Limited Scope Representation: An Experiment in San Diego Housing Court

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Abstract

By Lisa Young

This paper analyses how limited scope representation effects the settlement agreements reached by litigants in San Diego Housing Court. Limited scope representation, also known as “unbundling,” is defined as a form of legal representation where the attorney only represents the client in one part of the client’s case. Limited Scope Representation is growing as a viable response to the significant lack of legal representation for middle- and low-income Americans. This paper is the first scholarship to test whether limited scope representation actually makes a substantive difference in the results litigants achieve in court. This paper evaluates a pilot program created in San Diego Housing Court as part of the author’s Skadden Fellowship project. The first three parts of this paper define limited scope representation and provide a brief overview of California eviction procedures. Parts four and five of this paper explain the logistics of the pilot program and describe the evaluation that the author conducted of the program. Part six sets forth the results of the evaluation.

The paper finds that the vast majority of tenants in San Diego are unrepresented in housing court, but the vast majority of landlords are represented. Women and African-Americans are over-represented among housing court tenants, but Whites are slightly over-represented among housing court plaintiffs. This research also indicates that tenants in housing court tend to be low-income, and the vast majority of housing court cases are based on non-payment of rent.

The paper also finds that tenants who received limited scope representation in pre-trial negotiations were able to stay in their apartments longer and were less likely to receive a monetary judgment compared to tenants who did not receive any legal assistance. This paper indicates that even a small amount of legal assistance can make a substantial difference in the results litigants achieve in court. Overall, this paper provides support for increased funding for full-service as well as limited-service representation programs for litigants unable to afford their own lawyer.

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I. Introduction

California currently faces a crisis of unrepresented litigants.1 Our judicial system is designed to cater to two adverse parties, both represented by competent legal counsel.2 When one or both parties do not have ability to hire a lawyer, the result is frustrated court personnel, inefficient hearings, and worst of all, unjust results.3 This problem is particularly troubling when it touches the most important and necessary aspects of life, such as family and housing. In housing court, the problem is exacerbated because landlords are almost always represented by an attorney, and tenants are almost never represented by an attorney.4 This situation, where an unrepresented party must go through a legal proceeding against a lawyer, creates a severe power imbalance and greatly frustrates the judicial system. Concerns regarding fairness and imbalance of power are escalated given that the unrepresented tenants in

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1 Chief Justice of the Supreme Court of California, Ronald M. George, has called the problem of unrepresented litigants in California courts “one of the greatest challenges...for the legal system in the forthcoming decade,” Jessica Garrison, Aid in their Corner for Legal Fight, L.A. TIMES, Dec. 28, 2006, at B1.


housing court are often poor, and may have particular difficulties protecting their own interests.\(^5\)

The problem of unrepresented tenants in housing court is especially severe in San Diego, California, where housing costs are extraordinarily high. The average rent in the City of San Diego is $1,154.\(^6\) Fifty percent of residents in the City of San Diego rent their homes, and 53% of those renters pay more than 30% of their income for housing.\(^7\) The rental vacancy rate in the City of San Diego is only 4.7%.\(^8\) The vacancy rate reflects the percentage of total housing units that are vacant at any given time, and a vacancy rate below 5% is considered a very tight housing market.\(^9\) Given this high housing cost burden, and low rental vacancy rate, many poor San Diego City residents have difficulty finding safe, stable, and affordable housing.\(^10\) If tenants are unable to pay their rent, they usually face a brutally fast eviction procedure where they must navigate a lawsuit against an attorney.\(^11\)

Courts and legal services organizations have been struggling to find a way to respond to this \textit{in pro per} crisis. This paper evaluates one attempt to address this problem in San Diego Housing Court. The author created the pilot program evaluated in this paper, called the “Lawyer for the Day” program, as part of two-year Skadden Fellowship project sponsored by the Legal Aid Society of San Diego, Inc. The program

\(^5\) See \textit{infra} Section VI(A)(iv). discussing the income of housing court tenants in the City of San Diego.
\(^6\) U.S. Census Bureau, 2006 \textit{American Community Survey}.
\(^7\) Id.
\(^8\) Id.
\(^10\) Id. at 3 (discussing the decline in low-income housing in California and the housing difficulties faced by low-income Californians).
\(^11\) See id. at 2 (noting that “[m]any states have eviction laws that are more favorable to the tenant than the eviction process in California).
provides limited scope representation to certain tenants in eviction cases immediately before the tenants’ eviction trial. This paper describes the results of a detailed evaluation of the Lawyer for the Day program. The first three parts of this paper define limited scope representation and provide a brief overview of California eviction procedures. Parts four and five of this paper explain the logistics of the Lawyer for the Day program and describe the evaluation that the author conducted of the program. Part six sets forth the results of the evaluation.

II. Limited Scope Representation

This project utilized limited scope representation, also known as “unbundling,” to assist unlawful detainer defendants in one small aspect of their case. This section provides a brief definition of limited scope representation, and describes how it is used in practice.

A. Limited Scope Representation Defined

Limited scope representation refers to a relationship between an attorney and a client in which it is agreed that the scope of the legal tasks to be performed will be limited to specific tasks without entailing legal representation on the entire case.\(^\text{12}\) As described by Forrest S. Mosten, full service representation entails a bundle of legal services, including fact gathering, advising, discovery, research, drafting letters and documents, negotiation, and appearing in court.\(^\text{13}\) In limited scope representation, the lawyer and the client agree that representation will be limited to one or two “sticks” in

\(^{12}\) The definition of limited scope legal assistance adopted by the Limited Representation Committee of the California Commission on Access to Justice is: “A relationship between an attorney and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to the defined tasks that the person asks the attorney to perform.” Limited Representation Committee of the California Commission on Access to Justice, *Report on Limited Scope Legal Assistance with Initial Recommendations*, October 2001, part I.
the bundle of full scope representation. In limited scope representation, the lawyer creates an attorney-client relationship with the client. This relationship is clearly limited to the provision of an identified service. This type of service is distinguishable from “self-help” centers that only provide access to information. Rather than provide general information, as in a self-help center, the limited scope representation lawyer gives legal advice or performs a service specifically tailored to address the client’s unique situation.

The understanding and practice of limited scope representation is growing across the country. In reality, attorneys have used limited scope representation for years. Lawyers often help clients with one portion of their case. For example, an individual may consult with an attorney before negotiating her own agreement, or drafting her own legal document. Litigation attorneys often use retainer agreements that explain that their services will not include collection of a judgment or an appeal.

B. The Benefits and Limitations of Limited Scope Representation

Limited scope representation is attractive because so many Americans simply cannot afford an attorney to help them with all their legal needs. One report from the State Bar of California noted that 72% of the legal needs of California’s poor residents...
are not being met.\textsuperscript{19} Limited scope representation allows litigants who have scarce resources to concentrate those resources on the most difficult, or most important, part of a case.\textsuperscript{20} For example, an individual could hire an attorney to draft a legal document, make an appearance in court, conduct a negotiation, or simply talk through a case strategy. Rather than facing the stark choice between handling an entire case alone, or coming up with hundreds or even thousands of dollars to hire an attorney to handle the entire case, limited scope representation provides a third option. Limited scope representation also benefits the courts, because litigants who receive some assistance from an attorney are more likely to be better prepared and will allow the justice system to function more smoothly.\textsuperscript{21} In the world of private practice, limited scope representation can create thousands of new clients who can’t afford to hire a lawyer to assist them in an entire case, but can afford to hire a lawyer to assist in a discrete task.\textsuperscript{22} In the legal services context, the concept of limited scope representation allows legal services attorneys, or volunteer attorneys, to focus their time on assisting litigants with the most important aspect of their case, thus leveraging limited resources to create the greatest positive impact.

\textsuperscript{19} \textit{Supra} note 9, at 1.
\textsuperscript{20} \textit{Supra} note 14, at 6 (stating one of the benefits of limited scope representation is that it limits the expenses of legal representation); \textit{supra} note 2, at 1108 (explaining that advocates of limited scope representation “view it as a sound mechanism to provide poor clients greater access to the justice system”); State Justice Institute, \textit{Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration}, 2006 Edition, at 22, distributed by the Self-Represented Litigation Network (stating limited scope representation “focuses legal assistance on those aspects of the matter in which it provides the greatest benefits, reduces the cost to the client, and facilitates the court’s work by reducing continuances and confusion caused by litigants’ unfamiliarity with the court process, while providing additional business to the attorney”).
\textsuperscript{21} \textit{Supra} note 18, at 1 (commenting that limited scope representation can reduce the burden on the courts); \textit{supra} note 16; \textit{supra} note 2, at 1112 (stating limited scope representation benefits the courts by “educating and assisting more \textit{pro se} litigants about civil procedure and evidentiary rules reduce demands on court personnel”).
\textsuperscript{22} \textit{Supra} note 16.
Although limited scope representation is an attractive option for furthering legal services to the poor, there is absolutely no question that limited scope representation is not a substitute for adequate funding for the provision of full-service representation by legal services organizations. Limited scope representation does not provide the client with continuous assistance from the beginning to the end of a case. The lawyer cannot help the client with an overall strategy, and the lawyer is often limited in the quality of service she can provide by the inadequate research, investigation, or preparation conducted by the client. Full-services lawyers unquestionably are able to provide clients with better quality services, and the provision of full representation should remain as the ultimate goal.

C. Limited Scope Representation in California and Ethical Considerations

The State Bar of California and the California Judicial Council approved limited scope representation in California several years ago. In a 2001 report, The Board of Governors of the State Bar of California supported the expansion of limited scope representation as one method of increasing access to legal services. In order to guide attorneys through the ethical considerations that come up in limited scope representation agreements, both the American Bar Association (“ABA”) and The State

23 *Supra* note 4, at fn 5; see also *supra* note 9, at 1 (noting that “California lags far behind many other states in its funding of legal services for the poor).

24 *Supra* note 2, at 1124 (commenting that limited scope representation may establish lower standards of representation for the poor).

25 *Supra* note 12 at Part I.

26 *Supra* note 12 at Part I.
Bar of California have provided written guidance. The California State Bar Committee on Professional Responsibility and Conduct authored *An Ethics Primer on Limited Scope Representation.* The American Bar Association published a *Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force.* Both of these documents clarify that in limited scope representation lawyers owe the same duties of confidentiality, loyalty, diligence, and competence to limited-service clients that they do to full-service clients. The State Bar stresses the importance of clear and adequate communication with limited scope representation clients, including discussing any adverse consequences of the limited scope representation. The ABA states that the relevant ethical test for limited scope representation is “whether the legal assistance is ‘reasonable under the circumstances.’” The California State Bar cautions attorneys that limited scope representation is not appropriate for all forms of legal practice, and an attorney should avoid using limited scope representation in areas of complicated litigation. However, the Bar points out that limited scope representation has “proven effective” in landlord-tenant disputes.

The same good practices apply to limited scope representation that apply to full-scope representation. The retainer agreement should clearly state what services will be

27 *Supra* note 14; *supra* note 18, at 7.
29 *Supra* note 14.
30 *Supra* note 14, at 7-8; *supra* note 18, at 3-6.
31 *Supra* note 18, at 2, 5.
32 *Supra* note 14, at 81.
33 *Supra* note 18, at 2. Practitioners of limited scope representation must be aware of their responsibility to advise clients of the possibility of other issues outside the scope of their representation. In Nichols v. Keller, 19 Cal. Rptr. 2d. 601 (Ct. App. 1993), the California Court of Appeals held that the plaintiff had a cause of action for malpractice because the attorney failed to advise the plaintiff of the availability of third-party claims.
34 *Supra* note 18, at 2.
given and how and when the services will be provided.\textsuperscript{35} If the scope of the service broadens, the lawyer and client should sign a new retainer agreement.\textsuperscript{36} Many states have promulgated rules for when a limited scope representation lawyer agrees to make an in-court appearance on behalf of the client.\textsuperscript{37}

III. Eviction Procedures in California

The program evaluated in this paper utilized limited scope representation in the landlord-tenant context in the City of San Diego. In order to better understand what unrepresented San Diego tenants face when they go through the eviction process, it is helpful to briefly discuss the eviction procedure in California. Eviction procedures vary widely across the country, and the real estate market in San Diego further complicates the picture.\textsuperscript{38} An eviction in California is called an “unlawful detainer,” meaning that the landlord claims that the tenant is “unlawfully detaining” her property.

A. California Law

The unlawful detainer procedure is a summary proceeding under California Code of Civil Procedure section 1161. Unlawful detainer actions proceed through the court system and to trial much more quickly than general civil cases because nearly every aspect of the case is abbreviated.

The eviction process usually begins with the landlord giving the tenant some type of notice.\textsuperscript{39} Most evictions in the City of San Diego are based on non-payment of rent.\textsuperscript{40}

\textsuperscript{35} Supra note 14, at 81.
\textsuperscript{36} Supra note 14, at 7-8.
\textsuperscript{37} Supra note 14, at 81-83; The California Judicial Council developed several limited scope representation forms for use in the family law arena. These forms are available at http://calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-112.pdf.
\textsuperscript{38} The rental vacancy rate in the City of San Diego is only 4.7%. Supra note 6.
\textsuperscript{39} There are some cases where the landlord is not required to give the tenant any notice prior to beginning an eviction action. In practice, these cases are relatively rare.
\textsuperscript{40} See infra Section VI(B).
If the tenant does not pay the rent on time, the landlord must serve the tenant with a written three-day notice stating that the rent must be paid or the tenant must vacate the property within three days. This notice is commonly called a “three-day notice to pay rent or quit.” The law requires that this notice contain specific information. The notice must state “the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment.” This notice may be personally delivered to the tenant, delivered to a person of suitable age at the tenant’s residence or place of business, or posted on the property and mailed to the tenant. If the landlord wishes to evict the tenant for some other reason besides non-payment of rent, or for no reason at all, they must provide the tenant with a different type of notice.

After service of the notice, if the tenant did not comply with any demand in the notice, the landlord must file a complaint in the proper court. The complaint must set forth the facts on which the plaintiff seeks to recover possession of the premises and a copy of the relevant notice must be attached to the complaint. Upon filing the complaint, a summons is issued. The summons and complaint in an unlawful detainer

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42 Id.
43 Id. at § 1162.
44 If a tenant has been living in a unit for less than one year, the landlord may evict the tenant after giving them a 30-day notice. Cal. Civ. Code § 1946. If the tenant has been living in the unit for more than a year, the landlord may evict the tenant after giving a 60-day notice. Id. at § 1946.1 Under a local ordinance of the City of San Diego, if a tenant has resided in the unit for at least two years, the landlord must have good cause to evict the tenant. City of San Diego’s “Right to Know Regulations” §§ 98.0730 – 98.0760. Other notices include 3-day notices to perform covenant or quit, Cal. Code Civ. Pro. § 1161(3), and 3-Day notices to quit, Cal. Code Civ. Pro. § 1161(4). Special rules apply to mobile homes.
46 Id. at § 1166 describes all that the landlord must include in the complaint.
47 Id. at § 1166(d).
action must be served on the defendant in the same manner as a summons in a general civil action.\textsuperscript{48}

After service of summons and complaint on the tenant, the tenant has five days to make a motion, demurrer, or file an answer.\textsuperscript{49} If the tenant does not properly respond to the complaint within five days, the landlord may immediately seek a default judgment.\textsuperscript{50} The clerk enters this default judgment without a hearing.\textsuperscript{51} If the tenant files an answer or demurrer to the complaint, the landlord may request that the case be set for trial.\textsuperscript{52} The law requires that the case be set for trial within twenty days after this request.\textsuperscript{53} At trial, the tenant is allowed to present any defenses she may have to the case. If she loses at trial, judgment is usually immediately entered for the plaintiff, and upon plaintiff’s request, the court immediately issues a writ of execution of the judgment.\textsuperscript{54} The landlord may deliver this writ to the sheriff, and the law requires that the writ be executed “without delay.”\textsuperscript{55} The tenant must receive five days notice before the execution of the writ.\textsuperscript{56} After this five-day notice has expired, the sheriff will come to the tenant’s home, and physically remove the tenant from the premises.

Given the extraordinarily tight rental housing market in San Diego,\textsuperscript{57} the swiftness of the unlawful detainer process imposes significant hardship on many low-income families. If a tenant is one day late on her rent, her landlord can immediately serve her with a three-day notice to pay rent or quit. If she does not pay within those three days,
she may be physically removed from her home by the sheriff within 15-30 days, depending on whether she is manages to file a response to the lawsuit. Given the dearth of low-income housing in San Diego, combined with the expense of moving, low-income tenants face difficult odds when they face an eviction proceeding.

B. San Diego

Unlawful detainer cases in the City of San Diego are assigned to Department Five of the downtown San Diego courthouse of the California Superior Court. The court hears unlawful detainer cases seven times per week at either 8:30a.m. or 1:30p.m. All unlawful detainer cases are scheduled for one of these seven calendars at either 8:30a.m. or 1:30p.m. The calendars usually include 5-10 cases. A commissioner usually presides over the courtroom, but the parties have a right to insist that a judge, and not a commissioner, hear their case. If a party requests a judge, the case is usually sent to a different courtroom.

The vast majority of tenants in California unlawful detainer cases are unrepresented, and the vast majority of landlords in these cases are represented. After the plaintiff in the case requests a trial date, the court sends a trial notice to the defendant in the mail stating the time, date, and location of the trial. Many tenants attempt to reach their landlord or their landlord’s lawyer prior to the trial date to discuss the date, but the landlords’ bar typically refuses to discuss cases with tenants prior to the trial date.

57 The rental vacancy rate in the City of San Diego is only 4.7%. Supra note 6.
58 Thirty-four percent of plaintiffs in California unlawful detainer actions are self-represented at trial, but judges and court staff report that 90% of defendants in California unlawful detainer cases are self-represented. Supra note 4.
On the date of trial, landlords, landlords’ lawyers, and tenants assemble in the hallway outside of Department Five. Although all of the trials are scheduled to begin at either 8:30a.m. or 1:30p.m., the commissioner often doesn’t take the bench until 30-45 minutes after the scheduled beginning of trial. Sometime after the scheduled beginning of trial, the bailiff opens the door to the courtroom and checks each of the parties in. The bailiff or the commissioner usually instructs the parties to discuss the case in the hallway and try to reach a settlement agreement. Often, the landlords’ attorneys represent several landlords in several cases in one calendar. The landlord’s attorney will call out the defendant’s name, and ask the defendant to step out into the hallway to discuss the case. These settlement negotiations happen in the hallway outside of the courtroom and almost always take place between the landlord's attorney and the unrepresented tenant. After 10-30 minutes of negotiation, most cases settle. The landlord’s attorney fills in a pre-printed settlement form, the tenant, landlord, and landlord’s attorney sign the form. The landlord then tells the bailiff that the parties have reached an agreement.

The bailiff informs the commissioner that the parties have reached an agreement. When the commissioner takes the bench, the landlord’s attorney reads or summarizes the agreement before the commissioner, then asks both parties if they understand the agreement and agree to abide by it. The commissioner then reviews the essential terms of the agreement with the unrepresented tenant, again asks them if they understand the agreement, and asks the tenant if they have any questions for the court. If the commissioner is convinced that the parties understand the agreement, she signs the agreement, making it an order of the court. The bailiff then makes copies of the
agreement for the parties. If the parties are unable to reach an agreement, the case goes to trial immediately. If a defendant does not appear for trial, the landlord’s attorney conducts a “prove-up” where she proves the essential elements of her case and asks the court for a judgment. The court then grants a judgment, which typically includes a writ of possession and a monetary judgment. Each case is handled in this manner until every matter on the calendar has been addressed.

IV. Overview of the Lawyer for the Day Program

A. Background

The “Lawyer for the Day” program was created as part of the author’s Skadden Fellowship project. The Legal Aid Society of San Diego (“Legal Aid”) sponsored the program. The author modeled the program after a similar program in San Francisco run by The Bar Association of San Francisco. The author worked closely with court personnel and the usual commissioner in Department Five in developing and creating this program. Prior to the beginning of the program, Legal Aid sent a memorandum describing the program to all of the landlord’s bar and invited their comments and suggestions. The program began in mid-August, 2007.

San Diego faces a major shortage of legal aid lawyers in the area of landlord/tenant law. As of the writing of this article, only four legal services attorneys serve all tenants in all of San Diego County. This fact, combined with exceedingly high housing costs and an extremely tight rental market, create continuous and severe housing problems for low-income San Diego residents. After analyzing the eviction process and identifying the important stages in the eviction process, the author and the Legal Aid Society of San Diego, chose to implement a program to assist with the
negotiation stage of the process. This process takes place in an extremely stressful and high-pressure environment—in the hallway outside of the courtroom moments before trial. The tenant is forced to negotiate with an attorney. The knowledge and power imbalance is palpable in these circumstances. The attorney has vastly more knowledge of the law than the tenant, the attorney is far less emotionally and psychologically involved in the case compared to the tenant, and the attorney is far less intimidated by the prospect of going to trial than the tenant. Under these circumstances, the tenant may agree to a settlement that they do not fully understand or that is not in their best interest simply because they are afraid of what might happen at trial. These negotiations are absolutely undocumented, unsupervised, often rushed, and out of the public eye. In the vast majority of cases, the case ends at this stage.

B. Logistics of the Program

The Lawyer for the Day program provides limited scope representation to tenants in unlawful detainer cases in the downtown courthouse of San Diego Superior Court. The program provides assistance to tenants with pre-trial negotiations in the hallway outside of Department Five. The program is offered either one or two calendars per week. The days of the week when the program is offered changes on a random basis every week.

Three or four days prior to a scheduled program day, the managing attorney for the program contacts the clerk’s office and sets up an appointment to review the files for the cases scheduled for the program day. The attorney briefly reviews the file and makes a note of the names and addresses of the parties. The attorney then conducts

name based conflict checks prior to the program day. The attorney also emails the list of names to any volunteer attorneys scheduled for that program day so that volunteer attorneys can run conflict checks prior to the program day.60

On the program day, the attorney sits at a table provided by the court outside of Department Five. Next to the table, the attorney sets up a sign labeled “Free Help for Tenants.” The court also allows the attorney to place a small notice in Spanish and English on the bulletin board near the door to Department Five that notifies tenants of the availability of the program. The attorney only provides assistance to tenants who approach her and asks for help. The attorney does not approach tenants to offer assistance.

Tenants who approach the attorney and express an interest in receiving assistance are invited to sit down at one of the benches next to the table and are given a Legal Aid application to complete. The Legal Aid housing team only helps tenants who are at or below a certain income limit and meet other qualifications.61 Tenants who do not qualify for Legal Aid services are given informational handouts about the trial process, security deposits, and how an unlawful detainer case can affect their credit record. Tenants who do qualify for Legal Aid services are given a one page limited scope retainer agreement to review. The attorney explains the retainer agreement and emphasizes that if the parties are unable to reach a settlement agreement, the attorney

60 In the first few months of the program, if the records at Legal Aid show that the defendant in the case had previously contacted Legal Aid about this case, the attorney would send them a letter notifying them of the availability of the program. However, this process was abandoned shortly after the program began because the file review often did not take place until it was too late for a letter to reach the tenant through the mail before the trial.
61 Other limitations include asset limits and immigration status limitations.
will not represent the tenant at trial. If the tenant understands and agrees to the retainer agreement, both the attorney and the tenant sign the agreement.

The attorney then briefly interviews the tenant. The attorney gathers a very brief history of the tenancy, and explores any defenses that the tenant raised in her answer. If the tenant brought the complaint and answer with her, the attorney reviews these documents. The attorney also discusses with the tenant what her goals are for the proceeding. The attorney advises the tenant that she has a right to a trial, advises her as to the strength of her case based on the information provided, and discusses possible settlement agreements.

If the tenant wishes to explore settlement options, the attorney conducts a negotiation with the landlord or landlord’s attorney. If the parties are unable to reach an agreement, the attorney gives the tenant a handout that explains how the trial will proceed. The attorney goes through this handout and explains each stage of the trial, and helps the tenant prepare for the trial. The tenant then immediately proceeds to trial. The attorney does not represent the tenant at trial.

If the parties reach an agreement, the attorney or the landlord’s attorney fills in a pre-printed settlement form spelling out the details of the agreement. The attorney reviews the settlement agreement with the tenant and answers any questions she may have about the terms of the settlement. If the tenant understands and agrees to abide by the agreement, the tenant signs the agreement. The landlord’s attorney then presents the stipulated agreement to the commissioner as she would in a typical case where the tenant does not receive assistance from an attorney. The commissioner

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62 The attorney for the day enters the well of the courtroom and stands to the side of the defendant’s table to signal to the commissioner that she assisted the tenant in reaching this agreement.
asks the tenant her usual questions regarding whether the tenant understands and agrees to abide by the stipulation and then signs the stipulation, making it a court order. Every tenant who receives assistance is asked to complete a brief evaluation of the program.

V. Evaluation Conducted

The evaluation period ran from the beginning of the program in mid-August, 2007, to mid-July 2008. During this evaluation, the program assisted 147 defendants. One-hundred and twenty-two of these defendants received negotiation assistance, and 87 of these cases settled. The remaining twenty-five tenants received informational handouts and general education. The author conducted an evaluation of several different factors of the program. To create a comparison group, the author observed housing court on random days between October, 2006 and July, 2008. During these observation days, when an unrepresented tenant and a landlord came to a settlement agreement, the author listened to the terms of the settlement agreement as they were announced to commissioner and recorded the basic terms of the settlement agreement a form. The author also recorded information about whether the landlord was represented, the race and gender of the parties. The author gathered settlement information for 75 cases.

The author also completed the same court monitoring form for the 87 program participants who received negotiation assistance from the program and ultimately reached a settlement agreement with their landlord. The author collected the same

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63 The monitoring forms were modeled after the forms used in the “Evaluation of the Van Nuys Legal Self-Help Center Final Report,” by the Empirical Research Group, UCLA School of Law, August 30, 2001. If some of the information about the terms of the settlement was missing, the author reviewed the court file to complete the missing information.
demographic, representation, and settlement information for program participants as for non-program participants. On program days, the author also recorded how many cases were on calendar, and the number of cases where the landlord was represented and the number of cases where the tenant was represented.

Every tenant who received any form of assistance was given a simple satisfaction survey. The evaluation form asked the tenant if the Legal Aid Society assisted them in reaching an agreement with their landlord, and they were asked to rank how satisfied they were with the service from “very satisfied,” to “unsatisfied,” or “unable to resolve my problem.” They were also asked “[i]f we were not able to resolve your problem, was the assistance you were given helpful?” Lastly, the survey asked two questions regarding how the service could be improved and asked for any other comments.

VI. Results

D. Demographics

The evaluation provides a picture of what the people in eviction court look like. The sample of seventy-five court observations of cases where the tenant did not participate in the program shows the general demographics of housing court. Through the remainder of this paper, tenants in the group of 75 court observations who did not participate in the Lawyer for the Day program are referred to as “non-participants.” Tenants who did participate in the Lawyer for the Day program are referred to as “participants.”
(i) Race or ethnicity

The graph below shows the race of the defendants and plaintiffs in this group of seventy-five cases.\textsuperscript{64}

![Race of Plaintiffs](chart1)

![Race of Tenant Non-Participants](chart2)

As the charts show, Latinos, Whites, and Blacks/African Americans make up 88\% of plaintiffs\textsuperscript{65} in the sample and 95\% of defendants in the sample. Latinos made up 20\% of both groups. However, Whites made up a much larger portion of the plaintiff group and Blacks/African-Americans made up a much larger portion of the defendant group. Nearly 60\% of plaintiffs were White, whereas only 36\% of defendants were White. Only 9\% of plaintiffs were Black/African-American, whereas nearly 40\% of defendants were Black/African-American.

Below, three graphs compare the percentage of the three main demographic groups identified above (Black, White, and Latino) within four comparison groups. The

\textsuperscript{64} Some of the numbers in this analysis add up to slightly more than 100\%. This is because some plaintiffs or defendants consisted of more than one person. If the group had two different races, that defendant was counted twice, once for each race represented in the group.
four groups are (1) City of San Diego residents according to the 2006 American Community Survey, (2) plaintiffs from the 75 cases where the tenant participated in the program, (3) non-participant tenants, and (4) participant tenants.

This chart is instructive in a number of ways. It shows that Blacks/African-Americans are significantly over-represented among housing court tenants. Blacks made up approximately 40% of both of participant and non-participant tenant groups, yet they only made up 9% of plaintiffs, and 7% of San Diego City residents. Latinos made up approximately equal portions of all four groups (20%-28%). Whites appear to be slightly under-represented among housing court defendants. Although Whites make up 59% of

65 The race of the person who appeared in court for the plaintiff was recorded. Often the person appearing in court was not the owner of the property, but was someone from a management company managing the property for the plaintiff.
plaintiffs and 48% of San Diego City residents, they only made up 40% of non-participant defendants and 28% of participant defendants.\textsuperscript{66}

These comparisons also provide one way to determine whether comparisons of the settlement agreements reached by participant tenants and non-participant tenants should be made. If there are significant differences between these two groups that could influence settlements, something besides the addition of limited scope representation assistance could be at work, and comparisons might not be appropriate. It appears that the proportion of Latinos and Blacks/African-Americans are close between the two groups. The group of non-participant tenants appears to have more Whites (40%) compared to participant tenants (28%). One possible reason for this difference is the necessity of the program attorneys to screen participants for income. The program could only assist people who had low incomes. Because minorities in this country tend to have lower incomes compared to Whites,\textsuperscript{67} the people who were not able to participate may have been more likely to be White.

(ii) Gender

The next charts show the gender of tenants in participant and non-participant groups, and plaintiffs.

\textsuperscript{66}“Whites” in this analysis refer to non-Hispanic Whites.

\textsuperscript{67}In 2007, the median income for Black households in the United States was 62% of non-Hispanic White households, and the median income of Hispanic households is 70 percent of non-Hispanic White households. The poverty rates in 2007 were 8.2% for non-Hispanic Whites, 24.5% for Blacks, and 21.5% for Hispanics. \textit{Income, Poverty, and Health Insurance Coverage in the United States: 2007}, U.S. Census Bureau, U.S. Department of Commerce, Economics and Statistics Administration, issued August 2008, p. 6-12.
A comparison of tenant participants and tenant non-participants reveals approximately equal numbers of men and women. From these numbers, it appears that women are over-represented among housing court tenants. Forty-eight percent of non-participant tenants were only women (either a single woman, or more than one woman), and 54% of participant tenants were only women. Only 36% of non-participant tenants and 35% of participant tenants were composed of single men, or groups of men. In both tenant groups, nearly two thirds of defendants included least one woman, whereas in both
tenant groups, about half of defendants included at least one man. Plaintiffs were approximately equal men and women.

(iii) Representation

The data gathered can also demonstrate who is and is not represented by an attorney in housing court. Each program day, the author made a note of how many total cases were on calendar for that day, and made a note of how many plaintiffs were represented, and how many defendants were represented.

As the data clearly show, the vast majority (87%) of landlords are represented by an attorney, and the vast majority (90%) of tenants face housing court alone. Therefore, unrepresented tenants usually must engage in settlement discussions with a landlord’s attorney. The portion of landlords represented by attorneys in the 75 court monitored cases revealed a similar picture: 97% of those landlords were represented by an attorney. These statistics should come as no surprise given the dramatic lack of representation for the poor in California and in the United States as a whole.
(iv) Income

It was not possible to gather accurate information about the income of landlords and tenants in this evaluation. However, the program did gather income information for those tenants that participated in the Lawyer for the Day Program. The program only assisted those tenants who approached the attorney coordinator of their own volition. Therefore, if tenants who approached the attorney tended to have higher or lower incomes than those that did not approach the attorney, this could mean that the average income of those assisted by the program would not be an accurate measure of all tenants. However, an evaluation of the incomes of those tenants who did approach the attorney coordinator could reasonably be expected to give some indication of the general economic situation of tenants. Legal Aid can only provide representation to those who are below 125% of the Federal Poverty Guideline, and in some cases, below 200% of the Federal Poverty Guideline. Therefore, all of those who received negotiation assistance had incomes below 200% of the Federal Poverty Guideline. In 2008, 200% of the Federal Poverty Guideline is $3,533.33 per month for a family of four, or $1,733.33 per month for a single person. Given that the median rent in the City of San Diego is $1,1154 per month, families who are at or below this limit are certainly very poor. The chart below shows the portion of defendants who approached the program coordinator and qualified for Legal Aid representation.
The program assisted the defendants in 147 cases during the evaluation period. Of these 147 cases, 83% of the defendants in these cases qualified for Legal Aid, meaning that they were at or below 200% of the Federal Poverty Guideline. Some of the 25 defendants who did not receive negotiation assistance also had incomes below 200% of the Federal Poverty Guideline, but were ineligible for Legal Aid assistance for other reasons, such as immigrations status. Given that such a large portion of defendants who approached the program coordinator had such low incomes, it is reasonable to presume that most defendants have generally low or very low incomes. It is also reasonable to assume, that even tenants who are above the 200% limit and do not qualify for Legal Aid are nonetheless hurting financially. Given the high rents and generally high cost of living in the City of San Diego, even people who are above the 200% limit often find themselves in a position where they cannot pay their rent.

The fact that non-participant tenants have slightly higher incomes compared to participant tenants could affect the results of this evaluation in two main ways. First, tenants with higher incomes may tend to have higher rents. Thus, if the settlement
includes a judgment for past due rent, this judgment may be slightly higher for non-participant tenants. Second, settlements are usually easier to reach if the tenant has some financial resources at his or her disposal. For example, if tenants can pay for extra time in the apartment, landlords are often much more likely to allow them to stay longer in the unit. Sometimes, if tenants agree to pay what they owe quickly, the landlord will allow them to pay less than all of what they owe, or may agree not to collect attorney’s fees or court costs provided the tenant make large and/or quick payments. It is impossible to know how much these considerations influence the results.

**B. Type of Case**

The author recorded the reason for eviction in cases where the tenant participated in the program. The chart below shows that the vast majority of cases are based on non-payment of rent.

Eighty-nine percent of evictions were the result of a three-day notice to pay rent or quit. This result should not be surprising given the high cost of living in the City of San Diego and the generally low incomes of tenants. The remaining 11% of cases were made up
of 30 or 60-day notices, 3-day notices due to nuisance, or other types of less common
notices. This result may be slightly skewed, given that participant tenants are likely to
have lower incomes, on average, compared to non-participant tenants, as discussed in
the previous section. Tenants with lower incomes are more likely to have difficulty
paying their rent.

C. Likelihood of Settlement

One important consideration in evaluating this project is determining whether
participant tenants were substantially more or less likely to settle their cases compared
to non-participant tenants. The Lawyer for the Day Program provided negotiation
assistance to 122 tenants. Of those tenants who received negotiation assistance, 71%
settled. Cases that did not settle went to trial.

To determine whether assistance from the program resulted in more or less
settlements, the author asked the usual bailiff in Department Five to record the
dispositions of all cases on calendar for several months. The author analyzed the
records for February and April of 2008. The author only looked at calendars where the
Lawyer for the Day Program was not available, and only looked at cases where the
tenant was unrepresented. During the months of February, March, and April, 2008, 265
cases had unrepresented tenants. Of those cases, 58% were disposed of either by
settlement agreement or trial. The remaining 42% percent were disposed of by some
other means, such as a defaulting tenant (19%), continuance (8%) or other means
(14%). Of those cases that either settled or went to trial, 28% went to trial and 72%

\[68\] The reason for the eviction could not be determined for non-participant court observations because this
information was usually not announced to the court when the settlement was announced.
settled. The charts below compared the percentages of participant and non-participant tenants who settled their case.

As the above charts show, the Lawyer for the Day Program did not make settlement more likely. This result is significant because it shows that the program neither increased nor decreased the burden on the court in terms of the number of trials.

D. Comparison of Participant Settlements and Non-Participant Settlements

The author compared the participant group and non-participant groups in the following areas:

1. whether the tenant agreed to move out of the unit;
2. if the tenant agreed to move out, the number of days to move out; and
3. whether the settlement included the tenant accepting a money judgment.

(i) Possession of the Unit

The central reason why landlords file eviction actions is to legally take possession of the apartment away from the tenant and return it to the landlord. Thus,
whether the settlement agreement involved the tenant agreeing to move out of the unit or whether the parties agreed that the tenant would remain in the unit is a central component of any settlement agreement. The below two charts compare participant and non-participant settlement agreements on this issue.

As shown by the charts, there was no substantive difference between the participant and non-participant groups on whether the settlement agreement included the tenant moving out. The vast majority of both groups of tenants agreed to move out of the unit.

(ii) Number of Days to Lockout

Given that the vast majority of tenants agree to move out of their apartments, the next question is when the tenant will move out of their apartment. In the negotiation, the parties can agree on a “lockout date.” That is, the date the sheriff will come and lock the family out of their home. In reality, the lockout will usually not occur earlier than 10-14 days after the settlement is filed. It usually takes 10-14 days to complete a lockout due to the lag time involved when the court and sheriff’s office process the paperwork. If the tenant does not have a place to move to, she usually wishes to extend this lockout date, and the landlord usually wishes to keep it as short as possible. Below is a

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69 Most tenants do not realize that they will most likely not be locked out for 10-14 days, and landlord’s layers often exploit this ignorance in a negotiation.
comparison of the number of days to lockout between participant and non-participant groups:

As shown by this chart, tenants who participated in the Lawyer for the Day program, on average, stayed 26% (5.7 days) longer compared to tenants who did not participate in the program. Although this may be a substantively small difference, for the vast majority of tenants who do not have a place to move to, this small extension of time in their homes can mean the difference between temporary homelessness or a smooth transition to new housing.

(iii) Money Judgment

Typically, landlords in an unlawful detainer action will request a money judgment. They usually ask for a three part award composed of reimbursement for (1) back rent and damages; (2) attorneys’ fees; and (3) court costs. In non-payment cases, back rent includes the past rent, if any that the defendant failed to pay up through the expiration of the three-day notice to pay rent or quit. Damages usually equal the daily rental rate from the expiration of the notice through the date of trial. Almost all tenancy
agreements include a clause stating that if the landlord must sue the tenant in unlawful detainer, the tenant is responsible for reimbursing the landlord for costs of suit and attorneys’ fees. If the tenant loses at trial, she will receive a judgment for any back rent, damages, costs of suit, and attorneys’ fees (if the landlord had an attorney). In a settlement, the tenant may agree to accept a judgment for these costs. The following chart compares the percentage of tenant participants who agreed to accept a money judgment with the percentage of tenant non-participants who agreed to accept this judgment.

![Tenant Agreed to a Money Judgment](chart.png)

Participant tenants were 32% less likely to agree to a money judgment compared to non-participant tenants (59% compared to 87%). Broken down into the three parts of the judgment, participant tenants were 32% less likely to agree to a judgment for past rent and damages (59% compared to 87%), 52% less likely to agree to a judgment for attorneys’ fees (31% compared to 64%), and 41% less likely to agree to a judgment for court costs (43% compared to 73%).
From these statistics, it appears that participant tenants were substantially better off compared to non-participant tenants. Tenants often have difficulty paying off judgments they receive in an unlawful detainer case. If they don’t pay off the judgment, it remains on their record, damaging their credit history, and making it more difficult for them to rent another apartment and access credit in the future. Furthermore, an unpaid judgment may subject tenants and their families to demands and harassment from collection agencies and could result in wage garnishments, attachment of bank accounts, or liens on property. Thus, avoiding or lessening a monetary judgment is a very significant benefit to tenants who participate in the program.

Another way to interpret these results is to look at the total monetary amount the program saved the tenant population as a whole. To get a sense of the magnitude of this savings, we must compare the average total judgment of the participant and non-participant groups. The average total judgment for non-participant tenants was $3,067.88, and the average total judgment for participant tenants was $1,923.65. The difference in the average judgments equals an average savings of $1,144.23 per tenant. This average savings multiplied by the 87 participant tenants equals a total tenant savings of $99,548.01. Given the very limited nature of the program, this is a significant savings. The benefits that could be gained for the tenant population from a more extensive program could vastly outweigh the costs of the program.

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70 These average judgments should be viewed with some caution. The main component of these judgments is the judgment for back rent and damages. This judgment varies somewhat based on the amount of rent for the unit and the length of time the landlord waited to bring the unlawful detainer action.
E. Survey Results

All tenants who received negotiation assistance from the program were asked to complete a very brief survey. Twenty-nine percent (35 tenants) returned completed surveys. The following graph summarizes the results of this survey:

Eighty-nine percent reported that they were “very satisfied” with the help they received. Another 9% reported that they were “satisfied” with the help they received. One tenant reported that the program was “unable to resolve my problem.” No tenants reported that they were “unsatisfied” with the assistance they received. Ninety-seven percent of those who completed surveys reported that the program assisted them in reaching an agreement with their landlord.

On the surveys, tenants were asked for comments and suggestions. Many tenants wrote comments, and these comments were overwhelmingly extremely positive. One tenant wrote “[s]ervice was excellent and Lisa was very helpful. Without the help from your society it would have been very hard to come to an agreement with [my]
landlord.” Another tenant wrote, “I found Lisa Young’s demeanor very calming and clear. She answered all my questions directly and non-judgmentally. In these situations which are so stressful, it really helped having an attorney to clearly explain the process that is coming. Thank you.” Another commented that the lawyer for the day “was very helpful, professional and polite.” Other comments included: “Legal Aid was very helpful;” “[a]ttorneys we’re very helpful, nice, understanding;” “the great service was appreciated;” and “[s]ervice was extremely helpful.”

Only three tenants offered constructive criticism of the program. One suggested that the program have more bilingual attorneys. Another commented on the lack of privacy in the hallway and suggested that the attorneys be given an office by the courtroom to conduct the interviews. Another tenant suggested that the program have more attorneys.

These overwhelmingly positive comments from tenants served by the program suggest that tenants gain a benefit above and beyond the substantively better settlements they receive. Receiving guidance from an attorney takes some of the pressure off during this extraordinarily stressful process. Even if the result is that they must move out of their apartment very quickly, tenants greatly appreciate this guidance and are more likely to feel that they have been treated fairly by the judicial system.

VII. Conclusion

Limited scope representation is growing as a viable response to the significant lack of legal representation for middle- and low-income Americans. California has endorsed this form of representation as an ethical way to address the in pro per crisis in the state. This paper analyzes one attempt at using limited scope representation in
housing court, an area where lack of representation is particularly troubling. The paper provides a snapshot of what housing court looks like in the City of San Diego: the vast majority of tenants are unrepresented, and the vast majority of landlords are represented; women and African-Americans are over-represented among housing court tenants; and Whites are slightly over-represented among housing court plaintiffs. This research also indicates that tenants in housing court tend to be low-income, and the vast majority of housing court cases are based on non-payment of rent.

Most importantly, this paper tests the substantive difference limited scope representation makes in the context of housing court. In the program analyzed in this paper, tenants who received limited scope representation were not more likely to settle their cases compared tenants who did not receive this assistance. However, tenants who received limited scope representation in pre-trial negotiations with their landlord were able to stay in their apartments longer, and were less likely to agree to a monetary judgment compared to tenants who did not received any legal assistance. Given the very limited nature of the assistance, this paper indicates that even a small amount of assistance can make a substantial difference in the results litigants get in court. The survey results show that tenants were overwhelmingly very satisfied with the assistance they received. Overall, this paper provides support for increased funding for full-service as well as limited-service representation programs for litigants unable to afford their own lawyer.