Analysis of Landlord/Tenant Mediation
&
Disparate Impact Towards Low-Income People

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Presented to Public Administration Faculty at the University of Michigan-Flint in partial fulfillment of the requirement for the Master of Public Administration Degree

March 2004

First Reader Albert Price

Second Reader _____

DEDICATION

To

My Mom & Dad
Eleanor & Jack Howard

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ACKNOWLEDGEMENTS

Edward Hoort, "The Shepherd" – Who Carries A Big Staff
For his guidance, patience, and impatience.

Charles Dodge, "The Grammarian" - Who Has A Way With Words
For his editing and words of inspiration.

Daryl Mrazek, "The Gentle Wind"- Who Kept Me Moving Towards The Goal
For his solid support and words of encouragement.

ABSTRACT

This study examines mediation as a means to settle landlord and tenant disputes and to discover if it is a just process for low-income people. Justice is defined as a process and principal by which each individual is assured the things that belongs to him. One hundred subjects participated in mediation. The experimental group received training in landlord/tenant defenses prior to mediation while the control group went directly to mediation. Outcomes were measured for the experimental group, the control group, tenants going directly before the judge, and those with legal representation. There is no supporting evidence showing that justice was being served to low-income people. There was no significant difference in the outcome for tenants in the experimental and the control group.

Chapter I

Project Focus

This study is about mediation and its impact on low-income people. Mediation is an alternative form of access to justice. Landlord/tenant mediation is an alternative dispute resolution process, which provides tenants an opportunity to settle disputes with the help of a neutral third party. This research examines landlord/tenant mediation as a means to achieve justice for all people involved. Justice is a condition where the same or similar results occur regardless of the method used to reach the outcome.

This study will examine the level of justice for tenants participating in mediation (with or without training), tenants with legal representation, and tenants going directly before the judge. Justice as defined by World Book Dictionary is the principal or the process by which each man is assured the things that belong to him. Justice, in this research, is measured by what outcome each tenant receives as a result of mediation or the final judgment by the judge. Justice exists if the outcome is consistent among the settlement options.

The primary goal of this study is to analyze mediation as a means to settle landlord and tenant disputes and to discover if it is a justice process for low-income people. The following are areas to examine:

- Does mediation provide justice for low-income people?
- Does self-reported satisfaction indicate justice being served?
- Does training people prior to mediation improve their chance at justice?
- Does legal representation increase a low-income person's chance at justice?

This research is a qualitative and quantitative study of landlord/tenant mediation with a focus on social and economic factors. It investigates mediation and its disparate impact on low-income people. It also investigates self-reported satisfaction rates as they relate to justice.

Demographics are examined to establish which groups of people are involved in landlord/tenant mediation and if mediation has a greater impact on a particular segment of the population. The subjects in the study are from low-income communities. The jurisdictions include the 67th District Court (Mt. Morris City and Mt. Morris Township) and 68th District Court (City of Flint) in Genesee County, Michigan. The research design also included the 67th District Court in Flushing, however; only one mediation experience was conducted at that site.

Housing Occupancy and Rental Rates

The housing occupancy status (Table 1) reveals that the City of Flint has the lowest rate of owner occupied housing and the highest rate of rentals; in fact, it is almost double the County rate. Much of the housing stock is old and in serious need of repair. In addition, approximately 80% of the rental rates range from $300 to $749 (Table 2). The high ***gross rent as a percentage of income*** rates, place a burden on many, (Table 3) with 30 – 40% of the residents paying 35% or more of their income towards rent.

Table 1 - Occupancy Status in Genesee County, City of Flint, Mt. Morris, and Mt. Morris Township

	Total	Owner Occupied	Renter Occupied
Genesee County	169,825	124,340 (73.2%)	45,485 (26.8%)
City of Flint	48,744	28,679 (58.8%)	20,065 (41.2%)
City of Mt. Morris	1,312	809 (61.7%)	503 (38.3%)
Mt. Morris Township	8,815	6,818 (77.3%)	1,997 (22.7%)

Table 2 - Rental Rates in Genesee County, City of Flint, Mt. Morris, and Mt. Morris Township

	City of Flint	City of Mt. Morris	Mt. Morris Township
Less than $200	5.9	1.8	3.2
$200 - $299	7.5	3.2	3.5
$300 - $499	40.2	43.6	28.7
$500 - $749	35.9	42.4	47.7
$750 - $999	5.0	6.8	7.8
$1000 - $1499	1.5	0	0.8
$1500 - +	0.2	0	0

Table 3 - Gross Rents as a Percentage of Income in Genesee County, City of Flint, Mt. Morris, and Mt. Morris Township

	City of Flint	City of Mt. Morris	Mt. Morris Township
<15%	17.9	23.1	16.6
15 – 19%	10.0	13.9	9.0
20 – 24%	9.0	12.9	9.8
25 – 29%	9.0	12.2	9.7
30 –34%	6.0	6.8	7.8
35 - +	40.2	28.9	36.0

Racial Composition

According to CensusScope 2000, Flint is the most segregated city in Michigan and the one of the top ten most segregated Metropolitan Statistical Area in the Nation. The 2000 U.S. Census shows (Table 4) the total population for Genesee County is 436,141. There are 328,350 (73%) white, 88,843 (20.4%) black, and 8,877 (2.3%) Hispanics. The most compelling indicator that racial barriers exist is that there are 88,846 blacks residing in Genesee County - comprising of thirty-three municipalities, yet 66,560 (75%) of blacks live in one municipality – the City of Flint. If Mt. Morris Township is included, that figure raises to 86% of all blacks living in Genesee County reside in two of the thirty-three municipalities.

Table 4 - Population Composition in Genesee County, City of Flint, Mt. Morris and Mt. Morris Township

	Total Population	White Population	Black Population	Hispanic Population
Genesee County	436,141	328,350 (73%)	88,843 (20.4%)	8,877 (2.3%)
City of Flint	124,943	51,710 (39.6%)	66,560 (53.3%)	3,742 (3%)
City of Mt. Morris	3,194	2,904 (93%)	98 (3.1%)	71 (2.2%)
Mt. Morris Township	23,725	12,218 (51.5%)	9,526 (40.2%)	72 (3%)

Income & Poverty

Income is also an important component in this research. The 2000 U.S. Census shows (Table 5) that the three municipalities involved in the study have a greater percentage of people below the poverty rate than the Genesee County rate. In fact, the City of Flint has a 26% poverty rate, which is twice the County rate. Furthermore, 10% of the 41 census tracts in the City of Flint have a median income under $10,000 and 44% of the 41 census tracts with median income under $17,000.

Table 5 - Poverty Level for Genesee County, City of Flint, Mt. Morris, and Mt. Morris Township

	Total Population	Total Population Below Poverty Level
Genesee County	431,247	56,480 (13%)
City of Flint	122,853	32,440 (26%)
Mt. Morris City	3,261	473 (15%)
Mt. Morris Township	23,706	4,347 (18%)

Education

Educational achievements (Table 6) in the three municipalities show a higher rate of students with less than a high school education and a lower rate of college graduates than in the County.

Table 6 - Educational Attainment for the Population 25 Years and Over in Genesee County, City of Flint, Mt. Morris, and Mt. Morris Township

	Less Than A High School Graduate	College Degree
Genesee County	16.8	24.2
City of Flint	25.6	17.7
City of Mt. Morris	20.7	10.7
Mt. Morris Township	22.2	14.7

Prior to presenting the results of the study other relevant information is presented. First, a definition of alternative dispute resolution is provided, which will lead into the literature review. The literature review examines applicable mediation research, offering what has been measured and what is yet to be studied. Next, the project background is described, while includes defining the eviction process and affirmative defenses.

Chapter II

Introduction to Alternative Dispute Resolution (ADR)

Disputes are an inevitable societal occurrence. Since the beginning of mankind there have been disagreements in families, communities, commerce, the work place, and among governmental entities. The most common method to settle disputes is through the ***adjudication*** process. Thousands of people go to court daily to resolve conflicts. Adjudication takes place in a courtroom as an evidentiary process with one person, the judge, making a decision based on facts and rules of law. Each party may represent themselves or have an attorney to present their evidence. The judgement is binding.

Millions of court cases are filed in the United States each year creating overload and pressure on the system. Therefore, many judges are turning to pretrial Alternative Dispute Resolution (ADR) settlements as a way to ease the stress (Wall & Schiller, 1983). Chief Justice Warren Burger had urged "increased use of alternative methods such as mediation, conciliation and arbitration in divorce, child custody, adoptions, personal injury, landlord/tenant cases and probate of estates" (Ray, 1982 p.119).

As the years evolve, ADR programs have developed as an organized means of settling disagreements. Methods of resolution, such as mediation, arbitration, conciliation, and negotiation have become more prevalent and professional. Each type of conflict resolution has a nuance of its own, creating a unique process. This uniqueness dictates the most proficient resolution procedure, which facilitates the parties to a favorable outcome. The following highlights the aforementioned ADR methods.

Negotiation is a settlement process where two or more parties attempt to reach an end result through give-and-take. The desired outcome is a resolution between the parties

without assistance from a third party. Negotiation may be as formal as the boardroom or as informal as the kitchen table. The outcome is not always a legally binding agreement unless the results are in writing and signed by each party. Although handshake agreements have been enforced, they are more difficult to prove in court.

The term negotiation is frequently misused to describe other forms of dispute resolution, however there are significant differences. The following types of ADR, conciliation, arbitration, and mediation, include a facilitator who acts as a third party to assist in the settlement process.

Conciliation, a second type of ADR, provides an opportunity for the opposing parties to reconcile with the assistance of a third party. Generally, ADR strategies include face-to-face encounters; however, the conciliatory procedure does not encompass this style. Here, the conciliator dialogues with each party on an individual basis, gathers information, and elicits possible resolution options. The exchange continues until an agreement is reached between the parties.

Arbitration is generally a more formal face-to-face ADR process. It is frequently used to settle disputes in commerce, the workplace, and governmental entities. Here, the disputing parties submit their differences to a mutually selected or statutorily assigned neutral person or team, known as an arbitrator or an arbitration team. The arbitrator(s) gather information from all parties and offer a recommended solution to the dispute. Some arbitration is binding, where the parties have agreed, prior to the inception of arbitration, to accept the arbitrator(s) recommendation. In other arbitration experiences, participants have the option to accept or reject all or part of the recommendation.

Mediation is the last conflict resolution process to be considered, which is the focus of this research. With the assistance of a neutral third party, mediation is a face-to-face encounter of two or more disputing parties. Here, each party has an opportunity to express their views and offer possible solutions, while the other parties' listen.

Mediation may be conducted by one person or by a panel. The trained mediator(s) range from judges, attorneys, to community volunteers. The mediator's duty is to facilitate the resolution process without offering legal advice or pressuring either party into an agreement. The mediator's role is to help the parties explore the nature of the dispute, elicit settlement options, offer suggestions for the parties to consider, and act as a guide leading to resolution. If there is an impasse during mediation, a caucus may be necessary, where the mediator confers with each party on an individual basis.

Mediation may be voluntary or forced and range from an informal to a high-pressured experience. For instance, if it is court ordered mediation in Circuit Court, the parties argue a case to a group of lawyers, who then suggest a settlement. The parties agree or disagree. If a party rejects the mediation and does not do 10% better at trial, they are responsible for the other party's costs and attorneys fees.

Chapter III

Literature Review

The importance of a literature review is to provide evidence of value, to save time, and to sharpen the focus of this research. A review of the literature presents an overview of previous research and offers a potential for furture research. Over the past thirty years, mediation has become a popular type of "informal justice" used as an alternative to adjudication. This literature review summarizes a variety of mediation projects and their findings.

The majority of early research was conducted in the 1970's and 1980's in a laboratory or industrial setting. ***Laboratory experiments,*** simulating negotiation settings were conducted, testing hypotheses derived from early theoretical writings (Harnett & Wall, 1983). The first research, which was conducted by Podell and Knapp (1969), suggested that the parties look stronger when the concession is through a mediator. Other early research included: Vidmar (1971) indicating mediation creates a win-win situation; Pruitt & Johnson (1970) showed that mediation helped the parties make concession without feeling weak; and Hiltrop & Rubin, 1982 indicated that the anticipation of compulsory mediation facilitated concession making when conflict of interest is small, but slows when conflict of interest is high.

Industrial mediation research shows that there is a much greater likelihood of success when the parties are motivated to settle, have a greater tolerance level, and are receptive to third party intervention. Landsberger (1955a,b), found that successful industrial mediation occurs when there was no initial hostility between the parties and the session went through three phases: *orientation, evaluation, and suggestion.* The threat of

arbitration if mediation fails, for inexperienced negotiators, also enhances the likelihood of settlement (Kochan & Jick 1978).

Furthermore, the right to collective bargaining created the need for ***Public Sector Labor Mediation***. As a result, specialized mediation programs were formed to help settle disputes in thousands of public employee conflicts each year (Lewin, Feuille, & Kochan, 1977). Settlement rates in labor mediation have been found to be 28%-57% with a median of about 50% (Kochan & Jick, 1978). According to Canevale & Pegnetter, 1985, labor mediation is least likely to work when there are many sources of impasse, when hostility is high, and under conditions of scarcity.

Public Resources are not exempt from the practice of mediation. Generally, legislative and administrative bodies provide settlement in public resource issues such as money and land use. Efforts to mediate in spending of federal funds by state and local groups, the siting of dams and nuclear power plants, and the construction of low-income housing in middle-class neighborhoods have been settled though ***"environmental mediation".***

"Mediation began to play a role at all levels of society, in virtually every significant area of social conflict" (Pruitt & Kressel 1985). ***Family Mediation*** rapidly grew in popularity. "Many states now provide mediation services for the resolution of custody and visitation disputes, and California has mandated this process in all such instances" (Pruitt & Kressel, 1985). Mediators' deal with issues of divorce, child custody, adoption, visitation, and the division of property.

The demand for family mediation services is increasing. Due to the high level of sensitive issues, this type of mediation can be challenging. The areas of concern are

personal and many times based on deep-seated morals and beliefs, which can create volatile discussions regarding child support, divorce, visitation, etc. Research indicates a greater compliance with mediation in child custody, visitation, and child support awards than through adjudication (Pearson & Thoennes, 1984a). The satisfaction rate was approximately 75% satisfaction, the cost was less than adjudication, and respondents reported that the mediation experience improved communication, cooperation, understanding, and the ability to handle anger toward the ex-spouse (Pearson & Thoennes, 1984a,b).

Thoennes & Pearson's research also measured the disputants' personal characteristics and the respondent's perception of the mediator. Three court-based programs were studied. The focus was divorce litigants dealing with child custody or visitation issues. Mediation was mandatory in Los Angeles. In Minneapolis and Connecticut, mediation was either requested by parties, an attorney, or ordered by the judge or referee. Initially, questionnaires surveying pre-existing dispute characteristics were conducted. Three months later impressions of the mediation process and its outcome were gathered. The questionnaires were self-administered or by telephone.

The result of the mediation was 38% reached final agreement, 25% partial agreement and 37% reached no agreement. The participants were asked if they would recommend divorce mediation to others. The response was 208 yes and 63 no. The researchers indicated, the mediators' action and impact on the disputants might be more crucial for successful intervention than the nature of the dispute or the characteristics of the disputants. Furthermore, it might be argued that client self-reporting does not reflect what actually takes place during mediation.

In ***divorce mediation*** the settlement rate is between 22% and 97% across studies, with most at 40% to 70% compared to 100% through adjudication (Kressel, 1985). However, Pearson & Thoennes discovered that many respondents felt obligated to settle because of the strong-arm tactics used by the mediator. The mediator's pressure and/or bias, was reported with 25% to 50% of those sampled. Research suggests that mediation with the poorest outcomes are those with couples in custody/visitation (Kressel & Pruitt, 1985); disputes with a poor history of prior litigation and post-dissolution battles (Doyle & Caron, 1979); who describe their ability to cooperate as "just about impossible," or with a history of domestic violence (Person & Thoennes, 1984b); who have a wide range of highly disputed issues – especially with children (Doyle & Caron, 1779); and with those who have established patterns of destructive conflict management (Kressel, Jaffee, Tuchman, Watson, & Deutsch, 1980).

Studies show other factors that may reduce the likelihood of successful divorce mediation. For example, when a conflict expands to new spouses, lovers, stepchildren, and grandparents; a parent has a high level of continuing psychological attachment; or the spouse refuses to accept the divorce decision (Sprenkle & Storm, 1983). Attorneys can also influence the success rate of mediation if they are apathetic about ADR as a settlement process (Irving 1980).

"Mediation was introduced into the small claims courts during the late 1970s in response to criticisms of the trial process and the quality of justice delivered" (Wissler 1984). Social advocates and leaders in the legal field encouraged a surge of support for ADR programs by developing a Task Force. One recommendation by the Task Force

was to develop neighborhood justice centers that would process disputes in a variety of ways, including mediation programs (Conner & Pruitt 1985).

Therefore, ***Community Mediation Centers*** were developed to alleviate stress on the judicial system and place the resolution task at the grassroots level. Individual mediators or panels are used to handle "minor" disputes. These problems include neighborhood conflict, misdemeanor crimes, family disputes, some marital issues, juvenile delinquency, landlord-tenant disputes, and small civil suits between community members (Danzig 1973).

The U.S. Department of Justice, through the Law Enforcement Assistance Administration (LEAA), developed one of the earliest and most extensive neighborhood justice center projects, which spread nation wide. These community mediation centers are designed to help people resolve conflict with friends, relatives, neighbors, landlords and tenants, etc., to increase the likelihood of continued relationships. This created specialized mediation projects to assist in the resolution of issues such as special education, agricultural, delinquency peer councils, and much more.

The results of the research on community mediation centers varied. For example, Roehl and Cook (1985) found that 80% to 89% of disputants are satisfied with community mediation and would use it again if a dispute arose in the future and that there was a 67% to 87% compliance rate. The Pearson, 1983 research showed that the settlement rates for neighborhood justice programs range from 65% to 78%.

Studies nationwide reveal that many users of community mediation came away highly satisfied with the process and its outcomes. Merry and Silbey (1984) interviewed a sample of 73 disputants participating in two community mediation programs. Ninety-

two percent of the sample indicated mediation was a good process; 75% felt it was a fair process; and 85% reported upholding the mediated agreement. Other studies nationwide report similar satisfaction rates (Cook, Rowehl, and Sheppard 1980, Davis, Tichane, and Grayson 1980; Pearson and Theinnes 1985).

At first glance, satisfaction, compliance, and settlement rates influence one to believe that community mediation programs are successful. However, strong evidence suggests voluntary usage of community mediation centers is low. Community mediation programs without close court connections or well-developed court referral systems have experienced low caseloads (DuBow, 1986). In addition, programs with good referral systems have experienced a high rate of no-shows (Harrington 1984, Felstiner and Williams 1978).

The low numbers may be due to a lack of community education and advertising about neighborhood justice centers. Attorneys may also steer clients away from mediation because of loss of revenue, or they believe it is "second class" justice because of inadequate due process (Pearson (1982).

Little evidence supports the claim that community mediation programs reduce court backlog. For example, an Atlanta neighborhood justice center handled 1600 cases compared to 88,000 cases by the local court; which is only 2% of the court's load (Roehl & Cook, 1985). The low participation rate may be due to a variety of reasons. For example, mediation services are refused by potential participants more than 50% of the time (Pearson & Thoennes, 1984a). Furthermore, the no-show rate in mediation programs is 33% to 66% (Roehl & Cook 1985).

In 1974 twenty grants were awarded for neighborhood mediation centers. Orange County, Florida developed the Citizen Dispute Settlement (CDS) Project to provide impartial hearings for residents who had complaints involving ordinance violations and misdemeanors (e.g., simple assault). The research measured the degree of satisfaction with the settlement and the likelihood that the underlying conflict had been solved.

The study consisted of 306 complaints, median age 36, two-thirds female, 70% Caucasian, and 49% married. Harassment and simple assault were 48% of the complaints. The satisfaction rate for the complainant was 37.2% very satisfied; the respondent was 48.4%, and the hearing officer 27.7%. The results of the likelihood of the problem solved for the complainant was very satisfied 30.9%, the respondent 41.1% and the hearing officer 15.9%. A follow-up satisfaction sample was polled three weeks later. The very satisfied rate for the complainant was 51.2% going up while the respondent rate went down to 38.1%. The majority of the complainants 58.5% and 64.3% of the respondents reported that the problem was solved (Conner & Surette 1980).

The last type of mediation, which is advocated to be an alternative to adjudication, is ***mediation in Small Claims Court***. The claim is that compromise, compliance, and disputant satisfactions are greater through mediation versus adjudication. According to Vidmar (1985) despite the fact that a large number of experiments concerning mediation in the legal system were initiated during the 1970's, there have been few attempts to assess empirically whether the hypothesized differences between adjudication and mediation hold true.

McEwen and Mairman (1981) conducted a study in 1979 in Maine's small claims court. Six district courts of varying sizes and caseloads were used to collect data, which

included a total of 403 cases. The three areas tested for were compromise, compliance, and satisfaction rate. Mediated cases were more likely to compromise as opposed to adjudication, which created an all-or-nothing outcome. Defendants who owed money were twice as likely to comply than those who received a judgement in court. Mediation also resulted in a greater level of satisfaction and fairness reports.

Vidmar (1984) focused on the degree of liability admitted by the defendant in relation to the settlement process, compromise, and satisfaction rate. The research project was located in Middesex County Small Claims Court in London, Ontario dealing with claims up to $1000. Five regular judges heard cases such as consumer issues; individuals versus individuals; business disputes; landlord-tenant; various torts; including automobile damages. A random sample of 180 cases was analyzed with 89 as no-liability, 73 partial-liability, and 18 as full-liability. In no-liability cases the defendant denies all liability. In partial-liability cases the defendant feels they are only responsible to pay for only part of the claim. The defendant who claimes full-liability admits liability but does not have the money to pay what is owed.

Vidmar reports cases involving defendant's denial of all liability were more likely to be adjudicated, whereas those involving admission of partial or full liability were more likely to be settled by mediation. Many mediated settlements involved no compromise or resulted in coercive rather than have consensual processes. Compromise, when it did occur, was not necessarily a satisfactory outcome for one or both of the disputing parties.

The effect of process and case characteristics in mediated and adjudicated cases was the focus of the Wissler study. The research examined the small claims divisions of four district courts in the metropolitan Boston with damages less than $1,200. There was a

total of 281 litigants involved in 221 different cases that fell into three categories: 72 cases achieved an agreement in mediation, 5 cases went to trial after they were unable to reach a mediated agreement, and 96 cases had only a trial. The litigants were interviewed by telephone 6 to12 weeks after the court date ranging form 15 to 30 minutes.

Mediation performed better than adjudication in many areas. For example, litigants in mediation were more likely to say that the process was fair, they were satisfied with the process, they would use it again, and that they had improved post-court attitudes toward and understanding of the other party. Yet, mediated and adjudicated cases showed only a marginal difference in the compliance rate. Wissler concluded, admitted liability has some effect, however, differences in the effectiveness of mediation versus adjudication are due more to differences in the processes themselves than to the characteristics of the disputes and the disputants in each procedure.

In summary, the majority of preceding mediation research examines participant satisfaction rates, settlement rates, and compromise based primarily on self-reporting. This research studies self-reported satisfaction rate, its relationship to justice, and the disparate impact on the low-income population.

Chapter IV

Project Background

This research project is an analysis of a cooperative community grant, involving four local agencies that were awarded funds to establish, conduct, and evaluate a mediation program. Each agency had a specific part to perform in executing the grant. The participating agencies were funded with Emergency Shelter Grant money ***'aimed at the prevention of homelessness. The intent was to reduce the eviction rate through the use of mediation to settle landlord and tenant disputes'.*** The participating agencies and the role each contributed:

- **Legal Services of Eastern Michigan (LSEM)**
  LSEM provided legal training in landlord/tenant defenses (Appendix A) to the Housing Specialist at Urban League.

- **Urban League (UL)**
  UL provided training on housing rights and responsibilities of renting and the eviction process to families and individuals facing Summary Proceedings.

- **Genesee County Community Action Agency (GCCAA)**
  GCCAA provided trained and experienced volunteers to mediate disputes between landlords and tenants that were likely to otherwise result in eviction and homelessness.

- **University of Michigan – Flint**
  The University in conjunction with LSEM developed the evaluation/research tool designed to measure the success of providing the poor with legal education prior to mediation.

LSEM is a non-profit law firm that has been providing free civil legal assistance to low-income people in Genesee County since the 1950's. In addition to Genesee County, LSEM offers services to thirteen other mid-Michigan counties. LSEM offers legal assistance in the following specialties: housing, including fair housing; public benefits,

including heath; family law, including domestic violence; senior law, including elder abuse; education law; and employment law including economic development and jobs.

In the past seven years, LSEM has provided over 40% of its legal work in the area of housing. LSEM's housing unit has always done some work regarding homelessness, however, its work has focused on other issues. Types of cases handled include, but are not limited to: evictions, lockouts, land contracts, security deposit refunds, utility shutoffs, information on recourse through small claims court, and fair housing issues that have evolved into the establishment of a Fair Housing Center.

The second agency to participate in the mediation project is Urban League (UL). Since 1974 the Department of Housing and Urban Development (HUD) has certified the Urban League's Housing Services. UL provides casework and group counseling to more than 500 people annually. These services include mediation and resolution of landlord/tenant disputes, clarification of the eviction process, teaching the rights and responsibilities of renting and buying, money management counseling, home management (life skills), maintenance and repair counseling, tax, rental, and mortgage default counseling, reverse mortgage, and fair housing counseling.

Genesee County Community Action Agency (GCCAA), is the third agency involved. GCCAA currently, and for the past seven years, administered the Community Dispute Resolution Center of Genesee County (CDRC). This project receives funding from the Michigan Supreme Court/State Court Administrative Office (SCAO) to resolve disputes, typically in the court system, through the use of mediation. CDRC has 60 mediators, each of whom has completed a rigorous, SCAO approved, 40-hour mediation

training and 20 additional hours of landlord/tenant training (Appendix B), and an additional 10 hours of supervised internship working with an experienced mediator.

Chapter V

Eviction Process

The eviction process is a means for landlords to force tenants into compliance to pay rent owed or vacate the premises. The tenants in the experimental group receive training, which includes information on the eviction process. The following is a description of the eviction procedure, which may lead the parties into mediation. Eviction is a legal process for a landlord to remove a tenant from the rented premises with or without the tenant's consent. The landlord may evict for any of the following:

1. Non payment of rent;
2. Damage to the property;
3. Engaging in illegal activities related to controlled substances;
4. Causing a "serious and continuing" health hazard;
5. Engaging in illegal activities not related to controlled substances;
6. Violation of terms of the rental agreement (lease);
7. Failure to vacate the premises after the lease expires; and
8. Failure to vacate the premises after the landlord has given timely notice to terminate the lease.

The landlords may evict to regain possession of a rental unit for other purposes, such as remodeling or the decision to no longer use the unit as a rental. The tenant is obligated to vacate the premises unless he or she can prove that the eviction request was issued in retaliation for some action, which the tenant is legally permitted to do, such as placing rent in escrow and giving proper notice to the landlord until necessary repairs are made.

The landlord must follow the proper legal procedures to evict a tenant. Public Act No. 300 or 1976 prohibits "self help" evictions. For example the landlord may not:

- Change the looks on the doors;
- Move tenants positions to a different location;
- Use force or threat of force;
- Board up premises;
- Remove, withhold, or destroy personal property; or
- Put the tenant's belongings on the street.

Notice to Quit (NTQ), the first step to the eviction process, is a written notice to the tenant that the landlord wishes to regain possession. The NTQ determines the number of days before a landlord can file a complaint with the court. A 7-day NTQ is based on non-payment of rent, a health hazard, or injury to the premises. This eviction notice gives the tenant seven days to correct the problem or move out. For other violations of the lease or if the landlord wishes to regain the property a 30 day NTQ may be issued. The notice must be in writing and give the tenant at least one rental period (usually 30 days) to vacate the premises.

After the required notice period, the landlord may file a complaint with the District Court. Next, the court delivers or mails to the tenant a summons to appear in court on a certain date and time. If the tenant wins at the court hearing, the tenancy continues. If the tenant loses, the tenant has ten days to pay due rent, settle the dispute, or vacate the property. Ten days is a legally mandated minimum of days that the judge must provide unless there is illegal drug use or a serious health hazard to the premises. The judge has the discretion to grant more days.

If the tenant has not vacated after the ten days (or the time established in the judgment), the landlord can seek a ***writ of restitution,*** issued by the Court. This order allows the sheriff or other authorized court officer to serve the process and restore the landlord to the full possession of the premises.

Chapter VI

Affirmative Defenses

Affirmative defenses play a major role in the mediation process. Used in the correct way, the defenses allow tenants to gain relief in the final judgment. In this study the subjects in the experimental group receive training prior to mediation, from the Urban League Specialist, in affirmative defenses to use during mediation. Affirmative defenses are used to negotiate a final agreement. For example, this may include more time to pay rent owed, pressure for the landlord to make repairs, or some relief for rent money owed. The following information explains the different types of defenses available to tenants.

The person who starts the lawsuits, the plaintiff, files and serves a Summons and Complaint against the defendant, the person being sued. In this study, the plaintiff is the landlord and the defendant is the tenant. The plaintiff may file a termination of tenancy, where the landlord tries to end a tenant's occupancy because the landlord wants the property back, for no specific reason. Another court action is non-payment of rent. Here, the landlord gives the tenant the choice of paying and staying or not paying and moving.

There are affirmative defenses that tenants have available to use in nonpayment cases. Affirmative defenses are defenses, which do not simply deny allegations. They give the Defendant an opportunity to offer proof of facts that will avoid judgment even if the facts in the complaint are true. The tenant may be excused from liability by showing a justification for not paying money he owes the landlord.

Repair and deduct is a justifiable means for withholding rent. This is a situation where the landlord has a duty to make repairs to the premises but refuses. For example, the furnace goes out so the tenant contacts the landlord requesting repairs. After 48 hours

the landlord had made no attempt to make the repairs. Therefore, the tenant pays for the materials, makes the repairs, and then deducts the expense from the rent owed.

Another common defense is an ***abatement*** (being partially excused from paying rent) pursuant to MCL 600.574 because the landlord violated the Covenant of Habitability statute, MCL 554.139 by not keeping the premises in reasonable repair or not compliant with the applicable health and safety laws. The violation exists when the landlord causes or allows the following conditions to exist: defective and unstable back door, faulty electric switches, house over-run with roaches or mice, etc.

The defense of ***partial constructive eviction*** is another reason for abatement. It is used whenever the house has been condemned, unlivable because of flooding or fire, or in the absence of utility service where the landlord is at fault. A ***breach of contract***, a defense for abatement, is where the tenant experiences out of the pocket expenses because the landlord did not follow through on promises such as furnishing a working washer, dryer, or refrigerator as part of the rental agreement. The ***security deposit offset defense*** can be used for outstand rent, utility charges, or damage to the property.

Failure to mitigate is a defense available if the landlord did not make reasonable efforts to re-rent the premises when a tenant is evicted, has moved out before the lease runs out, or moves without properly notifying the landlord.

The tenant also has the option to file a ***counterclaim***, which is a lawsuit within a lawsuit. The type of suit, in violation of 600.2918, may be initiated if the landlord fails to provide water service, electricity, hot water, etc. Public Act No. 300 or 1976 prohibits "self help" evictions which includes: the landlord threatens or uses force against you;

changes locks, destroys your property; boards up the premises; removes doors, windows or locks; or introduces noise, odor or other nuisance, which interferes with your tenancy.

Retaliation defense is a common defense in Termination of Tenancy cases. The concept of retaliatory eviction being unlawful is based on Michigan law; Section 5720 of the "Summary Proceedings Act", MCLA 600.5720. The law states at Section (1) (a) – (f) that a landlord cannot terminate a tenancy at will if the tenant can prove the termination was intended as a penalty for making a complaint to a governmental authority such as the city building inspection, having a membership in a tenant's organization; or placing escrowed past due rent with the City Treasurer, Department of Building Inspection, or Legal Services.

Chapter VII

Hypotheses

The study includes the following hypotheses:

1. Tenants who go directly before the judge, without mediation or legal representation, will receive a less favorable outcome than those who have legal representation or mediation.
2. Tenants who participate in mediation (with or without training) will have a less favorable outcome than tenants who have legal representation.
3. Tenants receiving training by the Urban League Specialist, prior to mediation, will have a more favorable outcome than those who do not receive training.
4. Self-reported satisfaction will not be a reliable indicator that justice was served.
5. Mediation with or without training will not provide justice for low-income people.

The variables selected to test the hypotheses include:

- Whether a judgment was made in favor of or against the tenant;
- Whether or not a judgment for eviction was ordered;
- Whether or not an order requiring rent abatement was entered;
- Whether or not an order requiring landlord repairs was entered;
- Whether or not time was given for the tenant to seek legal counsel;
- Whether the case was dismissed;
- Whether more time than the legally mandated ten days is given to pay past due rent, settle the dispute, or vacate the premises.

Chapter VIII

Methodology

This study is designed as a randomized experiment involving a treatment group of fifty tenants trained by UL, and a control group of fifty-three that were not trained. The selection of the litigants in each group was based on the availability of the UL trainer. Due to numerous unrelated commitments of the UL trainer, involvement in the project had no regular pattern. Therefore, on the days that the trainer was present, the litigants (experimental group) received training prior to mediation. On the days where there was no trainer, the litigants (control group) went directly to mediation.

The participating subjects were involved with District Courts located in the City of Flint (67 percent of the subjects), Mt. Morris (33 percent of the subjects), and Flushing (1 percent of the subjects) with seven presiding judges. The landlord/tenant cases were heard on rotating bases among the judges. Prior to the inception of the study, the District Courts were sent a memo from LSEM explaining the project. Cooperation from the judges ranged from one case referred to mediation to all cases that had not reached an agreement referred to mediation. The referrals varied from judges *suggesting* the parties participate in mediation to *direct orders* to participate in meditation.

On the day of the hearing both parties must be present and pro se (representing themselves without an attorney) to participate in the mediation project. If the parties reach a settlement prior to mediation they go directly before the judge to have the agreement placed on the court record. Parties that have not reached a settlement will either participate in mediation or go before the judge to present their case. The judge determines the process.

Tenants in the control group go directly to mediation with no prior training for UL. However, tenants referred to mediation in the experimental group meet with the UL Housing Specialist for consultation on landlord/tenant rights, regulations, and defenses prior to participating in mediation. Generally, tenants mediate with experienced landlords. Therefore, the intent of the training is to prepare subjects for mediation so they can discuss relevant defenses.

During mediation the parties attempt to reach an agreement with the help of a neutral third party – the mediator. If the parties reach an agreement, the mediator records the terms for the parties to sign and then go before the judge to place the settlement on the court record. If no agreement is reached during mediation, the case will be heard that same day, by a judge who makes a final judgement.

The researcher is present during the training sessions with UL, the mediation, and also conducts the surveys.

The project was to include trained community peer volunteers, however, GCCAA had a difficult time fulfilling this requirement of the project. Instead, the mediators were trained staff members employed by GCCAA. The three mediators facilitated a total of 103 cases. One person mediated 62 cases, the second 34, and the third person mediated 7 cases.

The mediation subjects from both the experimental and the control group were asked to complete a questionnaire, on site, immediately after their mediation experience. The participants were also read the following before being asked any questions.

The University of Michigan – Flint has been asked to evaluate the landlord/tenant mediation process. I would like to ask you a few questions to help assist with that

evaluation. All of the information is confidential and you will not be identified in any reports based on the study. This is a voluntary process and you can terminate the interview at any time without penalty.

Each person was given a copy of the survey to look at while the surveyor read all the questions and recorded the responses. The questionnaire was Likert style, however, many of the questions provided an opportunity for open-ended responses. The five point Likert Scale included: 1 = strongly agree, 2 = mostly agree, 3 neutral, 4 = mostly disagree, 5 = strongly disagree, and 9 = not sure/no response. After the survey was complete, the tenants were given $10 for taking time to answer the questions on the survey. The subjects were not told of the $10 until they finished the survey.

The questionnaire was designed to collect information in three areas. The first section includes general demographic information about the tenants such as age, sex, race, and number of adults in the home, etc. Secondly, information regarding process and tenant satisfaction level was obtained. Final judgement was the third area to measure, which included time, money owed, abatement, repairs, etc.

*Prior to the inception of the study Edward Hoort, Executive Director, of Legal Services of Eastern Michigan made a decision to fund this component of the research.

Chapter IX

Findings

Subject's Demographics

- There were N=103 subjects, fifty in the experimental group and fifty-three in the control group.
- The reason for the hearings was 99 for non-payment and 4 for other lease violations.
- Subjects with children totaled 79.6%.
- The racial composition is 67 black (65%), 3 Hispanic (2.9%), and 33 white (32%) (Table 7).
- Sixty-eight percent of the tenants are of the lowest income level of $0 - $12,000 (Table 8).
- Sixty-four percent are high school graduates or less (Table 9).

Therefore, the predominate profile is:

- Minority,
- Low-income,
- High school graduate or less,
- With Children.

Table 7 - Race

	Frequency	Percent
Black	67	65%
White	33	32%
Hispanic	3	3%

Table 8 Income Level

Income Level	Frequency	Percent
$0 - $12,000	70	68.0
$12,001-$24,000	24	23.3
$24,001-$36,000	1	1.0
$36,001-$48,000	6	5.8
$48,001-$60,000	2	1.9
Total	103	100.0

Table 9 – Education Level

Education Level	Frequency	Percent
8th Grade or Less	2	1.9
Some High School	25	24.3
High School Graduate	39	37.9
College No Degree	29	28.2
College Degree	8	7.8

Final Judgment - Outcome

The outcome is the final settlement reached in mediation or the decision by the judge. The judgment consisted of one or a combination of the following:

- *One week adjournment to get an **attorney**;*
- *Adjournment while the landlord makes **repairs**;*
- ***Eviction** (the tenant must leave the residence);*
- *Case **dismissed**;*
- ***Abatement** (the tenant has a reduction of money owed because the landlord violated the contract – making repairs, having the water shut off, changing the locks, etc.), and*
- ***Time** (the number of days a tenant has to pay rent owed, to move, or the amount of time the tenant has to move but no money owed).*

The final outcome for tenants participating in mediation (with or without training), going directly before the judge, and those with legal representation is displayed in Table 10. The percentage will not equal 100 because tenants received one or more of the settlement options. The 50 tenants in the experimental group that received training prior to mediation, had 8 adjournments for an attorney, 8 adjournments for landlord repairs, 12 evictions, 2 dismissals, and 6 abatements. Dividing the number of participants receiving the settlement by the number in that category arrives at the percentage. For example, of the 50 tenants who received mediation training 12 received eviction as a final outcome, which equates to 24% of those who received mediation training was evicted (12 ÷ 50 = 24%). Therefore, the highest percentage rate for mediation (with or without training) and going directly before the judge was eviction. The highest percentage rate for those receiving legal representation is abatement and dismissal.

Table 10 - Outcome for Mediated (with and without training), Going Directly to the Judge, and Legal Representation

OUTCOME	MEDIATION TRAINING N=50	MEDIATION NO TRAINING N=53	DIRECTLY TO JUDGE N=100	LEGAL REPRESENTATION N=33
Adjourned – Attorney	N=8 16%	N=1 2%	N=10 10%	NA
Adjourned – repairs	N=4 8%	N=4 8%	N=0 0%	N=7 22%
Evict	N=12 24%	N=12 23%	N=33 33%	N=7 21%
Dismiss	N=2 2%	N=2 4%	N=4 4%	N=11 33%
Abatement	N=6 12%	N=3 6%	N=0 0%	N=14 42%

Table 11 shows the number of tenants that received time and the amount of time in each of the settlement categories. Tenants who received 9 days or less was highest for subjects that participated in mediation. The mandatory ten days was highest 97% for

tenants going directly before the judge, followed by tenants with no training at 57%, mediation with training at 53%, and the lowest 18% for tenants with legal representation. The more time a tenant has to correct the current situation the more likely they will not be evicted. Tenants that received 11 or more days were 3% going directly to the judge, 39% mediation no training, 42% mediation with training, and 82% for tenants with legal representation.

Table 11 - Outcome for Mediated (with and without training), No Legal Representation, and Representation from Legal Services of Eastern Michigan and Time Received

OUTCOME	MEDIATION TRAINING N=38	MEDIATION NO TRAINING N=51	DIRECTLY TO JUDGE N=78	LEGAL SERVICES N=17
9 or less days	N= 2 5%	N= 2 4%	N= 0 0%	N= 0 0%
10 days	N= 20 53%	N= 29 57%	N= 76 97%	N= 3 18%
11 or more days	N= 16 42%	N= 20 39%	N= 2 3%	N= 14 82%

Chapter X

Hypotheses Tested

1. Tenants who go directly before the judge, without mediation or legal representation, will receive a less favorable outcome than those who have legal representation or mediation.

Results: Tenants with legal representation or mediation had a better outcome than those going directly before the judge. The following are supporting conclusions:

- The experimental group (training prior to mediation) had more favorable outcomes than going directly before the judge - in adjournments for an attorney, repairs, eviction rate, abatement, and time.
- The control group (no training prior to mediation) had more favorable outcomes than going directly before the judge - in adjournments for repairs, eviction rate, abatements, and time.
- The area that was an advantage for the group going directly before the judge was the dismissal rate was higher than those in the mediation groups. It did not, however, have a higher rate than the group with legal representation.
- The group going directly before the judge had a more favorable outcome than the control group (mediation - no training) in adjournment for an attorney.

Therefore, the experimental group had a greater outcome than those going directly to the judge in all outcomes except the dismissal rate. The control group had a greater outcome than those going directly to the judge in all outcomes except adjournment for an attorney and dismissal rates. Furthermore, tenants with legal representation had a more favorable outcome in all areas.

2. Tenants who participate in mediation (with or without training) will have a less favorable outcome than tenants who have legal representation.

Results: Tenants with legal representation had a greater outcome than those who participated in mediation (with or without training). The following are supporting conclusions:

- The tenants with legal representation were over 4 times more likely to receive an outcome requiring the landlord to make repairs than tenants in the experimental and control groups.
- The tenants with legal representation were over 16 times more likely to receive a dismissal than tenants in the experimental and control groups.
- The tenants with legal representation were from 3.5 to 7 times more likely to receive an abatement than tenants in the experimental and control groups (respectively).
- The eviction rate was lower for tenants with legal representation than tenants in the experimental and control groups.
- The tenants in the experimental and control groups were three times more likely to receive a final judgment of ten days (rather then 11 or more days) than tenants with legal representation.
- Eighty-two percent of the time tenants with legal representation received a judgment of eleven or more days compared to 42% in the experimental group and 39% in the control group.

Therefore, there is a definite advantage for tenants with legal representation resulting in more time, less evictions, abatements, landlord repairs, and dismissals.

3. Tenants receiving training by the Urban League Specialist, prior to mediation, will have a more favorable outcome than those who do not receive training.

Results: There is little or no difference in the outcome of the experimental and the control groups. Yet, the experimental group received training in landlord/tenant defenses to use during mediation. The following are supporting conclusions:

- Eviction Rate – Mediation Training 24% & No Training 23%,
- Dismissal Rate – Mediation with Training 2% & No Training 0%,
- Repairs by Landlord – Mediation with Training 8% & No Training 8%,
- Abatement – Mediation with Training 12% & No Training 6%,
- Adjourned for an attorney – Mediation with Training 16% & No Training 2%,
- Time – 9 or less days – experimental group 5% (2) and 4% (2) in the control group; 10 days – experimental group 53% (20) and 39% (20); and 11 or more days – experimental group 42% (16) and 39% (20).

The results show that with training prior to mediation, there is little or no significant difference in the final outcome between the group with training and the group with no training. Both groups had high eviction rates, and low dismissal, repairs by landlord, and abatement rates. The majority of time, the experimental and control groups received the legally mandated minimum 10 days. The only valuable difference between the experimental and the control groups was that the experimental group had a higher rate for adjournments to obtain an attorney. Yet, the rate was not much different than tenants going directly before the judge, 16% compared to 10%.

The subjects in the control group received training in landlord/tenant defenses. The purpose was to provide tenants with landlord/tenant defenses so they could use them

during mediation. Two methods of measure were used to establish the transfer of training. The first method was by observation. The researcher was present during the training and mediation. Although the trainer from Urban League provided the information clearly, in some cases, wrote the information down, the majority of the tenants did not offer information learned in training or were unable to articulate the defenses during mediation.

The second method to measure the transfer of training was gathered through the survey tool. The subjects in the experimental group were asked two open-ended questions. First, "What did you learn in training?" Second, "Did you bring up the information during mediation?" There were 47 responses out of 50 tenants in the experimental group. The tenants offered no defense during mediation 26 times and 21 times they offered information learned during training. The following are what the tenants learned and what responses they did or did not state in mediation:

What the **TENANT LEARNED – & – DID NOT SAY** during mediation

- What is Mediation
- A lease is important
- I have rights (4)
- I learned nothing (2)
- Always get receipts
- Take pictures
- Community agencies will help with money owed (2)
- I have a right to contest
- I can get an attorney from Legal Services (4)
- Small Claims Court (2)
- Landlords are not always right
- I can use my deposit for repairs
- Keep receipts
- This is an illegal eviction
- Landlord cannot change the rental rate every month
- How to ask for an adjournment
- I learned good advice

What the **TENANT LEARNED - & - DID SAY** during mediation

- I should pay on time
- Small Claims Court (3)
- I have rights (2)
- Legal Services (2)
- Lock Out Law (2)
- Keep a copy of receipts
- I have receipts
- Community Resources are available to help
- This is not a money judgment (2)
- Landlord have to do repairs
- I have a good case
- I can move if I want to
- Tenants have rights
- I need to pay the rent owed & a payment plan is possible
- I learned about procedure

4. Client self-reported satisfaction is not a reliable indicator that justice was served.

Results: The majority of tenants that participated in mediation reported high satisfaction rates, yet they received less favorable outcomes than those with legal representation. Justice was not served because the tenants in mediation should have received an outcome similar to those with legal representation. The following are supporting conclusions:

Client self-reporting is consistently applied to measure mediation success in preceding research. This research too, implies that mediation is successful, based on tenant self-reported satisfaction rates. Table 12 shows that tenants who received eviction as a final judgment had high satisfaction rates regarding how their problem was handled, fairness in the process, and were satisfied with the outcome.

Table 12 – Mediation Subjects (with and without training) Receiving an Eviction Judgment & Satisfaction Rates

SUBJECTS RATED	*YES*		*NO*	
SATISFIED HOW MY PROBLEM WAS HANDLED	N=19	79%	N=1	4%
PROCESS WAS FAIR TO ME	N=21	88%	N=1	4%
SATISFIED WITH THE OUTCOME	N=13	54%	N=6	5%

A 10-day judgment is a legally mandated ***minimum*** that a tenant receives. Table 13 show that tenants who received only 10 days as a final judgment had high satisfaction rates regarding how their problem was handled, fairness in the process, and satisfied with the outcome.

Table 13 – Mediation Subjects (with and without training) Receiving a 10 day Judgment & Satisfaction Rates

SUBJECTS RATED	*YES*		*NO*	
SATISFIED HOW MY PROBLEM WAS HANDLED	N=28	57%	N=12	24%
PROCESS WAS FAIR TO ME	N=31	63%	N=11	23%
SATISFIED WITH THE OUTCOME	N=25	51%	N=21	43%

This research demonstrates that high satisfaction rate is not a good indicator of measuring successful mediation programs. When outcome is factored in with the satisfaction rate, mediation success is not as convincing as it first appears. Tables 12 and 13 show a high satisfaction rate, yet tenants in the mediated (with training and no training) groups had less favorable outcomes than tenants with legal representation. Client self-reported satisfaction rates may be lowered, if tenants realized that more favorable outcomes are possible. For example, if tenants recognize and comprehend that 10 days is a legally mandated minimum, that rent money could be placed in escrow until the landlord makes repairs, or that they have a right to an attorney, the satisfaction rate may decrease.

5. **Mediation with or without training will not provide justice for low-income people.**

Results: The research supports the fact that mediation with or without training will not provide justice for low-income people. Mediation provides access to an alternative form of settlement, but not an access to justice. A low-income tenant participating in mediation should be assured the same favorable outcomes as tenants with legal assistance. For justice to be served the outcome for all procedures should be similar; that was not the case. The following are supporting conclusions:

Time

The result of the research shows that the majority of tenants receive ten days, however, the system is designed to allow for more time. A ten-day judgment is a legally mandated minimum; therefore, judges, mediators, and attorneys have the option to offer more than ten days to remedy the situation. Time is a crucial factor to combat high eviction rates and homelessness; however, the majority of tenants receive the 10 days "rubber stamp".

The norm was 10 days for tenants without legal representation. Tenants going directly before the judge had a 97% 10-day rate, the control group 57%, and the experimental group had a 53% rate. However, 82% of the tenants receiving legal representation received a judgment of 11 days or more. Ten days provides little time to apply for payment assistance with social agencies, including the Family Independence Agency, to assist with rent owed. Furthermore, it does not allow much time for tenants to borrow the money from a friend or relative or establish realistic payment arrangements with the landlord.

Disparate Impact

The focus of disparate impact is not on a single incident, but whether a policy, procedure, or practice has a significantly greater impact on members (race, sex, national origin, disability status, color, religion, and familial status) protected under the Fair Housing Act. In Mountain Side Mobile Estates v. HUD, 56 F.3d 1243, 1251-53 (10th Cir. 1995) "The key to proving a disparate impact claim is statistical evidence showing that the defendant's policy or practice has a greater impact on protected class members than others." The statistical impact can be local or nationwide. The policy or practice must not be discriminatory on its face nor be applied in a discriminatory manner.

Mediation may be facially neutral, yet it has disparate impact on the poor, which is predominately members of the following protected classes: race, sex, and familial status. Those that participate in landlord/tenant mediation are predominately low-income tenants with children. The subjects in this study were 65% Black, 79% female, 79% with children. Furthermore, this profile includes low income (68% had less than $12,000 annual income) and low education levels (64% had a high school education or less).

According to the report, *Poverty in the United States: 2001*, by Bernadette D. Proctor and Joseph Dalaker of the U. S Census Bureau, the poverty rate for Blacks (22 percent) is three times the rate of White Non-Hispanics (8 percent). Furthermore, "... 11.7 million children, or 16.3 percent, were poor. Children represent a disproportionate share of the poor (25.6 percent) of the total population." "Of Children under 6 living in families with a female householder, no spouse present, 48.9 percent were poor, over five times the rate of their counterparts in married-couple families (9.2 percent)." The poverty rate for female householder, no husband present, White Non-Hispanic is 19

percent while the highest rate is a Black female household, no husband at a 35.2 percent rate. This is the predominant mediation participant.

For those at risk of losing their home, the entire judicial process can be very intimidating. The *New York Times,* July 10, 2003, summarized the experience of New York City Housing Court, perhaps prototypical of landlord/tenant courtrooms: "With its boisterous atmosphere of lawyers and tenants negotiating in crowded hallways or barking on cell phones, the housing court can be a desperately bewildering experience. While about 90 percent of the landlords have lawyers, perhaps only 15 percent of the tenants do." Those who are steered into mediation are poor, a low education level, and are not court room savvy. Landlords' generally have a higher level of education, a greater understanding of the laws, and can better articulate their case in a more confident and competent manner.

Chapter XI

Conclusion

The implications of high eviction rates and the 10-day minimum practice have a broader impact on society than just people losing their home. It impacts funding for schools, non-profit agencies, and medical clinics, which are already experiencing insufficient funding. Also, it may increase crime rate, divorce rate, mental health services, unemployment, etc.

Family mobility adds to high classroom turnover rates, which results in lower achievement levels, slower academic pacing, lower graduation rates, and additional special education programs. The effect on the child who is being evicted is enormous. As described by Maslow's Hierarchy of Needs, the child's lower level needs are absent. For example, if the child's focus is on their basic needs (such as food, water, shelter, security, and a sense of belonging), this contributes to a low self-esteem, lack of self-confidence and most likely a poor self-image. This prohibits the child from seeing what is truly possible for him or her.

Several studies show results similar to *A Report from The Kids Mobility Project* in Minneapolis which reports that 80% of the residential moves were associated with housing problems, such as substandard conditions, inability to find affordable housing, evictions, problems with landlords, or property condemnation. In addition, according to Chester Hartman, President/Executive Director of the Poverty & Race Research Action Council in Washington, D.C., "transiency is disproportionately higher among certain identifiable groups – in particular, low-income, homeless, farm worker, and minority

children – the already inadequate education received by such students is grossly magnified."

Furthermore, homelessness creates stress on a community and its resources. For example, when tenants and their children are evicted, they have no place to go, no money, and when shelters are full, the Family Independence Agency – Children's Protective Services can get involved and remove the children from the custody of the parents, placing the children in foster care. This creates additional problems for the parents, the children, and the community.

The amount of time the tenant receives has a monumental influence on the destiny of individuals, families, and communities. A judgment of 20 or 30 days to correct a housing situation can facilitate stability, reduce homelessness, and decrease burdens in already stressed communities.

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