as threats to the court's territory. The association between the physical threats and intellectual threats to the court is explained by Maturana and Varela's fusion of systems thinking about biological processes with cybernetic thinking about cognition (Capra, 1996). According to Maturana and Varela (Maturana & Varela, 1980), the behavioral pattern and cognitive pattern of living systems are synonymous: "Living systems are cognitive systems, and living as a process is a process of cognition" (p. 162). The court's territoriality, therefore, has both physical and cognitive dimensions that follow the same autopoietic, self-referential form. An individual carrying a knife threatens the court's operation through immediate physical interference: no proceedings took place in the Criminal Justice Center courtroom after the above-referenced stabbing took place there. An individual carrying a tape recorder or writing notes in court threatens the court's operation through possible exposure of the court's operations which may bring about reform efforts: the previous study relied on note-taking in court and generated significant media attention and reform efforts by the Philadelphia Bar Association. Recording and making public information have the potential to change people's thinking about the court and therefore the manner in which the court must

perceive itself in relation to court outsiders.

Paradox

Theory

While territoriality explains the relationship between Municipal Court and Landlord-Tenant Court as one of its structural components, paradox theory explains the group dynamics that take place during landlord-tenant trials. The association of the theory to autopoiesis and territoriality is evident in the former's reliance on the closed-yet-open nature of organizations and the latter's reliance on the share-yet-divided nature of territoriality. Smith and Berg (1987) propose that groups are inherently paradoxical in nature and are "...pervaded by a wide range of emotions, thoughts, and action that their members experience as contradictory.... (p. 14). They define paradox, in part, by using the idea of strange loops, a statement or set of statements that are self-referential and inherently contradictory. For example, the following two sentences establish a strange loop: "The following sentence is false. The preceding sentence is true." As Smith and Berg point out,

Neither of these statements, taken separately, is problematic. It is only when they are taken together that a paradox is created. When the second sentence is *framed* by the first, we suddenly find that the first is framed by the second. In trying to sort out which is true and which is false, we get tangled in a strange loop, a jumbled hierarchy that exists in the area *between* the two explicit statements (pp. 11-12).

Group behavior is similarly complex in that groups contain contradictory emotions and forces that create an essential structure that lies beneath superficial observation. This structure has the same kind of self-referential, circular pattern described by autopoiesis.

Paradox theory is built on an intellectual foundation that includes the work of

Georg Simmel (K. K. Smith, personal communication, June 25, 2001). Simmel (1955) was mainly concerned with conflict and the dynamic interaction between small groups in this context. His colleague, Louis Coser (1956), expanded on Simmel's theory and discussed the functionality of conflict as a group process. Though neither specifically addressed paradox *per se*, they both focused on group processes which involved or depended upon discordant points of view or experiences. Also, Simmel specifically applied his theory to legal conflict and the opposing litigants at trial. He pointed out that trials unify people at the height of an intense conflict, and uses this dynamic to illustrate his thesis that conflict is inexorably bound with unification. Legal trials have an existential dimension given the identification of the litigant with their side of the conflict:

All the uncompromising stubbornness and obstinacy with which parties at trial so often bleed themselves to death has, even on the defendant's part, hardly the character of an offensive, but, in a deeper sense, that of a defensive, since the question is the self-preservation of the person. This self-preservation is so inseparable from the person's possessions and rights that an inroad on them destroys it. It is only consistent to fight with the power of one's whole existence (p. 36).

When litigants face each other directly, there is often more at stake than the material goods being fought over. Simmel further points out that this is why legal disputes are often given to agents (attorneys) who are able to depersonalize the conflict so it fits into the legal framework as presided over by the judge. Applying Simmel's formulation of dyads and triads to the trial group provides multiple sets of dyads and triads, the most important of which to the current discussion are: litigant/litigant, attorney/judge, and attorney/attorney/judge.

Application

The importance of these intragroup pairings within L-T Court trial participant groups is that they are all paradoxical in nature. In these groups, of course, the litigant/litigant dyad is the landlord/tenant dyad. The relationship between landlords, tenants, and the property shared by them can be conceptualized as a strange loop: “The landlord owns the property but does not possess it. The tenant possesses the property but does not own it.” Tenancy creates a paradoxical relationship between ownership from the vantage points of the person who legally owns the property and the person who occupies it. Stated another way, in order for property owners to gain rental income, they must give up their possession of the property. By entering into a residential lease, tenants give up substantial control over their homes to landlords. In the days of *caveat emptor*, the paradoxical nature of this arrangement was drastically muted by the ready ability of landlords to retake their property from tenants who were given little protections against eviction. Once the warranty of habitability became instituted in common law, the latent paradoxical power of the landlord-tenant relationship developed into full flower. The intense emotions generated by landlord-tenant disputes are not simply derived from territorial conflict; they are also derived from fundamental, underlying group processes that effect all groups.

Another dyad that can be articulated as a strange loop is the attorney/judge subgroup. This paradoxical relationship works as follows: “Attorneys hold judges accountable to the law. Judges hold attorneys accountable to their legal verdicts.” I experienced two different effects of this paradox, in the form of the first attorney I spoke with who refused to take the case because of the power of the judges over attorneys and

the second attorney who took the case in order to hold judges accountable to the law. This dynamic is essential to the most stable trial participant group, the attorney/attorney /judge triad. This arrangement retains the mutual accountability between attorneys and judges and equalizes litigant access to the legal process in the form of legal representation. The statistical finding that tenants do significantly better when represented by attorneys represents the stability of this arrangement. When an attorney represents one litigant and the other is *pro se*, the triad loses its stability and presents serious problems for the litigant. This dynamic is counterbalanced to a large extent when the *pro se* litigant is a landlord due to the court's organizational alignment with this trial group's interests. This same dynamic, however, makes it even more difficult for *pro se* tenants than it might otherwise be. The legal interplay between trial participants is a delicate arrangement of the conflicting interests of litigants and the application of generalized law to the specific facts presented by any given case. When an element is removed, such as an attorney from one side of the triad, or when an element is introduced, such as the affinity between judges and one member of the trial group, the trial group will behave in different ways from normative expectations.

In what should not be a surprising parallel at this point, the paradoxical nature of the landlord-tenant pairing is shared by Municipal Court's basic institutional relationship as a tenant. Municipal Court has been a tenant since the beginning of its existence when its supporters protected its accommodation funding, but in the last decade has been paying its rent not to the city, another public entity, but to the Girard Estates, a private real estate corporation. As a tenant, the Municipal Court faces the same kind of insecurity faced by any tenant: its source of rent could be cut off and it could be evicted

from the building that it occupies for this or other, non-rent related reasons. The state legislature authorized its creation and could also authorize its elimination, so the court is vulnerable to institutional and jurisdictional as well as physical eviction. Paradoxically, however, the court deals with its insecurity by maintaining a pro-landlord rather than pro-tenant sensibility. Since both landlords and tenants maintain some form of ownership over a piece of property, it is conceivable that the court could develop a greater affinity towards tenants than towards landlords. Paradoxical processes, however, are not linear and are comprised of such contradictions between being a tenant yet having affinity to the landlord's position as ultimate owner of a property.

Paradox and Autopoiesis

The central thesis of autopoiesis is a paradox: living systems are both closed and open. The question no longer concerns distinct causes of organizational behavior, but concerns how an organization's interaction with other social systems represents its self-referential internal structure. Just as paradoxical thinking allows the analyst to develop insight into basic group processes that defy linear thinking, autopoietic thinking allows the analyst to both observe and participate in other systems in an ongoing and mutual creative process. Maturana's associational leap between neural structure and cognitive understanding was an embrace of paradoxical thinking: cognition is simultaneously a product of a unified living system and is the process that creates the living system. Because the internal processes of living systems such as organizations are constantly responding to their external environment, an organization's internal structure is synonymous with its external interorganizational environment.

Street Level Bureaucracy

Theory

Street level bureaucracy explains the creation of policy skewed towards landlords in spite of policy edicts to establish balanced landlord and tenant rights. Lipsky (1980) asserts that individuals and systems that implement policy are as influential policymakers as the individuals and systems that initiate the policy to begin with. Lawmakers at all three levels of governance (legislative, judicial, and executive/administrative) codify policy, but the actual effect of the policy is not directly determined by their actions. Lawmakers' direct effect is to create policy on paper; their effect on the policy targets is indirect because these paper policies charge others to implement the changes required by the policy. Lipsky calls those charged with policy implementation "street level bureaucrats" because they operate at the immediate intersection between the paper policy and the people whom it is affecting. Because of the indirect relationship between policy creation and implementation, it is as important to know how a policy is being translated into action by policymakers at the front lines as it is to know about the intent of the policymakers who initiated the policy in the first place.

Lipsky (1980) specifically includes minor court judges as examples supporting his development of the theory, but his observations are limited to the criminal system. Minor court judges and some front-line workers (along with teachers, social service caseworkers, and police officers) embody Lipsky's profile of the street level bureaucrat. Judges and some of the court staff members work in complex situations that require more than programmatic responses to the human dimension of the conflicts they are supposed to resolve. They face constant opportunities to choose between compassion and

flexibility on the one hand and impartiality and rigid rule-application on the other. This dialectic is another paradoxical dimension to organizational life that is congruent with the normative pairing of access/control identified in the previous chapter. Lipsky also discusses the need for “relative autonomy from organizational authority” which creates the space necessary for the discretion practiced by street level bureaucrats. This intraorganizational pattern replicates the interorganizational pattern of organizations that place a high value on the autonomous side of the autonomous/interdependence norm. Finally, Lipsky points out that street level bureaucrats apply their own personal standards to whether someone is deserving or not of their full service efforts.

Application

The street level landlord-tenant policymaking engaged in by Municipal Court takes place in administrative offices and in Landlord-Tenant Court. A significant number of court staff members have the direct contact with court users and discretion in their responses to them to qualify as street level bureaucrats. These Municipal Court functionaries tend to be even-handed in their dealings with landlords and tenants, though their interactions demonstrate some institutionalized problems faced especially by tenants. Many of these same staff members appear to be even-handed in spite of their personal opinions that value landlords over tenants. The judges' and tipstaves' low opinion of tenants is less restrained within Landlord-Tenant Court where members of each group sometimes reveal open contempt for tenants. Even when judges expressed empathy for tenants, they also expressed a thoroughly landlord-oriented interpretation of landlord and tenant law. As a whole, Municipal Court policymaking about landlords and tenants is predominantly aligned with *caveat emptor* principles and primarily governed

by sentiment rather than law.

The statements and observations of court staff presented in Chapter 6 demonstrate that many court staff members have the discretion to help or hinder litigants seeking access to justice in Municipal Court. The clerk's comment about the difficulty inherent in giving procedural advice rather than legal advice as well as the reliance of attorneys on the clerks for both kinds of advice is particularly instructive. Where the court staff members favor landlords more than tenants, they do so more in the context of behaving more favorably to plaintiffs than to tenants. Landlords are more often plaintiffs than tenants and more landlords have attorneys, so landlords disproportionately benefit from the procedural advice that is given only to plaintiffs and the high level of interactions between landlord attorneys and court staff. Furthermore, some of this advice appears to push the line between procedural and legal. The statements made by court staff members about their own experiences as landlords, their low opinion of tenants, and even their informal adherence to *caveat emptor* principles ("possession is nine-tenths of the law") seemed to govern their decision-making choices in relatively tangential ways.

The link between judges' experiences as landlords or landlord attorneys and their street level policymaking was, by contrast, quite direct. One judge expressed a lack of understanding for the reasons why tenants tolerate poor housing conditions, and implied that they should simply move (in spite of the lack of adequate affordable housing, the burden of moving expenses for low-income tenants, the desire to hold landlords accountable for their actions, etc.). Another judge related his experience as a tenant and landlord to his efforts to ease the burden on landlords who struggle to evict their tenants in a timely fashion. The impact of this judge's efforts was statistically significant – when

he heard cases, tenants were seven times more likely to lose. Even the judge who had the highest pro-tenant verdict rate expressed skepticism about deciding against possession if the tenant owed rent under any circumstances. This judge's eviction rate for contested eviction matched that of the extremely pro-landlord judge – when the case was limited to an evict/not evict decision, all judges found little reason to award continued possession to tenants. He did express remorse for the situation tenants found themselves in, and his verdicts represented an active outgrowth of this sentiment. Still, his decision-making remained street level and his pro-tenant verdicts remained at the margins of eviction.

Judges appeared unfazed by the legal implications their pro-landlord sentiment has for the enforcement of housing codes and the application of state Supreme Court landlord and tenant law. There were very few references to law in the form of past judicial decisions or statutes in my interview and trial data. When litigants referred to case law or statute, the response by judges appeared to be one of annoyance rather than one of active engagement in the normative judicial process of applying law to individual cases. The dominant factor within the court appears to be a pro-landlord sensibility that assigns moral value to paying rent and concludes that there is no good reason to not pay rent. Since withholding rent is a major recourse provided to tenants facing poor housing conditions by warranty of habitability principles, moralizing rent has the effect of eviscerating the new relationship established by modern landlord-tenant common law.

The Theoretical Bundle

. Street level bureaucracy fits neatly into autopoietic theory along with territoriality and paradox theory. In fact, the four theories are themselves self-reinforcing. Street level bureaucracy's emphasis on individual decisions between service access and control

that accrue into an organization-level policy describes the autopoietic process of self-referential organizational behavior. The pairing of access and control describe both a paradoxical strange loop and a normative pairing upon which the Municipal Court places more emphasis on control than on access. Additionally, the dynamic and patterned relationship between street level bureaucrats and their organization resembles the human ecological framework posited by territoriality. In sum, territoriality describes the physical dimension to autopoietic organizational space, paradox theory describes the paired dynamics that drive the organization's autopoietic behavior, and street level bureaucracy describes how individual and systemic policy development operates recursively to stabilize autopoietic organization.

Application

The self-replicating patterns that the theories identify have developed since the founding of the first Municipal Court at the beginning of the 20th century. This first court was formed in the throes of territorial disputes over its legal jurisdiction and physical space. Before trying one case, the Municipal Court had to litigate its new legal territory against those seeking to protect the existing organizational territory of the Court of Common Pleas. The mechanism used by these critics in their attempt to prevent Municipal Court's formation was cutting off their rent. This conflict placed the court in the position of vulnerable tenant, thus enacting a paradoxical landlord-tenant dynamic. Municipal Court judges used their new power to increase their autonomy and decrease public scrutiny by shutting down the first evaluation of its operations. The second Municipal Court retained much of the structural form of the first Municipal Court but was formed with magistrates, whose informality bordered on significant corruption and whose

jurisprudence represented the ultimate in street level policymaking. The development of housing court created a container for the court's existing territorial and paradoxical behavior, dramatically decreasing the likelihood that the court would apply new landlord and tenant law.

Given these past patterns, it should be no surprise that the organization responded to my research in the way that it did. In spite of seventy years and two organizational generations, Municipal Court is still attempting to secure its territorial control by reducing scrutiny by external observers. The entitlement with which the Municipal Court controls public data and the entitlement provided to landlords in Landlord-Tenant Court are iterations of the same organizational pattern. This entitlement is nested in the complex and paradoxical relationship between landlord and tenant, both of whom have a territorial interest in the same piece of property. The same pattern is further evident in bureaucratic policymaking that belies the court's role as a legal institution, tied to other courts through administrative, legislative, and judicial law. Territory, paradox, and street level sentiment cohere in a tight circle that resists the influence of external forces. Remarkably, Municipal Court and Landlord-Tenant Court so thoroughly replicate themselves that they manage to protect themselves from the legal self-referencing that forms the backbone of law itself. Both rendering landlord-tenant decisions that go against current common law and denying a researcher possession of public data protected by state and federal constitutions naturally emerge from such an extremely autopoietic system.

Given the importance of autopoiesis to my theoretical argument, it is worth reviewing the core evidence for the theory's usefulness in developing an understanding of

Landlord-Tenant Court and Municipal Court. The data reveal the transformation of specific interorganizational mandates about housing codes (under the aegis of the Departments of Licenses and Inspections and Public Health) into a self-referential legal formulation (dismissal of housing code evidence as irrelevant or unrelated to possession of property). My interaction with the organization pointed to other autopoietic processes. The court sought to control the boundary between us, revealing the norms of power/restraint and access/control. Finally, my continuous engagement with the court led to the eventual replications of organizational behavior in my own behavior. I began to walk the path of a landlord-tenant litigant, retaining an attorney to represent me in an open dispute over access to a piece of territory. Without the existence of autopoietic patterns, this level of meta-analysis would have been impossible.

An Autopoietic Framework

Autopoiesis provides a unifying framework for the multiple uses of theories, perspectives, data sources, and methodologies used for this study. The theory is simultaneously ontological (a statement about how the world works), epistemological (a statement about the nature of our knowledge about the world), and methodological (a statement about what we do to generate knowledge about the world). Nelken (1988) refers to autopoiesis as “ontological epistemology” (p. 197). The theories I have used all attempt to explain basic structures of organizations and human interactions (ontology). My effort to cultivate the perspective of differently situated actors and draw data from different data sources accounted for the dispersion of knowledge about the system throughout its different actors and components (epistemology). The methodologies I used comprised simultaneously divergent and convergent activities and philosophical

underpinnings (methodology). The common element to these methods is the requirement that I interact with the organization I was studying, and though I structured this interaction in very different ways, the knowledge I generated is ultimately a product of this interaction.

All knowledge, then, is generated via the interchange of information across mutually constructed boundaries that distinguish one individual or system from another. Knowledge is properly evaluated in the context of previous knowledge, use of methodologies, and theoretical development. However, whether knowledge is framed numerically, as in quantitative analysis, or textually, as in qualitative analysis, it is self-referential at its basis. This proposition closes the loop between self and subject as well as that between writer and reader. All scientific products, including the words I have written here, represent the autopoietic processes internal to the scientists who created them. The activity of reading science, then, engenders autopoietic processes in the reader, who remakes the writer's ideas in the context of her or his internal cognitive structure.

Conclusion: Social Policy Implications

Policy Considerations

The Judiciary

The autopoietic nature of Landlord-Tenant Court has wide significance to the study of the American judiciary. The organizational and legal autonomy of this one specialized small claims courtroom demonstrates that many of the courtrooms that process the greatest number of cases receive the least amount of judicial review. This is certainly the case in Pennsylvania where all small claims cases are first heard by a District Court or Municipal Court that has no legal responsibility for their verdicts upon appeal. The *de novo* appeal may be a new trial, but trials at the Common Pleas level require the kind of additional legal expertise and financial resources that small claims courts, such as L-T Court, were designed to replace. If law is not applied equitably in the initial small claims trials, then the court is serving some other function than its legal mandate to provide judicial access to poor litigants. Because there is no appellate accountability for small claims verdicts, higher courts do not have the organizational authority to make sure the lowest courts are adhering to their legal function. In short, there is no institutionalized check or balance to small claims verdicts when appeals are afforded *de novo* trials at the next court level.

The lack of judicial accountability becomes even more significant when landlords file eviction complaints in small claims courts. These cases are subject to new and evolving law and defy the rough justice equivalent to “splitting the baby” – possession of

a property must be granted to either landlord or tenant. Possession is typically more important to either party, so that awarding possession to the landlord and awarding the money damages to the tenant is not an equitably split verdict. Instead, the court should be applying legal precedent and statutory law that treat the lease as contract to the facts of the case in a manner that may contradict street level versions of jurisprudence. There is little current incentive for judges to subvert their street level legal reasoning with theoretically binding law. Municipal Court judges rarely write opinions because their decisions almost never affect subsequent litigation of the dispute. Consequently, no other judicial body holds these judges accountable for their verdicts by asserting their authority to overturn them. There is also no judicial review of the hearing transcripts that comprise the court's official record of the verdict. This facilitates such phenomena as the high level of court staff participation in hearings, the refusal by judges to review evidence presented at the bar of the court, or the issuance of continuances for no apparent legal reason, all outside the view of higher courts. Given the high stakes in cases involving a critical business commodity that meets a critical housing need, the social impact of small claims court's autonomy may be particularly dire when considering landlord-tenant cases.

This judicial accountability gap has allowed the cultural norm that prescribed rent paying as a moral obligation independent of the landlords' actions to hold sway in the courtroom in spite of the state Supreme Court's explicit directive not to do so. It is an open question whether district justices throughout the Commonwealth similarly dismiss warranty of habitability law in favor of their own versions of *caveat emptor*. It is also unknown how many other states share this accountability gap at the foundation of their

judicial systems, nor is it known whether the gap is preventing the application of modern landlord and tenant law to disputes heard in those states that have instituted the warranty of habitability. These represent two avenues of research worth pursuing: 1) Are Pennsylvania District Judges applying modern landlord and tenant law? and 2) What is the prevalence of small claims autonomy nationally, and does the presence of this autonomy affect the application of modern landlord and tenant law in those jurisdictions to which it applies?

Recent statutory requirements make the accountability gap particularly significant in Pennsylvania because they have made it more difficult for litigants to gain judicial accountability from courts higher than Landlord-Tenant Court. While verdicts on eviction matters have virtually no impact on substantive law, they activate significant procedural requirements upon their appeal to the Common Pleas level. The 1996 amendments to the Landlord Tenant Act shortened the appeal time from thirty to ten days and required the escrow of the lesser of either the initial verdict or three months' rent, creating significant impediments in addition to the formal filing rules already required. Furthermore, no grace period is allowed for the on-going rent escrow requirement so that a tenant attempting to gain a new trial would be evicted by the Court of Common Pleas if late with his or her rental escrow payment by one day. The *de novo* trials are fresh by law, but not by procedure. Though the federal district court ordered the Municipal Court and the Court of Common Pleas to provide an exception to the new escrow requirement for poor litigants, the courts' compliance has not been consistent. Furthermore, the exception requires an additional filing that could help deter a poor, *pro se* litigant from access to the next court level. A final limitation exists on litigants appealing a Municipal

Court verdict: if their case comes to trial, a Municipal Court judge will still hear it.

Though the existence of judicial review by the Superior and Supreme Courts at this level may promote more legally robust verdicts by these judges, a litigant does not actually receive a trial beyond the ambit of Municipal Court until a successful appeal to the Superior Court, which requires even more dense filing procedures.

Housing Court Evaluation

The difficulty of obtaining an appeal, the social and economic significance of landlord-tenant trials, and the high volume of cases heard by Landlord-Tenant Court call for increased judicial accountability. If Common Pleas appeals remain *de novo*, that accountability can only take place outside of common law appellate review. One possibility is the use of independent evaluators authorized and funded by the state to determine the extent of Municipal Court's compliance with legal mandates and rules governing the procedures and treatment of litigants. The Commission on Trial Court Performance Standards, a joint project of the National Center for State Courts and the U.S. Department of Justice, has prepared a measurement system designed for such an evaluation that has been standardized to cover all national trial courts. The system is called the Trial Court Performance Standards & Measurement System (TCPSMS) and is based on five legal principles that are operationalized into specific measurement domains (see Appendix G).

This system is particularly well suited for the purposes of evaluating Municipal Court for two reasons. First, the Court's mission statement is based almost entirely on the TCPSMS, making its use seamlessly matched to the Municipal Court's own standards (see page 23). Second, the Municipal Court was more closely integrated with other state

court organizations that are now unified under a single First Judicial District Governing Board and Court Administrator. This new (as of 1996) administrative structure provides a clear state court organizational context for the implementation of the TCPSMS evaluation of Municipal Court.

The TCPSMS includes operationalized performance standards accompanied by commentary addressing the normative presumptions behind each standard. For example, the first standard listed under the Access to Justice domain is “Public Proceedings.” The standard’s relevance to this study, particularly in the context of Chapter 10’s findings, justifies quoting its definition of the Public Proceeding Standard:

The court conducts its proceedings and other public business openly. This standard requires the trial court to conduct openly all proceedings, contested or uncontested, that are public by law or custom. The court must specify proceedings to which the public is denied access and assure that the restriction is in accordance with the law and reasonable public expectations. Further, the court must ensure that its proceedings are accessible and audible to all participants, including litigants, attorneys, court personnel, and other persons in the courtroom (National Center for State Courts & Bureau of Justice Assistance, 2001).

The measures accompanying these standards consist of instruments to be filled out by observers (see Appendix G for full text and measurement instrument for the Public Proceeding Standard).

Other methods utilized by the TCPSMS include more regularly used data sources such as court and case records and administrative data, as well as other less commonly used methods including structured interviews, surveys, simulations, consultative group techniques, and public opinion polls. The other domains included in the system are: Expedition and Timeliness; Equality, Fairness, and Integrity; Independence and Accountability; and Public Trust and Confidence. The measurement system, in short, is a

mixed method design that uses multiple data sources to evaluate multiple dimensions of the trial court operations, similar to this study. However, unlike this study, the system is an evaluation package standardized to various types of trial courts in general (it has been tested on federal, state, and county trial courts) and its application could be relatively straightforward and cost-effective. It could also yield valuable information that is relatively de-politicized as a result of its association with the National Center for State Courts and the Department of Justice. Reports generated by non-legal institutions, such as advocacy or academic institutions, would doubtlessly carry less weight within the Municipal Court system.

Given the current climate in the Pennsylvania State capital, it is unlikely that the state legislature would pass legislation authorizing and funding regular, periodic evaluations of Landlord-Tenant Court. The state legislature's passage of the Landlord and Tenant Act Amendments, the governor's signing of them, and the state Supreme Court decision upholding them illustrate that there is little will from current state leadership behind such an effort. The Trial Standards could still be administered under the aegis of a local agency, and one organization represents both landlord and tenant interests and has expressed interest in further study of Landlord-Tenant Court: the Philadelphia Bar Association. Following the Tenant Action Group *Court Watch* study (Eldridge, 1996), the Bar Association formed a Landlord/Tenant Court Task Force that included attorneys who represented landlords, attorneys who represented tenants, attorneys who did not practice in the area, and a Municipal Court judge (see Appendix H). The Task Force members heard testimony from tenant advocates, landlord and tenant attorneys, court staff, and an administrator from L & I, and observed L-T Court

proceedings. The Task Force Report (Foster, 1997) acknowledges the limitations of their own analysis, and called for a “well-funded, impartial, professionally administered study conducted over a substantial period of time” to validate the findings of the TAG study.

Though the current study may serve as an evaluation that used rigorous scientific methodologies to arrive at its conclusions, it does not address the need for on-going evaluation of the court. The need for on-going evaluation is critical: this study confirms some findings of the TAG study while disconfirming others.³⁶ The report also found that judges awarded plaintiff or defendant verdicts at different rates, but that eviction cases were uniformly decided in favor of landlords at a rate of 95%. The report, however, found that the over-all landlord-win rate was much higher (92% for the TAG report as opposed to 77% for the current study) and did not address the high rate of continuances and other time of possession extensions afforded tenants over landlord objections. The current study also provides some follow-up to the Bar Association Task Force’s unanimous recommendations. While I did not collect data concerning the provision of a brochure describing courtroom procedures, I never observed the brochure being distributed to people in the gallery before the court sessions.

I similarly did not determine the existence of frequent, on-going training of judges on landlord-tenant matters. However, my research does speak to the other recommendations: there is no explanatory video available at court, there is no liaison between Landlord-Tenant Court and L & I nor is there a computer linkage between the

³⁶ The differences between the studies may either be methodological or a result of changes Landlord-Tenant Court has gone through in the five years since the first report was conducted.

Court and L & I. There is also no noticeable influx of attorneys to represent tenants, no Bar Association ombudsman to help litigants in the courtroom, and no apparent application of standards for respectful and courteous treatment of litigants and attorneys. Finally, the Supreme Court validated the legislature's restrictions on access to a *de novo* appeal specifically for landlord-tenant cases. It is possible, however, that routine extra-judicial evaluation of Landlord-Tenant Court could fill in the accountability gap that currently allows the Court to apply its own street level landlord-tenant policy.

Municipal Court as a Regulatory Organization

Any change effort focused on Landlord-Tenant Court needs to account for the enormous complexity of the disputes heard there. The Court is a nexus of public and private functions, interests, and institutions: landlords both run private businesses and serve a fundamental public need; tenants both engage in a private contractual arrangements and depend on a public legal forum to resolve their cases equitably; Landlord-Tenant Court regulates the private housing market by the mandate of public state and city institutions. Finally, L-T Court is formed via an electoral process that favors the interests of private political parties above all other interests, including the organizational prerogative of higher courts to guide the behavior of lower courts. Justice is not entirely foreign to the courtroom, but it takes an idiosyncratic form that favors tenants around the margins of possession. Judges support landlords' right to evict with little respect to tenants' or their attorneys' efforts to activate modern landlord tenant law – *caveat emptor* has endured despite the common law and legislative changes enacted in the last half century. In the judges' efforts to infuse the proceedings with some degree of equity, landlords are often forced to wait for significant periods of time, thus losing

security on their rental income, for a verdict on their lawsuit. Though the landlord nearly always wins possession of her or his property, procedural decisions and damages verdicts can be as arbitrary and detached from legal deliberation from a landlord's perspective as verdicts sometimes are from a tenant's perspective. The lease has been clearly established as a contract, and both parties deserve a full hearing of their case and the reasoned application of common and statutory law to the facts of the case as presented by the litigants.

Failure to provide full hearings under the law adds instability to an already unstable rental market that serves a critical function in the nation's housing system. The warranty of habitability was designed to address the nation's current affordable housing crisis by elevating the tenant's rights to decent housing conditions to the same level as the landlord's right to receive rent for his or her property. Without rigorous application of both sides of the lease contract, courts' role in this important social policy innovation is eviscerated and courts become complicit in the deterioration of the country's affordable housing stock. At the same time, the failure of the courts and regulatory institutions to tailor their procedures and policies to account for the difficulties inherent in the landlord business has an equally disastrous effect. The discouraging impact of irrational continuances in L-T Court, lawsuits accompanied by little due process in L & I Court (where code violation cases brought by the Department of Licenses and Inspections are heard), and a lack of financial support to landlords who provide adequate, low-income housing are disincentives that compound the adequate, affordable housing crisis. The social welfare function of the private housing cases processed by Landlord-Tenant Court is solidly grounded within a legal framework. The Trial Court Performance Standards &

Measurement System manual frames all courts in this manner, characterizing trial courts as service organizations whose collective work involves judges, court staff, lawyers, and social service providers.

However, the preceding proposal to evaluate Landlord-Tenant Court and Municipal Court directly through evaluative mechanisms has limited prospects given the resistance to external scrutiny the Courts have shown in the past and in the course of this study. Landlord-Tenant Court's organizational role as the axis for Municipal Court's autopoietic patterns means that it is particularly resistant to change. An indirect approach may, in fact, have greater potential: one of the most effective ways to change an institution is to change the relationship between it and other institutions (Smith, 1982). Fortunately, there are numerous institutions that interface with L-T Court and therefore many opportunities to introduce external input that has the potential to loosen the Court's adherence to its current organizational structure and behavior.

The Municipal Court's relationship with the Department of Licenses and Inspections has particularly great potential for development because it already devotes its other specialized courtroom to lawsuits brought against landlords by L & I. While there is no L & I representative in Landlord-Tenant Court, there is one next door in L & I Court. This makes for ample precedent to build a closer relationship between the two institutions that serve central regulatory functions over the city's rental housing stock. Coordination between the institutions would be readily achievable through the exchange of data that could help increase due process for both landlords and tenants. Tenants who cause damage to their landlords' property could be held more accountable in L & I Court while landlords out of compliance with registration and habitability ordinances could

more easily be held accountable for providing decent housing next door in L-T Court.

The use of administrative data in the disposition of both sets of cases would require some technological innovation, training of court personnel, and additional staffing to assist filing clerks and judges in their use of the data. The pay-off, however, would be a coherent regulatory system that provides effective application of city and state law towards the aim of stabilizing the city's deteriorating low-income housing stock.

Similar potential exists in strengthening Landlord-Tenant Court's relationship with the Department of Public Health and the Fair Housing Commission. Data generated by either city agency could be made available in the same manner as L & I data via the use of a computer terminal in the courtroom. This would enable the judge to confirm tenant allegations that either agency had jurisdiction over their cases. The rarity of cases that activate lead contamination and retaliatory eviction municipal housing codes would make the use of a liaison inefficient, so judges could instead be provided with hot-lines to each agency that would ensure speedy information sharing. Such a linkage between L-T Court, the Department of Public Health and the Fair Housing Commission would facilitate the application of city laws that assert more direct authority over Municipal Court judges than laws involving the Department of Licenses and Inspections. All three agencies are creations of the Philadelphia City Council that passed laws specifically designed for enforcement by Municipal Court. Although the legal actions of both City Council and Municipal Court are at the behest of the state government, the court is still obligated to enforce local ordinances as the court with primary jurisdiction over them. A change in relationship between Landlord-Tenant Court and these city agencies, then, requires a change in relationship between Municipal Court and City Council. Unless

municipal law is struck down by the state legislature, the Municipal Court is fully authorized to enforce it. Current disregard for municipal law undermines City Council's power to create legislation it sees as beneficial to the city.

While the intent of the city's housing code is to secure the availability of habitable and affordable housing, the code places a high burden for doing so on landlords. L & I and Public Health inspectors apply the same building standards to landlords owning a single property as they do to corporations that own hundreds of rental units, but there is no compensation for this difference in scale. The strict enforcement of housing codes can create the perverse effect of motivating landlords to remove rental units from the market because they cannot afford the necessary repairs or do not want to expend the time and effort coping with an uncoordinated relationship between L & I and Municipal Court.

I found empirical evidence for this phenomenon in the statements of several landlords. Mr. Pendleton's (the landlord in Chapter 6 who had an unoccupied, lead contaminated apartment) statement that landlords should not take full responsibility for a situation largely created by paint companies is particularly on point. If the city requires all landlords to maintain their properties to high standards, it is incumbent upon the city to make renovation assistance available to landlords who qualify for it. The Department of Licenses and Inspections could administer a housing renovation subsidy program. The program could establish eligibility by using a formula that accounts for the size of a landlord's housing investment, the rental income gained from those units, and the landlord's total income and assets. The Department of Public Health could partner with L & I in linking landlords whose apartments are contaminated with lead with abatement assistance. The fines collected by L & I for housing code violations could fund this new

program and both agencies could jointly pursue additional state and federal funding.

Just as city codes place the burden of maintaining high housing standards on landlords, the current system places the burden of regulation on the tenants. Two tenants in this study reported that they were advised to withhold their rent by either L & I or Public Health, and many other tenants are informed of this right by housing counselors and tenant advocates. It is very difficult, however, for tenants to assert this right without benefit of counsel, particularly within a forum that does not recognize the law protecting tenants from eviction who are utilizing their right to hold their landlords accountable for breaching the warranty of habitability. Tenants are much more successful in Landlord-Tenant Court when represented by an attorney, and an influx of attorney representation would bring greater equity to landlord-tenant dispositions. Though tenant attorneys appear to have as difficult a time as tenants arguing an eviction defense based on the warranty of habitability, they do provide effective advocacy in other ways. It is possible that an increased presence of attorneys in L-T Court could elevate the status of warranty defenses and provide more persistent pressure on the Court to apply municipal and state law asserting key tenant rights.

Legal Assistance

There are numerous potential sources for increased tenant legal aid. Community Legal Services could administer additional funding earmarked specifically for increased assistance to tenants in Landlord-Tenant Court. The Bar Association could establish a sub-division of its VIP program specifically geared to the same end, and area law schools could also direct more of their clinical resources in this direction. The latter sources have the advantage of low costs given that the representation would be voluntary, but have the

disadvantage of not having training specific to landlord and tenant law. CLS could provide training to these volunteer advocates and work through the Bar Association to coordinate these efforts with Landlord-Tenant Court. Ideally tenants would have representation well before their hearings, and housing advocates made aware of the additional availability of tenant counsel could refer tenants to the program. However, any referral system is bound to be incomplete and many tenants would still appear in court without an attorney. Trial commissioners currently make mediators available to tenants for settlement negotiations with *pro se* landlords and could also make mediators available to tenants for settlement discussions with landlord attorneys. The availability of mediators for settlement negotiations between attorneys and *pro se* litigants would prevent tenants from divulging incriminating information during the settlement discussions, and would provide the tenant's attorney some time to establish a defense for the tenant. Ultimately, fewer tenants would be left without the skill to present their case in the best possible light and without professional authority behind the assertion of their rights.

Organizational Limits and Untapped Potential

Providing legal assistance to tenants, renovation subsidies, and even the full application of landlord and tenant law in Landlord-Tenant Court may help mitigate the shortage of adequate, affordable housing, but they cannot hope to solve the problem. As a landlord attorney stated, landlords need to pay their mortgages, and many tenants simply do not have enough money to pay rent: "It's a harsh reality, is what it is. The Court can't deal with that. Maybe they wish there is something they can do. It's not like the Municipal Court can say, 'Don't worry about it, here's a check'" (Interview Notes).

It is quite true that the Court alone cannot fill the gap between tenant income and housing costs, and this gap does put additional pressure on a court system that already processes a substantial volume of cases. Another attorney stated, “The problem is the housing situation. There’s no way the court could deal with the volume of hearings if it had a full hearing on each and every case” (Interview Notes). Given that judges spent an average of an hour each court session hearing cases from the bench, there is clearly an opportunity to hear more cases more fully; but, again, reforming Landlord-Tenant Court will not solve the city’s housing crisis.

However, the Court does play a central role for numerous programs that provide housing subsidies, most prominently the city’s Homelessness Prevention Program (HPP) and the federal Section 8 program. Both programs provide rental assistance to low-income tenants who otherwise would be unable to afford adequate housing, and in so doing provide rental income to landlords who would otherwise not have tenants with guaranteed financial backing. Though the programs’ immediate function is to assist low-income tenants, they have the wider purpose of adding stability to the low-income housing market. Since money is being funneled into the private market, the effectiveness of the public investment is subject to the effectiveness of L-T Court’s adjudication of the subsidized private rental disputes. The lack of housing code enforcement by Landlord-Tenant Court places heightened responsibility on housing programs to make sure that they are not providing subsidies to landlords who are not investing money to keep their properties in good repair. The Section 8 program incorporates an independent housing inspection system, and some data I collected indicate that the Philadelphia Housing Authority (PHA) successfully asserts the relationship between rental payments and

housing conditions to a significant degree. However, other data indicate that PHA's enforcement of its housing code system can be bureaucratic and depend too much on the tenant to participate in the enforcement. Agencies participating in the Homelessness Prevention Program should also institute a careful review of the responsibility of their landlord recipients to uphold the warranty of habitability. A tenant advocate was assisting at least one tenant in the study in a warranty defense against eviction by a landlord who had been subsidized by the Homelessness Prevention Program. L & I data should be reviewed by HHP agencies before providing subsidies. Finally, Section 8 program data, particularly concerning PHA's inspection findings, and HPP participant data could be incorporated into the data banks available to judges in the courtroom.

The provision of subsidies that benefit both landlords and tenants illustrates the fundamentally symbiotic nature of their relationships. As Cushing Dolbeare (1988) has stated, it makes little sense to pit tenants against landlords given that both benefit from remedies to provide adequate, affordable housing. The forces that pit landlords against tenants create a false dichotomy: as in any contractual relationship, the interests of landlords and tenants are mutually interdependent. Effective policy, therefore, serves the interests of both parties to these contracts. As a key player in city housing policy, Municipal Court also shares a social contract with the public that it will provide its services equitably and do what it can to alleviate the problems experienced by litigants who bring their disputes to court. Court staff and judges do provide tenants referrals to housing services, but only sporadically. I did not observe any court staff or judges providing referrals to landlords. There is a pressing need for remedies to repair deteriorating landlord-tenant relationships that could help stabilize them, the housing

shared by them, and the neighborhoods effected by tenant turnover, housing disinvestment, and abandonment.

Landlord and Tenant Education and Referral Center

This gap between court awareness of litigant problems and programs that could effectively ameliorate them calls for the establishment of a Landlord and Tenant Education and Referral Center located at the court. Such a Center could provide a port of entry for landlords and tenants interested in availing themselves of the numerous service agencies that provide assistance to both groups. Center staff could consist of referral counselors trained to provide information about programs and advocacy agencies that provide assistance to landlords and tenants. Their training could also include Municipal Court and Landlord-Tenant Court procedures to ensure that they know where to refer litigants within the court system. Court staff and judges could refer litigants to the Center counselors, who could in turn refer litigants to other agencies. For example, counselors could refer lower-income landlords to the Homeowners Association of Philadelphia Company (HAPCO), which provides low-cost legal assistance to its members, while they could refer low-income tenants to Community Legal Services. Counselors could also refer both landlords facing mortgage payments and tenants falling one or two months behind on their rent to agencies participating in the Homelessness Prevention Program. Counselors could have hotlines to these agencies to facilitate referrals, as well as hotlines to city agencies that interface with Landlord-Tenant Court (such as the Department of Licenses and Inspections, the Public Health Department, and the Fair Housing Commission).

Ideal physical space exists for the Center between the First Filing office and

Judgments and Petitions office on the administrative floor of Municipal Court. This area was once occupied by the Municipal Court's own Prothonotary office until the creation of the First Judicial District, which absorbed its duties into administrative offices located in City Hall. It has remained vacant and includes a large counter and enough space to store information and provide sit-down counseling to interested litigants. There is also enough room for three counselors, one of whom could attend Landlord-Tenant hearings and approach landlords and tenants who they feel would benefit from the service programs if made aware of them.

An interagency commission that represents the Municipal Court judges and court staff, the major municipal and social service agencies that impact on private tenancies, and landlord and tenant advocates could guide the Center's creation and evaluate its operation. The Center would have to provide a minimal amount of additional work to the Municipal Court and would have to provide its referrals in a way that does not interfere with courtroom procedures. The Center could, in fact, reduce the burden on the Court of litigants who need extensive information about pre-trial, post-trial, and courtroom procedures. Counselor referrals could help fill this gap in knowledge, and the Center would be a good place to maintain the running video description of Landlord-Tenant Court procedures that the Bar Association Task Force recommended. The presence of an interagency organization on Municipal Court territory designed to assist both landlords and tenants could interfere with the current organizational patterns that lock landlord and tenant in an adversarial relationship and prevent interaction between Landlord-Tenant

Court and other relevant agencies.³⁷

Judicial Selection

While the relationships with state, city and service agencies need to be strengthened in order to alter Landlord-Tenant and Municipal Courts' autopoietic patterns, relationships between the Courts, political parties, and campaign funders need to be weakened. Judges serving in Landlord-Tenant Court need to be selected on the basis of their ability to provide well-reasoned verdicts, not on their ability to give enough money and provide enough services to ward leaders of the political party in power. Furthermore, the possibility that the money some judges raise comes from the attorneys and landlords who try cases in front of them after they are elected should be eliminated. Verification of a link between funders and cases in Landlord-Tenant Court could be established by matching campaign funder lists with Municipal Court administrative data, both of which are a matters of public record. Even without a verified link, the real possibility of corruption is enough to justify reform of the current system. The recommendations of the Sixteenth Grand Jury that increase the accountability of ward leaders' expenditures of campaign funds should be adopted, and further limitations on Municipal Court campaign finances should be explored (see Appendix D).

The peculiarities of electing judges who are prevented from taking policy stands calls for intensified exploration of the benefits of merit selection over judicial election. The advocacy organization, Fund for Modern Courts, has led such efforts in the past on

³⁷ It should be noted that the Court's mediation program is also designed to create alternatives to the adversarial litigation, and this should be one of the programs to which the Center counselors refer litigants.

the state level. Data they have collected comparing the strengths and weaknesses of both systems should be evaluated by a blue ribbon committee that represents business persons and landlords, consumers and tenants, attorneys, sitting judges from the federal and state systems, and both political parties. Merit selection should not be approached as a panacea but as a viable alternative to the current system. One attorney stated that he preferred an elective system because it prevented the creation of a judicial elite nominated and installed by powerful members of top law firms and politicians with narrow agendas. Any merit selection system would have to adequately prevent the exchange of ward leader favoritism for the favoritism of legal and political elites.

Policy Recommendations:

The importance of Landlord-Tenant Court to landlords, tenants, and anyone concerned with the economic and housing infrastructure of the city warrants consideration of the following recommendations:

1. Establish alternative judicial review of Landlord-Tenant Court and Municipal Court as a whole through regular evaluations using the Trial Court Performance Standards & Measurement System. This could be administered by the Pennsylvania Supreme Court or legislature or by the Philadelphia Bar Association.
2. Discontinue the practice of using Municipal Court judges in Common Pleas Court and the practice of tipstaff involvement in proceedings beyond their prescribed roles.
3. Adopt the recommendations of the Bar Association Task Force Committee. The establishment of a Landlord-Tenant Court computer link to L & I should be coordinated with link to Public Health, the Fair Housing Commission, PHA/Section 8, and the Homeless Prevention Program, and the Municipal Court's own L & I Court.
4. Increase L & I use of systematic code enforcement with an audit program that makes the Department less reliant on a complaint-based inspection schedule.

5. Provide renovation assistance to landlords who cannot afford to bring their property into Housing Code compliance and legal assistance to tenants who cannot afford attorneys.
6. Establish a Landlord and Tenant Information and Referral Center on Municipal Court's administrative floor that distributes information about and makes referrals to agencies that serve both landlords and tenants.
7. Adopt the recommendations of the Sixteenth Grand Jury on judicial election reform and create a blue ribbon committee to weigh the advantages and disadvantages of replacing the current system with a merit selection process.

The final recommendation lies beyond the scope of Landlord-Tenant Court: expand and refine housing subsidy programs within the city, including the Section 8 and homelessness prevention programs. Such an expansion has the potential to reduce the court's caseload as well as promote the enforcement of housing codes by making a stronger association between rental income and habitable housing.

Methodological and Theoretical Considerations

Research Design

This study's mixed method case study design proved to be an effective strategy for conducting research in a legal setting, particularly given that the institution was resistant to being studied. Although such resistance can create significant methodological obstacles, the need for research into normatively public institutions that are not interested in rigorous scrutiny of their operations is great. If institutions as autonomous as Landlord-Tenant Court are not studied, their behavior will remain opaque, their accountability will be low, and their mandate will be mistaken for their actual behavior. Pennsylvania Code of Judicial Conduct (2000), which covers Municipal Court judges, speaks to the need for public scrutiny of judges and courts directly:

Public confidence in the judiciary is eroded by irresponsible or improper

conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be burdensome by the ordinary citizen and should do so freely and willingly.

This nation has traditionally placed a high value on public access to courts as a check on the extraordinary powers granted to judges. The classic presentation of American political checks and balances includes three branches, and the judiciary is so linked with the legislative and executive branches. Ultimately, however, all three branches are subject to the public, which authorizes their continued existence and organizational behavior. Public scrutiny of courts is therefore critical to the successful operation of our democratic system.

Fortunately, the effect of Municipal Court's resistance to scrutiny was mitigated by the durability of norms that preserved enough access to conduct a thorough multi-level analysis of L-T Court. I utilized most of the public records preserved by Municipal Court, was never prevented from observing hearings, and was able to use an attorney to develop an informed confidence in my right to access court data. My experience with this attorney provided ample ethnographic data that helped contextualize the court data I was collecting. I could further contextualize the data using the case studies I conducted as well as ethnographic observations of and interactions with court staff, litigants, and others at Municipal Court. The multiple court data sets (administrative data, transcripts and court files) provided a rich record for fine-grained statistical analysis of L-T Court hearings, in-depth qualitative analysis of these trials, and a full contextualization of the full life cycle of the cases that came to trial. I could then place the trials and cases into an organizational framework of L-T Court, Municipal Court, and the higher courts that

govern them using multi-faceted ethnographic analysis.

One phenomenon contributed substantially to the successful acquisition of both qualitative and quantitative data: Municipal Court staff behaved autonomously within the autonomous context established by Municipal Court. Said another way, I was able to gain entry into a highly bounded social system in part because members of that system defied these boundaries in favor of their own decision-making authority. I was therefore able to speak with judges even after the Administrative Judge had discouraged them from speaking with me, according to one of the judges I spoke with (I also observed another tipstaff state to another judge that he did not have to speak with me). I was also able to speak with court staff in various Municipal Court Departments, some of whom knew of the Court's policies limiting my access to data and others who did not. The operational difficulties of accessing data were considerable and would have been even more so without the assistance of various court staff throughout the Municipal Court system. The hierarchical organization of the courtroom that places judges over everyone else was not uniformly replicated throughout the court system. The court staff, after all, was subject to edicts from the same judicial administration that governed my access to data, and so shared with me a similarly marginal institution status. This common perspective appeared to motivate some court staff to assist me in spite of, or even because of, knowing that my research was being hindered at the administrative level of their organization.

I found combining quantitative and qualitative methods to be at once frustrating, exhausting, and rewarding. The frustration derived from the sense that because I was doing both I was unable to focus adequately on either. This is a basic limitation of

conducting mixed method designs that can be compensated for by spending more time on either or by utilizing multiple researchers. This frustration was offset by what I found exhausting and rewarding about the research and analysis: the paradigmatic switches between each method created an iterative process that forced me to sharpen my thinking both statistically and qualitatively. A discovery made while collecting statistical data led me to pursue a new qualitative theme; writing up a case study led me to rethink a statistical variable that would have increased explanatory power upon a new computation of this variable. This process was both dialectic and symbiotic in that the differences between the methods formed a creative tension that made the statistical and qualitative analyses mutually interdependent. Although this study should be assessed in the context of other research on the same or similar organization using the same or similar research design, this study's methodological and data triangulation allowed for a thorough analysis supported by varied evidence.

A particularly important dimension to this study's design was the structure it provided to account for the bias of the researcher. My first study of Landlord-Tenant Court was conducted as action research that was less scientific than advocacy in orientation. I was, in retrospect, able to maintain a reasonable measure of rigor for this study in the face of pressure from my collaborators to document foregone conclusions, but such basic design issues as the operationalization of variables were entangled with advocacy rather than scientific agendas. The use of rigorous conceptualization to derive variables and interpret statistical models on the one hand and the use of ethnographic consciousness and continual self-reflection on the other mitigated the effect of my previous experience as a tenant advocate. The degree to which I was able to adopt the

perspectives of tenants, landlords, and their advocates is left to the reader. I do believe that mixed method design may provide similar bias inhibitors for the study of other highly charged adversarial organizations or topics. I found that very few people maintained a neutral stance when discussing landlord-tenant issues, perhaps as a result of the primal nature of property, shelter, possession, and home. It is therefore incumbent upon researchers in this field to be aware of and compensate for personal biases, particularly because of the common interests landlords and tenants do share.

Theoretical Development

The combination of methods also facilitated theoretical development given that I had ample and multi-dimensional evidence with which to test a number of theories. The four theories I used to elucidate the organizational dynamics of Landlord-Tenant Court were drawn from a total of six theories that I applied to the study's findings. I was able to select these four theories on the basis of their inter-relatedness and created a theoretical package that can be tested on other organizations in other fields. I would propose that any highly bounded institution resistant to study would probably demonstrate autopoietic, territorial, paradoxical, and street level patterns of organization and operation. Legal autopoiesis as a theoretical construct could benefit from more empirical application and an emphasis on organizational patterns rather than legal abstractions. Paterson and Teubner (1998) point out that empirical applications of the theory could go a long way to bridging the current gap between empirical research and theoretical development in current law and society research. Of the three theories, territoriality and paradox theory have the weakest support in the literature and could use further development with studies of various kinds of organizations. In general, a close-knit relationship between empirical

evidence and theoretical development holds promise particularly for studies geared toward the development of policy recommendations or organizational behavior interventions.

Future Research

This study has its weaknesses and should be subject to verification through further study. The major weaknesses are the lack of income or net worth data about trial litigants and the lack of in-depth data about the vast majority of cases that do not come to trial. Tenants' and landlords' financial status clearly varies given the range of tenant testimony about participation in means-tested programs, whether or not the landlords are a corporation, and the amount of rent charged by landlords. These represent crude measures of economic status for both landlords and tenants so their lack of statistical significance in the models I ran may be a result of measurement error rather than the actual effect of income on trial outcome. With regard to the study of cases that did not come to trial, the exploratory data collected on tenants who settle cases with landlord attorneys, landlords and tenants who settle cases in mediation, and landlords and tenants who arrive for their hearings late and default – all these establish suggestive conclusions about three non-trial categories of cases. Though mediated and non-mediated settlements appear to be generally satisfactory to involved parties, the content of the agreements in the context of admitted liability, warranty of habitability enforcement, and legal understanding of the agreement terms is not known. Analysis of these agreements might be particularly important given that I observed a judge review few of these agreements from the bench, and they constitute approximately 20% of case dispositions.

The one group that was not studied at all represents about the same percentage of case dispositions: tenants who default on their hearings and who do not appear at all in court. Study of this group is important given the evidence from transcripts and interviews that some tenants are not properly served notice of their trial and default for that reason (no landlord was observed reporting this problem). One attorney referred to the practice of “sewer service” in which process servers do not serve the complaint but complete an affidavit testifying that they did so. A study by the New York’s Attorney General (Abrams & Aponte, 1986 in Reide, 1991) estimated that 48,000 default judgments in New York City courts resulted from such fraudulent service. An analysis of the potential hazards in a system that relies unquestionably on process servers to establish the basic due process foundation for its lawsuits is advisable.

Proposed Research Questions:

The areas not covered by this study constitute potentially fruitful research questions for future studies. Ones already described and additional questions are summarized as follows:

- 1) To what extent are Pennsylvania District Judges applying modern landlord and tenant law, and how do their courtroom dynamics compare with that of Landlord-Tenant Court and Municipal Court?
- 2) What is the prevalence of legally autonomous housing and small claims courts nationally, and does the presence of this autonomy affect the application of modern landlord and tenant law in those jurisdictions to which it applies?
- 3) Do landlords and attorneys who practice in Landlord-Tenant Court contribute money to Municipal Court judicial candidates who hear cases brought by members of these groups upon election and, if so, does this relationship affect the disposition of these cases?
- 4) Do litigants fully understand the legal significance of agreements they sign in mediated or non-mediated settlements, and to what extent do these agreements

stipulate repairs in addition to issues of payment?

- 5) Why do so many tenants default on their hearings, and is one of the causes improper service?
- 6) How does a study of landlord-tenant relationships that do not enter L-T Court and a study of public housing landlord-tenant relationships compare with this study of private landlord-tenant relationships?
- 7) How many people who are evicted enter the city's homeless shelter after being evicted in Landlord-Tenant Court?
- 8) What strategies are low-income landlords using to cope with non-paying tenants, what strategies are non-paying tenants using to extend their time of possession, and how many tenants who are claiming a warranty defense actually have the money they claim to have withheld?

This last question was raised by a judge who stated his belief that housing conditions are irrelevant in landlord-tenant disputes because the tenants invariably do not have the money to cover back rent they are being sued for. A thorough answer to this question would help clarify to what extent a lack of income in effect causes the use of a warranty defense as a tenant strategy to avoid eviction. Such a finding would mean that the use of tenant defenses as a primary mechanism in the regulation of the housing market is even more ineffective than if tenants do have the financial resources to set their rent aside as they withhold their rent.

Housing, Homelessness & Citizenship

Housing courts have an impact that is more significant than the scant attention afforded to the litigation that takes place there. The consequences of losing adequate and affordable housing are quite dire, both from the standpoint of providing income to landlords and shelter to tenants. The primary role these courts play in enforcing public policy designed to prevent the deterioration of affordable housing may be an unwelcome

burden to the court system, but their responsibilities are well established in Pennsylvania and most states. Failure to take this policy role seriously exacerbates the housing and homelessness problems of large cities such as Philadelphia.

Recent research continues to confirm the linkage between tenancy and homelessness. Burt, Aron, Lee and Valente's 1996 national survey of homeless single people and families (2001) indicate that the most consistent reason given for leaving their last residence was not being able to pay the rent. Family members said they were not able to pay rent more frequently than single people were and families also frequently indicated that they had to leave their last residence because the landlord made them leave. The data do not indicate how many of these families were living in sub-standard housing or why landlords made them leave their residences, but they do demonstrate how closely connected tenancy is with homelessness. The data also indicate the precariousness of the landlord business in a market infused with tenants facing significant income shortfalls. Landlords cannot be expected to bear this burden without significant public support.

Housing court research is important because many people, whether landlords or tenants, make their only contact with the judiciary through housing courts. West Virginia Supreme Court Justice Richard Neely (1983) articulates this point well:

I am led to the inescapable conclusion that the existing system has its priorities almost upside down. In terms of human justice, the minor courts are the most important courts in the system. Instead of placing all our best resources in the courts of general jurisdiction, leaving the minor courts as the system's stepchildren, we should approach the courts from the other way around (p. 201).

Housing justice requires that housing law be fully applied by organizations that respect each person's citizenship.

Appendices

APPENDIX A Code Book

[Note: this code book includes only the variables I measured during data entry. I created numerous other variables based on this raw data that I did not list here for the sake of brevity. I also did not describe those variables that had no variance].

casetype: Landlord Tenant/LT (when possession is at issue) or Small Claims/SC

file: Whether landlord ("0") or tenant ("1") filed case.

ltnumb: The official case number.

casename: Official name as listed by *The Legal Intelligencer*, Philadelphia's legal newspaper.

judge: Name of judge presiding over case

judrace, judgend: Race and gender of judge.

Race:

- 1 = White
- 2 = Black, African American, or Negro
- 3 = Spanish/Hispanic/Latino
- 4 = Asian (South Asian, Chinese, Filipino, Japanese, Korean, Vietnamese, Indian)
- 5 = Pacific Islander (Native Hawaiian, Guamanian or Chamorro, Samoan)
- 6 = American Indian or Alaskan Native
- 7 = Other Race
- 8 = Two or more races

Gender:

- 0 = W = Woman
- 1 = M = Man
- 2 = B = Both sexes present

date: Of hearing.

time: Official time case is listed.

session: Day and time case is listed.

- 1 = Monday morning
- 2 = Monday afternoon
- 3 = Tuesday morning

- 4 = Tuesday afternoon
- 5 = Wednesday morning
- 6 = Thursday morning
- 7 = Thursday afternoon
- 8 = Friday morning
- 9 = Friday afternoon

llpres, tenpres: Landlord or tenant is present for the hearing (1=present, 0=not present)

lltype: Type of landlord.

- 0 = Private Owner: Landlord is listed by name on docket.
- 1 = Corporation: Landlord is listed as a corporation on docket.
- 2 = Single Room Occupancy (SRO): Landlord self-identifies during trial.
- 3 = Not-for-profit Agency: Landlord self-identifies during trial.

tentype: Type of tenant.

- 0 = Unsubsidized: Tenant makes no indication of any form of financial assistance.
- 1 = Section 8 Recipient: Tenant or Landlord indicates during trial.
- 2 = Homelessness Prevention Subsidy Recipient: Tenant or Landlord indicates during trial.
- 3 = Former Section 8 Recipient: Tenant or Landlord indicates during trial.
- 4 = Non-housing Public Assistance Recipient: Tenant or Landlord indicates receipt of federal assistance of any kind, including Temporary Assistance to Needy Families, Food Stamps, Social Security, etc.
- 5 = Former Non-housing Public Assistance Recipient: Tenant or Landlord indicates receipt of federal assistance of any kind, including Temporary Assistance to Needy Families, Food Stamps, Social Security, etc.

llrace, tenrace: Race of landlord or tenant.

llesl, tenesl: Whether landlord or tenant speaks English as a second language.

llgend, tengend: Gender of landlord or tenant.

llwitness, tenwitness: Landlord or tenant has a witness.

llwitrac, tenwitra: Race of landlord's or tenant's witness.

llwitesl, tenwitesl: Whether landlord's or tenant's witness speaks English as a second language.

llwitgen, tenwitgen: Gender of landlord's or tenant's witness.

llwites, tenwites: Whether landlord's or tenant's witness testifies.

adlwit, adtwit: The number of additional witnesses landlord or tenant has.

llrep, tenrep: Whether landlord or tenant is represented by an attorney.

llrepsnam, terepsnam: Name of landlord's or tenant's attorney.

llreprac, treprace: Race of tenant's or landlord's attorney.

llrepsl, terepsl: Whether landlord's or tenant's attorney speaks English as a second language.

llrepsgend, trepsgend: Gender of tenant's or landlord's attorney.

llrepsrp, trepsrp: Whether landlord's or tenant's attorney tries more than one case in the sample and is therefore a Repeat Player.

heartype: The matter being heard by the judge.

agreeadj: Agreement, adjudicated; a settlement reached in front of a judge.

petopll: Petition to open judgment, landlord; landlord asks court to open a default judgment and list it again for a hearing.

petopten: Petition to open judgment, tenant; tenant asks court to open a default judgment and list it again for a hearing.

contllj: Continuance; landlord asks for the case to be listed at a future court date.

conttenj: Continuance; tenant asks for the case to be listed at a future court date.

affidll: Affidavit, landlord; landlord asks court to approve a statement, such as one asserting that an agreement has been fulfilled.

affidten: Affidavit, tenant; landlord asks court to approve a statement, such as one asserting that an agreement has been fulfilled.

petsatll: Petition to satisfy, landlord; landlord asks court to enforce an agreement or judgment.

petsaten: Petition to satisfy, tenant; tenant asks court to enforce an agreement or judgment.

possess: The landlord is suing for eviction.

damage: The landlord or tenant is suing for money damages.

advise: Taken under advisement; judge defers judgment on the case.

multiple: Multiple dispositions; judge gives out more than one disposition.

complaint possession: The basis upon which landlord is suing for possession

compossa: Non-payment of rent.

compossb: Termination of term.

compossc: Breach of lease.

compossu: Unknown.

comnopus: No possession

commone, comamon: The amount of damages filed for, and the amount of amended damages added to the complaint during the trial.

comcosts, comacosts: The amount of costs, which include filing, late, and attorney's fees, are part of complaint; the amount of costs amended to the complaint during trial.

rent: Monthly rent.

verconti: Continuance granted.

verdict possession: The basis upon which the landlord is awarded possession.

verpossa: Non-payment of rent.

verpossb: Termination of term.

verpossc: Breach of lease.

verpossu: Unknown.

vernopus: No possession

vertenlf: Tenant has already given up possession

vermone: How much damages the judge awards to the plaintiff.

vercosts: Amount of court costs judge awards to the plaintiff.

moretime: Whether or not the defendant asks for more time than what is normally granted for eviction.

timegive: Whether or not the judge gives the defendant more time.

amttime: The amount of additional time the judge gives the defendant.

lladposs, tenadpos: Whether the landlord or tenant (or their attorney) admit that they are not due possession of the rental unit.

lladmon, tenadmon: How much money the landlord or tenant (or their attorney) admits they owe the other party.

dvadmit: Percentage of the contested amount awarded to the landlord.

dydamll, dydamte: Total damages awarded to the landlord or tenant.

outcposs, outcdam: Whether the case is favorable to the landlord ("1") or to the tenant

(“0”) on the basis of possession and damages.

jelill, jeliten: Judge elicits testimony from landlord or tenant.

jelillr, jelitre: Judge elicits testimony from landlord’s or tenant’s attorney.

llrelil, llrelit, llrelitr: Landlord’s attorney elicits testimony from landlord, tenant, or tenant’s attorney.

trelit, trelill, trelillr: Tenant’s attorney elicits testimony from tenant, landlord, or landlord’s attorney.

llelit, llelitr: Landlord elicits testimony from tenant or tenant’s attorney.

telill, telillr: Tenant elicits testimony from landlord or landlord’s attorney.

landlord’s oral testimony

llodamn: Landlord testifies that damage to rental unit is due to tenant’s actions.

lloliab: Landlord testifies that L & I has issued an abatement notice.

llolprem: Landlord testifies that lead paint has been removed.

llorepai: Landlord testifies that landlord has made repairs to building.

llonoac: Landlord testifies that tenant has not given landlord access to make repairs.

llicen: Landlord testifies that he/she has a license.

lloowren: Landlord testifies that tenant owes landlord rent.

lloowut: Landlord testifies that tenant owes utilities payments.

llolexp: Landlord testifies that tenant’s term of lease has expired.

llobreac: Landlord testifies that tenant breached lease.

llononot: Landlord testifies that tenant did not provide adequate notice for termination.

llooth: Landlord provides other testimony.

llono: Landlord provides no testimony.

tenant’s oral testimony

tenodamn: Tenant testifies that damage to rental unit is not due to tenant’s actions.

tenoccli: Tenant testifies that he or she called L & I to report housing code violations.

tenolivi: Tenant testifies that L & I has charged landlord with housing code violations.

tenolp: Tenant testifies that there is lead paint in the rental unit.

tenoneed: Tenant testifies that the housing unit needs repairs.

tenonore: Tenant testifies that landlord has not made repairs to building.

tenoinve: Tenant invested money for repairs.
tenonort: Tenant testifies that tenant does not owe landlord rent.
tenolere: Tenant testifies that tenant owes landlord less rent.
tenonohe: Tenant testifies that there was no heat.
tenonout: Tenant testifies that tenant does not owe landlord utilities payments.
tenoleut: Tenant testifies that tenant owe landlord less utilities payments.
tenooth: Tenant provides other testimony.
tenono: Tenant provides no testimony.

landlord's attorney's oral testimony

laodamn: Landlord's attorney testifies that damage is due to tenant's actions.
laoliab: Landlord's attorney testifies that L & I has issued an abatement notice.
laolprem: Landlord's attorney testifies that lead paint has been removed.
laonore: Landlord's attorney testifies that landlord has made repairs to building.
lanoacc: Landlord's attorney testifies that tenant has not given access to make repairs.
laolicen: Landlord's attorney testifies that he has a license.
laoowren: Landlord's attorney testifies that tenant owes landlord rent.
laoowut: Landlord's attorney testifies that tenant owes utilities payments.
laolexp: Landlord's attorney testifies that tenant's term of lease has expired.
laonowot: Landlord's attorney testifies that tenant did not provide adequate notice.
laobreac: Landlord's attorney testifies that tenant breached lease.
laooth: Landlord's attorney provides other testimony.
laono: Landlord's attorney provides no testimony.

tenant's attorney's oral testimony

taodamn: Tenant's attorney testifies that damage is not due to tenant's actions.
taoccli: Tenant's attorney testifies that L & I was called by tenant or tenant's attorney.
taolivi: Tenant's attorney testifies that L & I has charged landlord with code violations.
taolp: Tenant's attorney testifies that there is lead paint in the rental unit.
taonore: Tenant's attorney testifies that landlord has not made repairs to building.
taoinve: Tenant's attorney testifies that tenant invested money in repairs to building.
taonort: Tenant's attorney testifies that tenant does not owe landlord rent.
taolere: Tenant's attorney testifies that tenant owes landlord less rent.
taonout: Tenant's attorney testifies that tenant does not owe landlord utilities payments.
taoleut: Tenant's attorney testifies that tenant owe landlord less utilities payments.
taooth: Tenant's attorney provides other testimony.

taono: Tenant's attorney provides no testimony.

questll, questten: Number of times the judge asks a question of landlord or tenant.
"Question" is defined as a statement made to elicit a response and may or may not be accompanied by a question mark in the transcript.

questllr, quester: Number of times the judge asks a question of landlord's or tenant's attorney.

cutll, cutten: Number of times the judge interrupts a landlord or tenant. "Interrupt" is defined as a statement made in the middle of a piece of testimony or legal argument that prevents the litigant or attorney from completing their testimony or argument.

cutllr, cuttenr: Number of times the judge interrupts a landlord's or tenant's attorney.

jasklld, jasktend: Judge asks for documentary evidence from landlord or tenant.

jaskllrd, jaskterd: Judge asks landlord's or tenant's attorney for documentary evidence.

llasktd, llasktrd: Landlord asks tenant or tenant's attorney for documentary evidence.

llraskld, llrasktd, lrasktrd: Landlord's attorney asks landlord, tenant, or tenant's attorney for documentary evidence.

tasklld, taskllrd: tenant asks landlord or landlord's attorney for documentary evidence.

trasktd, trasklld, trasklrd: tenant's attorney asks tenant, landlord, or landlord's attorney for documentary evidence.

landlord's documentary evidence

lldlease: Landlord has lease.

lldliaba: Landlord has L & I violations abatement notice.

lldlpaba: Landlord has lead paint abatement verification.

lldnonpy: Landlord has non-payment notice.

lldterm: Landlord has termination notice.

lldbreac: Landlord has breach notice sent to tenant.

lldrtrec: Landlord has rent received receipts.

lldphoto: Landlord has photographs.

lldvideo: Landlord has video.

lldrecei: Landlord has receipts from repairs.

lldut: Landlord has utility bill.

lldlicens: Landlord has rental license.

lldother: Landlord has other documents.

lldnone: Landlord has no documents.

tenant's documentary evidence

tendleas: Tenant has lease.

tendliv: Tenant has L & I violations notice.

tendlpv: Tenant has lead paint violations notice.

tendnot: Tenant has own breach notice.

tendrere: Tenant has rent paid receipts.

tendescr: Tenant has proof of escrow account.

tendut: Tenant has utility bills.

tendphot: Tenant has photographs.

tendrec: Tenant has receipts for repairs.

tendore: Tenant has other receipts.

tendlett: Tenant has a letter.

tendaff: Tenant has affidavit.

tendoth: Tenant has other documents.

tendnone: Tenant has no documents.

landlord's attorney's documentary evidence

ladlease: Landlord's attorney has lease.

ladliaba: Landlord's attorney has L & I violations abatement notice.

ladlpaba: Landlord's attorney has lead paint abatement verification.

ladnonpy: Landlord's attorney has non-payment notice.

ladbreac: Landlord's attorney has breach notice.

ladrtrec: Landlord's attorney has rent received receipts.

ladphoto: Landlord's attorney has photographs.

ladut: Landlord's attorney has utility bill.

lalicens: Landlord's attorney has rental license.

ladother: Landlord's attorney has other documents.

ladnone: Landlord's attorney has no documents.

tenant's attorney's documentary evidence

tadleas: Tenant's attorney has lease.

tadliv: Tenant's attorney has L & I violations notice.

tadlpv: Tenant's attorney has lead paint violations notice.

tadnot: Tenant's attorney has own breach notice.

tadrere: Tenant's attorney has rent paid receipts.

tadescr: Tenant's attorney has proof of escrow account.

tadut: Tenant's attorney has utility bills.

tadphot: Tenant's attorney has photographs.

tadrec: Tenant's attorney has receipts for repairs.

tendore: Tenant's attorney has other receipts.

tendlett: Tenant's attorney has a letter.

tendaff: Tenant's has affidavit.

tadoth: Tenant's attorney has other documents.

tadnone: Tenant's attorney has no documents.

julldoc, jutendoc: Whether judge reviews landlord's or tenant's documents.

jullrdoc, jutrdoc: Whether judge reviews landlord's attorney's or tenant's attorney's documents.

landlord's legal argument

llltrep: Landlord asserts that tenant is responsible for paying for repairs.

llltrent: Landlord asserts that tenant is responsible for back rent.

lllbrea: Landlord refers to breach of lease.

lllterm: Landlord refers to termination of lease.

lllagree: Landlord asserts that tenant has not upheld agreement.

lllnonot: Landlord asserts that tenant did not provide adequate notice.

lllother: Landlord makes other legal argument.

lllnone: Landlord makes no legal argument.

tenant's legal argument

tenllre: Tenant asserts that landlord is responsible for repairs.

tenlnoent: Tenant asserts that he/she does not owe rent due to apartment conditions.

tenllert: Tenant asserts that they owe less rent (including fees).

tenlreta: Tenant asserts landlord retaliated for making a report to L & I.

tenlwarr: Tenant refers to warranty of habitability.

tenlpugh: Tenant refers to Pugh v. Holmes.

tenlagre: Tenant asserts that tenant has upheld agreement.

tlagre: Tenant asserts that landlord did not uphold an agreement.

tlnonot: Tenant says that landlord did not provide adequate notice.

tloutqli: Tenant says that landlord has outstanding L & I violations on building.

tenloth: Tenant makes other legal argument.

tenlnone: Tenant makes no legal argument.

landlord's attorney's legal argument

lrltrep: Landlord's attorney asserts that tenant is responsible for paying for repairs.

lrltrent: Landlord's attorney asserts that tenant is responsible for back rent.

lrlbrea: Landlord's attorney refers to breach of lease.

lrlterm: Landlord's attorney refers to termination of lease.

lrlagree: Landlord's attorney asserts that tenant has not upheld agreement.

lrnonot: Landlord's attorney asserts that tenant did not provide adequate notice.

lrlother: Landlord's attorney makes other legal argument.

lrlnone: Landlord's attorney makes no legal argument.

tenant's attorney's legal argument

trllre: Tenant's attorney asserts that landlord is responsible for repairs.

trlnort: Tenant's attorney asserts that tenant owes no rent due to apartment condition.

trllesrt: Tenant's attorney asserts that tenant owes less rent due to apartment condition.

trlretal: Tenant's attorney asserts that landlord retaliates for tenant report to L & I.

trlwarr: Tenant's attorney refers to warranty of habitability.

trlpugh: Tenant's attorney refers to Pugh v. Holmes.

trlagre: Tenant's attorney asserts that tenant has upheld agreement.

trlnogr: Tenant's attorney asserts that landlord has not upheld agreement.

talnonot: Tenant's attorney asserts that landlord did not provide adequate notice.

taloutli: Tenant's attorney asserts that landlord had outstanding L & I violations.

trloth: Tenant's attorney makes other legal argument.

trlnone: Tenant's attorney makes no legal argument.

judge's legal argument

jlrebate: Judge asserts that the tenant is owed a rebate due to housing conditions.

jlnoescr: Judge asserts that the tenant's withholding is not valid because they did not pay their rent into an escrow account, something that is specifically required by the Rent Withholding Act but not by Pugh v. Holmes.

jlnodam: Judge asserts that the landlord is responsible for repairs to the property even though the landlord testifies that the tenant caused the damages.

jltnonot: Judge asserts that tenant did not provide adequate notice.

jllnonot: Judge asserts that landlord did not provide adequate notice.

jllother: Judge makes other legal argument.

jlnone: Judge makes no legal argument.

APPENDIX B
Consent Form and Interview Protocols

Consent Form

UNIVERSITY OF PENNSYLVANIA

David Eldridge, School of Social Work
Phone: 610-649-6162
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**“The Making of a Courtroom: Landlord-Tenant Trials
in Philadelphia’s Municipal Court”**

INVITATION TO PARTICIPATE: I am being asked to participate in a research study about how landlords and tenants resolve their conflicts.

PURPOSE: The purpose of the study is to gain a full understanding of private landlord-tenant contests in Philadelphia’s Landlord-Tenant (L-T) Court by combining interviews, observation, and analysis of hearings. This research will be the basis for a Ph.D. in Social Welfare dissertation.

PROCEDURES: Research participants will be asked to be interviewed for ½-1 hour about their experience of a Landlord-Tenant dispute.

RISKS: The only risk of participating in this study is the inconvenience of taking time to be interviewed.

BENEFITS: Participants will help provide a better understanding about conflicts between landlords and tenants.

COMPENSATION: There is no compensation for this interview.

CONFIDENTIALITY: I understand that all information collected in this study will be kept completely confidential, except as may be required by law. All research records will be kept in a locked file cabinet, and no analysis will include identifying information. If any publication results from this research, I will not be identified by name nor will any statements I make be attributed to me.

DISCLAIMER/WITHDRAWAL: I agree that my participation in this study is completely voluntary and that I may withdraw at any time without any negative consequences.

PAGE 2: "The Making of a Courtroom: Landlord-Tenant Trials in Philadelphia's Municipal Court" David Eldridge

SUBJECT RIGHTS: I understand that if I wish further information regarding my rights as a research participant, I may contact the Director of Regulatory Affairs at the University of Pennsylvania by telephoning 215-898-2614.

CONCLUSION: I have read and understand the consent form. I have been given the chance to ask questions and they have been answered. I agree to participate in this research study. Upon signing below, I will receive a copy of the consent form.

_____	_____	_____
Name of Subject	Signature of Subject	Date
_____	_____	_____
Name of Investigator	Signature of Investigator	Date
_____	_____	_____
Name of Witness	Signature of Witness	Date

Interview Protocols

[Note: I have identified the sections that are identical in all five protocols in the first protocol, and have deleted those common sections from succeeding protocols].

(Common) The following questions function to guide the interviewer in obtaining sufficiently valuable case study data. The questions will be used reflexively in the context of the interview, and will be accompanied by probes and interviewee-generated questions and responses.

Tenant Interview

I. Information (Common)

Introduction: First, I want to ask you some background questions that may seem unusual but that help make sure my study is accurate.

Coded Race/Ethnicity: _____ (Coded before participant responds)

1. What race or ethnicity do you consider yourself?

Coded ESL: _____

2. Is English your first language?

Coded gender: _____

3. What is your gender?

4. What is your age?

5. What is your educational attainment?

II. General

1. How long have you been a tenant?

2. Were either or both of your parents tenants?

3. If so, what was it like growing up as a tenant?

4. How many different landlords have you had?

5. What is the hardest thing about being a tenant?

6. What is the easiest thing about being a tenant?

III. Normative

1. *What do you think are your responsibilities as a tenant?*
2. *What do you think are the responsibilities of your landlord?*
3. *What do you think are the Court's responsibilities in dealing with landlord-tenant conflicts?*

IV. Experience

1. *What happened between you and your landlord that led to a trial?*
2. *What were your expectations of Court the day you had your hearing?*
3. *Why did you have these expectations?*
4. *How did your expectations compare with your experience in court?*
5. *Looking back, would you have done anything differently?*
6. *Do you think the court should have done anything differently?*
7. *What will you do next?*
8. *What do you think your landlord will do next?*

V. Information II

(Common) Introduction: This last set of questions also helps maintain the consistency of my study, and will be kept strictly confidential like all the information you are giving me.

1. *Are you currently employed, and, if so, in what occupation?*
2. *What is your annual income?*
3. *What are the sources of your income?*
4. *Have you ever been a landlord?*

VI. Closing Questions (Common)

1. *Is there anything else I should know about?*

2. *Do you know of someone else who I might be able to help me with this research?*

Landlord Interview

II. General

1. *How long have you been a landlord?*
2. *How did you get into the business?*
3. *How many properties do you own?*
4. *Who helps you manage them?*
5. *What is the hardest thing for you about being a landlord?*
6. *What is the easiest thing for you about being a landlord?*

III. Normative

1. *What do you think are your responsibilities as a landlord?*
2. *What do you think are the responsibilities of a tenant?*
3. *What do you think are the responsibilities of the Court in dealing with landlord-tenant conflicts?*

IV. Experience

1. *What happened between you and your tenant that led to a trial?*
2. *What were your expectations of Court and the judge the day you came to court?*
3. *Why did you have these expectations?*
4. *How did your expectations compare with your experience in court?*
5. *Looking back, would you have done anything differently?*
6. *Do you think the court should have done anything differently?*

7. *What will you do next?*
8. *What do you think your tenant will do next?*

V. Information II

1. *What is your annual income?*
2. *Is your landlord business your only source of income?*
3. *If not, what are your other sources of income?*
4. *Have you ever been a tenant?*

Tenant Attorney Interview

II. General

1. *How long have you been an attorney?*
2. *Have you represented only tenants or have you also represented landlords?*
3. *If you have represented both, what are the differences between representing tenants and representing landlords?*
4. *How much experience have you had representing litigants in L-T Court?*
5. *What is the hardest thing for you about representing tenants?*
6. *What is the easiest thing for you about representing tenants?*

III. Normative

1. *What do you think are your responsibilities as a tenant's attorney?*
2. *What do you think are the responsibilities of a tenant?*
3. *What do you think are the responsibilities of landlord?*
4. *What do you think are the responsibilities of the Court in dealing with landlord-tenant conflicts?*

IV. Experience

1. *How did you come to represent this tenant?*
2. *What were your first impressions of the case?*
3. *If there were settlement discussions, what were those like?*
4. *What were your expectations of Court and the judge the day you came to court?*
5. *Why did you have those expectations?*
6. *How did your expectations compare with your experience in court?*
7. *Looking back, would you have done anything differently?*
8. *Do you think the Court should have done anything differently?*
9. *Do you think your client should have done anything differently?*
10. *What do you think your client will do next?*
11. *What do you think your client's landlord will do next?*

V. Information II

1. *What is your annual income?*
2. *Is your law practice your only source of income?*
3. *If not, what are your other sources of income?*
4. *Are you or have you ever been a landlord?*
5. *Are you or have you ever been a tenant?*

Landlord Attorney Interview

II. General

1. *How long have you been an attorney?*

2. *Have you represented only landlords or have you also represented tenants?*
3. *If you have represented both, what are the differences between representing landlords and representing tenants?*
4. *How much experience have you had representing litigants in L-T Court?*
5. *What is the hardest thing for you about representing landlords?*
6. *What is the easiest thing for you about representing landlords?*

II. Normative

1. *What do you think are your responsibilities as a landlord's attorney?*
2. *What do you think are the responsibilities of a landlord?*
3. *What do you think are the responsibilities of tenant?*
4. *What do you think are the responsibilities of the Court in dealing with landlord-tenant conflicts?*

III. Experience

1. *How did you end up representing this landlord?*
2. *What were your first impressions of the case?*
3. *If there were settlement discussions, what were those like?*
4. *What were your expectations of Court and the judge the day you came to court?*
5. *Why did you have those expectations?*
6. *How did your expectations compare with your experience in court?*
7. *Looking back, would you have done anything differently?*
8. *Do you think the Court should have done anything differently?*
9. *Do you think your client should have done anything differently?*
10. *What do you think your client will do next?*

11. *What do you think your client's landlord will do next?*

IV. Information II

1. *What is your annual income?*
2. *Is your law practice your only source of income?*
3. *If not, what are your other sources of income?*
4. *Are you or have you ever been a landlord?*
5. *Are you or have you ever been a tenant?*

Judge Interview

II. General

1. *How long have you been a judge?*
2. *What was the electoral or appointment process like to become a judge?*
3. *Did you represent either landlords or tenants before becoming a judge?*
4. *How much experience have you had hearing cases in L-T Court?*
5. *What is the hardest thing for you about hearing cases in L-T Court?*
6. *What is the easiest thing for you about hearing cases in L-T Court?*
7. *What is the racial proportion of tenants who come before you?*
8. *What is the racial proportion of landlords who come before you?*

III. Normative

1. *What do you think are your responsibilities as a judge?*
2. *What do you think are the responsibilities of a tenant?*
3. *What do you think are the responsibilities of a landlord?*
4. *What do you think are the responsibilities of a landlord's attorney?*

5. *What do you think are the responsibilities of a tenant's attorney?*

IV. Experience

1. *What did you know about this case before it came to trial?*

2. *What were your first impressions of the case?*

3. *If there were settlement discussions, did you expect that they would settle the case?*

4. *What did you think about the tenant's presentation of his/her case?*

5. *What did you think about the landlord's presentation of his/her case?*

6. *What do you think the tenant will do next?*

7. *What do you think the landlord will do next?*

8. *Looking back, would you have done anything differently?*

9. *What are your general impressions of the cases you hear in L-T Court?*

10. *What is the most memorable case you heard in L-T Court?*

11. *Do you think the Court should handle L-T cases any differently than it does now?*

V. Information II

1. *Would you mind telling me for record-keeping purposes what your annual income is?*

2. *Is your judgeship your only source of income?*

3. *If not, what are your other sources of income?*

4. *Are you or have you ever been a landlord?*

5. *Are you or have you ever been a tenant?*

APPENDIX C Ethnographic Themes

Data Collection Themes

Initial Themes:

1. *Formal v. Informal Exchanges*: informal interactions between research participants often provide insight into the organization's deep structure.
2. *Multiple Representativeness*: the different roles and personae people adopt or project provide insight into the organizational structure that assigns these roles in the first place.
3. *Personalological, Intragroup, and Intergroup Dynamics*: different levels of individual and collective behavior provide insight into the complex dynamics of an organization.

Working Themes:

4. *Relative Power*: The construct that places landlord/owners above tenants/renters.
5. *Adaptation*: Using rules and mechanisms to one's own advantage.
6. *Being heard*: Process evaluation of courtroom experience.
7. *Financial Creativity*: Underground economies, bartering, money.
8. *Court Family*: Insider/outsider, organizational dynamics.
9. *Gender/Race/Class*: Demographic differences imbued with meaning.
10. *Violence*: Aggression between litigants and between the Court and outsiders.
11. *Private/Public Nexus*: The intersection of private interests (landlords) and public organizations (Municipal Court, Social Welfare Organizations).
12. *Repeat Player/One Shotter*: Galanter's (1974) formulation relating to relative success of litigants.
13. *Differential Treatment*: Court's treating landlords differently than tenants.
14. *Money/Home*: Central conflict in landlord-tenant relationship.
15. *Intimacy of landlord-tenant relationship*: Landlords and tenants are closely bound by their mutual interest, and relationships often involves family or friendship.
16. *Surveillance*: Court staff's emphasis on controlling behavior in the courtroom.
17. *Crime*: Association with tenants, connection to individual cases.
18. *Rough Justice*: Solomonic verdicts that do not apply substantive law.

Evolving Themes:

19. *Dynamic Nature of Complaints*: The landlord-tenant relationships are constantly evolving, and so are the complaints being litigated or processed.
20. *Eviction*: A central concern for both landlords and tenants.

21. *Family Matters*: The case involves family issues such as health or parent/child conflict.
22. *Housing Conditions*: A central feature of many cases.
23. *L & I*: A central organization in Municipal Court's regulatory network.
24. *Mercy of the Court*: Tenants who admit the full complaint but ask for relief from the judge.
25. *Standout Cases*: Cases that illustrate broad patterns, and cases that are particularly emotional.
26. *Out of Court*: Interactions that take place outside the courtroom.
27. *Special Treatment Cases*: Cases in which the judge appears to offer special treatment to either landlord or tenant.
28. *Tenant-tenant intimacy*: The residential proximity between tenants creates intimate relationships.
29. *Instability*: The fragility of the landlord-tenant relationship.
30. *Death and Disability*: Many tenants talk about the affect of death and disability on their ability to pay rent.
31. *Possession*: A basic expression of ownership, not necessarily attached to land.

Case Participants:

32. *Attorneys*: Experiences and points of view of both landlord and tenant attorneys.
33. *Court Staff*: Experiences and points of view of court staff.
34. *Judges*: Experiences and points of view of judges.
35. *Judicial Attitude*: Judges' feelings about an L-T Court assignment.
36. *Landlords*: Experiences and points of view of landlords.
37. *Tenants*: Experiences and points of view of tenants.
38. *Pro se attorneys*: Experiences and points of view of attorneys who represent themselves.
39. *Settlers*: Experiences and points of view of litigants who settle their cases.
40. *Mediators*: Experiences and points of view of litigants who mediate their cases.
41. *Defaulters*: Experiences and points of view of litigants who default on their cases.

Write-up Themes:

Case Analysis Themes (Chapters 4-9):

42. *Legal Representation*: The affect that attorney involvement or *pro se* litigation has on trial group dynamics.
43. *Interorganizational Dynamics*: The organizational network in which Municipal Court is situated.

Ethnographic Themes:

Chapter 5:

44. *Low-income Landlords/High-Income Tenants:* Landlords who need financial assistance to maintain their properties, and tenants who do not need financial assistance to support their tenancy or their access to courts.
45. *Judicial Decision-making:* Judges' statements about the reasoning behind their verdicts.
46. *Trial Participant Satisfaction:* Frustration of attorneys and litigants with lack of legal application and aggressive procedural application.

Chapter 6:

47. *Landlord Decision-making:* The reasoning behind landlord's decisions about making repairs and evicting tenants.
48. *Court Staff:* The involvement of court staff in trials and court staff statements about landlords and tenants.
49. *Lead Contamination:* An area that has received significant statutory development and that places Municipal Court in direct relationship with the Department of Public Health.

Chapter 7:

(see #23). *L & I:* A central organization in Municipal Court's regulatory network.

Chapter 8:

50. *Fair Housing Commission:* Another central organization in Municipal Court's regulatory network.

Chapter 9:

51. *Political Parties:* The Philadelphia Democratic and Republican parties that dominate the selection of Municipal Court judges.
52. *Organizational Accountability:* The efforts of the Philadelphia Bar Association, state government, and advocacy organizations to hold Municipal Court and Landlord-Tenant Court accountable to its behavior.
53. *Social Welfare Organizations:* Public and non-profit agencies that provide assistance to both landlords and tenants.

APPENDIX D
Field Interaction Protocols

I. Response Protocols (when a participant approaches me)

A. What are you doing?

"I'm working on a project for school. I can turn off the computer if it makes you uncomfortable."

B. What is the project about?

"It's about disputes between landlords and tenants. I'm trying to get as many perspectives as possible on landlord-tenant cases to develop a more complete understanding of them."

Because some participants may be familiar with the research I conducted for the Tenant Action Group (TAG), it may make sense for me to indicate to them that I no longer work for TAG and that I am interested in all perspectives on landlord-tenant disputes (landlord, tenant, attorney, and court staff).

II. Initiating Protocols (when I approach a participant)

A. In general, I would say:

"I'm doing a research project on disputes between landlords and tenants and I wanted to know if you would be willing to participate in the study."

B. If I am asking a participant for an interview, I would say:

"I'm doing a research project on disputes between landlords and tenants and I wanted to know if you would be willing to participate in the study by talking to me about your experience."

APPENDIX E
Case Analyses Glossary

Chapter 5: Singleton v. Zephyr Properties

Albert Singleton: Tenant (Plaintiff)

Zephyr Properties: Landlord (Defendant)

Barbara Doubleday: Landlord Attorney (For Defendant)

Chapter 6: Pendleton v. Fortune

Charles Fortune: Landlord (Defendant)

Darcy Pendleton: Tenant (Plaintiff)

Chapter 7: Sexton v. McGinnis

Elaine Sexton: Landlord (Plaintiff)

Judge Bill Nemon: Judge

Gary Oxholm: Tenant Attorney (For Defendant)

Francie McGinnis: Tenant (Defendant)

Chapter 8: Dennis v. Yes Housing, Inc.

Henry Dennis: Tenant and Tenant Attorney (Plaintiff and Defendant and For Plaintiff and Defendant)

Larry Severeide: Landlord Attorney (For Plaintiff and Defendant)

Mack Nelson: Tenant Attorney (For Plaintiff and Defendant On Appeal)

Nathaniel Twiname II: Landlord (Plaintiff and Defendant)

APPENDIX F
Communications With Municipal Court Administration

Chronology:

- 11/95 Began observations for Tenant Action Group (TAG) study.
- 3/96 Told by then President Judge's Court Reporter that I could not buy the notes of testimony for a landlord-tenant appeal heard in Common Pleas Court.
- 5/96 Presented TAG's report, *Court Watch: A Pilot Study of Tenants' Experience in Philadelphia's Landlord-Tenant Court* to President Judge and Municipal Court Administrator. TAG, Community Legal Services (CLS) and Homeowners' Association of Philadelphia Company (HAPCO) representatives were also present.
- 12/4/98 Letter to Court Administrator asking for information about how to obtain Notes of Testimony and whether I could review the computer list used in the courtroom.
- 1/10/99 Telephone conversation with Court Administrator who indicated that I could not buy the Notes of Testimony because I was not an attorney, but that I could review the computer list as it was a matter of public record. Also indicated that I could appeal his decision by writing a letter to him, which would be reviewed by the Court's legal staff.
- 6/23/99 Letter to Court Administrator. Asked Court Administrator to appeal his decision about the Notes of Testimony.
- 7/99 Telephone conversation with Municipal Court Administration receptionist. Informed me that Court Administrator was on an extended medical leave and that the Deputy Court Administrator was acting as Court Administrator. Asked to speak with Deputy Court Administrator, and was told that I could set up a meeting.
- 7/29/99 Meeting with Deputy Court Administrator. Was informed by Deputy Court Administrator's secretary that any requests had to be made to the Administrative Judge.
- 8/4/99 Letter to Administrative Judge. Gave background to previous requests, explained research, and asked to buy Notes of Testimony and to have a way to determine hearing claim numbers.

- 8/30/99 Letter from Administrative Judge. Told me to speak with Deputy Court Administrator about cost of buying Notes of Testimony.
- 9/99 Telephone conversation with Municipal Court receptionist. Faxed Deputy Court Administrator letter to Court Administration.
- 9/99 Telephone conversation with Municipal Court receptionist. Set up a meeting with Deputy Court Administrator.
- 9/29/99 Meeting with Deputy Court Administrator. Met with Deputy Court Administrator's secretary. Discussed costs of Notes and ordering procedure. Asked to review computer lists, told I could not but was told I could use the computer located in the Court Administration office.
- 10/5/99 Began taking notes in Landlord-Tenant Court for dissertation research.
- 10/99 Met with Director of Dispute Resolution Program who told me that he would be glad to talk to me about the mediation program.
- 11/4/99 Told by Judgments and Petitions Supervisor that she would need to ask permission of the Court Administrator to give me permission to review case files. I asked if journalists had to ask permission as well, and was told that they did.
- 2/8/99 Asked to stop taking notes during hearings by a Judge's clerk. Told by clerk after hearing that I had to ask permission from the judge to take notes. Asked Judge to give me permission to take notes, which she did.
- 2/10/99 Tipstaff told me to stop taking notes while court was in session until I met with Administrative Judge. Attempted to take notes between roll call and hearings, and was told that I couldn't take notes at all within the courtroom. Later told by Judge's clerk that he and his Judge asked the Administrative Judge about me on the previous Thursday. He told them that he knew me, I had written papers about the court before, and that he was going to make a decision about whether I could take notes before any judges in Landlord-Tenant Court.
- 2/11/00 Letter to Administrative Judge. Requested permission to take notes during hearings and to review case files. Attached Institutional Review Board permission.
- 2/16/00 Spoke to Administrative Judge's clerk about letter. Told he didn't know anything about it and would give the Judge a message that I called.

- 2/28/00 Asked tipstaff if I was not permitted to take any notes, and she confirmed that I was not. I then attempted to take notes in the hallway, and was told by a sheriff that I couldn't stand in the hallway.
- 2/29/00 Spoke to Administrative Judge's secretary about letter. Told she hadn't seen it, could I fax it. Faxed letter.
- 3/1/00 Faxed attachment to letter. Told by secretary that she hadn't seen yesterday's fax. Faxed letter again. Told by secretary that she received it and would put it on Administrative Judge's desk.
- 3/21/00 Sent second letter to Administrative Judge.
- 3/30/00 Spoke with Administrative Judge's secretary to confirm receipt of second letter. Secretary said that she remembered filing my previous letter, thought that Administrative Judge had sent something to me, and that she did not remember the second letter. When I said that I had not received a response, she wrote down my request to review case files and take notes in court, and said that she would run it past another staff member in the office and get back to me. On same day, TAG staff told that they could not take notes in court, though subsequently a TAG staff took notes behind a pillar in L-T Court and was not asked to stop.
- 4/6/00 Asked by another tipstaff if I was recording the hearings. Asked same question on two different occasions by same tipstaff.
- 4/7/00 Spoke with Director of Dispute Resolution Program. Told that he needed clearance from "the judge" to meet with me to discuss the mediation program, and that I could send a letter to him about what information I was interested in obtaining and he would review it.
- 4/18/00 Spoke with attorney about the possibility of his representing me.
- 6/7/00 Met with attorney and summer associate.
- 7/6/00 Same tipstaff who had asked me if I was recording, asked someone else in L-T Court who was not there for a specific case to stop taking notes.
- 8/23/00 Attorney completed draft of letter to Administrative Judge. Decided not to send it unless I faced additional restrictions on public data access.
- 11/00 Asked a clerk at Judgments and Petitions if I could speak with Supervisor. Was told that she didn't work there anymore. Later told another clerk that I was doing research and asked if I could review files. He said that I could. I gave him my list of hearings, and he pulled the first six files and

gave them to me after asking for my license, which he kept until I was done reviewing the files.

APPENDIX G

Trial Court Performance Standards & Measurement System

[These excerpts of the TCPSMS were downloaded from the National Council of State Court Web-site, http://ncsc.dni.us/RESEARCH/tcps_web (2001)].

Forward: Developing a common language for describing, classifying, and measuring the performance of trial courts was the goal of an 8-year effort, the Trial Court Performance Standards Project, initiated in 1987 by the National Center for State Courts and the Bureau of Justice Assistance (BJA). The Trial Courts Performance Standards and Measurement System is the result of that effort.

Preface: The Commission first created the Trial Courts Performance Standards, which set forth standards of performance for trial courts in five performance areas:

- Access to Justice
- Expedition and Timeliness
- Equality, Fairness, and Integrity
- Independence and Accountability
- Public Trust and Confidence

The Commission's next challenge was to provide trial courts with a systematic and sound means to examine how well they achieve these performance standards. To meet this challenge, the Commission and the Trial Court Performance Standards Project staff developed a set of measures for assessing trial court performance. Twelve trial courts in Ohio, New Jersey, Virginia, and Washington subsequently tested the measures during a 4-year demonstration The resulting measurement system is intended to be a versatile tool for self-assessment and improvement, and not a means for evaluating the performance of individuals or for drawing comparisons across courts.

Standard 1.1: Public Proceedings. The trial court conducts its proceedings and other public business openly.

Commentary. This standard requires the trial court to conduct all proceedings openly, contested or uncontested, that are public by law or custom. The court must specify proceedings to which the public is denied access and ensure that the restriction is in accordance with the law and reasonable public expectations. Further, the court must ensure that its proceedings are accessible and audible to all participants, including litigants, attorneys, court personnel, and other persons in the courtroom.

Measurement Overview. The three measures for Standard 1³⁸ determine the degree to which a court openly conducts its business. The measures assume that a trial court meets Standard 1.1 if it: (1) provides public access to its courtrooms, (2) ensures that information regarding the status of court proceedings is obtainable, and (3) ensures that judges and other court participants can be heard in open proceedings. All three measures rely on direct observations.

The measures require court staff to compile some basic calendaring information. Once this information is available, each of the measures can be completed within a few days. Each of the measures can be accomplished separately, but it would be more efficient to conduct them simultaneously.

Although almost anyone can serve as observers for these measures, as noted in the overview of measures for Access to Justice beginning on page 1, it is recommended that individuals who are unfamiliar with the court be recruited. The same individuals also may be used for obtaining observation data for measures related to other standards of access, particularly measures of the convenience of access, perceptions of safety, courtesy, and responsiveness of court personnel.

Measure 1.1.1: Access To Open Hearings. This measure verifies that the public has access to court proceedings that should be open to the public. The coordinator for the measure provides volunteer observers a list of scheduled court hearings and asks the observers to verify whether they can enter the courtroom in which the hearings take place.

Planning/Preparation. Preparation for this measure involves identifying at least 30 court proceedings for the volunteer observers to attend. The first step is to select several days during which the observations will take place. The number of days selected will depend on:

1. The court's daily volume of proceedings. If few proceedings are held each day, the observations will have to be conducted over many days or weeks.
2. The variety of proceedings conducted each day. If certain matters are heard only on certain days (e.g., all or most civil and criminal motions are heard only on Mondays), then several days will be needed to observe a cross-section of proceedings.
3. The number of volunteer observers available to conduct the measure. If a large number of observers are available, data could be collected across many

³⁸ In general, the reliability of the measure's results increases with an increase in the size of the sample. During the demonstration, several courts increased the number of proceedings they investigated by sampling over an extended timeframe or asking volunteers to observe more than one proceeding.

days without asking observers to visit the courthouse repeatedly. Alternatively, if observers must collect data on a number of proceedings, it will be more convenient to do so on 1 or 2 days than to have them traveling to the courthouse across many days.

4. The observers' schedules. The court may have to collect data across several days (or in just a few days) in order to accommodate the various schedules of the observers.

The measure provides an example in which five volunteers observe two proceedings each across 3 days. As noted above, the data collection process can be modified to accommodate a court's particular caseload and volunteers' schedules. Select more or fewer days as necessary.

To select the 3 days, first ask court employees involved in scheduling court proceedings whether certain matters are heard only on certain days. If, for example, most short matters are heard only on Mondays, be sure to include at least one Monday in the sample.³⁹ The selected days should include a cross-section of the types of proceedings the court hears. If the court hears the same types of matters each day, randomly select 3 days.

Next, review the list of proceedings scheduled for each day for nonpublic proceedings. Eliminate any matters specifically noted as closed to the public. (Eliminated proceedings may be examined in connection with Standard 3.1, Measure 3.1.1, to determine whether the court's practices for closing hearings are in compliance with federal and state case law and applicable statutes.)

Randomly select 10 proceedings scheduled for each day.⁴⁰ Because some proceedings (such as trials) may be canceled before their scheduled start times, it is advisable also to select several additional proceedings as backup.

On the morning of the planned observation, give each of the five volunteers two proceedings to attend. Make sure that the two proceedings are not scheduled to take place at the same time in different courtrooms.

Data Collection. An observer returns to each scheduled hearing at the designated location and time. For each event, the observer records (see Form 1.1.1, Record of Access to Courtroom) whether he or she was successful in gaining access to the

³⁹ A trial test of the measure using calendars from one court, for example, did not include any Monday calendars. Because of this, virtually all of the court's criminal and civil motions and other short matters, including sentencing, child support, and so forth, were excluded from the sample.

⁴⁰ If the court's calendar tends to change frequently, court staff may prefer to wait until the morning of the scheduled observations before selecting the proceedings.

proceeding. If the observer is excluded from any of the scheduled proceedings, he or she should talk with court officials and record the reasons for exclusion.

If some of the proceedings with individually scheduled start times (such as trials) are canceled before the scheduled start time, additional proceedings should be chosen to replace them. Canceled proceedings that are part of a court session including many short matters do not need to be replaced. As long as the observer gains access to the courtroom where the matter was scheduled to be heard, the observer can record that the proceeding was accessible.

Data Analysis and Report Preparation. Analyzing the data involves a two-step process. If all of the court proceedings were open to the public, the court is performing well on this measure and there is no need to undertake the second step of analysis. If, on the other hand, some of the court proceedings were closed, court officials should examine the legitimacy of the explanations that were given for closing the proceedings. Were the proceedings closed according to the standards enumerated by the Supreme Court in Press-Enterprise Co. v. The Superior Court (1984)?⁴¹ These standards include:

1. There is an overriding interest that would be prejudiced by open proceedings.
2. The closure order is no broader than necessary to protect that interest.
3. Reasonable alternatives to closure have been considered.
4. The trial court needs findings on the record adequate to support closure.
5. The standards enumerated for closing a pretrial hearing in criminal cases are:⁴²
 - A. There is substantial probability that the defendant's right to a fair trial will be prejudiced by publicity.
 - B. No reasonable alternatives to closure could protect the defendant's fair trial rights.

If any of the proceedings were closed for reasons other than these, the court is not performing optimally on this measure. If proceedings were closed for illegitimate reasons, court officials should take steps to ensure that, in the future, the Supreme Court's standards for closing proceedings are followed.

⁴¹ Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 104 S. Ct. 819, 78 L.Ed.2d 629 (1984).

⁴² Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 106 S. Ct. 2735, 92 L.Ed.2d 1 (1986).

**Form for 1.1.1. (Page 1 of 2)
Record of Access to Courtroom**

Case #	Case Title	Scheduled Hearing Date	Scheduled Hearing Location	Observer Name	Was Access Obtained? (If "No," attempt to determine the reason)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					

**Form for 1.1.1. (Page 2 of 2)
Record of Access to Courtroom**

Case #	Case Title	Scheduled Hearing Date	Scheduled Hearing Location	Observer Name	Was Access Obtained? (If "No," attempt to determine the reason)
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23.					
24.					
25.					
26.					
27.					
28.					
29.					
30.					

Figure H1. TCPSMS Record of Access to Courtroom.

APPENDIX H
Philadelphia Bar Association Landlord/Tenant Court
Task Force Recommendations

[From Foster, 1997].

The Task Force did not have the facilities to perform a detailed study of the Court which would be necessary to determine the validity of the TAG Report. This can only be done through a well funded, impartial, professionally administered study conducted over a substantial period of time. Because of the concerns raised in that report, such a further study is recommended...

The following are the unanimous recommendations of the Task Force as far as the future workings of the Landlord/Tenant court [sic].

1. An important element to improve the workings of the Court is to take steps to get more information to the parties. With this in mind, the following are suggested:
 - a. The brochure explaining the procedures in Landlord/Tenant court [sic] should be revised in accordance with the suggestions made to and by [the Supervising Judge for Civil Matters who served on the Task Force]. The revised brochure, available in both English and Spanish, should be included in the mailing of the complaint at the time service is made. Members of the Task Force who are familiar with the workings of the Landlord/Tenant Court will be working with [the Judge] to revise the brochure so that additional pertinent information will be included.
 - b. Consideration should be given to having an on-going video presentation sponsored by the Bar Association, perhaps put together by the theater wing, of just what the Landlord/Tenant Court is all about, explaining the Court procedures and what will occur in Court, etc. This on-going video should be installed at an appropriate convenient place outside the courtroom and should be continuous so that when parties arrive, they can view the video. The video should be made available to any interested groups such as tenant organizations, landlord organizations, and the like.
2. Arrangements should be made with the Philadelphia Department of Licenses and Inspections (hereinafter "L & I") for a liaison to act between the Court and L & I so that they both can be immediately advised of any uncorrected violations which may be involved in the cases being heard. Computer terminals should be installed to facilitate making the information available.
3. Additional efforts should be made to assure that adequately funded and knowledgeable legal services are available to tenants. This effort should be provided

through the Philadelphia Bar Association, Community Legal Services, various tenants associations, and it is hoped through the local law schools. Every tenant should be able to have competent representation regardless of income.

4. It is recommended that consideration be given to appointing an ombudsman for the Landlord/Tenant Court. An ombudsman is defined by Black's law Dictionary, Fifth Edition as follows:

“An official or semi-official office to which people may come with grievances connected with the government. The ombudsman stands between, and represents, the citizen before the government.”

It is suggested that the Senior Lawyer Committee be consulted to provide senior attorneys who could serve as an ombudsman. The ombudsman would be available to tenants and landlords and to the Court to assist in the administration of justice in the Landlord/Tenant Court. The office of ombudsman would be available to assist Landlord/Tenant Court litigants to understand and navigate through the court system.

5. The Task Force is concerned that efforts to maintain Courtroom decorum are sometimes perceived as intimidating by litigants, especially first time litigants, as well as counsel. Consideration should be given to establishing standards to assure that all parties are treated with equal courtesy and respect.
6. It is recommended that two changes be made by the Supreme Court of Pennsylvania to the rules governing appeals in landlord/tenant matters:
 - a. A rule to permit tenants who qualify for In Forma Pauperis status to appeal and remain on the premises pending appeal without posting the money otherwise required. Such a rule would not relieve these tenants of the obligation to deposit ongoing rent as it comes due until the appeal is decided.
 - b. The time for appealing in residential and commercial matters should be uniform at 30 days. We point to the fact that the appeal statistics for 1996 showed a decline in the number of appeals by approximately 50 percent since the change in time for appeals became effective.

APPENDIX I Grand Jury Recommendations

[From Sixteenth Statewide Investigative Grand Jury, 2001]

Finally, we conclude that there must be persistent and consistent law enforcement involvement in the area of Election Code finance and reporting. We agree with the assessment of Voight (Director of the Committee of Seventy who initiated the Grand Jury Investigation), who has long monitored election activity in Philadelphia that there must be someone “ringing the bell” • to encourage Election Code compliance. Voight cited the 1984 investigation, as well as the present investigation, as examples of bell-ringing which result in compliance. It is our hope that the arrests we have recommended through the presentments we have issued will ring the bell loudly and clearly. In order to ensure that there is a consistent law enforcement effort in Election Code compliance, we are recommending the establishment of an Election Code monitoring and enforcement unit within the Office of Attorney General. We concur with Voight’s opinion that it is that office which is best suited for the task.

Therefore, in order to effectuate the changes we have discussed, we make the following specific recommendations:

1. That Election Code section 3251, which dictates the place at which reports are to be filed, be amended to require that reports of political committees, which concern both candidates who file for nomination with the state and candidates who file with a county, be filed with both the state and the county.
2. That Election Code section 3246 (c), which pertains to expenditure vouchers, be amended to include a provision requiring that treasurers of political committees obtain and retain vouchers, for all expenditures of \$250 or more, which include the name, address, and social security number or tax identification number of the expenditure recipient.
3. That Election Code section 3246 (b)(4), which details the requisite information for expenditures on reports, be amended to include a provision requiring that, for all expenditures of \$250 or more, the treasurers of political committees obtain and retain the social security number or tax identification number of the expenditure recipient and file all necessary tax or income documents with the appropriate taxing authorities.
4. That Election Code section 3246 (b)(4) be further amended to include a requirement that all expenditures by political committees or candidates to political committees be identified as such, and include the name, address, and identification number of the committee.

5. That the campaign expense report which is designed by the Secretary of the Commonwealth include a separate schedule for expenditures to political committees.
6. That Election Code section 3260, which prescribes “additional” powers and duties of the state supervisor, be amended to require the state supervisor to identify and publish a list of political committees which have either received or made contributions and have not filed reports.
7. That Election Code section 3259, which prescribes the powers and duties of both the state and county supervisors, be amended to require the county supervisors to engage in the activities described in Recommendation 6, above.
8. That Election Code section 3246 (g), which concerns persons who must file reports, be amended to include a provision requiring that all consultants who make expenditures on behalf of candidates, other than to media outlets, be subjected to the reporting requirements of the Election Code.
9. That Election Code section 3244, which governs political committee registration, be amended to: a) require political committees to establish a single bank account which is exclusively utilized for all committee financial transactions; b) prohibit the commingling of political committee and personal funds; c) require that the bank account number be identified on the political committee registration statement; d) require that the account address be the home address of the political committee’s treasurer; and e) require that an informational packet be sent to the home address of the new treasurer when a political committee replaces its treasurer.
10. That the Election Code be amended to require that all political committee expenditures in excess of fifty dollars (\$50) be made by check from the committee’s single bank account referenced in recommendation number 9 above, and that a section be added making it unlawful for any candidate or political committee to make an expenditure of United States currency which exceeds fifty dollars (\$50).
11. That Election Code section 3252, which concerns late filing fees, be amended: to increase the daily fines to \$100, and the maximum fines to \$1,000; and to provide that the amounts of the fines for repeat offenses, that is, the late filing of subsequent reports, be increased by a multiple of the number of offenses (e.g. \$2,000 for second offense, \$3,000 for third offense).
12. That a section be added to Article XVIII of the Election Code which establishes that failure to file reports within sixty days of the report due date is a misdemeanor of the third degree.
13. That the penalty provisions related to political committee receipts and expenditures, and the reporting thereof, specifically, sections 3540, 3541 and 3545, be amended to establish that second and subsequent offenses are felonies of the third degree.

14. That section 5552 of Title 42 be amended to establish a three-year statute of limitations for Election Code offenses.
15. That the General Assembly provide funding for the establishment of an Election Code enforcement unit in the Office of Attorney General.
16. That the supervisor for both the state and Philadelphia County increase their staffs, and establish Election Code compliance and enforcement units, to allow them to more diligently fulfill the enforcement mandates of sections 3259 and 3260 of the Election Code.
17. That judges for all courts be selected through a merit-based appointment system.

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