

Legal Services and Landlord-Tenant Litigation: A Critical Analysis

During the eight years since its establishment, most of the controversy surrounding the Legal Services Program has centered on its suits against state and local governments and on behalf of "law reform."¹ Little or no serious study has been given to the far more common types of Legal Services cases involving domestic relations, commercial disputes, or landlord-tenant controversies.²

This Note will examine the impact of one Legal Services Program, the New Haven Legal Assistance Association (LAA)³ on landlord-tenant disputes. The Note's findings on LAA's impact on this one area of law are in no way conclusive as to its general performance or to the overall value of Legal Services in the nation.⁴ Nevertheless, they may suggest questions for further study in other programs and other types of litigation.

1. See Note, *The Legal Services Corporation: Curtailing Political Interference*, 81 YALE L.J. 231 (1971).

2. See, e.g., Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1330-33 (1964); Johnson, *An Analysis of the Legal Services Program*, 38 MISS. L. REV. 419, 427 (1966); Shriver, *The OEO and Legal Services*, 51 A.B.A.J. 1064, 1066 (1965).

An exception to the general tendencies of commentators has been a series of articles by Geoffrey Hazard. See generally Hazard, *The Law Reforming in the Anti-Poverty Effort*, 37 U. CHI. L. REV. 242 (1970); Hazard, *Social Justice Through Civil Justice*, 36 U. CHI. L. REV. 699 (1969); Hazard, *Rationing Justice*, 8 J. LAW & ECON. 1 (1965). The most ambitious evaluative effort to date has been the "Kettelle Report." 1 EVALUATION OF OFFICE OF ECONOMIC OPPORTUNITY LEGAL SERVICES PROGRAM, FINAL REPORT (1971), prepared for the Evaluation Division, Office of Economic Opportunity (OEO), by the John D. Kettelle Corporation [hereinafter cited as the *Kettelle Report*]. The usefulness of the report was undermined by objections of Legal Services officials to researchers' requests to interview former Legal Services clients. *Id.* at ch. 3, at 7, ch. 5, at 1-5. An OEO working paper stressed that, "No mention is made of the impact of the programs in alleviating poverty, a noteworthy omission." Legal Services: Goals and Criteria for Evaluation 12 (1972) (emphasis in original).

3. LAA is funded by five sources: Operating on an overall 1971 budget of \$869,876, it received \$364,129 from OEO and \$119,021 from the federal Model Cities Program. Connecticut contributed \$141,241 and the remainder was contributed from "other" sources (including some \$15,360 in VISTA funds and from unspecified Federal work-study programs). Information 1971 (mimeographed pamphlet distributed by LAA). LAA is one of the oldest Legal Services Programs in the United States. Pamphlet, New Haven Legal Assistance Association, Inc. Needs Your Help Now! (pamphlet). See CONFERENCE PROCEEDINGS, THE EXTENSION OF LEGAL SERVICES TO THE POOR, sponsored by the HEW Welfare Administration, Office of Juvenile Delinquency and Youth Development, November 12-14, 1964, Washington, D.C. This article was substantially reprinted in Parker, *The New Haven Neighborhood Model*, 25 LEGAL AID BRIEFCASE 164 (1965). The program was also discussed in *Legal Services in Connecticut Under the Office of Economic Opportunity*, 41 CONN. B.J. 577 (1967).

4. One of the major problems in analyzing the Program is the imprecision of its goals. A recent OEO working paper, *Legal Services: Goals and Criteria for Evaluation*, at 4, characterized the goals of the Program as "hopelessly vague," and then noted: It is clear that immense discretion is left . . . to decide the emphasis and direction of local programs. Although a grantee [legal services program] cannot totally ignore one or more of the goals, there is no clear norm by which they can be judged. Moreover, the problems of distinguishing between the goals is also quite difficult.

I. LAA's Impact on Summary Process Litigation.

A. *The Data*

Connecticut, like many other states,⁵ has established a procedure to provide for the rapid disposition of landlord-tenant disputes over the possession of leased premises.⁶ Under this procedure pleadings and motions must be filed at intervals of not more than three days,⁷ and triable issues are limited to a few specifically enumerated in the statutes.⁸

The involvement of LAA attorneys in summary process cases clearly tends to increase the amount of time required for disposition of the action. An examination of court records for all summary process actions initiated in New Haven during the last six months of 1971⁹

5. See, e.g., CAL. CIV. PRO. CODE §§ 1159-79a (1955); ILL. ANN. STAT. ch. 57, §§ 1-22 (Smith-Hurd 1952); N.Y. REAL PROP. ACTIONS §§ 701-67 (1963); TEX. REV. CIV. STAT. ANN. arts. 3973-75b (1966); TEX. R. CIV. P. 738-55.

6. CONN. GEN. STAT. REV. §§ 52-532-52-549 (1968), as amended, §§ 52-532 (Supp. 1969), 52-532a (Supp. 1971), 52-534 (Supp. 1969), 52-540A (Supp. 1973), 52-542 (Supp. 1971).

7. CONN. GEN. STAT. REV. § 52-534 (Supp. 1969).

8. The only triable issues contemplated in the action as between landlord and tenant are whether the lease has terminated by lapse of time, by nonpayment of rent if an oral lease, or by express stipulation (which may include nonpayment as a cause for eviction, see *Webb v. Ambler*, 125 Conn. 543, 7 A.2d 228 (1939)) if a written lease. CONN. GEN. STAT. REV. § 52-532 (Supp. 1969). (The landlord also has an action if the tenant has been convicted of using the premises for illegal or immoral purposes. *Id.* at § 52-539 (1968).)

The landlord may secure a judgment of possession by proving that: (1) the defendant is his lessee and is holding-over after the lease has terminated in one of the ways listed above; (2) the defendant has been properly served with a Notice to Quit the premises; (3) the defendant is holding-over after the time period to be specified in the Notice to Quit; and, (4) the defendant has no title to the property. *Id.* at § 52-534 (Supp. 1969). The policy of the statutes is thus to limit the issues in the action to a few simple matters, *Davidson v. Poli*, 102 Conn. 692, 695, 129 A. 716, 717 (1925); *Dreyfuss v. World Art Group, Inc.*, 6 Conn. Cir. 309, 310, 272 A.2d 144, 145 (1970), and allow the landlord to regain possession without suffering delay or expense. *Housing Authority v. Alproves*, 19 Conn. Supp. 37, 39, 109 A.2d 884, 885 (1954). Nevertheless, both legislative and judicial decisions have as a practical matter qualified the landlord's right to evict. First, the landlord who uses summary process may recover only a judgment of possession; he cannot sue for damages. CONN. GEN. STAT. REV. § 52-534 (Supp. 1969). Second, the landlord may not engage in retaliatory eviction, e.g., as punishment for the tenant's contacting public officials regarding the landlord's violation of housing, health, or other state statutes or regulations. CONN. GEN. STAT. ANN. § 52-540a (Supp. 1973). Third, the courts have not been reluctant to grant equitable relief, e.g., in cases of fraud on the part of the landlord. *Greenberg, The Action of Summary Process*, 33 CONN. B.J. 62, 73 (1959). Finally, in certain circumstances the court may stay execution of the judgment for up to six months. CONN. GEN. STAT. REV. §§ 52-543-52-546 (1968). Finally, the landlord may not evict tenants because of nonpayment of rent from certain buildings for which no inspection certificate has been issued. *Id.* at § 19-371 (Supp. 1973); *Dreamy Hollow Apartments Corp. v. Lewis*, 4 Conn. Cir. 355, 232 A.2d 346 (1967).

9. The docket books summarizing individual case files were used as the source of most of the data discussed below. This Note focuses on litigation involving residential leases and excludes commercial leases (less than ten percent of the sample) because neither the scope of obligations between the parties nor the interests at stake in the litigation are comparable between the two types of tenancies.

In determining the date of the initiation of the action, the Note uses the date that the landlord's complaint was returned to the court (the complaint and Notice to Quit having already been served). CONN. GEN. STAT. REV. § 52-532 (Supp. 1969). In deter-

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indicates that disposition of the action took an average of 1.4 times as long in cases where private counsel represented the tenant-defendant, as compared with cases in which the tenant had no counsel at all. However, a similar comparison of cases where the tenant was represented by LAA with counsel-less cases indicates cases took 2.7 times as long to reach disposition.¹⁰ Or, stated differently, the *additional*

mining the date of disposition, it uses the date of judgment (where available) whether by default, agreement, or stipulation between the parties, or by trial on the merits.

However, in many cases no judgment was ever entered; in some, the last docket entry was a stipulation or agreement, though there was no subsequent entry of a corresponding judgment. It seems reasonable to infer, a year and a half later, that in such cases the stipulation represented the practical termination of the action. Hence the filing of the stipulation or agreement in such instances is considered to represent the date of disposition. In other cases the last docket entry is simply the withdrawal of the action from court. Again, the date of such a filing is used as the date of disposition.

10. Excluding cases in which no judgment, stipulation, or withdrawal was filed, and those involving non-residential leases, computations of disposition time were based on 352 of the 519 cases initially examined. See note 9 *supra*. The comparison of the length of the actions was as follows:

TABLE I

1970	Unrepresented		Represented by Private Counsel*		Represented by LAA	
	*Time	Cases	*Time	Cases	*Time	Cases
July	57	31	51	5	134	16
August	34	39	56	4	67	16
September	18	36	15	1	128	13
October	32	48	17	3	72	17
November	30	48	33	3	74	17
December	34	35	77	2	55	18
Mean:	32		44		87	
Median:	26		27		75	
Total cases:		237		18		97

* average number of days from initiation to disposition

10. While Table I reveals monthly variations in disposition time, the *mean* figures demonstrate that the overall effect of LAA representation was to make the disposition time of the action 2.7 times as long as when the tenant had no counsel, while the introduction of private counsel resulted in a factor of delay of only 1.4. A consideration of the *median*, in order to avoid the effect of aberrant cases, indicates that LAA-represented actions took 2.8 times as long as unrepresented cases, while privately-represented actions required almost no additional time (a factor of only 1.04).

Table II shows the percentage distribution of the cases in the sample. The actions in each category cluster in the area of the mean:

TABLE II

Time of Dispo- sition (days):									
	1-7	8-15	16-30	31-45	46-60	61-90	91-120	121-180	180+
LAA rep- resented:	2.1	3.1	10.3	14.4	13.4	20.6	12.5	12.5	11.3
Privately rep- resented:	11.1	11.1	27.8	11.1	11.1	22.2	0.0	5.6	0.0
Unrep- resented:	13.1	15.2	31.2	23.2	5.1	8.0	3.0	1.3	0.0

Chi-square variance tests showed the obviously perceived differences in the disposition time to be statistically significant.

time required for disposition that resulted when the tenant was represented by an attorney was over four times longer when the attorney was from LAA as compared with when he was a private lawyer.¹¹

The primary factor leading to this differential appears to be LAA's use of the procedural complexities¹² available in summary process litigation.¹³ However, despite such efforts, the landlord almost inevitably obtains judgment of possession.¹⁴

11. The average unrepresented action took thirty-one days. LAA representation appears to have added fifty-five days (87 minus 32), while the average private counsel added only twelve days (44 minus 32)—a ratio of 4.6 to 1. See Table I, note 10 *supra*.

12. A variety of procedural pleadings and motions are available in a summary process action, for the philosophy of the action is to speed disposition by shortening the time intervals permitted for pleading rather than by limiting procedural devices themselves. See CONN. GEN. STAT. REV. § 52-534 (Supp. 1969) (providing that pleadings and motions shall advance at least one step every three business days). Hence, as in any other civil action in Connecticut, a defense counsel may file: (1) a Plea in Abatement or Motion to Erase, contesting the court's jurisdiction, 2 CONN. PRACTICE BOOKS § 92-97 (1966); (2) a Motion for Oyer, requiring production of the lease by the landlord where he has alleged that a written lease exists, *id.* at § 103; (3) a Motion for Production & Disclosure, demanding disclosure of any of the landlord's records allegedly material to the tenant's defense, *id.* at § 167; (4) a Motion for More Specific Statement, *id.* at § 99; or (5) a Motion to Expunge, alleging that the complaint contains unnecessary, obscure, irrelevant, immaterial, or evidential matter, *id.* at § 100.

13. Examination of a two-month sample (September and October 1971) indicates that LAA filed 2.3 pleadings and motions per action (71 pleadings and motions/30 actions), while for private defense counsel, the average was 1.0 (5/5). While on first impression the 2.3 average may not seem impressive, it must be put in the context of other unrelated, time-consuming aspects of the process: For example, due to a court backlog and the fact that motions are heard only on Mondays, a motion generally is not set down for argument for a week and a half after it is filed. Thus, the filing of even two motions can increase the time needed for disposition by over three weeks.

Taking an additional one day for a defensive pleading can double the time necessary to dispose of that pleading. For example, if the complaint is returned on a Thursday, Day 1, defense counsel has until the following Tuesday, Day 6, to respond. On Day 6 landlord's counsel will file a motion for default judgment (for failure to plead), and if the defense makes no response within another three days (by Friday, Day 9), the landlord receives a judgment. By waiting until the last day (Day 9) to file his response, defense counsel can forestall argument until at least Monday, Day 26, for no matter can be argued on Monday, Day 19, unless it has been filed by the deadline of a week and a half before (here, Thursday, Day 8).

Of course, procedural advantages can be maximized and disposition delayed not only by well-timed pleadings, but also by sheer aggressiveness in terms of the number of pleadings filed. See, e.g., *Baxter v. Lombardi*, CV # 6-7111-53652 (6th Conn. Cir. Feb. 14, 1972), where the landlord's counsel had to surmount seven LAA pleadings and motions consuming more than three months.

14. Given the limited defenses available in a summary process action, see note 8 *supra*, it appears that the landlord, if persistent, can ultimately obtain a judgment of possession in the great majority of cases. Thus, of the ninety-seven actions defended by LAA in the sample, judgment was formally entered for the landlord in fifty-three; and in another twenty-one actions, an agreement or stipulation between the parties was reached, though the court apparently neglected the formality of entering a corresponding judgment.

In only two actions did the tenant obtain judgment—once by a non-suit and once after trial on the merits. (In the remaining twenty-two actions, the landlord simply withdrew the complaint. In these cases, there is no way of determining whether the action was terminated because the landlord had obtained satisfaction from the tenant, because the tenant had vacated, or because the landlord felt his case was too weak to proceed; the last explanation, however, seems the least probable given the disposition of the actions that did go to judgment.)

B. *An Explanation of the Data*

This tendency—cases involving LAA lawyers to take longer for disposition—appears to result from both their freedom from market constraints and the economic status of their clients. The tenant who must pay a private attorney obviously has some interest in terminating the litigation as soon as possible. By contrast, the LAA-represented tenant obtains his counsel free; protracted litigation costs him nothing. Thus, to the extent that a private attorney is constrained by his clients' desire to avoid excessive legal expense, his actions are influenced by a factor absent in the decision-making of his LAA counterpart.¹⁵

Moreover, the LAA attorney is dealing with low-income clients¹⁶ for whom protraction of the litigation will often be not only costless, but even profitable. When a landlord succeeds in a summary process action, he obtains only a judgment of *possession*¹⁷—that is, the authority to evict the tenant. If the landlord does evict, or if the tenant vacates before eviction, with the tenant owing the landlord back rent, the landlord must bring a separate action for a money judgment.¹⁸

A tenant eligible for LAA representation is not, however, likely to have sufficient assets to make such a suit worthwhile, and thus passing on the costs, *e.g.*, the accrual of rent while the action is being litigated, to the landlord may operate to the tenant's permanent advantage.¹⁹

II. Evaluating the Consequences of Increased Disposition Time

At least two arguments can be made to justify the extra time that LAA clients are able to obtain in eviction actions. First, such delay may be considered a procedural "band-aid" for bad substantive law. The Connecticut summary process statutes currently allow the tenant

15. A client who is paying for his counsel will decide whether and to what extent to pursue a case based on the computation: (value of winning \times probability of winning) — cost of winning = value of litigating. For the recipient of free legal services, of course, the third factor is absent. *Kettelle Report, supra* note 2, at ch. 4, at 81-82.

Thus, the *Kettelle Report* notes that in some cases the costs of litigating to his clients is so great as to compel the private attorney not to proceed, *id.*; but Legal Services attorneys are free (within their program's budget constraints) to pursue such unremunerative litigation, *e.g.*, for the sake of law reform, *see* p. 1500 *infra*.

16. LAA's "basic standard for determining financial eligibility" is the ability to afford a lawyer. LAA Information 1971, at 1 (mimeograph). For example, during the period examined, LAA attorneys were instructed not to represent an applicant with two dependents if his net weekly income was greater than \$100 and the estimated cost of case was less than \$250; \$105, for a \$250 to \$500 case; \$110, for a case that would cost more than \$500. *Id.*

17. *See* note 8 *supra*.

18. CONN. GEN. STAT. REV. § 52-236 (1968).

19. Thus, very few landlords pursue their former tenants in a second, separate damage action. Interview with LAA and with private attorneys in New Haven, March 27, 1972 and February 21, 1973, respectively (the attorneys requested that their names be kept confidential).

only limited defenses—a denial of the allegations of the complaint or the avoidance of the complaint by showing that the eviction is retaliatory.²⁰ The tenant may not assert the landlord's breach of any covenant in the lease, since the tenant's covenants, *e.g.*, to pay rent, are considered independent of those of the landlord. It may therefore be argued that the use of procedural complexities is justifiable as a means of blunting what would otherwise be a drastic and arbitrary landlord's remedy.²¹ Second, to the extent that any delay results in a redistribution of wealth from landlords to tenants,²² it may also be justified simply as a type of antipoverty program.

20. See note 8 *supra*. However, this seemingly bleak picture should be qualified by noting the broad scope of the definition of retaliatory eviction, the equitable discretion vested in the courts to deny the landlord any relief or to grant a stay of execution, and the inability of the landlord to evict because of nonpayment of rent when he fails to possess a required building inspection certificate. See *id.*

21. See note 8 *supra*. For a general critique of existing landlord-tenant law, see Garrity, *Redesigning Landlord-Tenant Concepts for an Urban Society*, 46 J. URBAN LAW 695 (1969).

22. The following data illustrate the way in which such redistribution may occur. One of the most prominent New Haven landlords' attorneys, who litigates more summary process actions than any other in the city, was willing to discuss his cases (with the understanding that his name be kept confidential). Interview in New Haven, April 12, 1972. An examination of all the actions which he closed in February and March of 1972 suggests the economic burden placed on landlords by LAA's summary process activity. In approximately two-thirds of the actions (56 of 82), the landlord and tenant reached an agreement whereby the tenant paid his back rent and was allowed to remain in the apartment. Of the twenty-six remaining actions, the tenant either was evicted or vacated before eviction. In all of these cases, the tenant left owing rent. Table III illustrates the distribution and average total indebtedness (including the standard \$100 charge for attorney's and sheriff's fees) of the tenants who comprised these cases:

TABLE III

Tenant was:	Total cases	Cases in which tenant was evicted or vacated before eviction	Average debt to landlord in column 2
Unrepresented	62	17	\$389
Privately-represented	3	2	395
LAA-represented	17	7	695

As Table III indicates, the landlord becomes an involuntary creditor of approximately an extra \$300 when he does not conclude a settlement with an LAA-represented tenant. As a check on the small number of LAA- and privately-represented tenants in Table III, an additional sample of such cases from this attorney's files was examined. Interview in New Haven, March 21, 1973. Table IV represents cases closed in January, February, and the first half of March 1973, and indicates the average indebtedness of LAA- and privately-represented tenants who were evicted or who vacated before eviction:

TABLE IV

Tenant was:	Total cases	Cases in which tenant was evicted or vacated before eviction	Average debt to landlord in column 2
Privately-represented	10	2	\$395
LAA-represented	12	5	749

Thus, enlarging the data base yields results similar to those in Table III.

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On examination, however, neither of these justifications appears compelling. To the extent that the use of procedural delay is viewed as a surrogate for reforming the substantive law, it seems a poor way to balance the competing interests of landlord and tenant. Presently, the philosophy of summary process is based on the assumption that the landlord has a paramount interest in regaining possession. Substantive and procedural aspects of the action have therefore been limited so as to give the landlord a speedy remedy.²³ On the other hand, the statutes also establish some measure of protection for the tenant by compelling the landlord to resort to legal process and not to use self-help in obtaining evictions.²⁴ If a different balance between such competing interests is to be struck, substantive reform by the legislature would seem the appropriate method.²⁵ Moreover, the purposes served by LAA's summary process policy are only distantly related to substantive reform. Presumably any rational reform would distinguish tenants who only want equitable treatment from their landlords from those who resist eviction purely out of spite. LAA's use of procedural complexities, however, provides the same advantages to either type of tenant, so long as he is eligible for free representation. Those ineligible are left to face the substantive law without being able to use such rights.

To the extent that LAA's summary process activity redistributes wealth, its equity is questionable. There is no reason to believe that the landlords who bear the costs are particularly wealthy; most are

At one time any assertions about additional expenses to landlords from LAA's activities would have to be qualified with regard to LAA clients on welfare. In 1969, the Connecticut Legislature enacted a statute authorizing state welfare authorities in certain circumstances to deduct accruing rent from a tenant's monthly welfare check and send it directly to the landlord. CONN. GEN. STAT. REV. § 17-2f (Supp. 1971). However, this resulted in a conflict with federal regulations governing state eligibility for matching funds, and in 1971 the statute was amended so as virtually to eliminate such direct rental payments. *Housing Authority v. White*, 29 Conn. Supp. 346, 347, 287 A.2d 644, 646 (1971).

23. See note 8 *supra*; *Lindsey v. Normet*, 405 U.S. 56 (1972), where the Supreme Court rejected due process and equal protection challenges to an Oregon summary process statute:

The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for . . . swift repossession by the landlord . . . the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else.

Id. at 72.

24. *Id.* at 71-72. See note 8 *supra*.

25. There is little reason to believe that the legislatures are closed to such pleas for reform. For example, in 1969 the Connecticut Legislature provided tenants with affirmative defenses to summary process actions. CONN. GEN. STAT. ANN. § 52-540a (Supp. 1973). See note 8 *supra*. Even advocates of reform prefer the use of the legislative rather than the judicial process. See Clough, *The Case Against the Doctrine of Independent Covenants: Reform of Oregon's FED Procedure*, 52 ORE. L. REV. 39, 51, 54 (1972).

probably of more moderate means.²⁶ For these landlords the additional expense involved when litigating against a LAA-represented tenant may constitute a significant economic hardship.

Moreover, such redistribution may operate, at least marginally, to decrease the long-run supply of housing available to the poor. To the extent that landlords are forced to absorb the costs of delay, they will have an additional incentive to convert their property to non-residential uses or abandon it entirely.²⁷ One might challenge the argument

26. During the sample period, the most frequent type of landlord involved in a summary process action was a private individual:

	No. of actions
Private individuals	158
Low-to-moderate income Co-Ops*	24
Apartment and Realty Companies**	66
Housing Authority of the City of New Haven	96

*As defined by FHA income regulations. See *infra*.

**Includes mortgage and investment companies, and banks.

And tenants defended by LAA confront private individual landlords as plaintiffs in about two of every three cases:

Plaintiff was:	Tenant was defended by LAA	
	No. of actions	No. of different landlords
Private individual	64	56
Low-to-moderate income Co-Ops*	7	3
Apartment and Realty Companies**	17	9
Housing Authority of the City of New Haven	9	1

* ** See comments, Table V *supra*.

There are, unfortunately, no data on the income levels of private New Haven landlords. But even LAA does not contend for the stereotype of the private individual landlord as a "fat cat." Interview with New Haven LAA Director Frederick Danforth, New Haven, February 23, 1972. Moreover, several studies of landlords in other urban contexts "cast . . . doubt upon the popular stereotype of the rapacious slumlord earning monopolistic profits." Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Distribution Policy*, 80 *YALE L.J.* 1093, 1099 (1971). See, e.g., W. Grigsby, L. Rosenburg, M. Stegman, & J. Taylor, *HOUSING AND POVERTY* ch. 6 at 6, which finds that in Baltimore "the small and casual investors . . . [account] for . . . 60 percent" of private inner-city apartment ownership. See also G. STERNLIEB, *THE TENAMENT LANDLORD* 122-23 (1966), and G. STERNLIEB, *THE URBAN HOUSING DILEMMA* 13-1—13-41 (1966).

Of course, where the landlord is a cooperative, the tenants themselves bear the cost of a summary process action. In this regard it should be noted that the cooperatives involved in Table VI receive federal mortgage subsidies, as a condition of which they are restricted to tenants of low and moderate income. See Department of Housing and Urban Development, *Income Limits for Section 221 D3 BMIR and Exception Income Limits for Sections 235 and 236 Housing*, HPMC-FHA 4400.36A, Connecticut.

27. Cf. Ackerman, *supra* note 26, at 1111. There are no comprehensive studies of the rate of abandonment in New Haven. But studies of other urban centers, particularly older ones, suggest that they face not only the problem of a tight housing market,

that LAA's summary process activity results in any such wealth redistribution with the contention that landlords maintain a stable profit margin by passing on additional costs to the consumer.²⁸ But if that is the case, such delay, though not redistributing wealth away from landlords, still adversely affects the housing situation of the poor by increasing its price.²⁹

A substantial expenditure of effort by LAA on increasing the time involved in individual landlord-tenant actions may also raise serious problems of resource allocation within the program itself. The case sample examined showed that while LAA represents far more tenants in summary process actions than all of the city's private attorneys combined, the vast majority of tenants involved in such suits continue to go unrepresented.³⁰ Thus, the special measures taken by LAA on behalf of those tenants it does represent may be at the expense of a large number of tenants who receive no legal services at all.

III. Remediating the Problem of Procedural Delay

A. Reform Involving External Controls

Consideration might be given to means of strengthening external control over such programs to reduce the time required for disposition of cases. First, the present national Legal Services Program could be abolished and replaced by fifty state corporations funded in whole or part by the federal government.³¹ Second, the governors could be given veto power over particular Program activities in lieu of the far less discriminate general veto they now possess.³² Such proposals might increase participation by state and local officials, and bar associations,

but also that of a relatively high rate of abandonment. See Sternlieb, *New York's Housing: A Study in Immobilism*, in HOUSING AND ECONOMICS: THE AMERICAN DILEMMA 496 (M. Stegman ed. 1970); Note, *Abandoned and Vacant Housing Units: Can They Be Used During Housing Crises?*, 1 N.Y.U. REV. OF LAW & SOC. CHANGE 59 (1971). See also Note, *Retaliatory Evictions: Review and Reform*, 1 N.Y.U. REV. OF LAW & SOC. CHANGE 81, 108 (1971).

28. The extent to which landlords can pass on such costs to their tenants depends on a number of relatively complex market factors. See generally Ackerman, *supra* note 26. Of course, by definition the costs of delay are passed on, in their entirety, to the tenant-landlords who live in a cooperative.

29. An analogous argument has been made in the context of consumer credit reform. See *Fuentes v. Shevin*, 407 U.S. 67, 103 (1972) (White, J., dissenting); Buchanan, *In Defense of Caveat Emptor*, 38 U. CHI. L. REV. 64 (1970); Kripke, *Consumer Credit Regulation: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 455 (1968). But see Wallace, *The Logic of Consumer Credit Reform*, 82 YALE L.J. 461 (1973).

30. See Table I, note 10 *supra*.

31. Those state organizations would be funded either by revenue sharing or through the national corporation's budget.

32. 42 U.S.C. § 2834 (1970).

familiar with the problems of their areas. But they also raise the risk of additional political interference: Officials might well be responsive to interests and influences not directly related to the merits of individual Programs. Both would have broad ramifications for many other aspects of the Program, and would have to be evaluated in light of the consequences. And perhaps most important, neither would deal directly with the underlying problem of the freedom from economic constraints enjoyed by Legal Services attorneys.

Another possible solution would be for the federal government to retain control of the Program but for Congress to prohibit grantee agencies from engaging in summary process litigation.³³ A similar attempt to bar criminal representation,³⁴ however, has been of questionable effectiveness,³⁵ and the problems in imposing a national prohibition on litigation defined by varying state statutes seem substantial.

Another restructuring proposal—instituting a *judicare* system—does deal with the problem of economic constraints. The LAA attorney would be replaced by members of the private bar subsidized by the government for clients who were unable to pay normal fees.³⁶ Though there has been some largely negative analysis of existing *judicare* experiments by law reformers,³⁷ there has thus far been no assessment of such programs' impact on the time taken for disposition. It would seem that were such a program funded through cost reimbursement, there would be no greater economic constraint on individual attorneys; indeed, procedural delay might prove an even greater problem than at present.³⁸ But if the *judicare* funding involved reimburse-

33. The prohibition could be broadly phrased to exclude all housing litigation, whether before administrative agencies or courts, or to exclude only landlord-tenant litigation in courts, or perhaps only in those trials denominated as "summary" by state legislatures.

34. 42 U.S.C. § 2809(a)(3) (1970).

35. See Note, *supra* note 1, at 253-54. Some local Legal Services agencies avoid the federal prohibition by using federal money only on civil cases and funds from other sources for criminal work. For example, New Haven's criminal cases provide a substantial portion of its caseload. Indeed, the Director of LAA believes the criminal caseload is very important to LAA's work. New Haven Register, February 28, 1973, at 73, col. 7.

36. See generally Pelletier, *English Legal Aid: The Successful Experiment in Judicare*, 40 U. COLO. L. REV. 10 (1967); Robb, *Alternate Legal Assistance Plans*, 14 CATH. LAWYER 127, 135 (1968); Schlossberg & Weinberg, *The Role of Judicare in the American Legal System*, 54 A.B.A.J. 1000, 1001 (1968); Utton, *The British Legal Aid System*, 76 YALE L.J. 371 (1966); Widiss, *Legal Assistance for the Rural Poor: An Iowa Study*, 56 IOWA L. REV. 100 (1970) (dealing only with the Iowa program).

37. See, e.g., Goodman & Feuillan, *Trouble with Judicare*, 58 A.B.A.J. 476 (1972). For a defense of *judicare*, see S. BRAKEL, WISCONSIN JUDICARE: A PRELIMINARY APPRAISAL (1972); Marsh, *Neighborhood Law Office or Judicare*, 25 LEGAL AID BRIEFCASE 12 (1966); Preleznik, *Wisconsin Judicare: An Experiment in Legal Services*, 57 A.B.A.J. 1179 (1971).

38. There might well be problems with extremely high demand, as in the British case. See generally Utton, *The British Legal Aid System*, 76 YALE L.J. 371 (1966). For the difficulties of Medicare-style funding, see H. SOMERS & A. SOMERS, MEDICARE AND THE

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ment on some flat-fee basis, procedural delay might be reduced. The primary problem with such a flat-fee approach is, of course, that it would be difficult to insure quality legal services; there would be little cost-quality control (save the general reputation of the attorney among a rather inexperienced clientele) over "form-pad" practitioners.

B. *Reforming the Existing Structure*

1. *Budgetary Review*

More exacting budgetary review, administrative or legislative, may be another way to affect LAA's summary process activity.³⁹ Nonetheless, simple budget shifts may not be clearly enough delineated to effect a change in Agency policy, and may produce unexpected or undesired results. Rather than the expected alteration of behavior, a completely different activity may be changed. Summary process attorneys are, however, unable to agree on the net effect of funding reductions, and this uncertainty suggests the many intangibles that may frustrate an attempt to use indiscriminate budget cuts. And again, such reductions are subject to fluctuation with changes in national or state administrations.

2. *Internally-imposed Constraints*

Another approach would be for Legal Services to adopt some internal accounting standards that would confront LAA lawyers with factors similar to the economic inputs influencing private attorneys. For example, LAA attorneys might be required to project their estimated caseloads for a given fiscal period and assign some fixed fee to each case. Or the attorneys might be limited in the number of hours they could spend on a given type of case. The Agency, with or without

HOSPITALS: ISSUES AND PROSPECTS 242, 247 (1967); Feldstein, *An Econometric Model of the Medicare System*, 85 Q.J. ECON. 1, 1, 19-20 (No. 1, 1971); Havinghurst, *Health Maintenance Organizations and the Market for Health Services*, 33 L. & CONTEMP. PROB. 716, 790 (1970).

39. For example, in 1972 Connecticut Governor Thomas Meskill sharply reduced state funding of LAA. To have continued the same 1971 level of services (see note 7 *supra*), the 1972 budget would have required approximately \$950,000. Interview with Frederick Danforth, in New Haven, October 19, 1972. The actual 1972 budget was only \$838,891. Nearly the entire reduction was due to lower funding by Connecticut's Department of Community Affairs, which dropped from \$138,129 in 1971, to \$45,110 in 1972. Interview with Frederick Danforth, in New Haven, October 19, 1972; New Haven Register, March 1, 1973, at 31, col. 3. Estimated 1973 funding levels were between \$650,000 and \$700,000. *Id.* at 31, col. 4. As a consequence, LAA eliminated twenty-five percent of its staff attorneys, Interview with LAA attorney C, in New Haven, October 19, 1972, and four of the six offices were closed, New Haven Register, February 28, 1973, at 1, col. 5.

external review, would then establish floors and ceilings on the total amount of resources to be expended in each area.

Under such a system LAA attorneys would probably represent more summary process clients but spend less time on each case. However, such internal pricing suffers from several obvious weaknesses. The additional administrative costs engendered by this system might be of sufficient magnitude to cast considerable doubt on its effectiveness. Moreover, the standards prescribed might be inaccurate, or, more importantly, might not reflect the clientele's desires.⁴⁰

Second, a price analogue would also be vulnerable to political manipulation and pressure. The *Kettelle Report* identified such a political problem in the allocative decisions between law reform activities and legal "first aid."⁴¹ The local political pressures that could be applied under an internal pricing device would be more precisely targeted than external budget manipulations, but potentially no less destructive.

C. Discouraging Delay Through Ethical Constraints

A third general approach to the problem would involve revising the ethical constraints of the American Bar Association *Code of Professional Responsibility*.⁴² Although the *Code* now contains general statements about attorney practice with regard to delay, these statements are vague, and do not seem to be strictly enforced.⁴³

One possible solution would be to revise Ethical Consideration 7-14

40. See Winter, *Property, Economic Equality and the Equal Protection Clause*, 1972 SUP. CT. REV. 41, 66-77.

41. *Kettelle Report*, *supra* note 3, at ch. 4, at 82, 83.

42. AMERICAN BAR ASSOCIATION, CODE OF PROFESSIONAL RESPONSIBILITY (1971) [hereinafter cited as ABA CODE].

43. Presently Canon Seven of the *Code* admonishes attorneys to "represent a client zealously within the bounds of the law." Canon 7, ABA CODE 24. The "Ethical Considerations" and "Disciplinary Rules" developed to implement this general charge presently require that the ethical practitioner refrain from filing frivolous, Ethical Consideration 7-4, ABA CODE 24, or harassing motions, Ethical Consideration 7-10, ABA CODE 25; treat other parties to the action with consideration, Disciplinary Rule 7-102(A)(1), ABA CODE 27; follow generally accepted practices, Ethical Consideration 7-38, ABA CODE 27; and accede to the reasonable requests of an adversary which are not prejudicial to his client's rights, Disciplinary Rule 7-101(A)(1), ABA CODE 27.

Neither the formal nor informal opinions of the ABA substantially clarify these considerations. See AMERICAN BAR ASSOCIATION, COMMITTEE ON PROFESSIONAL ETHICS, OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES (1967 & Supps.); OPINIONS OF THE COMMITTEES ON PROFESSIONAL ETHICS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND THE NEW YORK COUNTY LAWYERS' ASSOCIATION (1956); Opinions of the Committee on Ethics and Professional Responsibility, Formal Opinion 324, "Legal Aid Agencies," rendered August 9, 1970, reported in 56 A.B.A.J. 1168 (1970). The Opinion, however, focused its attention on "unpopular" causes, law reform activities, class suits, and similar controversial activities of legal aid groups (making no distinction between publicly and privately funded organizations). The Committee stated that general policy-making by local Program governing boards is permissible, and that the situation it sought to prevent was case-by-case, client-by-client regulation and supervision by such boards. *Id.* at 1170.

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with a view to applying it to Legal Services attorneys. The Consideration now provides:

A government lawyer in a civil action or administrative proceeding . . . should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.⁴⁴

It seems reasonable to argue that while their resources are not as large as the government prosecutors or agency attorneys the Consideration had in mind, LAA lawyers do possess a greater degree of independence than most private attorneys because of their freedom from traditional market constraints.

But even under such a more stringent standard, difficult issues regarding the validity of a defense, the number and type of the pleadings, and the attitude of the attorneys in settling or litigating cases would undoubtedly remain. Such questions, when coupled with the understandable reluctance of lawyers to file ethical complaints, suggest that the effect of even revised ethical considerations on the problem would be uncertain at best. Nevertheless, the general proposition that Legal Services attorneys may deserve special ethical provisions to reflect their special freedom from economic constraints would appear to merit further consideration.

D. *Revising the Law of Summary Process*

There are two broad approaches toward developing a "fail-safe" law of summary process. The first would be to simply eliminate or substantially reduce the pre-trial pleadings.⁴⁵ While such procedural safeguards undoubtedly were originally intended to protect tenants, several states have found that they can limit procedural complexity without putting undue burdens on tenants.⁴⁶ Yet while such reform may be possible, it also seems a rather short-run solution.

A more fruitful approach might be to eliminate the very incentive

44. Ethical Consideration 7-14, ABA CODE 25.

45. See note 13 *supra* for the relevant Connecticut pleadings. The most likely candidates for elimination include the motions for Default for Failure to Plead, for Production and Disclosure, and for Oyer.

46. In Oregon, no continuance will be granted for longer than two days, ORE. REV. STAT. § 105.135 (1953) unless sufficient bond is posted, in which case trial will be held in six days, ORE. REV. STAT. § 105.140 (1953). Florida's statute similarly limits the number of pre-trial pleadings, and provides that motions for discovery will not postpone the time of trial. FLA. STAT. ANN. § 51.011 (1972). See generally Boyer & Groble, *Reform of Landlord-Tenant Statutes to Eliminate Self-Help in Evicting Tenants*, 22 MIAMI L. REV. 800 (1968). Courts in Georgia are also required to move speedily to judgment, hopefully within one month of the litigation's commencement. GA. CODE ANN. § 61-303 (1970).

for increasing the time involved before disposition by requiring the defending tenant to continue paying rent to a judicial escrow account.⁴⁷ Connecticut⁴⁸ and several other states⁴⁹ presently provide for just such an escrow procedure in disputes over health, safety, and housing code violations. The extension of the procedure to suits over possession would appear to be a workable compromise which would insure that a prevailing landlord would eventually receive the back rent due, while allowing the tenant to exercise any procedural safeguard he and his attorney feel is justified.⁵⁰ Problems of administration could arise,⁵¹ but a general rule which decrees that if the tenant fails to comply with the escrow arrangement the landlord will be awarded immediate possession should prove effective.⁵²

E. *Eliminating the Adversaries' Attorneys*

Legal Services was in part established to equalize the legal position of the poor vis-à-vis the landlord by providing them with free counsel. It would be possible to achieve the same type of equalization by re-

47. A recently-revised Georgia statute, for example, provides that where the question of possession cannot be resolved within one month, the tenant must pay into a judicial escrow account. GA. CODE ANN. § 61-304 (1972). Amounts required include rents due after the issuance of the dispossessory warrant, *id.* at § 61-304(a), and also all prior rents allegedly owed. *Id.* at § 61-304(b). If the amounts are disputed, the court decides the proper amount payable.

48. In Connecticut, local boards of health or other authorities (defined in CONN. GEN. STAT. REV. § 19-347(a) (1968)) established by local governments may seek the appointment by the Court of Common Pleas of a receiver of rents. *Id.* at § 19-347(b). These receivers are appointed to repair conditions which, in the opinion of the Board of Health or other authority, are dangerous to safety or health, as defined in *id.* at § 19-344 or § 19-347. These provisions are not applicable in summary process, nor can they be invoked by tenants, acting for themselves.

49. N.Y. REAL PROP. ACTIONS §§ 769-82 (1965). These statutes, applicable to the occupants of multiple dwellings in New York City, allocate rents to remedy unsafe or unhealthy conditions. The action must be initiated by one-third or more of the tenants in a multiple dwelling, *id.* at § 770, as defined by the statute, *id.* at § 782. Somewhat similar provisions exist for all cities with a population in excess of 400,000. N.Y. MULT. DWELL. LAW § 302-a (Supp. 1972). The question of possession is not adjudicated in these proceedings, but is resolved under other provisions, N.Y. REAL PROP. ACTIONS §§ 701-67 (1965), providing for hearing within five to twelve days after the commencement of the action. *Id.* at § 731. No escrow is contemplated under this procedure. The Massachusetts statutes also contemplate escrow rent payments when the issue is unsafe or unhealthy conditions. MASS. GEN. LAW ANN. ch. 111, § 127F (1965). Pennsylvania recently enacted a similar procedure. PA. STAT. ANN. tit. 35, § 1700-01 (Supp. 1969).

50. See, e.g., *Javins v. First National Realty Corp.*, 428 F.2d 1070, 1071 (D.C. Cir. 1970) (Wright, J., endorsing escrow concept).

51. See C. BERGER, LAND OWNERSHIP AND USE 335-52 (1968); Note, *Tenant Rent Strikes*, 3 COLUM. J. LAW & SOC. PROB. 1 (1967); Note, *Pennsylvania's Rent Withholding Law*, 73 DICK. L. REV. 583 (1969); Note, *St. Louis Public Housing Rent Strike—A Model for Inducing Community Action*, 28 LEGAL AID BRIEFCASE 111 (1970); Note, *Rent Withholding—A Proposal for Legislation in Ohio*, 18 WEST. RES. L. REV. 1705 (1967).

52. Georgia provides for this solution. GA. CODE ANN. § 61-303(c) (1970). It is admittedly often difficult to determine whether the tenant is late in his payment or has failed to make payment in violation of the statute. The answer would seem to lie with the court's discretion.

ducing the legal advantages of the poor's adversary.⁵³ Thus, one possible strategy for dealing with the present problem would be to create special summary process courts which would be closed to lawyers of both the landlord and the tenant.⁵⁴ Such courts would operate without formal pleadings, motions, or the technical rules of evidence; the judge would assume complete control of the hearing.⁵⁵

The change from present summary process proceedings would be substantial. There would be an early hearing and speedy judgment.⁵⁶ The litigants themselves would present the usually simple facts, and the judge would merely decide if the tenant has any adequate defense.⁵⁷

The lawyerless court would thus be a version of the typical small claims court—and similar objections might be applicable.⁵⁸ It may be argued that the landlord would inevitably be more articulate than his adversary, and that the tenant would be reluctant, because of his alleged general fear of legal institutions, to assert his position. Inadequate attention might be given the less articulate tenant's rights, and the courts might act as little more than eviction agencies.⁵⁹

Inarticulateness has not, however, proved an obstacle to competent

53. See Hazard, *Rationing Justice*, 8 J. LAW & ECON. 1, 8 (1969).

54. The Oregon statute bars interference by *anyone* other than the plaintiff and defendant without permission of the judge in the case. ORE. REV. STAT. § 55.090 (1953). California's provision is very similar. CALIF. CIV. PRO. CODE § 117g (1955). Both provisions forbid not only court appearances, but also out-of-court assistance to litigants by attorneys. To overcome whatever technical legal difficulties might arise, the clerks of the court might give the parties assistance, thus obviating the need for out-of-court assistance. These statutes have been consistently upheld by the courts so long as the right of appeal is preserved. The California Small Claims Act's provision barring attorneys was attacked on due process grounds in *Prudential Insurance Co. v. Small Claims Court*, 76 Cal. App. 2d 379 (1946). The court held that exclusion of counsel from such tribunals did not abridge due process, so long as the exclusion was not arbitrary. The more pragmatic rationale for excluding attorneys is that small claims courts are quite capable of conducting their business without them. Note, *Small Claims Courts*, 34 COLUM. L. REV. 932, 938 (1934).

55. Note, *supra* note 54, at 937.

56. The defenses allowed in possessory disputes would vary from jurisdiction to jurisdiction. See note 5 *supra*.

57. See *Lindsey v. Normet*, 405 U.S. 56, 64-67 (1972) (noting the simplicity of issues which the Oregon courts face in forcible entry and detainer cases).

58. See generally Robinson, *A Small Claims Court in Chicago's New Circuit Court*, 44 CHI. BAR RECORD 421 (1963); Note, *The California Small Claims Court*, 52 CALIF. L. REV. 932 (1959); *Buyer v. Seller in Small Claims Courts*, 36 CONSUMER REPORTS 624 (1971). Apparently only one jurisdiction, Pittsburgh, has established a court specifically for housing disputes. Clough, *supra* note 25, at 52. This court, however, deals only with violations of local housing and building codes, Comay, *The City of Pittsburgh Housing Court*, 30 U. PITT. L. REV. 459, 460 (1969), and employs normal Pennsylvania pleading and practice. *Id.* at 472-73. This court is thus dissimilar to the proposed court.

59. See Note, *Small Claims Courts as Collection Agencies*, 4 STAN. L. REV. 237 (1952), which reaches essentially this conclusion. One earlier study reaches a contrary result. Clark & O'Connell, *The Working of the Hartford Small Claims Court*, 3 CONN. BAR J. 123, 129 (1929). See also Note, *Small Claims in Indiana*, 3 IND. LEGAL FORUM 517 (1970); Note, *The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California*, 21 STAN. L. REV. 1657 (1969).

adjudication in courts barring attorneys.⁶⁰ Judges typically become familiar with the differences in the litigants' abilities to present their cases. Also, as the judges would deal with a limited field of landlord-tenant law, they should become far better acquainted with it than those judges in the more generalized small claims courts.⁶¹ Indeed, much of the present concern for the inarticulate litigant is limited to small claims courts with non-lawyer judges, and their failings need not be repeated in the proposed summary process courts.

Since the landlord-tenant court would be mandatory, both parties would be allowed to appeal.⁶² This right of appeal does not, however, mean reintroducing time-consuming litigation. Bond⁶³ could be required on appeal, most logically the value of the rent,⁶⁴ to insure no tenant default after an adverse appellate ruling. Legal Services would thus still have a role in aiding poor tenants on appeal, although not at the trial court level. Some tenants would prevail at trial and would not appeal; not every unsuccessful tenant would appeal; and since the court would have power to make such orders as the judge deems "just and equitable for the disposition of the controversy,"⁶⁵ satisfactory com-

60. In small claims courts "[h]istrionic appeals are fruitless, since there is no jury. The subtleties of pleading and technicalities of trial procedure are laid aside and an attempt is made to approximate a just result . . ." Note, *Small Claims Courts: Reform Revisited*, 5 COLUM. J. OF LAW & SOCIAL PROBS. 47, 55-56 (No. 2, 1969). The Ralph Nader study of small claims courts similarly concludes that with proper assistance provided by the court, e.g., convenient session hours, the barring of attorneys would be desirable. THE SMALL CLAIMS STUDY GROUP, LITTLE INJUSTICES, SMALL CLAIMS COURTS AND THE AMERICAN CONSUMER 95-114 (1972).

61. The same point is made with regard to proposed consumer courts in *Buyer v. Seller in Small Claims Courts*, 36 CONSUMER REPORTS 624 (1971). Some small claims courts handle landlord-tenant matters, *Id.* at 629. Such a strategy would be appropriate for states without a substantial population housed in rental dwellings. In more heavily urbanized areas, however, a separate housing court would seem appropriate. Statler, *Small Claims Courts in Texas: Paradise Lost*, 47 TEX. L. REV. 448, 454-55 (1969).

62. Appeal is not, however, required for due process. *Lindsey v. Normet*, 405 U.S. 56, 77 (1972). One Bar Association recommended specifically that no appeals be allowed from its proposed consumer court. THE SPECIAL COMMITTEE ON CONSUMER AFFAIRS, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, TOWARD THE INFORMAL RESOLUTION OF CONSUMER DISPUTES 11 (1972) (citing cases in support of proposition that appeal is not required for due process). In California and Oregon, only the defendant may appeal from the judgment of a small claims court. CALIF. CIV. PRO. CODE § 117 (1955); ORE. REV. STAT. § 55.110 (1953). Since the plaintiff voluntarily submits to the court's jurisdiction, eliminating his appeal does not violate due process; since the defendant was involuntarily subjected to jurisdiction, appeal must be available to him. *Superior Wecler Cake Corp. v. Superior Court*, 203 Cal. 384, 264 P. 488 (1928); *Skaff v. Small Claims Court*, 68 Cal. 2d 79 (1968), *Prudential Insurance Co. v. Small Claims Court*, 76 Cal. App. 2d 379 (1946).

63. See, e.g., for small claims courts, ORE. REV. STAT. § 55.120 (1953), which provides appeals within ten days to the circuit court without a jury, and no further appeals allowed; CALIF. CIV. PRO. CODE § 117j (1955) provides for appeals within ten days, the appellant to pay superior court filing fees, any adverse judgment, plus \$15 attorneys' fees.

64. Bond could also include the adverse party's attorneys' fees if, for example, Legal Services attorneys appealed as a matter of course. For Connecticut's current appeal bond from summary process see note 46 *supra*.

65. ORE. REV. STAT. § 55.090 (1953).

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promise would often occur, and no appeal would be pursued. Hence, the volume of cases reaching Legal Services would be substantially reduced.

Also, for tenant-appellants the security would eliminate any advantages inherent in extended litigation. The lawyerless court would also have the advantage of equalizing legal resources among tenants. Neither those with private counsel nor those now represented by LAA would have any advantage over the great majority of tenants now unrepresented. The lawyerless court would thus have effects extending beyond the problem of LAA summary process activities: Indeed, it may prove the most attractive remedy precisely because it addresses as well problems of allocating judicial resources, legal representation, and "citizen participation."

IV. Conclusion

In observing that the presence of LAA attorneys in summary process litigation leads to additional time to reach disposition (with its attendant costs to landlords, unrepresented tenants, or both) this Note has focused on the impact of only one Legal Services agency in but one type of litigation. It would be inappropriate to extend its conclusions to other aspects of the national Legal Services Program without further investigation. Freedom from economic constraints may, however, have analogous effects in other areas.⁶⁶ Further empirical investigation will be necessary to determine whether the types of reforms suggested here are appropriate.

66. For an expression of some tentative misgivings on the abuses of free counsel in the criminal area, see *Argersinger v. Hamlin*, 407 U.S. 25, 58-59 (1972) (Powell, J., concurring). Justice Powell's concerns are especially interesting as he, as President of the ABA, was a key supporter of Legal Services in its early stages.